IN THE NATIONAL AND STATE HOUSE OF ASSEMBLY

ELECCTION PETITION TRIBUNAL (PANEL 3)

HOLDEN AT UMUAHIA, ABIA STATE

THIS MONDAY THE 11TH DAY OF SEPTEMBER, 2023

BEFORE THEIR LORDSHIPS

HON. JUSTICE ABUBAKAR IDRIS KUTIGI - CHAIRMAN

HON. JUSTICE AHMAD MUHAMMAD GIDADO - MEMBER 1

HON. JUSTICE MOMSISURI BEMARE ODO - MEMBER II

PETITION NO: EPT/AB/HR/26/2023

BETWEEN:

1. **CHIMAOBI EBISIKE IHEANYICHUKWU…….PETITIONERS**
2. **PEOPLES DEMOCRATIC PARTIES (PDP)**

AND

1. **EMEKA SUNDAY NNAMANI……..RESPONDENTS**
2. **LABOUR PARTY(LP)**
3. **INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC)**
4. **IKWECHEGH ALEXANDER IFEANYI**
5. **ALL PROGRESSIVES GRAND ALLIANCE (APGA)**

JUDGEMENT

DELIVERED BY HON. JUSTICE MOMSISURI BEMARE ODO

The petitioner's states that the This petition was filed on the 19/03 /2023 before us by the 1st and 2nd petitioners against the 1st, 2nd, 3rd , 4th and 5th respondents respectively.

Sequel to the 2023 general elections into membership of the House of Representatives of Aba North and Aba South federal constituency conducted on 25th February 2023 by the 3rd respondent where the 1st petitioner participated in the election as a candidate under the platform of the 2nd petitioner, the 1st respondent participated under the platform of the 2nd respondent while the 4th respondent participated under the platform of the 5th respondent.

The 1st petitioner pleaded he was a candidate in the last conducted election and he has the right to vote and be voted for and he pleaded his voters card and his 2nd petitioner membership card (PDP membership card). the 2nd petitioner is a registered political party in Nigeria and the 1st petitioner is one of the candidates that contested under it's umbrella.

As a result of the election of 25/2/2023 the 1st respondent was declared the elected and winner and was returned by the 3rd respondent with 35, 502 votes. The 4th respondent was declared as the 2nd highest scorer with 22, 465 votes, while the 1st petitioner was the 3rd highest scorer at the election with 13, 358 votes respectively.

Apart from the 1stpetitioner, 1st respondent and the 4th respondent as candidate and their scores, the 3rd respondent announced the result of the election inconclusive of the 1st petitioners, 1st respondent and 4th respondent result on the 25th February 2023 as follows.

POLITICAL PARTY	**SCORES**
1-ADC	**226**
2-APGA	**22,465**

3-APP **1,163**

4-LP **35,502**

1st respondent having been found to be constitutionally disqualified on the grounds of forgery, stands disqualified for all times and so cannot contest the said election.

The petitioner states that the Aba North and Aba south federal constituency is made up of two Local Government Areas and delineated into 24 electoral wards which are.

ABA NORTH WARDS

(1) Eziama
(2) Industrial Area
(3) Ososu 1
(4) Ososu 11
(5) ST Eugene
(6) Uraha
(7) Old Aba GRA
(8) Umuola
(9) Anaria market
(10) Ogbori 1
(11) Ogbori 11
(12) Umuogor

ABA SOUTH WARDS

(1) Eziukwu
(2) Asa

(3) Enyimba

(4) Ngwa

(5) Ohazu 1

(6) Ohazu 11

(7) Igwebuike

(8) Ekeoha

(9) Glouchester

(10) Mosque

(11) Aba river

(12) Aba town hall

The petitioner states that there are 518 polling units in the Aba north and 498 polling unit in the Aba south federal constituency.

The number of registered voters in Aba North is 212,677 voters. While that of Aba south is 240, 155 voters.

Relying on the position of the Electoral Act 2022 and the Independent National Electoral Commission-INEC (3rd respondent) manual and guide lines for the conduct of 2023 Elections, the petitioners states that the winner of the said federal constituency election must have polled the highest number or majority of the lawful votes cast at the election from the constituency where the election took place and election conducted in strict or substantial compliance with the provision of the electoral Act 2022.

Petitioners states that election did not hold in some polling unit in both Aba north and Aba south federal constituency.

These polling units are;

IN ABA NORTH

(1) In Eziama ward 1

No election in polling units 006, 023, and 033

(2) In industrial ward 2

No election in polling units 08, 018, 039 and 043

(3) In Ososu 11 ward 4

No election in polling unit 007

(4) In Anaria ward 9

No election in polling unit 050, 031 and 077

Petitioner states that there were total number of 6548 registered voters and a total number of 6519 permanent voters card (PVC) were collected and a total number of 6519 voters were disenfranchised from voting in 10 polling units across 4 wards in Abia North L.G.A in addition to the number, a total number of 77, 241 PVCs were collected but elections did not held in other polling units running across the Aba north L.G.A- We refer to pages 11 (a) (b) and (c) of the petition.

IN ABA SOUTH

(1) In Eziukwu ward

No election in polling units 039, 043, 044, 045, 046, 047 and 052.

(2) In Eyimba ward

No election in polling units 001, 002, 003, 005, 016, 045, 049, and 052.

(3) In Ngwa ward

No election in polling units 045, 053, and 057

(4) In Ohazu 1 ward

No election in polling units 034, 038, 041, and 043

(5) In ohazu 11 ward

No election in polling units 001, 002, 003, 004, 005, 006, 007, 008, 013, 015, 016, 019, 020, 023, 026, 028, 029, and 030

(6) In Igwebuike ward

No election in polling units 003, 007, 009, 024, 026 and 027

(7) In mosque ward

No election in polling units 012, 029, 030, 031, 032, 033, and 036

(8) In Aba River ward

No election in polling units 016, 017, 018, 021, 022, 023, 026, 038, 039 and 040

(9) In Aba Town Hall ward

No election in polling units 017, 019, and 020

The petitioner's states that the numbers of registered voters In Aba south is 240, 055 voters, the total numbers of registered voters with PVC in the affected area are 22, 674. The total number of registered voters who collected their PVCs in Aba North and Aba south federal constituency but did not vote is 29,117

The petitioner states that the 3rd respondent through his returning officer (RO) announced its inability to conduct election on 25/02/2023 in the above polling unit and postponed election to 27/02/2023 and announced the election inconclusive. The petitioner relies on the video recording of the announcement and Business Online report for 27/2/ 2023.

The petitioner state that 5 hours later, the 3rd respondent through its Returning Officer announced the result and declared the 1st respondent the winner of the election.

The petitioners contend that if the 29,117 disenfranchised voters were allowed to vote, the 1st petitioner would have emerged the winner or the result would significantly tilt in favor of the petitioners.

The petitioners alleged incidences of over-voting in the said federal constituency and provide particulars as follows

ABA SOUTH

(1) St eugene ward 5 polling unit 013- had 127 accredited voters, 129 total of votes cast- 2 over-voting

(2) The same ward, polling unit 006- had 57 accredited voters, 107 total number of votes cast- 50 over-voting.

No incidence was stated for Aba North.

The petitioner state that there was no result sheet for the compilation of House of Representative election results in Aba North in 59 polling units and no ballot sheets provided for in some of the polling units. The particulars of this are as follows:

(1) Eziama ward 1- polling unit 010 No result sheet

(2) Industrial ward 2- polling unit 029 one ballot booklet not enough for House of Representatives. Polling unit 039 no ballot paper and result sheet

(3) Osusu ii ward 4- polling unit 008 no result sheet

(4) Ariaria ward 9- polling units 001-006, 007-013, 014- 029, 031, 032-033, 038, 041, 050-056, 062-070 and 075 No result sheet while that of polling unit 080- missing result sheet.

(5) Ogbor ii ward 11- polling units 006-008 & 010- No result sheet.

The petitioner states that the BVAS failed to upload the result of the following polling units in Aba North LGA. They are.

	WARD	**POLLING UNITS**
(1)	Industrial ward 2	019, 029
(2)	Osusu 1 ward 3	001,014.015,018 and 026

(3)	Osusu 11 ward 4	001-004
(4)	St Eugene ward 5	012
(5)	Old GRA ward 7	021, 022, and 035
(6)	Umuola ward 8	007
(7)	Ogbor 2 ward 11	022-024

A total number of 19 polling units.

The petitioner's states that the following polling units recorded the incidences of wrong location and absence of INEC officials in Aba North LGA.

(1) Eziama ward 1- polling unit 034 lack of materials and staff.

(2) Industrial ward 2- absence of materials and staff- polling unit 018 and 043.

(3) Ariaria- polling unit 030- unavailability of materials and staff.

In the same Aba North, that BVAS failed to accredit voters in the following polling units:

(1) Eziama ward 1 – polling unit -047

(2) Osusu 1 ward 3- polling unit-012

(3) 0susu 2 ward 4- polling unit 034

(4) Uratta ward 6- polling unit 010

(5) Old GRA ward 7- polling unit 010

(6) Umuola ward 8- polling units 004 & 007

(7) Ogbor 1 ward 10- polling units- 020, 025 & 031

A total number of 10 polling units.

The petitioners states that there were other incidences of election not holding owing to the arrival of INEC staff at about 3:30pm, late arrival of INEC staff

without ballot paper's for House of Representative, result sheet not tallying with the polling unit, polling result not uploading by the BVAS, result hijacked to an unknown location, non- availability of voters register for alphabets P-Z, N-Z, wrong location leading to disenfranchisement of many voters, late arrival of ballot papers and booklet, malfunctioning of BVAS, cancellation of polling unit election, INEC staff unable to operate the BVAS, voters names missing from the voters register leading to disenfranchisement and material missing with incomplete result sheet.

These incidences are all tabulated on pages 17, 18 and 19 of the petition.

The petitioners also state that there was no box to enable voters vote for the candidate of the All Progressive Congress (APC), yet 23 votes was credited to him. The said election was substantially affected by other irregularities such as failure to upload the result of the election in to the IREV (INEC Result View Portal), failure to use BVAS (Biomodal voters accreditation System) to accredit voters, BVAS malfunctioning and disparity between the numbers of accredited voters and the number of people who voted at the election.

The petitioners contend that the margin of lead between the 1st respondent and the 4th respondent is 13,037 and that between the 1st petitioner and the 1st respondent is 22, 344 which are all less than the 29,117 voters who did not vote and so the 3rd respondent had no right and power to declare the 1st respondent the winner of the election in such a circumstance.

The petitioner prays the tribunal as follows:

(1) That having regards to the 1999 constitution, the 1st respondent having been found to be unqualified to contest the election by a court of law, stands disqualified for all times and as such cannot be declared the winner of the

election to the Aba North and Aba south federal House of Representative constituency held on the 25th/2 /2023.

(2) That this Honourable Tribunal disqualifies the 1st and 2nd Respondents as candidates and contestants in the 25th February 2023 Aba North and Aba South Federal Constituency election.

(3) That the election in the Aba North and Aba South Federal Constituency conducted on the 25th February 2023 is invalid by reason of non -compliance with the provisions of the Electoral Act 2022,

(4) That with the disqualification of the 1stand 2nd respondents, the 4th and 5th respondents cannot be declared the winner of the election because they did not win the majority of lawful votes cast at the February 25th, 2023 Aba North/South federal constituency election having regards to the margin of lead between the 4th and 5th respondents and the petitioners.

(5) That this Honourable Tribunal direct the 3rd respondent to conduct supplementary elections in the polling units of the Aba North/South federal constituency where election did not hold.

-IN THE ALTERNATIVE

(6) That the 3rd respondent INEC should be directed to Conduct a fresh election in the Aba North/South FederalHouse of Representative constituency.

(7)-An order of this Hon Tribunal cancelling the said election and directing the 3rd respondent to conduct a fresh election among the qualified candidates that contested the election of the 25th February 2023.

In order to prove their case the 1st Petitioner on behalf of the petitioners testified as PW36 and called 35 other witnesses.

Under cross examination the highlight of the evidence, the 1st petitioner as PW36 said that;

- INEC published his name, the 2nd petitioners name and the names of the 1st and 2nd Respondents among others as those qualified to contest the election and that neither himself (PW36) nor his party challenged the alleged non-qualification of the 1st and 2nd respondent nor did he make any formal report to the police. He also said he was not aware of any formal indictment, prosecution and conviction of the 2nd respondent.

The 1stpetitioner said with respect to EXHIBIT 70 (a) and (b) that he did not author same. With respect to EXHIBIT 80(b), he said that there is no any form of ticking of any name to prove the identification and accreditation of voters. PW36 also said that, though he still stand by his paragraph 31 of his own written deposition he said that WAEC is the minimum qualification for the contest of House of Representative. He also says he stands by his paragraph 39 of his deposition as well as paragraph 49- on the total number of permanent voters collected in Aba North and South being 29,117 and if this number had voted he would have won the election. He finally stands by his reliefs that he seeks from the Tribunal as contain on the petition.

The 1st petitioner (PW36) tendered the following documents which were admitted and marked as follows:

(1) Permanent voters card to be referred to as PVC of the 1st petitioner (PW36) as EXHIBIT (to be written as EXH) EXH P 69 (a)

(2) First letter written by the 2nd petitioner to the Resident commissioner of the 3rd respondent in Abia state for the cancellation of the election dated 25th February 2023- EXH P70 (a).

2nd letter written by the 2nd petitioner to the 3rd respondent dated 25th February 2023 vide its resident electoral commissioner Abia state requesting for re-run election in the polling units where election did not hold on 25th February 2023 EXH P 70 (b).

(3) Application to INEC for certified true copy (to be written as CTC) of form CF OO1 used for the 2015 election and the CTC of the expression of interest form used in 2023 election- **EXH P 71 (a)**

- CTC of the expression of interest form ie particulars of the 1st respondent issued by INEC EXH P 71(b)
- Receipt of payment of CTC issued by INEC- EXH P 71 (c)
- INEC later stating that they don't have form CF 001 used in 2015 election- EXH 71(d)

Learned counsel for the 1st respondent objected to the admissibility of **EXH P 71(a) (b) and (c)** in evidence.

(4)- verification of success later dated 24th/7/2015-**EXH P72.**

(5)- letter titled confirmation of NYSC mobilization dated 4/9/2015

(6)- CTC of Judgment in petition NO- **AB/EPT/HA/20/2015**, between **HON DAME BLESSING OKWUCHI NWAGBA & ANOR VS EMEKA SUNNY NNAMANI & 4ORS >EXH P74**

(7) CTC of Judgment of court of Appeal in Appeal **NO CA/OW/EPT/HA/81/2015 between EMEKA SUNNY NNAMANI VS HON DAME BLESSING OKWUCHINWAGBA & ORS> EXH P75**.

Only the counsel to the 1st respondent also objected to the admissibility of EXH P73, P74 and P75, he also objected to the admissibility of the following documents.

(8) Manual for election official 2023 EXH P76

(9) Regulations and guide lines for election EXH P 77

(10)-Abia state record of PVC collected as published by INEC EXH P 78 (a)

-Certificate of compliance by INEC

(11) CTC of electoral material of Aba North and South issued by INEC EXH P79 (a)

(12) receipt for payment of CTC dated 18/7/2023- EXH P 79(B)

Application later for the CTC of voters register for Aba North and Aba South EXH P 80 (a)

The flash drive containing the voters register above (EXH P 80 (a)- EXH P 8 (b)

-The flash drive containing the voters register reproduced by the petitioners from which 3 copies were made for the Tribunal EXH P 80 (c) (i) (ii) and (iii)

Exhibit P 80 (a), (b), (c), (i), (ii) and (iii) were vehemently objected to by all the respondents on the grounds that the exhibit were not pleaded.

Counsel for the petitioners tendered the following documents which the 1st respondent counsel also objected to their admissibility

(13) Subpoena ad testificandum and subpoena ad duces-tecum ad testificandum issued by the Tribunal in the Aba North and Aba South who failed to appear before the Tribunal- EXH P 81 (a) and P 81 (b).

- 2 affidavit of service of the 2 subpoenas- EXH P 82 respectively.

The witnesses (PW1- PW35) of petitioners testified and the high light of the evidence is as follows.

PW 1- By name prince Ezinwa Ogumika with the acronym AAPU 003 and he described himself as a photographer. In his written deposition which adopted, he said that he was a registered in polling unit 003. That he arrived at his polling unit on 25th February 2023 at 8am and waited till 5pm without seeing INEC official with INEC material to cast his vote, that no election held at the unit and that was a result the election was postponed to the 27th/ February/

2023 and yet no election held on the said 27th/February/2023. Under cross examination PW1 repeated the above statement and added that he heard over the radio that election were re scheduled till 27/February/2023 that he did not visit any other polling unit on the day of the election.

PW2-AAU026- Ekpeudi steven, a registered voter in polling unit 026 in Aba River deposed to the same facts as PW1 and only difference in his evidence under cross examination is that he did not know the result of the election in that polling unit was announced by 12pm that same 25/2/2023.

PW3- AAPU O17- Okereke Philips registered voter in 017 also deposed to the same facts. He said he saw other people voting at other polling unit at River side primary school where his polling unit is located.

PW4- Jacob lilian a registered voter in polling unit 013 in Ohazu 2 ward 4, the facts in her deposition are the same as those before her. Her unit was located at Iheorji secondary school unit 013 under cross examination she said she does not know the school has polling units 001 to 004 and she does not know what happened in polling unit 011-012 and 014 but she saw many people voting, later on she said she saw many people but did not know what they are doing.

PW5- Enyeribe Marcus a registered voter in polling unit 001 Ohazu 2 ward. He deposed same facts under cross-examination he said he did not INEC officials with INEC materials and so there was no voting at Ndiegoro village hall where his unit was located.

PW6- Obinna Okpehi, a registered voter in polling unit 005 in Eyimba ward 3. His deposition are the same as others. Under cross-examination PW6 said unit 005 is located at Port- Harcourt Road and he does not know wheather polling unit 005 is in a hall and that no INEC staff told him elections were postponed as he did not see any INEC official.

PW7- AAPUO27- Felix Asega. A registered voter in polling unit 023 in Aba River. He deposed to the same fact. Under cross-examination, He said no INEC staff told him that election was postponed till 27th/2/2023.

PW8-APPU 10 Jude Chukwuemeka Amadi. A card carrying member member of PDP and a polling unit agent of PDP in unit 10 Eziama ward Aba North LGA. He also deposed to the same facts under cross- examination, he said, that he voted on the day of the election, the votes were sorted out, counted according to parties at his polling unit but the result were not recorded. He confirmed there was voting but they were not written, he said no one was declared the winner after the sorting out and counting of the results as there was no paper to write down who won the election. But that he was present when the sorting out and counting of the results were done. He said that there was result sheet for that of the presidential election but no result sheet was given by INEC officials for that of House of Representative.

PW9- APPU 009- Ujuomunna Ndubuisi Chris- A registered voter at polling unit 009 in Igwebuike ward, situated at Ohabiam secondary school. Under cross-examination he repeated what PW4 said. He saw many people but he doesn't know what they were doing.

PW10- Uzoma Cheta- a registered voter in polling unit 008 in Ohazu 2 ward. Her deposition is the same as usual and under cross examination she virtually repeated what PW4 and PW9 said and added that she does not know that which particular election was rescheduled as no INEC official told her election was rescheduled.

PW11- Prince John Uwaoma. A registered voter at polling unit 016 Eyimba ward 3. Under cross-examination, he said that he heard from people and radio that election was rescheduled to 27/2/2023 and he held it the following day.

PW12- AAPU 022- Ojukwu charity. A registered voter at polling unit 002 in Aba south. She deposed to the same facts. Her evidence under cross- examination is that, on her way home, along the way, she over-heard people saying that the election of 25/2/2023 were rescheduled till 27/2/2023 and she does not know who won the election.

PW13- APPU 18- Ajuziegu Emmanuel Aloze Jim. A registered voter and a card carrying member of PDP. He was also a polling unit agent for unit 18 in Industrial ward 2 Aba North LGA. He also deposed to the same facts. Under-cross examination PW13 said that he worked at unit 18 as a party agent. He was not a voter and nobody denied him to vote. He said that party agent were duly accredited and issued with customized tag by INEC including PW13 but that he lost his tag in the chaos that erupted at his polling unit.

PW14- Julius Ukwuoma- AAPU 30- A registered voter, a card carrying member of PDP and a polling unit agent at unit 030 in Ariaria ward 9. His deposition is on same facts as all other witnesses of the petitioners. Under cross examination he said that unit 30 is at Eziobu primary school where he voted but he was supposed to vote at unit 45 sahabo at the back of Eziobu primary school. PW14 also said that he is the assistant secretary of PDP at his ward so he knew where all the wards are located. He said that it was only in unit 32 that people casted their votes and there was result. He said no voting materials in unit 30 but he could see what was happening in unit 32.

PW15-AAPU 025- Oluchi Ahamefula. A registered voter and a card carrying member of PDP. A unit agent of polling unit 025 in Ariaria ward 9 Aba north LGA and duly issued with a polling unit identification tag/ship. She deposed to the same facts and adopted it as all others before her. Her evidence under cross examination is that she does not have her tag with her and she agrees that the election was free and fair.

PW16-AAPU 029- Micheal Anya. A registered voter and a card carrying member of PDP and a polling unit agent of polling unit 029 Ariaria ward Aba North LGA. He was duly issued with agent identification tag/ship, under cross examination, PW16 said he did not depose to the fact that his identification tag was deposed to by rain and he did not depose to the fact that there was no accreditation in his polling unit, no election materials and that election did not take place at polling unit 029, he only deposed to the fact that there was no result sheet of that of the House of Representative and that all the election of 25/2 2023 took place simultaneously.

PW17-AAP-010- Chinyere Paul- the description of herself is the same as that of PW14, PW15 and PW16- an agent of polling unit 010 Ariaria ward 9. Under cross examination she said that she voted at polling unit 009 where polling unit 010 was also located. PW17 said she was only given her party PDP tag only not INEC customized laminated identification party agent tag. She said she saw INEC officials working with BVAS machine but she does not know wheather the machine was working. PW17 said ballot papers of presidential and senatorial elections were sorted out and counted. She also said that after counting the votes, the result were entered into the result sheets.

PW18-AAPU 005- Chinonso Ebere a polling unit agent of unit 005 in Ariaria ward 9. He deposed to same facts. Under cross examination he said that he did not depose to the fact that he was issued with INEC customized tag and that only party agents with INEC customized tag were shown, the INEC materials. He also forgot to depose to the fact that ballot papers in his polling unit were not sorted out and counted because there was a problem. He also said he forgot to depose to the fact before voting commence in his polling unit, voters ask for result sheet to be produced but INEC officials did not produce it, that election did not hold at his polling unit.

PW19-AAPU 010- Isreal Aguwa. He deposed to the same previous facts as other witnesses. A polling unit agent for unit 010 Ogbor 2 ward 2 Aba North LGA. Under cross examination, PW19 said that he would rely on the BVAS report. He said that no result in his unit were uploaded as no result were counted. He said voters were accredited and voters voted in his unit there was no counting of votes of that of the House of Representatives because there was no result sheet. He said that he was not given INEC identification tag.

PW20-AAPU 008- Prince Ugwueze Anaba. A polling unit agent for unit 008 in Ogbor 2 ward 2 Aba North LGA. His deposition is the same. Under cross examination he said that rain spoilt his agent tag and that he signed his document.

PW21-AAPU-008- Oguikpe Ekpoma Kelvin. A polling unit agent for unit 008 Osusu 2 ward 4 Aba North LGA. His polling unit identification tag was admitted as EXH P 22 (c) under cross examination he said that EXH 22(c) was given to him by the 2nd petitioner who collected same from INEC office and that he saw BVAS machine at his polling unit.

PW22- AAPU OO6- Obi Ukandu. A polling unit agent in unit 22 in Ogbor 2 ward 2 in Aba North LGA. His deposition is same as other witnesses above. His polling unit identification tag was admitted as EXH P23(b) under cross examination he said his party PDP issue EXH P23(b) to him without his name and picture on it. He said despite the rains, voting continued. He said BVAS machine was used for accreditation but it was not used to upload the result. He was there when votes were sorted out and counted party bt party but there was no entry of the result on the result sheets. That he voted at the same unit where he worked as an agent. That INEC office did not come with House of Representative result sheet.

PW23-AAPU OO3-Abel Ifeanyi Ogwubie a polling unit agent for unit 003 in Ariaria ward 9. His deposition is also the same as other witnesses. His polling unit identification tag was admitted as EXH P24 (c). under cross examination, he said that he does not know that INEC polling agent identification tag has a code for every polling unit. He said that EXH P24 (C) does not have his picture affixed on it and does not bear his name and the unit written on EXH P24(c) is unit 004 and not unit 003 but his party told him it does not matter when he complained. He said he did not vote and he did not sign any result sheet.

PW24-AAPU 001- Prince Joseph Omenazu Ikomene. A polling unit agent for unit 001 in Osusu 2 ward 4. His deposition is the same as others and his agent tag was admitted and marked as EXH P25 (b) and his permanent voters card (PVC) as EXH 25 (a). under cross examination he admitted that EXH 25 (a) is defaced with no visible unit number on it. He said that the only problem at his unit was that BVAS machine failed to upload the result. Thereafter he said there was no result at the polling unit and he did not depose to the fact.

PW25-AAPU025- Eke Ndukwe Ukwa- a polling unit agent for unit 025 Ogbor 1 ward 10 the same facts was deposed to by him and under cross examination he virtually repeated what was in his deposition.

PW26-AAPU 028-Edwin Chim Echefulam- a unit agent for unit 028 Ariaria ward 9. His deposition is same as those before him. Under cross examination he said that he was at the polling unit 028 during the sorting out of ballot papers but that they were not counted, that the ballot papers for PDP and LP were sorted out and he (PW26) saw it. He said he saw the BVAS machine but did not know what they were used for.

PW27-AAPU 004- Blessing Orji. A polling unit agent Ariaria ward 9 his PVC was admitted as EXH P28(a) under cross examination, he admitted that the exhibit he tendered has a different content from what he told the Tribunal. He said

that he voted at the polling unit where he worked which is polling unit 004 and he later said "yes I am aware that I am a registered voter at polling unit 002"

PW28-AAPU007-Fidelis Nwogwugwu. A polling unit agent for unit 007 in Ogbor 2 ward 11 under cross examination, he said that he is aware that BVAS is used to upload results to the INEC IREV. That he stands by his paragraph 7 of his deposition but he has no BVAS report with him from his party or INEC or anybody else. That there was no result sheet for House of Representative at his polling unit, which was the only problem at his unit then, later he said there was no election at his unit.

PW29-AAPU-006- At this point, it is worthy of note that 2 different persons (1) Mr Anthony Ndukwe and (2) one Obi Ukandu, testified as AAPU 006 and adopted the same deposition at pages 358-359 of the petition for unit 002 in Ogbor 2 ward 11, this Tribunal shall refrain from evaluating this piece of evidence and attaching any form of evidential value to it. 2 witnesses cannot depose to and adopt the same deposition as their evidence in chief. We hold therefore that the evidence of PW29 which is of no evidential value before us is accordingly discountenance and struck out.

PW30- Uche Micheal- AAPU-006 at page 284-285 of the petition- a polling unit agent for unit 006 in the same deposition content as other witnesses. Under cross examination PW 30 who was rather a very difficult witness reluctantly answered that the result was sorted out but problem erupted shortly after. He still reluctantly said that INEC officials displayed and showed party agents other election materials except the result sheets but that voting commenced as INEC promised to bring the other voting materials. That this facts are not in his depositions he earlier adopted. He eventually admitted that the unit number of his PVC-EXH P 31 (a) is unit 004 and not unit 006. He clearly said he voted at his polling unit with his voters card. He said after accreditation every

accredited voter casted his/her vote. That at the sorting out and counting of votes stage problem started.

PW 31- Mr Chidi Agbawo a PDP collation agent for Aba North Aba south federal constituency. He tendered the following exhibits which were admitted but C J Okoh Akirika counsel to the first respondent objected to there admissibility which objected is to incorporate in his final written address.

(a)- CTC of statement of result from polling units- form E C 8 A (II) marked as follows

(1)- Eziama ward 1-46 result sheets- **EXH P 32 (1)-(46)**

(2)- Aba North Industrial Area-13 result sheets- **EXH P 33 (1)-(13)**

(3)-Osusu 1 ward 3-37- result sheets- **EXH P 34 (1)-(37)**

(4)-Osusu 2 ward 4- 2 result sheets- **EXH P 35 (1)- (2)**

(5)- St Eugene ward 5-27 result sheets- **EXH P 36 (1)- (27)**

(6)- Uratta ward 6-3 result sheets- **EXH P 37 (1)- (3)**

(7)- Old GRA ward 7-34 result sheets**- EXH P 38 (1)- (34)**

(8)-Umola ward 8-32 result sheets- **EXH P 39 (1)-(32)**

(9)- Ogbor 1 ward 10 -26 result sheets- **EXH P 40 (1)-(26)**

(10)- Ogbor 2 ward 11-2 result sheets- **EXH P 41 (1)- (2)**

(11)- Umuogbor ward 12-24 result sheets- **EXH P 42 (1)-(24)**

(12)- Ariaria ward 9-63 result sheets- **EXH P 43 (1) -(63)**

(13)- Receipt for payment for the above result**- EXH P 44**

Also admitted into evidence are the CTC result sheets for that of Aba South- form E C 8 A(II) as follows-

(1)- Ezikwu ward 1-48 result sheets- **EXH P 45 (1)- (48)**

(2)-Asa ward 2-36 result sheets **EXH P 46 (1)-(36)**

(3)- Eyimba ward 3-43 result sheets **EXH P 47 (1)–(43)**

(4)-Ngwa ward 4-64 result sheets **EXH P 48 (1)-(64)**

(5)- Ohazu 1 ward 1-42 result sheets **EXH P 49 (1)- (42)**

(6)-Ohazu 2 ward 2-16 result sheets **EXH P 50 (1)-(16)**

(7)- Igwebuike ward 7-25 result sheet **EXH P 51 (1)- (25)**

(8)-Ekeoha ward 8-40 result sheets **EXH P 52 (1) –(40)**

(9)-Gloucester ward 9- 36 result sheets **EXH P 53 (1)- (36)**

(10)-Mosque ward 10-30 result sheets **EXH P 54 (1) – (30)**

(11)- Aba River ward 11- 28 result sheets **EXH P 55 (1) – (28**)

(12)- Aba town hall-44 result sheets **EXH P 56 (1) – (44)**

Petitioner also through PW 31 tender summary of result sheet form EC8B (II) of wards in Aba south LGA and upon admission into evidence they are marked as follows:

1 Asa ward- **EXH P 57**

2 Eyimba ward 3- **EXH P58**

3 Ngwa ward 4- **EXH P 59**

4 Igwebuike ward 7- **EXH P 60**

5 Aba River- **EXH P 61**

6 Aba Town Hall – **EXH P 62**

Also admitted amidst objection by the 1st respondent counsel Okoli Akinka Esq are **EXH**- P 63- A letter to produce dated 7/7/ 2023 written by 1st respondent to INEC.

EXH P 64 (a)- CTC. BVAS report

EXH P 64 (b)- Application for the payment of the CTC of the BVAS report and

EXH P 64 (C)- The application by the 1st petitioner for the BVAS respondent respectively.

Under cross examination, PW 31 said he witnessed the sorting out and distribution of the election materials to the various ward but they were not complete and he made an oral complaint. That by this paragraph 2, 3, and 4 of

his deposition, the complaints were about the ward where his agent worked. **EXH P 64 (a)BVAS Report** is correct that the polling unit agent report to him and he believe what they reported to him. That duplicate copies (agent copies) of the result he tendered are with his party, he did not bring them to court because his counsel applied for CTC of same. That his means of identification as a party collation agent got missing on the election date at the collation center and his identity could be verified at INEC office. That election took place on the day of election and there were result. He said form EC40G which is issued is issued at the point of the election where not given to them by INEC and that all he deposed to were told to him by his agents.

PW 32- Enyioma Chijioke Nwaulu a register voter in unit 018- AAPU 018 in Aba River ward. His evidence in chief is a repetation of the earlier depositions. Under cross examination, he said that election did not take place at his polling unit 018 Aba River located at olasi road primary school. That he saw voters being accredited with BVAS in other polling unit. He also saw INEC personel arrive with election materials at the school and PW32 was there when INEC officials shared INEC materials for the six polling units

PW33 -AAPU-016 Evans Benedict Nwigwe- a registered voter at unit 016 Aba River ward. He said he did not vote on the election day. That his unit 016 is located at Aba River side with 5 units located in there and election did not take place in all the units and he also saw INEC staff arrive with INEC materials and he was there when INEC staff were bringing it out from the bus the electoral materials but he did see when the INEC officials show the party agent the election materials.

PW 34- Kelechi Kanu- Has the same deposition and a registered voter at polling unit 006 in Ohazu ward 2- His deposition is on page 90-91 of the petition. Under cross examination he said that polling unit 006-009 at located

at Umuogele primary school with 8 polling units. He said the INEC staff came to the primary school with electoral materials but they did not come to unit 006. He said he knows polling unit 18 and 19 and other 4 units that added. That he observed election in units 006-009, 017-020 and that he is just a registered voter and not an agent. PW 34 said that he did not vote on the day of the election but he was in the school when INEC staff arrived with electoral materials and he saw them.

PW 35-AAPU 002- Kingsley Uche- a registered voter and a card carrying member of PDP. Also a polling unit agent of Osusu 2 ward 4. He deposed to the same content of depositions just as the previous witness. Under cross examination he said he was accredited and he also voted like other voters. That the votes cast were sorted out, counted and entered into the result sheet. That he was there when the result were entered into the result sheet and PDP won in his unit. He said he did not sign the result sheet because the result did not tally but that he does not have the untallied result sheet with him.

The petitioner closed the case with the evidence of PW35.

The respondent accordingly open their defense with the 1st respondent testifying DW 15 and called 14 other witnesses.

The 1st respondent on his part testified as DW 15. He adopted
his depositions on pages 143- 148 of the reply of the 1st respondent to the petitioner VOL 1. the salient points of his reply are that the petitioner did not plead credible and admissible facts to be returned or elected at the said election. He stated that the petitioners did not have agents at all the polling units in Aba North and Aba South federal constituency on 25/2/2023 and the did not perform the function of the use of the BVAS machine, counting of

ballot papers, accreditation, voting and the general conduct of the election as alleged by the petitioner in their pleadings. He contends election were duly conducted conclusively and results generated and declaration of the result accordingly made. That to the knowledge of all contestant voters and polling agents, because of the exigencies of the elections and circumstances pleaded, certain units result duly generated at the elections were not captured in the ward collation. This was to the knowledge of and in the presence of polling agents present at the units and collation centers. That the 1st respondent won majority of the lawful votes cast at the said election of the Aba North and Aba South federal constituency. That the addition of this units results that could not be in the ward collation further strengthen the voting of the 1st and 2nd Respondents. That they never suffered any constitutional disqualification nor incapacity that his qualifying documents were duly submitted to INEC who published same and neither the petitioners nor any body challenged his documents nor qualification at all relevant times. That he did not submit forged certificate during the 2015 election. That pursuant to the directive of the Election Petition Tribunal in **EPT/HA/20/2015**, the police investigated the alleged forgery and he absolved by the police report that the alleged forgery was subject of litigation in suit **No HUM/26A/2022** between **Egeonye Peter V Emeka Sunny Nnamani** where the 1st respondent was absolved of the commission of the crime of the forgery by the Hon court. 1st respondent states that there were units where zero zero registration were recorded in the voters register and also duly reflected in the result sheets used at the polling unit in the course of the election. That the petitioner clearly lost at the election even by the results of the election reflects on the pleading of the petitioners. That there was no incidence of over voting, and even if there were, the alleged over voting did not substantially affect the results of the election at the federal

constituency. That BVAS function optimally during the elections and that there was never a time the petitioners nor their agents complained against the malfunctioning of BVAS to the upload election result. The INEC staff and voting materials were duly and timely deployed to the polling unit and the voting materials were sufficient and properly utilized at the various polling units in the federal constituency. That if the alleged disenfranchised voters were to vote, the petitioner will still not win the sad election. Finaly he states that the petition is lacking in merit and should be dismissed.

The following documents were tendered by the 1st respondent and same were admitted and marked accordingly as follows

1. Permanent voters card of **DW 15- EXH D 22**

2. Labour party (LP) membership card of **DW 15-EXH D23**

3. Two letters

The first- letter of resignation of DW15, resigning from APGA to INEC dated 2/4/2022 **EXH 024(a)**

The second- letter of resignation of DW15 resigning from APGA to the chairman APGA Eziama ward 1 dated 2/4/2022- **EXH D 24 (b)**

(4)- photocopy of enrolment Judgment order- **EXH D25**

(5)- copy of police report title RE: MR Emeka Sunny Nnamani (m)- **EXH D26**

(6) copy of WAEC result of DW15 dated September 1991 **EXH D12**

The petitioners counsel chief Uche Ihediwa SAN only objected to the admissibility of exhibit D22 TO D26 in evidence. He did not object to the admissibility of DW 15 WAEC result EXH D27 to be captured in his final address for the petitioners. Form EC8A (ii) of the following wards and units- the duplicate originals of same.

FOR ABA NORTH

(7)-Eziama ward 1-54 result sheets **EXH D28 (1)- (54)**

(8)-Industrial ward 2 -35 result sheets **EXH D29 (1)- (35)**

(9)-Osusu 1 ward 3-41 result sheets **EXH D 30 (1)- (41)**

(10)-Osusu 2 ward 4-32 result sheets **EXH D31 (1)- (32)**

(11)-St Eugene ward 5-11 result sheets **EXH D32(1)-(11)**

(12)- Uratta ward 6-35 result sheets **EXH D 33 (1) – (35)**

(13)- Old Aba GRA ward 7- 33 result sheets **EXH D 34 (1) – (33)**

(14)- Umuola ward 8-38 result sheets **EXH D 35 (1) – (38)**

(15) Ariaria ward 9 – 63 result sheets **EXH D 36 (1) – (63)**

(16) Ogbor 1 ward 10 – 30 result sheets **EXH D 37 (1) – (30)**

(17) Ogbor 2 ward 11 – 22 result sheets **EXH D 38 (1) – (22)**

(18) Umuogor ward 12 – 22 result sheets **EXH D 39 (1) – (22)**

The petitioners counsel Chief Uche Ihediwa SAN, objected to the tendering and admissibility of exhibits D 28 to D 39 series in evidence to be made in his final address for the petitioners.

Form EC8A (ii)- Duplicate copies for the wards and polling units.

FOR ABA SOUTH

(19) Ezuikwu ward 1 – 44 result sheets **EXH D 40 (1) – (44)**

(20) Asa ward 2 – 34 results sheets as **EXH D 41 (1) – (34)**

(21) Eyimba ward 3 – 6 result sheets as **EXH D 42 (1) – (16)**

(22) Ngwa ward 4 – 66 result sheets as EXH D 43 (1) – (66)

(23) Ohazu 1 ward 5 – 36 result sheets as EXH D 44 (1) – (36)

(24) Ohazu 2 ward 6 -14 result sheets as EXH D 45 (1) – (14)

(25) Igwebuike ward 7-16 result sheets EXH D 46 (1) –(16)

(26) Ekeoha ward 8 – 41 result sheets EXH D 47 (1) – (41)

(27) Glouchester ward 9 – 30 result sheets EXH D 48 (1)- (30)

(28) Mosque ward 10 – 37 result sheets EXH 49 (1) – (37)

(29) Aba River ward 11 -28 result sheets EXH 50 (1) – (28)

(30) Aba Town Hall ward 12 – 48 result sheets EXH 51 (1) - (48)

Again on Chief Uche Ihediwa on behalf of the petitioners objected to the tendering and admissibility of exhibits D 40 – D 51 series, to be inputed in petitioners final address.

Other documents admitted also includes summary of results from polling units - collation at registration areas level- 2023 Aba North/South constituency Area – form EC8B (II).

FOR ABA NORTH

(31) Osusu 2 ward 4- 1 sheet as EXH D 52

(32) Uratta ward 6 – 2 sheets a EXH D 53

(33) Old Aba GRA ward 7 -2 sheets EXH D 54

(34) Umuola ward 8 – 2 sheets EXH D 55

(35) Ogbor 1 ward 10 – 2 sheets EXH D 56

Only the learned SAN chief Uche Ihediwa objected to the tendering and admissibility of exhibit D 52 – D 56, same to be imputed in petitioners final written addresss.

FOR ABA SOUTH

(36) Eziuku ward 1-3 sheets EXH D 57

(37) Asa ward 2- 2 sheets EXH D 58

(38) Eyimba ward 3- 4 sheets EXH D 59

(39) Ngwa ward 4 – EXH D 60

(40) Ohazu 1 ward 5- EXH D 61

(41) Ohazu 2 ward 6 EXH D 62

(42) Igwebuike ward 7- EXH D 63

(43) Ekeoha ward 8- EXH D 64

(44) Glouchester ward 9 – EXH D 65

(45) Mosque ward 10 – EXH D 66

(46) Aba Town Hall ward 12 – EXH D 67

Learned SAN on behalf of the petitioners only objected to the tendering and admissibility of Exhibits D 57 – D 67. He reserves his objections till final written address.

(47)- Application for CTC of BVAS report and IREV for Aba South/North result by the law firm of Muster- point solicitors dated 5/4/2023 **EXH D 68 (a)**

-The CTC of the BVAS report issued **EXH D 68 (b) (60)**

-CTC letter from university of Port- Harcourt, student affairs department titled

MEMORANDUM- EMEKA NNAMANI CONFIRMATION OF NYSC MOBILIZATION dated 7/9/15 – EXH D 80

Objections recorded as in exhibit D 78 and D 79 above

(57)- DW 15- NYSC discharge certificate titled National Service of DW 15 dated 8/7/ 2001- EXH D 77

(Learned SAN, objected to the admisibilty of EXH D 77)

(58) -Judgment in suit No EPT/HA/20/2015 dated 29/10/ 2015 – EXH D78

(Tendered by Nwabueze Nwankwo esq, counsel to the 4th and 5th respondent from the Bar)

Learned counsel Ladu N Martins esq counsel for the 3rd respondent, C.J Okoli Akinika, for the 1st respondent and O.O Nkume for the for the 2nd respondent objected to the admissibility of EXH D 78.

(59) – Court of Appeal Owerri Judicial Division in Appeal No **CA/OW/EPT/HA/81/2015- EXH D79-** Thus was also tendered from the Bar by Nwabueze Nwankwo esq counsel for the 4th and 5th respondent (The same objection were recorded as in EXH D 78.

- The receipt for payment of CTC applied for – EXH D 68 (C)

-INEC certification of the BVAS report EXH D 68 (d)

No objection raised for the above exhibits.

-CTC of IREV unit result sheet for the following units.

FOR ABA NORTH

(48)- Industrial ward 2-41 copies EXH D 69 (1) – (41)

(49)-Osusu 1 ward 3-4 copies EXH D 70 (1) – (4)

(50)-Osusu 2 ward 4 – 30 copies EXH D 71 (1) – (30)

(51) -St Eugene ward 5 – 19 copies EXH D 72 (1) – (19)

(52)-Old Aba GRA WARD 7 – 26 Copies EXH D 73 (1) – (26)

(53)- Umuola ward 8- 43 copies EXH D 74 (1) – (43)

(54)- Ogbor 1 ward 10 – 24 copies EXH D 75 (1) – (24)

(55)- INEC certificate of compliance for the IREV result issued by INEC EXH D 76.

Only the learned SAN for the petitioners raised objection for the admissibility of exhibit D 69 – D 76. Objections to be captured in the petitioners final written address.

Under cross examination, DW 15 said he was about 25 years old when he graduated from the university of Port- Harcourt and was within the age of youth service. DW 15 said he under went his NYSC compulsory program in Maiduguri, Borno State and that DW 15 served in the year 2001.

DW 15 further said that the university of Port Harcourt sent his name to NYSC office before he was posted to go and serve.

DW 15 said that by his paragraph 3.12 of his deposition, he was aware that the police investigated the allegation with the university of Port -Harcourt before exculpating him of the allegation and making the report- ie **EXH D 26** – police report DW 15 also said that with respect his paragraph 3 : 11 of his deposition the documents that he submitted at the 2015 election were his

WAEC result, success letter from university of Port -Harcourt and his NYSC certificate. DW 15 said that he did not submit any degree certificate. He said that before 2015 election, there was no investigation of the police involving him. DW 15 said that **EXH D 26** is the police report he referred to in his paragraph 3:12 of his deposition. That he was a party to suit No EPT/HA/20/2015 between **NWAGBA & ANOR VS NNAMANI & 4 ORS JUDGMEMT** delivered on 19/10/ 2015 Judgment of the High court of Ummunochi.

DW 15 said he would be surprise to hear that the university of Port-Harcourt denies that they mobilized me for NYSC scheme.

DW 15 said that the letters written by the university of Port-Harcourt were all written to the court where he was sued. He said that he submitted his WAEC certificate.

DW 15 said that he graduated in the year 2000 and he does not have his certificate before the Tribunal.

DW 15 said that by 2020 and by **EXH D 25,** he had been absolve of all charges, DW 15 said that **EXH P 71 (b)**, the expression of interest form that it is deposed to under oath. With respect to column or certificate in **EXH P 71 (b)-** DW 15 said that it is entirely his prerogative to put in his minimum qualification to contest election and that is why he chooses to attach only his WAEC certificate to the expression of interest form. With respect to exhibit **EXH D 25**DW 15 said Mr Egwounu is a political opponent and the said Mr Egwounu sued him before the Umunnachi High court with respect to **EXH D 26**, DW 15 said that he believe the complainant in the said exhibit emanated from the suit between Egwuonu peter and himself ie from the suit at the court of Appeal, and that

from Umunnachi High court, DW 15 said that he stands by his para 3 of his deposition **(refer to pages 144 – 148 – paras 3 – 3:27**of the 1st respondent deposition) that he is qualified to contest for election. This is the claim of the 1st Respondent. Below are the evidence of the 1st Respondent 14 witnesess.

DW 1 – His evidence is at pages 169 – 170 of the 1st respondent reply to the petition. His acronym is **MR C.** His name is Reginald Uwakwe in his adopted evidence, he said he was the polling unit agent of Labour party, the 2nd petitioner in unit 001 in Osusu 2 ward 4 Aba North during the 2023 general election held on 25/ February/ 2023, he also said he voted at the said unit 001.

DW 1 said he was at his duty post on the day of the election at unit 001 Osusu 2 ward 4 when INEC staff came in the morning with there materials and that election was duly conducted as accreditation was done with BVAS, people voted, votes were entered into the result sheet, the party agents present including himself signed and collected copies and there was no problem.

DW 1 said he can recognize his own copy

DW 1 tendered **EXH D1 (a)** which is DW1 PVC, **EXH D 1 (b)** which is his agent tag. At the close of his evidence in chief and **EXH D 2.**Under cross examination, DW 1 said that the election in his unit took place at Osusu secondary school and there were other polling unit at the venue. He said he could see other polling units where election was taking place because the polling units where located close to each other. DW1 said "yes apart from unit 001 other polling unit were 002-009 and they were all located at the venue. DW1 said he saw the party agents of PDP, APC, APGA and others political parties and they also signed the result sheet apart from me and they all collected their copies." The

PDP agent signed and collected his copy for his party because both of us are friends. He said that election was free and fair and voters were accredited with BVAS before they voted. DW 1 confirmed that after election, ballot papers were sorted counted and result announced publicly. DW 1 said he signed his deposition.

DW 1 finally said the INEC officials gave them copies of the results after counting and announcing and then pasted the extra copies on the wall.

DW 2- testified next with the acronym MR N. His testimony is on page 110 only. He said his name is Nnanna Amos and he is a trader in his adopted evidence in chief, he said that he is a registered voter at unit 013 Ohazu 2 ward 6 Aba south and he voted during the election at his unit during the 25th /February/ 2023 general elections. DW2 said that the INEC BVAS captured and approved me to vote and I voted just like other voters who came to the polling unit that day and there was no problem.

Under cross examination, DW 2 said that he is a registered voter in polling unit 013 and he also voted at the same unit 013. DW2 said many people came out to vote, that the people on the queue also voted. That the votes were counted and recorded in the result sheets. He said the polling unit 013 is located at Iheorji secondary school and many polling units were located there and was not sure of the numbers.

He said other voters were accredited by BVAS machine. DW2 said he did not say he witnessed the signing of the result sheet. DW2 said I witnessed everything but when it was time to record the results only the party agents were allowed to come close.

DW 3- testified next with the acronym ASWA 6 on page 106 of the 2nd respondent reply to the petition. His name is Johnson Agwu the witness evidence on oath is the same as that of DW 1 and DW 2. DW 3 functioned as the labour party agent for Ohazu 2 ward 6 Aba South and that he collected the unit result from the party polling agents., under cross examination DW3 said that he was the labour party ward collation agent of Ohazu 2 ward 6 Aba south. He said that he knows they have about 30 polling units in all the wards and he witnessed the distribution of electoral materials for the polling units of the ward. DW3 said that the distribution center of the electoral materials was in Iheorji 2 secondary school which is the ward collation center, DW 3 said he toured the polling units during the election to know if elections were going well at the various polling units. DW 3 said to his knowledge there was no complaints about the non- availability of result sheets in any of the polling units that he visited, DW 3 also said that result sheets were among the electoral materials that were distributed at his ward and he was at the ward collation center and during the collation of the results and the election was free and fair in his ward.

When further questioned by the petitioner's counsel, chief Uche Ihediwa SAN, **DW3** said that he voted in his polling unit and that he visited all the 30 polling unit in the ward. DW3 said that he did not hear of anything that happened in any of the polling unit he visited.

DW 3 said that there are results for all the wards including polling units 2,3,6,7,13,15,16,20,23, 26,28 and 29. He said that he brought the results to the constituency collation center late in the evening but he cant recall the time.

DW 3 said that as a ward collation agent, his work ends at the ward level. DW3 said that **EXH D 5 (b)** his agent tag allows him to enter the constituency collation center.

DW 4ASWA 5 and his evidence on oath is at page 105 of the said reply. His evidence is the same with the previous 3 witnesses. He functioned as the labour party agent for Ohazu 1 ward 5 Aba South and he voted at his polling unit 006. Under cross examination DW 4 said that he worked as the ward agent. He said that he had the privilege to witness the sharing of electoral materials to the different polling units and there were no complaints about result sheet in his ward. He said said that electoral materials were shared to the various polling units and he knows as no complaints came to him from his ward. DW4 said his party agent of the various polling units brought back polling unit results to him, that the name of the collation center for the ward is Ndaki Road primary school. DW 4 said the result he received from the various polling units agents, he took them to the constituency collation center and he gave them to the constituency collation agent., that there are 46 polling units in Ohazu 1 ward 5. That he did not count the number of the polling units result given to me after the collation and at the ward level 44 results were given to him. DW 4 further said that there were no election in polling unit 34 and 38. He said he took 44 result sheets to the collation center. DW 4 said the Aba South collation center is at constitution cresent primary school. that he does not know anything about the constituency collation center. DW 4 said that the Aba North and Aba South constituency center is at the constitution cresent primary school.

DW 4 changing his evidence

DW 4 said that he did not receive any report from unit 37 that the number of accredited voters was different from the voters who actually voted.

DW 5 ASWA 7 His evidence is the same with the previous witnesses DW 5 said he function as the labour party agent for Igwebuike ward 7 in Aba South and he voted in polling unit 5, under cross examination DW5 said that yes he was the collation agent of his ward and the collation center is at Ohabian secondary school. DW 5 said that the electoral materials for the various polling units were not shared at the Ohabian secondary school but shared at the INEC office at Aba South L.G office and that he was there when the sharing was done. DW5 said that there was no shortage of any electoral materials at his polling unit. That he was given the duplicate copies of the results by the various polling agents. The results were collated at the ward and taken to the INEC office. DW5 said after collecting the result from the various agents he took them to the L G collation agents. That they have 30 polling units at the Igwebuike ward and that 29 polling units results were all given to him by the unit agents and after the ward collation, 29 result sheets were given to him, in **EXH P 64 (9)**, that there was election in unit 3 but no election in unit 27. That he visited unit 3 and saw voters being accredited. DW 5 said in respect of **EXH P 64 (a)- BVAS** reportthat is written against unit 3 as accreditation, DW5 said that he was there at L G collation center during the collation, that one Dr NCNC Okoli Okorie was L G collation agent for labour party (LP) and that he submitted the results to him Dr NCNC Okoli Okorie.

DW 6 acronym ASWA 3 Uzondu Nwokocha, his evidence on oath is the same as other witnesses that he functioned as the LP agent in Eyimba 3 Aba South LGA and he voted in his polling unit 001. Under cross examination DW 6 said that if there was any polling unit that INEC officials came and election did not

hold, he was not made aware of it. DW 6 said he witnessed the distribution of electoral materials by INEC and that he visited almost all the polling units in his ward, that it is not correct that there are more than 74 polling units. That there are 52 polling units in Eyimba ward 3 and election held in the entire 54 polling units and after elections 50 units result sheets were handed over to him and he took the 50 units result to L G collation agents DW6 said he did not sign any result and none was given to him as ward collation agent, DW6 said 9 polling units result out of the 52 polling unit result were not given to him and that he does not know the name of the result that were given to him by the polling unit agents

DW 7 MRS H- Patience Peter. Her evidence is the same with the previous witnesses. She was the polling unit agent of LP in unit 003 Ariaria ward 9 Aba North. DW 7 also said in her paragraph 4 of her written evidence that accreditation was done with BVAS, under cross examination, DW 7 said that her name and signature are on **EXH D 11**the pink duplicate copy of the result she tendered against LP, DW 7 said that she was at the polling unit until the votes were counted and recorded. DW 7 said the INEC officials came to the polling unit at about 10am, that sorting and counting of votes was done at around 4pm-5pm. DW 7 said that there was no INEC stamp on **EXH D 10**she tendered agent tag, she said INEC issued **EXH 10** to her party and her party gave her. She said she signed **EXH D 11**, that she did not tomb print on it. DW 7 said that the first thing that INEC officials do when they arrive at polling unit is monitoring their booths. She said the INEC officials took the original copy of the result she tendered and the INEC official is called presiding officer- P O and that she only knows of the copy of the result given to her.

DW 8 ANWA 5-, Emmanuel Ukwuonu. His evidence is the same as those of the previous witnesses, he functioned as LP agent for Ogbor 2 ward 11 in Aba North and that he voted at his polling unit 013. Under cross examination, DW 8 said the venue for Ogbor 2 ward 11 is Royal commercial college which has about 9 polling units. That he visited all the polling units in his ward. That over voting, rigging, snatching of ballot box never took place as at the time he visited the polling units and there were no such reports of such by his agent. he said election went on smoothly in his ward. There are about 26 polling units In Ogbor 2 ward 11 and they are all not situated in the Royal commercial college, only 9 polling units are situated at the college, the other 17 are situated at federal housing estate, Ogbor Hill Girls High school and Ogbor Hill primary school, these centers are not far from each other and that it is possible to know what was happening at the units because he had people there working and whatever they told him was true

DW 8 said INEC officials came around 8am and within 15mins they had accredited those on the queue, DW 8 said he was the first to be accredited.

DW 8, said the result given to him by polling agent at the collation center is called EC8A ie **EXH D 13**collation center. That he was at the collation center when their result were declared.

DW 9- with the acronym **ANWA**. Christian Maduka. His evidence are the same as that of the previous ones, DW 9 functioned as the LP agent for Eziama ward 1 in Aba North and that he voted at his polling unit 052, under cross examination DW9 said that the ward collation center is at Abia state polytechnic and he was there when electoral materials were being shared for distribution to the polling units, that there were 58 polling units in Eziama ward 1 where he worked, that he monitored elections in all the 4 centers and

election held in all the units monitored by him. That there were result sheets among the electoral materials that were distributed. The results were made available by party agents after the election, result are entered into form EC8B. That ward collation for Eziama took place at Abia state polytechnic. He said the constituency collation took place at Umukalika INEC office, the constituency center for Aba North and Aba South constituency center, that his deposition is base on what he saw and what the agent told him.

DW 10 ANWA 4- His evidence is the same as the previous witnesses, he functioned as the LP agent for Ogbor 1 ward 10 in Aba North and he voted in his polling unit 29. Under cross examination, DW 10 said that there were 31 polling unit in Ogbor 1 ward 10, 5 center for the ward and 1 collation center. That the ward collation center is called Wilcox memorial college Ogbor Hill Aba, which also has polling unit located there including unit 29. That election took place at the polling unit within the college. That he did not witness nor receive any report on ballot box snatching. That he did not count the number of polling units at the college there were many of them. That he got result sheets from all the 31 polling units.

That the print of **EXH D I6**is the result I brought. That the print of **EX D 16** were faint and he could not see the result of APGA and APC. That he signed EXH D 16 but it is faint, I couldn't see. That he does not know the result collated by INEC officials at the collation office Umukahka. That on the election day there were election of the presidential and the National Assembly elections.

DW 11 ANWA 9- Kelechi Victor Okonafor, his evidence is the same as that of other witnesses. He functioned as the LP agent of Osusu 2 ward 4 in Aba North and he voted at his polling unit. Under cross examination DW 11 he said he monitored 36 polling unit and 3 centers during the election in his ward, he also

collected 36npolling unit result from the party agents in his ward. That he was there during the sharing of electoral materials to the various polling unit in his ward, he was there when the polling units result were collated & recorded. That the unit result collated was at the ward collation center Osusu secondary school. That he voted at polling unit 34. That there was election in all the polling units in my ward, that before voting, voters were accredited with BVAS machine. That he collected every polling unit result in his ward and he signed as ward collation agent. That he was not at the 3 centers at the same time. DW 11 said the content of his deposition are from his personal knowledge and what his agent told him. That he does not have the unit results given to him by his agents and that he is not aware that INEC has only 2 units results from his ward and that the result went from the ward collation center to the INEC office at Umukalika.

DW 12- ANWA 7. His evidence is the same as other witnesses, he functioned as the LP agent for Industrial ward 2 Aba North and he voted at polling unit 032. DW 12 said that unit 0008, 018,034, 043 and 044 only because, they were new polling units, INEC officials came late other units were already counting their votes and the mob refused to allow them conduct the election, as for the rest of the units election was held at the polling units. That what he said about this 5 units is from his personal knowledge as award collation agent. He personally monitored them. That there are 45 polling units in his ward and election were credible in the other 40 polling unit. That the name of the ward collation center is called Ngwa cultural hall located at industrial layout Aba. That it is not true that apart from the 5 units listed above, other units also experienced mob action, that he collected results from his agents but he is nit with them because he submitted the result at the appropriate quarters, INEC office at Umukalika., that what he said about the polling units are not

contained in his deposition. He also did not depose about the 3 units with mob action preventing election. That it was not true that there are no results in the 30 polling units of his ward. That collation took place at his ward collation center Ngwa cultural Hall. That the result are put into form E8. That his work as a collation agent is to go round and monitor elections at polling units then collect the unit result.

DW13- ASWA II. His evidence is the same as other previous witnesses, DW 13 functioned as the LP agent for Aba River ward 2 in Aba South, he voted at polling unit 032. Under cross examination DW 13 said that he was a polling agent and stands by his paragraph 2 and 3 of his deposition. That voting did not take place in polling unit 017,021, 022, 023, 026 and 040 in his ward, that unit 40 is a new polling unit and no voter came out to vote at polling unit that day. In unit 17,21,22,23, and 24, they did not see INEC official that were supposed to conduct elections, he was there and found out the facts for himself. That there are 40 polling units in his ward in Aba river ward 2. That the name of the ward collation center is constitution cresent AKA Santa Mana primary school. Where election materials were shared is in INEC office Aba South. That he collected 34 polling units results. That he still stands by his paragraph 4 of his deposition and said that election was credible. That the units agents gave him results of 34 polling units and he gave the L G collation agent. That as at 2019 there were 39 polling units, they added just one unit to make 40 polling units. That it is not correct that the newly created unit is unit 34.

DW 14-Dr Godwin Chinedu Duru. His evidence is that he was the 1st and 2nd respondent's constituency collation agent during the general election of 25/

February/ 2023 the salient part of his deposition are the alleged and phantom issue of the 1st respondent's disqualification was never the case.

That on the day of the election he witnessed due distribution of electoral materials and due collation of the final result at the Aba North/South federal constituency collation center, that he formally signed and collected 1st and 2nd respondents copy.

That throughout the period and at the point of announcement of the result, there was never a time any INEC staff, collation or returning officer said, nor suggested that the election was inconclusive and would be reconducted later, either wholly or in some units or ward.

Under cross examination DW 14 said that as constituency collation agent, he received all the duplicate results of all the agents of the party at the ward, Local Government and constituency level. That the total summary of the result from Aba North and Aba South were given to him, which results he handed over to his candidate, that he was present when the 1st respondent was declared and returned as the winner of the election with respect to his deposition in paragraph 3. That he was aware the 1st respondent presented the minimum qualification for the election. That the election was not inconclusive. That he also heard that the 1st respondent also contested election in 2015 and the 1st respondent confirmed it to him that he doesn't know the 1st respondent presented other documents not limited to WAEC in 2015 that he and the 1st respondent are always together. That he has an Honourary Doctorate Degree but did not do National Youth Service but that he graduated before he turned 26 years of age, that he was not aware that the 1st respondent graduated from the university of Port-Harcourt, that the fact of the 1st respondent was disqualified after the 1st respondent won the 2015

election because the 1st respondent presented a false certificate, he was not aware that he collected the Local Government result and the Aba North/South constituency result as a constituency collation agent that all the constituency center 2 results and 1 final result were given, ie, the final result of the Aba North/South and then the constituency final result making 3 result, "these results are implied by his para 4 and 5 of my deposition" that **EXH D 21** was issued by his party which document allowed him to function perfectly as constituency collation agent. DW 14 said the number of polling units in Aba North are 503 and those in Aba south are 518.

With the evidence of DW 14 the 1st respondent closed his case.

The 3rd Respondent called 3 subpoenaed witnesses.

Learned SAN Uche Ihediwa on behalf of the petitioners and Nwabueze Nwankwo Esq, on behalf of the 4th and 5th respondents objected to the subpoenaed witnesses testifying and adopting their respective depositions, before this Tribunal. They reserved their objection till final written addresses.

The salient point of the subpoenaed witnesses adopted evidence on oath is reproduced as follows

DW 16- his name is Nkem Okoh and he said he is a staff of INEC, DW 16 said he perform the function as the electoral officer for Aba South LGA of Abia state, during the presidential and National Assembly elections held in the state on 25th/ 2/2023, that prior to the elections, INEC informed all the political parties that participate in the election about the schedule for the distribution and movement of election materials to the various LGAs super Rac wards polling units etc, in Abia state that he received from INEC state office, Umuahia the non- sensitive materials namely, INEC bag, envelops, posters, aprons, biros,

cubicles, cellotapes, ballot boxes etc, 3 weeks before the elections he received all sensitive materials for the elections eg BVAS, ballot booklet/papers, all the result forms, voters register rubber stamp etc on 23/2/ 2023, that political party agents. Namely APGA,PDP,APC,LP, etc were all present at the central Bank of Nigeria (CBN) Umuahia and all witnesses the distribution of the materials to all LGAs of Abia state, security agents eg DSS, police, civil defense corps etc were also present and all monitored the movement of all these material from the CBN Umuahia to Aba South INEC office where the materials were off loaded in to the office and safe guarded by heavy security personnel, party agents kept vigil over the office till 24/2/2023 when DW16 and his staff in the presence of security officials and the party agents sorted out and distributed the materials to various wards which had earlier been sorted out according to sensitive and non- sensitive materials and in accordance to each unit in each ward in Aba South LGA. The sensitive materials for the wards were customized ward by wards. That he called the supervisory presiding officer (SPO) for all the wards in Aba South LGA who came and checked the sensitive and non- sensitive materials for their respective wards, confirmed, that they were complete, each of the SPOs signed the materials receipt and collected the said materials. The SPOs moved these materials to the various Super- Racs in Aba South LGA with security officials, political party agents also monitored these movement to the Super- Registration Area Centers. That the political party agents witnessed and monitored the sorting and distribution of all the electoral materials to various wards in the LGA. That as part of his responsibility, he monitored the election in the various wards and polling units in Aba South LGA. The conduct of the election was free and fair in the polling unit he visited without violence, that there was no infraction of the electoral process during the said election in to the House of Representative for Aba

federal constituency held on 25/2/2023. That election took place in almost all the polling units in Aba South LGA those except few polling units as shown on the BVAS report which was majority due to the absence of voters. That he did not receive any complain from anybody against the election on issue regarding vote buying, intimidation or threats to voters, corrupt practices perpertrated by INEC official and adhoc staff, violence, non -compliance with the provision of the Electoral Act etc. under cross examination, DW 16 said he was testifying as the electoral officer of Aba South LGA. That he received all the electoral materials used in Aba South election from INEC are distributed to them to SPOs, whose duty is to share to presiding officers (PO) at the polling units there is no way he would have shared the electoral materials without the result sheets, that result sheets were shared in all polling unit under his supervision at Aba South, that there are reversed logistics which are those materials that return to the LG office at the end of the election and collation. That after collation, the materials used at the election and collation will return back to him, that there are 518 units in Aba South and out of these there are also zero (0) unit but he does not know the number of the zero units. That he is not a spirit and so could no go round the whole 518 units on the date of the election, he only went to some polling units. That his deposition is based on what he witnessed when he went to some of the polling units and the reports of the SPOs working under his supervision, that none of the SPOs working under him reported that any problem occurred during the election, that he collected all the original forms EC8AS that were given to him and he send them to the head office, that **EXH D 48** was certified by his office and he can see the INEC stamp.

DW 17- He said his name is Udeaja Sabastine Arinze. He described himself as an INEC staff of Aba North LGA. That he performed the duties as the electoral

officer for Aba North LGA his written evidence is the same as that of the INEC staff identity card of DW 17 was admitted as **EXH D 83** and the subpoena duces tecum testificandum in the name of DW 17 dated 3/8/2023 as **EXH D 84**without objections. Under cross examination, DW 17 said he shared all the sensitive and non- sensitive electoral materials inclusive of result sheet to the supervising presiding officer (SPO) who duly cross checked them, that he monitored election in some polling units and wards. He defined reversed logistics as the process by which materials used during the elections and collation after the elections are brought back to the office where it was initially collected. That all the electoral materials collected including the result sheets were returned back to him and he returned them back to the head office, sensitive and non -sensitive materials, that anyone who applied for the result sheet is issued with the CTC of same by the INEC headquarters but he does not know who issued the CTC. That he is not in position to say that. **EXH P 31- P45** are from INEC because they did not emanate from his office. He cannot also confirm that **EXH P32** is the result sheet of Eziama ward. That he did not get information about gun shots in Ogbor ward. That result collation started at collation center but because of security threats, the Resident Electoral Commissioner (REC) said they should move to the INEC head office Umukalika.

DW 18- He said his name is Isaiah Kayode Folaju. That he was the presiding officer (PO) for unit 5 ward 9 Ariaria market in Aba North LGA, during the presidential and National Assembly elections held in Abia state on 25/2/2023. That unit 5 is located at Osusu Road primary school Aba North LGA which had about 6 polling units to it, unit 001-006 that both sensitive and non -sensitive materials were made available to them including BVAS, ballot papers, result sheets etc and that election in his polling units and all the polling units in his center were conducted in substantial compliance with the provisions of the

Electoral Act 2010. (as amended). That there was no infraction of the electoral process during election, PVCs and voters register were used to authenticate and accredit voters before ballot papers were issued to them to cast their votes. That after all the votes were cast he sorted and counted all the ballot papers in the presence of security personnel, party agents and voters who waited behind after casting their votes, that he afterwards announced the result of each party and entered them in the polling unit result sheet forms which he signed and stamped and willing party agent signed and he gave to willing party agents in the company of willing party agents and security personnel, he took the original copy of the unit result and the electoral material used for the election to the ward collation center.

The National Identification Number (NIN) of DW 18 was admitted in evidence as **EXH D 85** and a copy of subpoena Duces Tecum ad Testificandum dated 3/8/2023 in the name of DW 18 as **EXH D 86.** Under cross examination DW 18 said the ward collation center is at Umukalika and that he knows Osusu primary school. That the school has 6 polling units. That all the polling unit are situated at the same place at the primary school and he could see what was taking place. That the materials for the election he received them at the INEC office. That they did the ward collation at Boys Technical college (BTC) and then they moved from there to INEC office Umukalika. Again he said they did the collation at BTC and then they moved to Umukalika and that was where they slept that night. He said that his work ends at the ward collation center when he handed over the unit result to the SPO but there was no vehicle to convey him back to the house so he slept at Umukalika. DW 18 said he collected the election materials at Umukalika.

The 3rd respondent closed its case with the evidence of DW 18.

The 2nd respondent opted to call no evidence, he relies on the case of the 1st respondent while the 4th and 5th respondent decided to put the petitioners to the strictest prove.

At the close of the all parties respective cases, all the parties filed and exchanged their respective final written addresses and replies on points of law in compliance with the provisions of the Electoral Act 2022.

1.0 The petitioners filed their final written address on the 20/8/2023 in which they formulated and argue two issues for determination before us as follows.

1. WHETHER THE PETITIONERS HAVE PROVED ALL OR ANY OF THE GROUNDS OF THE PETITION TO WARRANT THE GRANT OF ALL OR ANY OF THE RELIEFS SOUGHT?

2. ***WHETHER THE PRINCIPLE OF MARGIN OF LEAD CAN BE INVOKED IN RESPECT OF THE SUBJECT MATTER OF THIS PETITION TO WARRANT A RUN-OFF IN DESIGNATED UNITS BETWEEN THE PETITIONERS AND THE 4TH AND 5TH RESPONDENTS***

On issue one that is

whether the petitioners have proved all or any of the grounds of the petition to warrant the grant of all or any of the reliefs sought?

<u>On Grounds of Disqualification</u>

Learned SAN submits that in paragraph 26(1) of the petition, the petitioner alleged that the 1st respondent is not qualified to contest the election on the grounds that he presented a forged certificate. This ground as disqualifying factor is provided for in Section 66(1)(i) of the

Constitution of the Federal Republic of Nigeria, 1999 (as amended) and Section 134(a) of the Electoral Act, 2022.

He submits the facts upon which the petitioner anchors this ground are set out in paragraphs 28 to 33 of the petition. The climax of the matter as stated in paragraph 33 is that since the 1st respondent had been found to have committed forgery, he stands disqualified at all times from contesting an election.

He tendered judgment in the case of **EPT/HA/20/2015 BETWEEN HON. DAME BLESSING OKWUCHI NWAGBA & ANOR V. EMEKA SUNNY NNAMANI & 4 ORS**dated **19/10/2015** as **ExhibitP74** and **D78**. The petitioner also tendered the **JUDGEMENT OF COURT OF APPEAL, OWERRI DIVISION AFFIRMING THE JUDGMENT OF THE TRIBUNAL AS EXHIBIT 75 AND D79;** Also, in evidence relating to the forgery are:

i. The forged success letter of University of Port-Harcourt, Rivers State as Exhibit P72. This is not University certificate note that this exhibit.

ii. Letter of University of Port-Harcourt, Rivers State alleging that they did not inform NYSC that the 1st respondent had graduated from University of Port-Harcourt as Exhibit D80. This is a precondition for participating in the NYSC.

iii. CTC of expression of Interest form submitted by the 1st Respondent for the 2023 election as Exhibit P71(b).

Learned counsel submits that the petitioner testified as PW35 and called PW31 in relation to these facts.

In response to these allegations of have presented a forge certificate, the 1st and 2nd respondents in their answers averred in paragraph 134 to 136, that the 1st respondent is qualified to contest the election. To the 1st respondent, the fact that

a. INEC published the particulars of the 1st respondent, and no one challenged same at all relevant times.

b. That the 1st respondent did not submit forged certificate during the 2015 election,

c. That on account of the directive in EPT/HA/20/2015, Exhibit P74 and D75, the Police investigated the allegation of forgery and exculpated the 1st respondent.

d. That the allegation of forgery was the subject matter of Suit No: HUM/26A/2022 between EGEONYE PETER v. EMEKA SUNNY NNAMANI (exhibit D25). That the court absolved the 1st respondent of the allegation, and

e. That the 1st respondent being a holder of WASC, the benchmark qualification, is qualified to contest election into the House of Representatives.

The 1st respondent tendered photocopy of a Police report as exhibit D26 and the Judgment Orderas Exhibit D25. He also tendered an unpleaded NYSC certificated as exhibit D77. The 1st respondent testified in support of this defense.

Learned SAN submits that qualification to contest the House of Representative elections is provided for in section 65(2)(a) and (b) of CFRN, 1999 and the disqualifying criteria is provision for in Section 66.

The petitioners are attacking the 1st respondent's qualification on account of Section 66(1) (i) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). For emphasis, the Section and subsection provides:

"66(1) No person shall be qualified for election to the Senate of House or Representatives if –

(i) He has presented a forged certificate to the Independent National Electoral Commission"

Learned SAN re-iterate that in proof of this allegation, the petitioners tendered exhibits P74 and P75. Other relevant documents tendered in the course of trial and exhibits P71 and P72. He submits that the court is to take judicial notice of exhibits P74 and P75 which are judgment of a court of co-ordinate jurisdiction and a superior court, court of Appeal. He referred us to section 122(e) of the Evidence Act which enjoins the Court to take judicial notice of seals of the Court Nigeria and the case of AMAKO v. STATE (1995) 6 NWLR (Pt. 399) 11.

Learned counsel submits that section 66(1)(i) uses the adjective, "presented" According to Cambridge Dictionary "PRESENTED" has been defined as "**to give, provide, or make something known".**

He submit that word is clear and unambiguous. The word is also used in past tense. Literally, it means that ones a person has "presented" a forged certificate, he remains disqualified for life except pardoned by the Governor of State. That is the construction given to this Section by the Supreme Court.

He further submit that the facts of this case are similar to the facts in the case of **HON. HASSAN ANTHONY SALEH V. CHRISTIAN ABABAH ABAH (2017) 12 NWLR (**Pt. 1578) 100. In that case, the Respondent had been found to have presented a forged certificate by an Election Petition Tribunal in 2011 but he carefully removed the forged certificate when he was contesting for the 2015 election into the House of assembly in Benue State. BAGE JSC in his considered ratio said:

> **"The question in paragraph 6 of part E of the 1st Respondent's INEC from CF001 is very specific: "Have you ever presented a forged certificate to INEC". We align with the position of the learned senior Counsel to the Appellant, that this question relates to all elections, for as long as a candidate had previously presented a forged certificate to INEC. The same scenario plays itself out vis-à-vis the provisions of Section 66(1) (i) of the 1999 Constitution (as amended) which is to the effect that, quote: "No person shall be qualified for election to the Senate or the House of Representatives if: (i) he has presented a forged certificate to the Independent National Electoral Commissions". The law is very clear to warrant any form of colourated interpretations. The question in form INEC form CF001 and Section 66(1)(i) of the 1999 Constitution (as amended) is whether a certificate that turned out to be forged has ever been presented not whether the forged has ever**

been charged, tried or convicted on this. The Court below got into the error of forgery under Section 362 and 363 of the Penal Code as against forgery under the Electoral Act 2010 (as amended). More importantly, a Court or tribunal had found the certificate in issue to be forged. We have reiterated on several occasions that ours is not only a court of law but public policy. Forgery of certificate for the purpose of election and electoral processes and forgery under criminal law are not the same issue. Forgery under the Electoral Act is a specific law on forgery or presentation of a forged certification for the purpose of election. The best forum for electoral forgery is election tribunal as against general criminal trial. This is what played out, rightly in this appeal. We restate our position that, as held by the trial Court, "...the judgment of National/State House of Assembly Election Tribunal for Markirdi, Benue State delivered on 6/9/2011 at pages 57 & 58 are conclusive on this issue. "Election tribunal had exercised specific jurisdiction to try the issue. There has also been a judicial reconfirmation by the trial court on the same issue as it relates to forgery of certificate for electoral purposes, by the 1st respondent. These are not controverted and the 1st respondent did not deem it fit to appeal this finding of facts that he perceived were adverse to his electoral fortune or political future. This

position restates the settled position of the law that the legal consequence of failure to appeal against any finding, holding or decision of a court is that the parties to the case have accepted it as correct and binding upon them. N this side of the judicial structure, the law is settled that a party is stopped by his failure to appeal against an adverse findings of a fact relevant to the issue. See ABUBAKAR V. BEBEJI OIL AND ALLIED PRODUCTS LTD & ORS (2007) 18 NWLR (Pt. 1066) 319 (2007) 2 S.C 48 Per Ogbuagu, J.S.C. (P. 68 para F) I am unable to disagree with learned senior counsel on the issue as the 1st respondent is stopped by his failures to appeal against the numerous adverse findings of fact on the issue of certificate forgery which relate directly to his electoral future. See the cases of JOE IGA & ORS. VS CHIEF EZEKIEL AMAKIRI & ORS (1976) 11 SC AT 12-13. See also the position of this court in S.P.D.C. (NIG) LIMITED VS X.M. FED LTD (2006) 16 NWLR (Pt. 1004) 189 at 201. Paras D-F. It is our considered view that the court below was wrong to have held that 1st respondent ought to have been charged, tried and convicted. This is because the case of the Appellant at the trial court is predicated on the provision of Section 66(1)(i) of the 1999 Constitution (as amended) and Section 31(2), (5) and (6) of the Electoral Act 2010 (as amended).”

Further to the above, the Learned JSC sever "**from the totality of the facts of this appeal, forgery of certificate by the 1st Respodnent to contest Ado, Okopwu and Ogbedibo Federal Constituency of Benue State keeps resonating. The 1st respondent presented forged certificate to the 3rd respondent in the run up to the 2011 election and when it was time for the 2015 general election he carefully and deliberately omitted to include this fact. The relevant question is whether the 1st respondent ever presented a forged certificate to INEC (3rd respondent) at any (previous or current) elections, and not whether or not it was listed or omitted from the declaration form completed for a particular election. The second legal is that there must have been a judicial pronouncement, by a court or tribunal, that the certificate in question is forged. In this appeal, an Election Tribunal with specific jurisdiction has found, in the judgment of National/State House of Assembly Election Tribunal for Makurdi, Benue State delivered on 6/9/2011 at pages 57 & 58, that the certificate presented by the 1st respondent is forged. And this, as the trial court rightly found, is conclusive on this issue. The provisions of the Nigerian Constitution are unambiguous. The Constitution expressly provides that" 66(1) No person shall be qualified for election to the Senate or the House of Representatives if: (ii) he**

has presented a forged certificate to the Independent National Electoral Commission. "The intention of the constitution is that anyone who has presented a forged elections if, as in this case, a court or tribunal finds the certificate to have been forged, and it matters not whether or not such facts is further fraudulently or desperately concealed in subsequent elections or declaration forms. No decent system or polity should condone, or through judicial policy and decisions, encourage the dangerous culture of forging certificates with impunity to seek electoral contest. The 1st respondent ought not to have, and the opinion of the law, was not qualified to contest election into the Ado, Okopwu and Ogbadibo Federal Constituency of Benue State based on the combined effects of the provisions of Section 66(1)(i) of the 1999 constitution (as amended) and Section 31 (2, (5) and (6) of the Electoral Act 2010 (as amended). He stands constitutionally disqualified. This being a pre-election matter, we agree with trial court that votes polled by the 1st respondent through nomination by the 2nd respondent are invalid and wasted. The Appellant being the runner up in the PDP Primary election conducted for the said election automatically steps into his shoes as nominee and winner of the election into the Aso, Okopwu and Ogbadibo Federal Constituency of Benu State. It is our considered view

that the provision of section 141 of the Electoral Act only applies in cases of post-election cases at the Election Tribunal as against pre-election matters. To hodl otherwise would mean allowing ineligible persons to contest and win an election and thus deploy dilatory tactics to reap from his or her fraud to the fullest until the expiration of the tenure procured by fraud. Due to the foregoing reasons, issue two is also resolved in favour of the Appellants. The judgment of the Court below is hereby set aside. The advisory opinion of the learned trial judge is instructive in this regard, and we quote: "The culture of impunity exhibited by the 1st and 3rd Defendant's continued unabated with 2nd Defendant, INEC declaring 3rd Defendant's not only eligible but the winner of the said general elections 2015 (sic) and returned him unopposed as the Honourable member for the said Federal constituency on the platform of 1st Defendant, PDP, as other registered Political parties fielded no candidates at the general election 2015. The era of political parties presenting candidates holding public offices at Local, State and National levels with forged certificates which still persists in the polity need to be addressed urgently by relevant law enforcement agencies and other stakeholders (and we add-including courts) in this nascent democracy) (Emphasis ours). "This court must take the lead, in righting the wrongs in our

society, if and when the opportunity presents itself as in this appeal. Allowing criminality and certificate forgery to continue to percolate into the streams, waters and oceans of our national polity would only mean our waters are and will remain dangerously contaminated. The purification efforts must start now, and be sustained as we seek, as a nation to now 'change' from our old culture of reckless impunity. The Nigerian Constitution is supreme. It desires that no one who had ever presented forged certificate to INEC should context election into Nigeria's National Assembly. This is clear and sacrosanct. More compelling as a judicial determination had been taken by no less a technical panel sitting in, at least a panel of three judges as Election Tribunal with constitutional mandate to determine such issues as they relate to elections and its outcomes, including eligibility. This has also been affirmed by the trial court in this appeal. On these issues, our duty is to apply the constitution and the law in its start, original form undiluted by 'colourated' interpretations"

The Supreme court re-iterated the above in **MALHAJA V. GAIDAM (2018) 4 NWLR (PT. 1610) 454 AT 487.** He also cited the cases of

1. ANACHE & ANOR VS. BAKO & ORS (2019) LPELR 55316 (CA)

2. DIDE & ANOR VS. SELEKETIMBI & ORS (2009) LPELR 4038 (SC)

Learned SAN submits that at paragraph 13.1.1, that 1st respondent argued that because no one has challenged the 1st respondent with respect to his filed particulars before the election, thus, it cannot be done now. With respect, this argument is misconceived. It shows failure to appreciate the law and decided cases on the point. Under the 2010 Electoral Act, as amended, this argument may have merit, but not anymore.

He submits that one of the mischiefs the Electoral Act, 2022 corrected vis-à-vis the Electoral Act, 2010 (as amended) is that the old Section 31(5) empowered any Nigerian to institute an action to challenged the qualification of an aspirant before the election. However, now donates that power only to an aspirant, who participated in the party's primaries for the same position. Therefore, the only time the qualification of any candidate can be challenged by any other person is after the election. See Section 134 of the Electoral Act, 2022 and Section 66 of the 1999 Constitution as amended.

He referred us the Supreme Court decision in the recent case of PDP V. NGBOR & ORS (2023) LPELR – 59930 (SC) held:

> "**the outcome of a political party's primary election can only be challenged in the context of the provisions of Section 84(14)(a) and (b) Electoral Act 2022 by an aggrieved "aspirant" who participated in the primary election and no other person. Therefore, it is only the aggrieved "aspirant" as defined by statute who has the locus standi to institute pre-election actions and no other person.**

By the golden rule interpretation, the whole section of the law must be considered in the circumstances. Obviously the intention of the legislature as gleaned from Section 84(14) of the Electoral Act, 2022 is to circumscribe the litigants who can file pre-election suits and the courts have consistently maintained that it must be an aspirant challenging his own party's violation of the Electoral Act or Party's Act Constitution and guidelines.

My Lords, I agree with Appellant that while it is settled that by Section 285(14)(a) and (b) as enunciated above, only an aspirant can challenge the dried. The point being made here by the Appellant is that the second portion enables a political party to challenge the actions of INEC which are illegal or ultra vires the Electoral Act of the 1999 constitution.

The offshoot of that point is that the appellants are challenging the courts not to close its eyes to the second portion of Section 285(14)(c) which provided disjunctively for a political party to challenge INEC on the basis that "....any other applicable law has not been complied with by the Independent National Electoral Commission in respect of the nomination of candidates of political parties for an election, time table for an election, registration of voters and other activities of the commission in respect of preparation for an election".

No doubt, the primary responsibility of the Court in interpretation of a statute is to ascertain the intention of the legislature and give effect to it. My Lords, pre-election and election matters are sui generis in the sense that they are a special breed or specie of litigation bound by special statutory and constitutional provisions as interpreted by decision law.

While section 285(14)(c) talks about how the political party can challenge the decision of INEC, it relates to any decision of INEC directly against the interest of that political party. It cannot be stretched to include the inactions/actions of INEC in respect of nomination for an election by another political party.

So, pre-election and election matters are governed by laws made specially to regulate proceedings. Also the case NWAOGU V. INEC (2008) LPELR 4644, SA'AD V. MAIFATA (2008) LPELR – 4915

In this case, the 2nd Appellant has absolutely no cause of action since the party purportedly in violation of the Electoral Act is not his party. In the case of the political party, no other interpretation can be given to the provision than that the political party has a right of action against INEC where it rejects the nomination of is candidates, where it proposes unsuitable timetable or its registration of voters or register of

voters or other activities of INEC are against the interest of that political party.

Section 285(14)(c) cannot extend to challenge INEC's conduct in relation to another political party irrespective of whether such conduct by the other party is wrongful or unlawful. Section 285(14)(c) cannot cloth a party with the locus to dabble into INEC's treatment or conduct in respect of another political party. No matter how manifestly unlawful an action is, it is the person with he locus standi to sue who can challenge it is a court of law. See Suit SC/CV/1628/2022 APC & ANOR v. INEC & ORS delivered on 3/2/2023.

My Lords, a lot of fuss has been made about the fact that this court in several cases had nullified primaries conducted in violation of the Electoral Act. However, these cases arose as a result of a challenge by an aspirant within the same political party who felt aggrieved about the illegal venue where the primaries were conducted or about the illegality and irregularity perpetrated by his party which adversely affected his interest.

Section 285(14)(c) cannot be a license for another political party to challenge not to talk of successfully challenge such a wrong doing by INEC. In the

circumstances, this issue is resolved against the Appellant" Per OGUNWUMIJU, J.S.C.

In ABDULLAHI A. & ANOR V. AHMED & ORS (2019) LPELR – 49181 (CA) (Pp. 10 – 13 paras. C) the court said:

"I have taken time to look deeply into the submissions of the parties on this issue of qualification of a candidate and jurisdiction of the election petition Tribunal over the issues. Let me start here by pointing out that the Electoral Act does not leave any one in doubt about how to approach the tribunal and with what grounds of the petition. Section 138 (1) is so specific and direct on the requirements of the law. It specifics that an election may be questioned on any of the grounds listed therein. The first ground is that a person whose election is questioned was not qualified to contest the election. This provision of the law is plain and unambiguous. This court and the Supreme Court have considered the provisions in numerous cases. From the law as in Section 138(1) of the Electoral Act, 2010 (as amended) and all the relevant decisions of the Supreme Court, an issue of qualification of candidate is a ground upon which an election can be questioned before an Election Tribunal. The law makes for a party to raise issue of qualification as a pre-election issue. Where the ground of disqualification involves an allegation as to the falsity or otherwise of the affidavit sworn by the

candidate, it could be challenged before and after the conduct of the election as a pre-election matter at the Federal High Court, High Court under Section 31(5) and (6) of the Electoral Act 2010 (as amended). The position therefore is clean and very clear that where the information given by INEC is false, and that falsity touches on the constitutional bar. It is both a pre-election and post-election matter. If it is election, the fact that the election has come and gone does not detract from the matter being continued as a pre-election matter in regular courts. Where however, the matter is taken up as a post-election matter, it can only be filed by a party to the election and it must be before an election petition Tribunal. Under Section 138(1)(a) of the Electoral Act, 2010 (as amended). The position is well captured by the Supreme Court in the case of PDP v. INEC (2014) 17 NWLR (pt. 1437) 525, where the Supreme Court held:

"where a person who ought not to have contested an election was allowed to do so, the remedy available to a person seeking to challenge him at the Election Tribunal lies in Section 138 (1) (a) of the Electoral Act 2010 (as amended). In other words, a person who wished to challenge the election on the basis that the winner was not qualified to contest the election has umbrage in Section 138 (1) (a) of the Electoral Act. That is no say, where a person fails to take advantage

of Section 31(5) and (6) of the Electoral Act in the High Court, he can still approach the Election Tribunal under section 138 (1) (a) thereof".

"This clearly justifies the contention of the respondents and the position of the Tribunal that the Tribunal had the jurisdiction to entertain the matter. It follows invariably that the trial Tribunal was right to assume jurisdiction in this matter" per ADAH J.C.A

He also cited the case of ISRAEL & ANOR V. AMOSUN & ORS (2019 LPELR- 48916 (CA)

He submits and urge this Tribunal to hold that failure to challenge the qualification of the 1st respondent before the election is not fatal. Indeed, the courts have held that in line with section 66 of the constitution of the Federal Republic of Nigeria, 1999 as amended and section 134 of the Electoral Act, 2022, qualification of candidate who allegedly won an election can be challenged at the Tribunal. He cited ABDULLAHI & ANOR V. AHMED & ORS (2019) LPELR – 49181 (CA).

Learned counsel submit that the 1st respondent evidence in rebuttal is ridiculous and unreliable, and that they dealt with the so-called report Exhibit D25 in their objection to its admissibility. In terms of probative value. He invite us to note the following flaws in the documents:

i. It was letter from Nigerian Police, Abia State to the Abia State Judiciary. It should have come from the office of the commissioner of police and not D.P.O;

ii. There is no mark to show that it was tendered in evidence. If tendered through a witness, it will be marked, and if tendered through an affidavit in the Originating Summons, it will also be marked to link it to a particular paragraph in the affidavit or counter affidavit, he cited cases of **ASO MOTEL KADUNA V. DEYEMO (2007) ALL FWLR (Pt. 390) 1444 at 1470;** and **OSOH V. A.G EKITI STATE (2002) 2 NWLR (Pt. 752) 628.**

iv. Learned counsel submits that on the face of the document, the complainant is the Umunneochi High Court of Abia State. That High Court fell to the level of being the Complainant and the adjudicator in a case before it. For the record, the Court of Appeal affirmed the "advise" of the Tribunal. That advise by the Electoral Act, 2010 as amended should have been implemented by INEC. See Section 149 of Electoral Act, 2010 as amended. Exhibit D25 has no probative value.

He submit that this tribunal should not recognize it, act on it or accord it any weight, because the essence of that document is to over-rule an indictment affirmed by the Court of Appeal. It is trite law that in deciding whether a previous judgment amount to issue estoppels or estoppel per rem judicata, that Tribunal is entitled to examine the decision. See on this power, the cases of:

1. BALOGUN V. ODE (2009) FWLR (PT. 358) 1050

2. AJAO V. ALAO (1986) 12 SC 193

He also submit that examine this document we would observe:

I. That it was a Civil case in which the claimant sought a declaration that the 1st Respondent's not a graduate of University of Port Harcourt.

What the Court of Appeal affirmed is that "a success letter" tendered to prove that the 1st respondent graduated from university of Port Harcourt. Whoever did this hatchet hob, should have got the Court to declare this the "success letter" was not a forgery.So, the two case are not on the same subject matter.

II. Exhibit D25 was a Civil case decided on balance of probabilities. Exhibit P74 though Civil had power to navigate in proof beyond reasonable doubt to ground an indictment. To set aside that indictment, the proper party should have been the Police or Attorney-General of a State after a trial for the crime.

III. It is trite law that whoever wants a Court to pronounce on a document must tender the document before that court. See.

a. OGAH V. IKPEAZU (2017) 17 NWLR (PT. 1594) 299

b. N.P.A V. B.P. PTE LTD (2012) 18 NWLR (PT. 1333) 454

IV. Exhibit D25 is a judgment order CULLED from the "FULL JUDGMENT" of that court. In paragraph 1 of exhibit D25, it is stated; "**after hearing the claimant's claim and the Defendant of the Defendant and <u>Upon the full judgment</u> of the Honourable Court, it is ordered as follows"** (Underlining ours). For this tribunal to form an opinion on that judgment order, the full judgment should at least be tendered. From there, this tribunal will know what the matter is about.

V. Exhibit D25 absolved the 1st respondent of "the suspected crime and <u>any other crime whatsoever"</u> (underlining Ours) . Umunneoci High Court turned itself to God. It is only God, not even a President or State Governor that can absolve a person of any other crime whatsoever. Exhibit D25 is a treasured certificate the 1st respondent can parade because all crime committed before April, 2022 has been nullified by a

court that does not know the crimes. The Governors in exercising their powers under the constitutional pre-rogative of mercy are specific as to the crime.

VI. Umunneochi High Court ordered Police Investigation while a case was before it, awaited the police investigation before concluding the matter. I have never seen a situation where a court becomes the complainant in matter before it.

VII. When Umunneochi High Court said the Defendant is a graduate of UniPiort did this exculpate him from forgery of the success letter?

VIII. Umunneochi High Court referred to a letter marked Exhibit D. That letter is not before this Tribunal. It is also referred to "prayer by the Claimant". These are not before this tribunal and the tribunal cannot speculate on these matters.

He submits that with respect, given the pedigree of this Tribunal, it must continue the charge of purging the society of people like 1st respondent who, despite being indicted, wants to hold public office. Under cross-examination, DW15 had no qualms about the fact that his failure to attach "Degree Certificate" to his form EC9 sworn to before a Commissioner for Oath. A degree he obtained in the year 2000. He attached success letter in 2015 and in 2023 after being cleared by UMUNNEOCHI HIGH COURT of "any crime whatsoever" still did not attach it. He did not tender it in Court but tendered unpleaded photocopy of an "NYSC" certificate.

Learned SAN submits that the defence of not attaching the impugned success letter or degree certificate to the EC9 in 2023 is not tenable. Section 66(1) (i) used the past tense "PRESENTED". Learned counsel submit the practical application of it means as stated by the Supreme

Court is it the has presented a forged certificate, any time before the contest.

He urge this Tribunal to hold that the 1st Respondent who was found to have presented a forged certificate in the past, is not qualified to contest the election.

That the 1st respondent was not qualified to contest the election and the consequence is to grant reliefs 1 and 2 in the petition.

ON GROUND OF NON-COMPLIANCE WITH THE ELECTORAL ACT

Learned counsel submit that before going into this sub-issue, it will be apposite to signpost some innovative principles in the electoral act 202 and other legal principles that will help us handle the legal niceties that relate to non-compliance with the provision of the Electoral Act, 2022 during an election.

Section 137 provides:

"It shall not be necessary for a party who alleges non-compliance with the provisions of this Act for the conduct of election to call oral evidence if originals or certified true copies manifestly disclose the non-compliance alleged"

He submit that this section is clear and unambiguous. It addresses evidence needed to prove "non-compliance" – with the provisions of the Electoral Act. It states that you can use the original of the results or a certified true copy to prove non-compliance. In our view, the non-compliance that this section refers to are those that can be seen upon an examination of the result. Some of these he submits are:

i. Where the presiding officer did not sign the result;

ii. If the figures are mutilated;

i. If there is over-voting i.e where the number of people that voted are more than those who were accredited to vote;
ii. Where the number of those that voted are more than the number of those who are registered in that unit etc.

He submits that this section addresses the mischief which required a petitioner to all evidence from every unit where he complains of non-compliance. In this case, the section will help prove over-voting.

He submits that it is not a blank cheque that will allow anyone to use the result tendered at a polling unit for any purpose. The golden rule backed by Law of Evidence is that the best evidence of what transpired at a polling unit must come from a person who was at the polling unit when the event occurred. The courts from decided cases can take judicial notice of the fact that the people that are usually in a polling station are INEC Officials, Security Agents, Voters and Polling Unit Agents representing their Political Parties, Observers, the candidates. See Section 5-8 of the Electoral Act. He cited the cases of:

1. BUHARI V. INEC (2008) 19 NWLR (PT. 1120) 246
2. BUHARI V. OBASANJO (2005) 13 NWLR (PT. 941) 1
3. ADEWALE V. OLAIFA (2012) 17 NWLR (PT. 1330) 478

Learned SAN, though a candidate can be at polling unit, he cannot be in all of them at the same time since he is not God. So, to prove the making of a result, only the maker can give evidence of it. He cited Section 83 of the Evidence Act, 2011 for definition of maker. To cases of

1. AKEEM SANUSI V. THE STATE (2023) LPELR – 59977(SC)
2. OZUAGU V. FAKAYODE & ORS (2023) LPELR – 59632 (CA)
3. OKOROAFFIA V. AGWU Supra

With respect to uploading of the result and use BVAS machine, He submits that only a person who witnessed them can give evidence of when and how it was done. A CTC of these report only raise presumption of regularity. Evidence by any of the persons in a unit who testifies that it was not done during the election, will displace that presumption. This is because our election history is replete with proven cases of uploading after the election. Also, he submits that the completion of accreditation does not mean that the voting was done. For this reason, Section 137 of the Electoral Act, 2022, cannot be used to give life to EC8A's dumped on the Tribunal by DW15. He refers.

Section 167(d)OF THE EVIDENCE ACT, PROVIDES. "(d) evidence which could be and is not produced would, if produced, be unfavourable to the person who withholds it",

He submits that in a plethora of case, the Courts have held that this presumption will be invoked in appropriate circumstances.

1. DOGGO VS ASHDENE ASSOCIATES NIG. LTD (2022) LPELR - 56910(CA)
2. JOJI V. C.O.P (2023) LPELR – 60379 (CA)

ON VOTER REGISTER V. NUMBER OF PVC COLLECTED

Learned SAN submits that one of the innovations introduced by Electoral Act is the use PVC collection as against number of registered voters in a polling unit to know the number of those disenfranchised. He refers us

to paragraph 67 and 100 of the Guideline made by INEC pursuant to the Act and submits that it will be recalled that before 2022, number of disenfranchised voters was reckoned from number of votes on the Voters Register. He cited the cases of

1. **OMAJALI V. DAVID & ORS (2019) LPELR – 49381(SC)**
2. **KIBIYA & ANOR V. FAMMAR & ORS (2019) LPELR – 49626 (CA)**
3. **NGIGE V. INEC (2015) 14 NWLR PART 1440 PAGE 281 AT 326**

Submits that the rationale for this innovation and mischief it intends to cure is that the voters register contains fictitious names, names of deceased persons, those that have relocated etc.

He further submits that the implication of this innovation is that when the Tribunal is to form an opinion as to the number of disenfranchised voters, recourse should be had to the number of PVCs collected in each unit. The petitioners tendered that document as Exhibit P78A.

He submits that when the evidence of a witness consists of what he heard and what he witnessed, such evidence will not have any probative value. All the witnesses of the 1st respondent fell into this error. He urge us to discountenance their evidence.

He submits that the 4th and 5th respondents complained of discrepancy in names of the 2nd and 5th respondents. Which is a misnomer. The Courts have gone beyond this exercise in crass technically. See HDP vs. INEC & ORS (2009) LPELR 1375 (SC)

ON ALLEGATIONS THAT THERE WAS NO ELECTION

Learned SAN submits that in AUDU VS. INECT (No. 2) (2010) 13 NWLR (PT. 1212) 456. It was held that a petitioner who contends that an election did not take place must call at least one disenfranchised voter from the polling unit where the election did not hold. He cited the case of

i. OGBORO VS. UDUAGHAN & ORS (2011) 2 NWLR (PT. 1232) 538 @ 595 – 596, where Dongbhen Mensem JCA, said:

> **"Surely, the question of the burned of proof on the pleadings and indeed, the evidential burden, where the allegation relates to non-voting have long been settled by a long line of authorities... in the above cases, in which non –voting was the pivot of the petitioners' cases, the court consistently held that in order to succeed, such petitioners were under obligations to call voters from each of the polling booth in the affected constituencies or areas as witnesses. Such witnesses will tender their voters' cards and testify that they did not vote on the day of the election".**

ii. CHIME VS. ONYIA (2009) 13 NWLR (PT. 1124) 1

iii. AYOGU VS. NNAMANI (2006) 8 NWLR (PT. 981) 160

He submits that we hasten to add that even a pooling unit agent who testified that he was at the unit and testifies that an election did not hold can give evidence based on Best Evidence Rule. He refers to Section 129 Electoral Act, 2011. From the précis of evidence, and submits that the petitioners called about 85% of voters who testified that election did not hold. The results tendered before this Tribunal

equally supports the fact that election did not take place in these units because there is no results for them. He submits that the 1st respondent's witness, DW12 & DW13 corroborated this fact that election did not hold. Learned SAN reproduce a graph which he says and the identifies the witnesses, their units and the fact that there was no result, PVCs collected in those unit and at the end, he totaled the number of disenfranchised voters. (we refer to para 6.4.4 of petitioners final address pages 26-27).

S/N	Petitioner's Witness No.	Unit Testifies On	Complaint Testimony of Witness	Was Result Tendered	Did Respondent Tender Result	No. Registered Voters	PVC Collected in Unit
1	PW1	Unit 003 Igwebuike ward 7, Aba South LGA	No Election	No Result	No Result	559	498
2	PW2	Unit 026 Aba River, Aba South LGA	No Election	No Result	No Result	969	727
3	PW3	Unit 017 Aba River ward 11, Aba South	No Election	No Result	No Result	520	390
4	PW4	Unit 013 Ohazu II Ward 6, Aba South	No Election	No Result	No Result	1228	921
5	PW5	Unit 001 Ohazu II Ward 6 Aba	No Election	No Result	No Result	872	751

		South					
6	PW6	Unit 005, Enyimba ward 3, Aba South	No Election	No Result	No Result	996	990
7	PW7	Unit 023 Aba River ward 11, Aba South	No Election	No Result	No Result	466	350
8	PW11	Unit 16, Enyimba ward 3 Aba South	No Election	No Result	No Result	632	630
9	PW12	Unit 022 Aba River ward 11 Aba South	No Election	No Result	No Result	603	452
10	PW13	Unit 018 Industrial ward 02 Aba North	No Election	No Result	No Result	776	582
11	PW32	Unit 018 Aba River ward 11, Aba South	No Election	No Result	No Result	452	350
12	PW33	Unit 016 Aba River ward 11 Aba South	No Election	No Result	No Result	1227	920
13	PW34	Unit 006 Ohazu ward 7 Aba South	No Election	No Result	Yes but not clear	1286	960

14	PW10	Unit 028 Ohazu 2 ward 8 Aba South	No Election	No Result			1073
	Total						**9594**

ON LACK OF RESULT SHEET

Learned counsel submits that election is process. This was re-iterated by our Superior courts in AONDOKAA V. AJO (1999) 5 NWLR PT. 602 at 205 particularly at 225 in these wards.

"...an election constitutes accreditation, voting, counting of votes, collating at ward, Local Government ward and announcement of votes. Voting alone or voting in a unit dives wit constitute whole election. Therefore, if any of the process in an election commencing accreditation and ending with announcement of result by INEC is disturbed it affects conclusion of the particular election (to post) fresh election to that post should be ordered". see also:

i. IGODO V. OWURU (1999) 5 NWLA (PT. 601) 70 AT 71.

ii. MARWA & ANOR V. NYAKO & ORS (2012) 6 NWLR (PT. 1296) 199 AT 357

He submit that failure to use a result sheet amounts to non-compliance and the petitioner pleaded non-compliance in paragraph 34. 35, and 42 of the petition and cited PW4, PW15, PW16, PW17, PW18, PW19, PW20, PW21, PW22, PW26, PW27, PW28, PW30 and PW35 to testify in support of this position. Non-compliance was defined by I.T Mohammed

(as he then was) in OJUKWU vs. YA'RADUA (2009) 12 NWLR (pt. 1154) 50 at 140 B-C as "compliance is an act of complying or acting in accordance with wishes, requests, commands, requirements, conditions or order. It is an act of yielding or conformity with the requirement or order". He then said that non-compliance is the opposite of compliance. He refers to OLUWAROTIMI O. AKEREDOLU V. DR. R. MIMIKO & ORS (214) 1 NWLR (PT 1385) 402 at 472 and

Section 60(1), (2) and (3) of the Electoral Act, 2022 which stipulates what is to be done after an election. It provides:

> ***"1. The presiding officer shall, after counting the votes at the polling unit, enter the cotes scored by each candidate in a form to be prescribed by the commission as the case may be***
> ***2. The form shall be signed and stamped by the presiding officer ad counter signed by the candidates or their polling unit agents where available at the polling unit***
> ***3. The presiding officer shall give to the polling agents and the police officer where available a copy each of the completed forms after it has been duly signed as provided under subsection(2)"***

Learned SAN submits that the form referred to in the section is the result Form EC8A (II) he refer to paragraph 35(a)(v)(b)(i)(iii)(iv) of the Guideline.

Section 62 of the same act mandates the presiding officer to hand over the result form to the INEC ward collation officer at the end of the election.

Apart from alleging that there was no result the petitioner requested result, from INEC through Court Order, notice to produce and subpoena. The result give to the petitioners were tendered by PW31 as Exhibits P35 to P36 series.

He submits that in response, the 1st respondent dumped duplicate originals on the tribunal through DW15. He submit that if we look at the dumped results that were not frontloaded, if they have any probative worth, we will see that apart from Units 005, 006 and 025 in Ariaria Ward 9, 006 in Ogbor 2, Ward II, and Unit 002 in Osusu Ward 4, where faint duplicate original were dumped by DW15, there is no other evidence of results in the affected units. The so called duplicate originals do not have the missing result.

He also submits the result tendered for units 005, 004, 006 and 025 in Ariaria ward 9, Aba North, unit 002, Osusu II ward 4 Aba North and unit 006 Ogbor II ward 11, Aba north are not clear. He cited the case of JWAN VS ECO BAN NIG DIC (2012) 10 NWLR (PT 1785) 449 where it was held that a faded document has no probative value.

He submits that some of the respondents (sic) in their final written addresses tried to cast a slur on the testimony of these witness and those that said there was an election by a reference to IREV report exhibits D69 – D75 and the IRV report was not pleaded, listed nor frontloaded and so, they are worthless. He cited:

1. ORJI V. PDP (2009) 14 NWLR (PT. 1161) 310 AT 404
2. UKPO V. NGAJI (2010) 1 NWLR (PT 1174) 175.

Learned counsel submits that these IREV reports is an ambush and is not allowed in an election petition. He refers to the case of OSHOMOLE V. AIRHIAVBERE (2013) 7 NWLR (PT 1353) 376. With respect to BIVAS report, he submits that election is a process and the fact that a voter has been accredited, does not mean he will vote. He can decide to go home. Some issues may arise at the unit and put an end to the election,

he submit that a graphic presentation of areas he alleged that there is no result: (we refer to pages 29 -30 of petitioners final written address)

S/N	Petitioner's Witness No.	Unit Testifies On	Complaint Testimony of Witness	Was Result Tendered	Did Respondent Tender Result	No. Registered Voters	PVC Collected in Unit
1	PW14	Unit 030 Ariaria ward 9, Aba North LGA	No result sheet	No	No Faded	768	768
2	PW15	Unit 025 Ariaria ward 9 Aba North LGA	No result sheet	No	Duplicate original tendered	750	563
3	PW16	Unit 029 Ariaria ward 9, Aba North LGA	No result sheet	No	No	761	761
4	PW17	Unit 010	No result	No	No Faded	1188	1075

		Ariaria ward 9, Aba North LGA	sheet				
5	PW18	Unit 005 Ariaria ward 9, Aba North LGA	No result sheet	No	Tendered duplicate original tendered	851	738
6	PW 19	Unit 010, Ogbor II ward 11, Aba North	No result sheet	No	No	695	597
7	PW20	Unit 008 Ogbor II ward 11, Aba North	No result sheet	No	No	550	466
8	PW21	Unit 008 Osusu II ward 4, Aba South	No result sheet	No	No	862	769
9	PW26	Unit 028 Ariaria ward 9, Aba North	No result sheet	No	No	750	142
10	PW28	Unit 007 Ogbor II ward 11, Aba North	No result sheet	No	No Faded	635	576
11	PW29	Unit 006 Ogbor II ward 11, Aba North	No result sheet	No	Duplicate original tendered	767	677

12	PW30	Unit 006 Ariaria ward 9, Aba North	No result sheet	No	Duplicate original tendered	464	396
13	PW35	Unit 002, Ososu Ii ward 4, Aba North	No result sheet	No Result	Faded Duplicate original tendered	1001	832
14	PW24	Unit 001 Ososu ward 4	No result sheet	No Result		821	714
15	PW22	Unit 006 Uratta, ward 6 Aba South	No result sheet	No Result		825	773
16	PW27	Unit 004 Ariaria ward 9	No result sheet	No Result		660	495
	Total						**10342**

He submits that the total number of votes affected is **22,044** (Note that this includes figures where overvoting occurred) and he urged as to hold that the petitioners have discharged the burden of proving that there was no result in these units and no election in others.

OVERVOTING

He submits that Section 51(2) of the Electoral Act, 2022 defines Overvoting as a situation where the number if those that vote exceeded the number of voters that were accredited.

That by virtue of the innovating provision of section137 of the Electoral Act, 2022, overvoting can now be proved by simply looking at the certified true copy of a result tendered. A look at Exhibit P36(13) will

show that the number of accredited voters was 127 but the votes cast was 129. This is a clear case of overvoting. We pleaded same in paragraph 41 of the petition.

He submits that the consequence of overvoting is that the Polling Unit should have been cancelled by the Presiding Officer. With the provision of section 51(3) of the Electoral Act, 2020 and he failed to do so and the toxic result emanating from that unit was added into the overall votes of the contestants.

He urge us to cancel the result of Polling Unit 013 St. Eugene's Ward 5 and that the permanent voters card (PVCs) collected in this polling unit is **563**

ON CORROBORATIVE EVIDENCE OF NO ELECTION AND OR NO RESULT SHEET

Learned SAN submits that in the course of trial, DW13 and DW6 testified that election did not hold in the polling units he represented below on a graph on page 31 of the petitioner final written address

	Unit	Ward	Local government	Pvc collected	No of register voters
DW13	Unit 21	Aba River 11	Aba South	250	333
	Unit 33	Aba River 11	Aba South	89	104
	Unit 40	Aba River 11	Aba South	40	16
DW6	Unit 022	Enyimba ward 3	Aba South	874	879
	Unit 049	Enyimba	Aba South	144	150

		ward 3			
	Unit 050	Enyimba ward 3	Aba South	11	11
	Unit 052	Enyimba ward 3	Aba South	137	139
DW12	Unit 008	Industrial ward 2	Aba North		668
	Unit 018	Industrial ward 2	Aba North		582
	Unit 034	Industrial ward 2	Aba North		1
	Unit 43	Industrial ward 2	Aba North		3
	Unit 044	Industrial ward 2	Aba North		3
Total					**1545**

And the 1st respondent asserted that petitioners said election did not hold, by BVAS report and IREV reports assert to the contrary. Petitioners has submitted that election is a process. Part of that process includes use of BVAS. But the fact that a voter is accredited does not mean that the voter voted. If they voted, it does not that the result sheets were used to compute the results. On IREV, we have submitted in our objection that same was dumped on the Tribunal. That evidence even through favourable to the Petitioners is not reliable. It has no probative worth.

He submits that the Petitioner has asserted is that a computation of PVCs collected in the impugned units will come to **22,044**. He urge us to hold that the petitioner has proved figure. That we should not be shy

of holistically looking at the votes cast and doing some mathematics in order to come to a conclusion as to the actual number of affected by non-conduct of the election and failure to use result sheet to compute results. It refers us to the case of

A. UDUMA VS. ARUNSI (2012) 7 NWLR (PT. 1298) 55
B. NGIGE VS OBI (2016) 14 NWLR (PT. 999) 1

He submit that with this number of disenfranchised voters the appropriate thing to do in accordance with the Guidelines was for the 3rd respondent to reschedule the election and organize a supplementary election in the affected units.

He urged this tribunal to hold that the petitioner has proved the Ground 2 of the petition and entitled to relief 3 of the petition.

ISSUE TWO

WHETHER THE PRINCIPLE OF MARGIN OF LEAD CAN BE INVOKED IN RESPECT OF THE SUBJECT MATTER OF THIS PETITION TO WARRANT A RUN-OFF IN DESIGNATED UNIT BETWEEN THE PETITIONERS AND THE 4TH AND 5TH RESPONDENTS.

Learned San submits that in paragraph 15 of the petition, the petitioners pleaded the result of the election. The 1st respondent admitted it is the result in paragraph 6 of its reply. The 2nd respondents did not join issue with the petitioner on this point, the forth respondent agree with it.

He urge us to hold that there is no dispute with respect to the result of the election. What is admitted need no proof.

He further submits that by its relief 5, the petitioner prays this Tribunal to other supplementary elections in polling units in the Federal Constituency where election did not hold and in paragraph 49 to 54 the petitioner outlined the reason for asking for this relief. In summary he submits that the contention is that based on the principle of margin of lead contained in the manual, an election result should not be declared where the margin of lead between the two leading candidates is not in excess of the number of the registered voters who collected their PVC's but did not vote where elections were not held. That principle is contained in paragraph 62, 67 and 100 of the Guidelines for the conduct of the election tendered as Exhibit P77 and paragraph 100 of the Guidelines, it goes on to state how the margin of lead is managed and he also cited the case of FALEKE V. INEC (2016) 18 NWLR (PT. 1543) 61: INEC did not declare the result of the Election on the basis of this Principle. The Supreme Court endorsed this principle in the following words:

> **"That declaration was made base on the provisions of Chapter 3 paragraph 3.11, step 14 of INEC's Manual for Election Officials. The argument of learned senior counsel for the appellant is that the provisions of the Manual cannot be employed to amend or augment the provision of the Constitution. It is not disputed that pursuant to section 160(1) of the Constitution, INEC has the constitutional power to regulate its own procedure or confer powers and impose duties on it Officers for the purpose of discharging its functions. Sections 73 and 153 of the Electoral Act contain**

similar provisions to ensure the proper discharge of its functions. Section 73 empowers the commission to publish in the Gazette, Guidelines for Elections "which shall make provisions for the step by step recording of the poll in the electoral forms as may be prescribed…."

While Section 153 empowers the commission to issue regulations, guidelines or manuals for its administration. I agree with finding of the lower Court at page 1608 of the record that the provisions give statutory backing to the Manual as subsidiary legislation and where that is found to be relevant, its provision must be invoked, applied and enforced.

The relevance of INEC's Manual for Electoral Officers in the proper conduct of election was acknowledged by this Court in the case of CPC v. INEC (2011) LPELR 8257 (SC) at page 54-55, F-B (2011), 18 NWLR (PT 1279) 493 at 542 para.

"Where the margin of win between the two candidates is not in excess of the total number of registered voters of the polling unit(s) where election were cancelled or nor held, decline to make a return until another polling unit(s) and the results incorporated into a new form EC8D and subsequently recorded into new form EC8E for Declaration and return"

Final Collation and Declaration of Governorship Election Results at State Level:

The State Collation/Returning Officer for the Governorship shall

Step 14: "Where the margin of win between the two leading candidates is not in excess of the total number of registered votes of the polling unit(s) where elections were cancelled or not held, decline to make a return until another poll has taken place in the affected polling unit(s) and the results incorporated into a new Form EC8D and subsequently recorded into a new form EC8E for Declaration and Return" (Italics mine)

"***The provision is clear and straight forward and did not require a foray into any other provision on the Manual for it is to be effected. There is no dispute as to the fact that the margin between the votes scored by the late Prince Audu and the other appellant on the one hand and Capt. Wada and Arch, Awoniyi, on the other was 41,619, which was less than the total number of registered voters in 91 polling units where the votes were cancelled. I therefore agree with the Court below that 1st respondent was correct to have declared the election inconclusive on the basis of number of registered voters in the 91 affected polling units. Having regard to the clear provisions of the Election Manual, it would have been wrong for any electoral official to base his decision on any other consideration, such as the number of registered voters***

who had collected PVCs, or the geographical spread of the votes already cast. Clear and unambiguous provision must be given their natural and ordinary meaning. Neither the Court nor learned counsel is entitled to read into a provision what it does not contain."

While Section 91 affected polling units. Having regard to the clear provisions of the Election Manual, it would have been wrong for any electoral official to base his decision on any other consideration, such as the number of registered voters who has collected their PVCs, or the geographical spread of the votes already cast. Clear and unambiguous provisions must be given their natural and ordinary meaning. Neither the Court nor learned counsel is entitled to read into a provision what it does not contain"

He also cited case of:

1. UZANERE V. URHOGIDE & ORS (2009) LPELR 5082 (CA)
2. ELOHOR & ANOR V. INEC & ORS (2019) LPELR 48806 (CA)
3. OPUTCH V. ISHIDA 1 LRECN 140
4. EJIKE V. EZEUGWU (1992) 4 NWLR (PT 236) 462

He submits that the margin of Lead principle no longer uses the number of the registered voters for its computation. It now uses the number of registered voters who collected the "PVC's". For Aba North and Aba South Federal Constituency, this data was tendered as Exhibits 78A. That at paragraphs 6.4.4, 6.5.11 and 6.7.1 of the reply petitioners

produced with illustrated graphs the number of disenfranchised voters on account of no election, lack of results and over-voting and have also analyzed the evidence on both sides on the point and concede that the respondents tried to impeach the credit of these witnesses in relation to collateral matters like failure to tender INEC Agent Tag (respondents did not tender any) and failed to cast any slur with respect to the evidence that is materials.

That is why petitioners tendered exhibits 80b & 80c (disc containing voters register issued by INEC). Learned counsel submits that for the polling units where we said election did not take place, or that there is no results, petitioners have nothing to tender.

He submits that the margin of lead is applied between the 4th respondent and the 1st petitioner. My Lords will see that the difference would be 22465 – 13358 = 9107 votes. The total PVC collected in arrears where election did not take place and where no results were granted comes to 22,044 disenfranchised voters. He submits that in an election between the 1st petitioner and the 4th respondent, the result would not be declared because 22,044 is more than the margin of lead (9,107) between the two candidates and the remedy is to ask the respondent to conduct supplementary election between these two candidates in areas where election did not take place or where there was no result.

He submits that I am aware that Section 136(2) provides that where the winner is disqualified, the 1 Runner up would be declared the winner. If he satisfied the requirements of the constitution and this Act as duly elected for emphasis.

He submits that the Electoral Act in Section 148 empowers the INEC to issue Guidelines. In FALEKE V. INEC supra and other cases, it is clear that in interpreting the Act, recourse would be had to the Guideline. That in the peculiar circumstances of this case between the 1st petitioner and 4th respondent, applying the margin of lead principle would only lead to a re-run between these candidates in designated units. He urge us to direct INEC to conduct supplementary election between the 1st petitioner and 4th respondent in the units set out in the chart in paragraph 6.4.4, 6.5.11 and 6.7.1 of this address.

The petitioner finally urged us to hold that they are entitled to the two reliefs they seek.

In response to the Petitioners final written address the 1st Respondent in his 1st Respondent final written address filed on the 11/8/2023 formulated a sole issue for determination before this tribunal to wit:

"whether the Petitioners have adduced sufficient evidence

As mandated by Law in proof of the claimed reliefs"

Learned counsel for the 1st Respondent C. J. Okoli Akirirka Esq. submits that whoever desires any Court to give Judgement as to any Legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist. If such a party adduces evidence which ought reasonably to satisfy the Court that the fact sought to be proved is established the burden then lies on the other party against whom Judgement would be given if no more evidence were adduced. See **Section 131(1) and 133 (2) of the Evidence Act 2011**.

He submits that to determine what a plaintiff or petitioner is required to prove, the Law obligates the Petitioner to plead all the materials and evidence relied upon in proof of their case the Law was eruditely articulated on **BUHARI VS OBASANJ0 (2005) 13 NWLR (PT 941) Pg 1 at Page 200 Paragraphs F-G thus, per BELGORE (J.S.C)** as he then was:

"In all civil matters in Superior Courts of record, all facts a Party relies upon must be pleaded clearly in numbered paragraphs. The same applies to election Petitions so that the Paragraphs set out seriatim will indicate the facts the petitioner relies for his petition".

He further submits that the initial burden to introduce evidence and prove the facts in support of the assertions made by the Petitioners rests on the Petitioners concomitantly, the germane question that ought, with respect to agitate our minds is, what is the state of the Petitioners pleading pursuant to which his reliefs are claimed he submits that in summation, the Petitioners case is predicated on:

(a) The 1st Respondent submitted forged document to the 3rd Respondent (INEC).

(b) That the 1st Respondent's election was marred by corrupt practices and non compliance with the Electoral At 2022 with regards to alleged non voting in some polling stations, non provision of electoral materials, massive electoral violence and malpractices, non availability or continuous malfunctioning of BVAS, over voting and forgery of election results, non uploading of election results, non uploading of election

results in some itemized units/wards and alleged wrong location of polling units.

Learned counsel submits that the First and crux or substratum of the Petitioners case is that the 1st Respondents presented a forged Certificate to INEC as held in **AB/EPT/HA/20/2015 HON DAME BLESSING OKWUOCHI NWAGBA & ANOR Vs EMEKA SUNNY NNAMANI 8& ORS** which Judgement was upheld on appeal in **CA/OW/EPT/ HA/81/2015**.

He submits that the 1st Respondent apart from contending that the issue of the alleged presentation of forged document & fake document is or making false declaration in form C.F 001 is a pre-election matter contended that:

(a) That the Judgement in AB/EPT/HA/20/2015 is not absolute but contained a directive for Police "Command to look into the issue of forged Certificate in the possession of the 1st Respondent for purpose of possible prosecution".

(b) That Police investigated the "issue of forged Certificate" and exculpated the 1 Respondent of any criminality.

(c) That the Court in **Suit NO HUM/ 26A/ 2022 EGEONU PETER VS EMEKA SUNNY NNAMANI** further absolved the 1st Respondent of culpability on the alleged forgery of document.

(d) That aside the alleged forged document that the 1st Respondent at all material times, is a holder of WAEC which is the Constitutional benchmark for qualification to contest the election the submission of these alleged document to INEC notwithstanding.

(e) The particularly important and significantly exculpatory Reply of the 1st Respondent that the Police investigated, the alleged forgery of documents and issued a Report (EXH D26) was neither factually responded to by the Petitioners on their Reply to the 1st Respondent's Reply to the petition nor controverted in the course of trial.

Learned counsel with respect of (e) above, submits that as threshold contention that vide **Section 123 of the Evidence Act 2011**, the Petitioners are deemed to have accepted and admitted the 1st Respondent's pleading on Police Investigation of the alleged offence of forgery. The law was admirably restated in **UMERA VS NRC (2022) 10 NWLR (PT 1838) Pq 349 at 389 Paras G-H Per GARBA (3.S.C)** thus:

"The law, as provided in Section 123 above is that generally, a fact admitted needs no further proof by the party pleading it since proof pre-supposes dispute or denial of fact(s) thereby raising and joining issue(s) thereon. Therefore when Parties do not dispute or deny facts between them, but rather agree or admit such facts and so did not join issues thereon, the question of proof does not and will not arise"

He submits that the Petitioners in their Reply to the 1st Respondents Reply to the petition stigmatized and enrolled Judgement Order in SUIT NO HUM/26A/2021 as "a nullity" and "made in anticipation of the Petition by the 1st Respondent without disclosing the existence of a conviction of forgery by the Court of Appeal. See Paragraphs 8 and 9 of the Petitioners Reply to the 1st Respondents Reply to the Petition.

Learned counsel urged us to bear in mind that:

(a) A motion was filed by the 1st Respondent challenging the essence of Petitioners Reply to the 1st Respondents Reply to the petition.

(b) The petitioners further written deposition to the said Petitioners Reply to the 1st Respondents was not adopted by the petition and therefore deemed abandoned. See the case of **INEC VS AC (2009) 2 NWLR (PT 1126) Pg 524 at 616 Paras G-H.**

(c) Objection was taken to the admissibility of EXHS P72 and P73.

EXH 72 was addressed to K.C. NWUF0 SAN & ASSOCIATES and "produced by subpoened witness" and received on evidence at the trial tribunal in 2015 "in line with the provisions of Paragraph 41(8) of the 1st Schedule to the Electoral Act 2010 as amended". See Pages 7-8 of EXH P72.

He submits that the alleged forged document was tendered on subpoena by the non maker without evidence of the witness testifying on oath and subjected to cross examination. This ordinarily denuded the said document of conclusive probative value. See **OKECHUKWU VS INEC (2014) 17 NWLR (PT 1436) Pg 255 at 299-300; BELGORE VS AHMED (2013) 8 NWLR (PT 1355) Pg 60.**

He submits further that in that same EXH P72, the 1 Respondent denied forging his NYSC discharge Certificate at Page 10 thereof. Quite curiously the Learned Tribunal Judges said nothing about that.

In the present petition, the Petitioners vide Paragraph 6 of their Joint Reply to the 1 Respondent's Reply to the Petition alleged that 1st Respondent submitted "false NYSC Certificate of National Service

allegedly issued to the 1 Respondent" and gave no notice to produce it at the hearing of the petition".

That from the point of settlement of pleadings till date, the Petitioners did not controvert the fact that 1st Respondent did his NYSC and tendered his discharge Certificate as EXH D77.

The Petitioners did nothing to prove that 1st Respondent submitted forged NYSC Certificate. He submits that

On the other hand, the 4th/5th Respondents tendered EXH D80 alleged letter from the University of Port Harcourt from the Bar.

Thus, denying the 1st Respondent the opportunity of questioning veracity, authenticity or probative status of the said document.

Learned counsel submits that Even if the tribunal, in the, most unlikely event of being minded to admit the said EXH D80, learned counsel urged us not to attach any weight to the said document. For it is only the NYSC that can testify whether the 1st Respondent duly performed the NYSC Programme or not.

Learned counsel also submits that, it is pertinent to note that all the parties are ad idem that the trial tribunal on EPT/AB/HA/20/2015 ordered the Police to investigate "the issue of forged Certificate in the possession of the 1st Respondent". He urged to take Judicial Notice of the fact that the 1st Petitioner on EPT/AB/HR/3/2023 admitted that he complied with the order of the trial and appellate tribunals on EPT/AB/HA/20/2015 and incidented a report with C.O.P Abia State. For inexplicable reasons, he suppressed the contents and outcome of his report to the Police.

Learned counsel submits that the present petitioners admitted that they did not execute the advise or directive of the trial Tribunal and the appeal Court on the finding of the trial tribunal that 1 Respondent presented a forged document. Thus, the finding of the trial tribunal (though adjectivally wrong as pointed out above) and the directive that the Police should be activated to investigate the alleged forgery remained inchoate until the Police Report and Judicial Proceedings in EXHS D25 & D26 respectively.

He submits that ex facie these EXHS D25 & D26 the following facts emerged;

(a) the Police investigated the 1 Respondent over allegation of forgery as ordered by the Court

(b) investigation revealed that the University of Port Harcourt exonerated 1 Respondent and confirmed that he was their graduate.

(c) consequently there is no reason to recommend that the 1st Respondent be prosecuted.

(d) that University of Port Harcourt wrote a letter (EXH D) that 1st Respondent is a Graduate from the University.

(e) that 1st Respondent did not commit the offence of forgery.

Learned counsel submits that EXHS D25 & D26 were formally pleaded, frontloaded and tendered in Court. That it is spectacularly interesting that the Petitioners apart from the fatal failure to join issues with the 1st Respondent regarding the Police Report (EXH D26) and to adopt his further written deposition attached to the Petitioners Reply to the 1st

Respondent's Reply, also failed, and neglected to challenge, impugn or contradict the said documents.

He submits that EXH D25 & D26 are ex facie, the products of official acts and are therefore presumed to be regular and valid pursuant to **Section 168 (1) of the Evidence Act 2011**. Thus, the onus to prove otherwise is therefore adjectivally cast and shifted to the Petitioners vide **Section 132 (1) of the Evidence Act 2011**.

He submits that the 1st Respondent orally and documentarily established that the finding and holding of the Hon Tribunal in EPT/AB/HA/20/2015 in respect of the alleged forged document is neither exhaustive and final but subject to Police Investigation. The onus thus shifted to the Petitioners to rebut what the 1st Respondent has proven, See **ANDREW VS INEC 2018) 9 NWLR (PT 1625) Pg 507. See also Section 133 (2) of the Evidence Act 2011**. He further submits that

The only "defence" the Petitioners raised against EXHS D25 & D26 Is that the Judgement/Order encapsulated in EXH D25 is a nullity. With respect, this is quite untenable, unprocedural and illogical. It does not lie within the province of the Learned Counsel for the Petitioners to extra judicially declare a Court process, Judgement or Order "a nullity". It is trite, elementary and rudimentary that a Court Process, ruling, Order or Judgement remains valid and subsisting unless and until set aside, and he refers us to

the Supreme Court in **EZE VS UNIJOS (2021) 2 NWLR (PT 1760) Pg 208 at 225 Paragraphs B-C Per M.D. MUHAMMAD (J.S.C)** thus:

"It is settled that such a decision that has not been set aside by the apex court remains valid binding and enforceable"

Learned counsel submits that the alleged submission (sic) forged document is a serious allegation and in the context of the pleadings of the Parties, the Petitioners woefully failed to prove that 1st Respondent Submitted "forged" document to INEC. Thus, if there was no Forgery, there certainly cannot be presentation or submission of forged document. It is an eternal and valid statement of the Law that you cannot put something on nothing. See **MACFOY vs U.A.C. COY LTD (1961) 3 WLR Pg 1405.**

He contends that in the peculiar circumstances of this case, the alleged forgery of University of Port-Harcourt (Uniport) Certificate does not disqualify the 1st Respondent. It is on record and admitted by the Petitioners that at all material times, the 1st Respondent is the holder of a valid and subsisting WAEC result which a Constitutional benchmark for qualification to contest the election, Thus the presentation of the alleged "forged Uniport document is a mere surplussage. With the WAEC result, the 1st Respondent was qualified, ab initio, to contest both the 2015 and 2023 elections.

In other words, the 1st Respondent did not need the alleged forged document to qualify to contest the election.

Learned counsels submits that even if the alleged forgery is established, which is not conceded, it is of no effect or moment on the peculiar circumstance of the Petition. The Law as replicated on **ABUBAKAR VS INEC (2020) 12 NWLR (PT 1737) Pg 37 at 173**

quoting AGI VS PDP & ORS (2017) 17 NWLR (PT 1595) Pg 386 per ABBA AJI (J.S.C) thus:

> **"Therefore, where there is a matter of alleged falsification of a document or rendering of a false statement as alleged on this case, it must relate to a qualifying or disqualifying factor by virtue of the Constitution of the Federal Republic of Nigeria".**

He submits that, on the state of the adduced admissible evidence the Petitioners, to all intents and purposes woefully failed to prove allegations of corrupt practices, non compliance with the Electoral Act 2022, regarding nonvoting/conduct of elections in some polling units, non provisions of electoral materials, massive electoral Violence and malpractices, non availability or continuous malfunctioning of BVAS and forgery of every results. He submits that

It is settled in Law that there is a presumption of regularity and validity of election result declared by INEC. Thus, the onus is on the party alleging the contrary to prove otherwise by adducing cogent, credible and material evidence. See **BUHARI VS OBASANJO (Supra) in ATIKU VS INEC (Supra) MUHAMAD (CJN as he then was)** held at Page 124 Paragraph H thus:

> **"The law is trite that there is a presumption of correction and regularity in favour of the results of election declared by the Independent National Electoral Commission in the conduct of election. This means that except it is proved or rebutted that such results are not correct, they are accepted for all**

purposes by the Election Tribunal or Court. The onus, of course is on the Petitioners to prove the contrary".

He submits that in the context of the Petitioners Pleadings, they are obligated to prove non compliance and corrupt Practice unit by unit, by cogent, credible and material eye witness account as stipulated on **Section 126 of the Evidence Act 2011.** He refers us to

the Supreme Court case in **ABUBAKAR VS INEC (Supra) I.T. MUHAMMAD (C.J.N as he then was at Pg 125 Paragraphs A-C** pointedly held:

"There is no doubt the task of establishing a Petition on the ground of non-compliance is a herculean and daunting one placed on the Petitioner by Law.

A Petitioner who desires and urges the Court to set aside the result of an election on ground of non compliance with the Electoral Act has the onerous duty of proving the alleged non-compliance by calling witnesses from each of the polling units complained. It has to be noted that he does not just call any witness. He must present eye witnesses i.e. those who were present at the various polling stations across the election area".

Learned counsel submits that taking the issue of over voting, it is contended that the Petitioners woefully failed to adduce evidence of the alleged over voting unit by unit that substantially affected the outcome of the election. The law is settled that to prove over voting, the

Petitioner must adduce evidence to demonstrate that more votes than the registered number of voters were cast at a polling station. See Section 51 of the Electoral Act 2022. Thus, the Petitioners are duty bound to tender the voters register used on the course of the election and the BVAS report thereof

He submits that in the instant petition, the Petitioners fatally failed to tender the voters register used during the election on the questioned units of St Eugene Ward 5, Uratta Ward 6 and Ogbor 2 Ward 11 all in Aba-North.

On non-conduct of election or non-voting, he submits the Petitioners pleadings Are contextually and evidentially conflicting. In Paragraph 38 at Page 10 of the petition, the Petitioners alleged that "election did not hold in 78 polling unit in the underlisted wards in both Aba North and Aba South Federal Constituency.

The self same Petitioner proceeded in Pages 11(a); (b) and (c), 12 and 13 of the Petition to allege that election did not hold in more than 180 units Across the Federal Constituency.

He submits that however the Petitioners called only 35 witnesses and tendered BVAS report which showed as, pointed out while analysing Petitioners witnesses that election took place in most of the polling units mentioned by the Petitioners. Thus, on the state of the pleading, the Petitioners woefully failed to adduce requisite evidence to prove no holding of election on the itemized units. The voters registers of the said units were not tendered sufficiently. Witnesses and voters were not called in the said units. Worst of all, the BVAS report EXHS P64(a) and "D68 (a)-(d) respectively tendered by the Petitioners and 1st Respondent

showed accreditations were duly carried out in majority and substantially member of polling units in the Federal Constituency.

On the alleged inconclusive or postponement of the election. Learned counsel submits that apart From the mere ipse dixit of few uniform witnesses called by the Petitioners, and the ex post facto letters written by the Petitioners (EXHS 70(a) and (b), the Petitioners failed to adduce cogent and tenable evidence of these serious allegations of non compliance with the Electoral Act. The pleaded video recording and the news item allegedly carried by Businessday newspaper being real evidence, were not tendered in evidence as mandated by Paragraph 41(4) of the First Schedule to the Electoral Act 2022 and no reason was adduced for this fatal omission.

Learned counsel contends that the phantom video recording of the alleged postponement of the election weighs heavier than the oral testimonies of Petitioners witnesses on postponement of election.

The Hon Tribunal Would have used same as a hanger to gauge the veracity of the Petitioners witnesses but the Petitioners suppressed and refused to produce the video coverage and the newspaper publication. He submits

that if they had been produced, their content would have settled the alleged inconclusive election in favour of the 1st Respondent. See **Section 167 (D) Evidence Act 2011**.

Learned counsel submits also that The Petitioners who clearly admitted the collection of duplicate original results from their agents intentionally withheld them. The Petitioners opted to tender CTCs of the units and

some collation results. On the allegations of wrong location of voting units and wards, wrong use of electoral results, alleged suppression of Petitioners voters, they tendered no oral or documentary evidence.

He further submits that on the state of the Evidence, the Petitioners woefully failed to adduce evidence required by, Law to warrant the 1st Respondent to disprove what has been proven. He cited Section 133 (2) of the Evidence Act and also the case of **ANDREW VS INEC (Supra) in APM VS INEC (2023) 9 NWLR (PT 1890) Pg 419 at 507 Paragraphs C-D SENCHI (J.C.A)** held:

"It is pertinent to state that where an allegation is made positively or negatively and it forms an essential part of a Party's case, the proof of such allegation rest on him".

He contends that though the onus of proof never shifted, the 1st Respondent ex abundentia cautela proceeded to adduce oral and Documentary evidence on support of the due conduct of the election by tendering the necessary duplicate originals, certified true copies of INEC results and calling requisite oral evidence.

First and foremost the 1st Respondents Counsel got PW 31 (the Petitioner's Federal Constituency collation agent to admit that electoral materials were duly distributed from the Federal Constituency collation centre and that the BVAS report (EXH P48) was correct.

That the 1st Respondent called ward collation agent who gave direct Oral evidence of the distribution of electoral materials in their Respective wards, collation of election results in the respective Wards (after due conduct of the election in various units) and final submission

of the collated and collected results to their Party's (L.P) Local Government Collation agents. To counter Petitioners flimsy averment that election results were not uploaded in the Named wards, the 1st Respondent tendered EXHS D69 (1-41), D70 (1-4), D71 (1-30), D72 (1-19), D73 (1-26), D74 (1-43), D77 (1-24) And D78.

He submit that the 1st Respondents oral and documentary evidence preponderated over the scanty, discordant and untenable evidence called by the Petitioners.

He draw our attention to stereotype and uniform format of the Petitioners witnesses written depositions. Apart from P.Ws 31 and 36, virtually all the Petitioners witnesses have uniform depositions and manners of alleged "signature". No individuality nor originality unlike the 1st Respondent's witnesses who are natural, identifiable and spontaneous and signed their depositions individually and personally.

In view of the above, learned counsel urged and invited not to accredit the Petitioners witnesses. In scenario of similitude on **MADUABUM VS NWOSU (2010) 13 NWLR (PT 1212) Pg 623 at 656-657 Paragraphs A-F,** the Court held:

> **"To start with, an examination of the written statements on Oath of RW/A – RW 14A who were witnesses called by the appellant, these witnesses claimed to have heard, seen and done exactly the same thing, without any discrepancies in their respective evidence. Thus, this was indicative that the witnesses have tutored and could not have been telling the truth…. See AJADI VS AJIBOLA (2004) 16**

NWLR (PT 898) 91 where this Court held that, where one witness comes to chorus what the other Witness said verbatim, it will raise a suspicion that their testimonies were pre-arranged and so stood discredited".

He further submits that aside the calling of witnesses, the Petitioners must go further to establish by evidence how the alleged non compliance or corrupt practices substantially affected the conduct and outcome of the election. See Section 135 (1) of the Electoral Act 2022. Thus, the Petitioners failed to do.

Learned counsel urged us to dismiss this petition with substantial cost in that:

(1) The 1st Respondent was subjected to Police Investigation and suit in respect of the alleged presentation of forged Certificate to INEC and was exonerated in both instances by the Police and the Court.

(2) The Petitioner woefully failed to prove the alleged non -compliance and corrupt practices of non conduct of election, over voting, non use of BVAS, suppression of Petitioners votes, wrong location of voting units/wards, failure to distribute (sufficient electoral materials) non uploading of results of the election etcetera.

The 1st Respondent in his reply on points of law filed on the 23/8/2023submits as follows:

WITH RESPECT TO ABA RIVER WARD II

He submits that D.W 13 never said that elections did not hold in units 032, 033 and 040 contrary to the submissions of the Petitioner Counsel

in Paragraph 3.2.1 (ii) of the written address. D.W 13 testified that INEC staff turned up for election but voters did not come out in Unit 040 which is one of the new created units. That voters did not come to vote does not mean that election was not held. The law is settled that Counsel's address is not substitute for evidence.

WITH RESPECT TO ARIARIA WARD 9 ABA NORTH

He submits that contrary to the submissions of the Petitioners, the unit results of units 025, 029, 003, 010, 028, 004 and 005 were captured in the tendered unit results in EXHS D36 (1-63) series.

WITH RESPECT TO OHAZU 2 WARD 6 ABA SOUTH

He submits that contrary to the submissions of the Petitioners Counsel which does not substitute for evidence, the unit results of units 001, 002, 003, 006, 007, 013, 015, 016, 020, 028, were duly contained in EXH D62 (ward summary results containing unit result entries) which was not challenged by Petitioners.

Also contrary to the submissions of the Petitioners Counsel in Paragraph 3.2.4 (iv) of the written address, there are results of units 001, 002, 003, 004, 005, 006, 007, 008, 012, 015, 016, 019, 020, 023, 026, 028, 029 & 030, there was no direct oral no documentary evidence that election did not hold in these units. Simply put, the Petitioners did not discharged the burden of proof of non conduct of election. In these units, the 1st Respondent tendered unchallenged evidence – **EXH D62** containing entries of unit results of the aforementioned units.

WITH RESPECT TO ENTIMBA WARD 3 ABA SOUTH

He further submits that Petitioners contention in Paragraph 3.2.6 that election did not hold in unit 005, is not supported by evidence on record as 1st Respondent EXHS D59 and 68 demonstrated accreditation on the said unit and existence of unit result.

WITH RESPECT OSUSUWARD 2 ABA NORTH

He submits that contrary to the submission of Petitioners Counsel, P.W 21 admitted under cross examination that results of the election in this unit were duly generated and uploaded. Results of the election could not have been uploaded without being entered into a result sheet. Also the unit result of the election was captured on the ward collated summary result tendered as **EXH D52**

WITH RESPECT TO URATTA WARD 6 ABA NORTH

He submits that contrary to the contention of the Petitioners Counsel election held unit 006 in Uratta ward 6 Aba North and was duly entered in the Ward Collection result tendered as **EXH D53**

WITH RESPECT TO OGBOR 7 WARD 10 ABA NORTH

He submits that contrary to the Petitioners submission, election was duly conducted and the unit result of 025, was duly captured in the ward collation result tendered as **D16**which up till now has not been controverter.

WITH RESPECT TO EZIAMA WARD 1 ABA-NORTH

He submits that also contrary to the submission of the Petitioners, the result of unit 10 in Eziama ward 1 was captured in the ward collation/summary results.

WITH RESPECT TO INDUSTRIAL AREA WARD 2 ABA NORTH

Learned Counsel submits that contrary to the claims of the Petitioners, elections held in units 034 and 044 but being newly created units, voters did not come out though INEC staff and materials were on ground.

WITH RESPECT TO OGBOR 2 WARD II ABA-NORTH

He submits that contrary to the assertions of the Petitioners Counsel, election was duly conducted and results generated in units 010, 008 and 006 which were properly entered in the ward collation/summary tendered as **EXH D13**by D.W 8.

He submits that My Lords, it is therefore, wrong and misleading to contend that "no result sheet was tendered most especially when the Petitioners did not challenge ward collation/summary result which enjoys or is clothed with statutory presumption of regularity. He cited **Section 168 (1) Evidence Act 2011.**

RESPONSE TO OBJECTION TO TENDERED DOCUMENTS

Learned Counsel submits that in Paragraph 4.1 (ii) the Petitioner's Counsel argued that **EXHS D2 & D11** are faded and therefore "useless". EXH EC8A (II) pink result sheet for Ososu II Ward 4 unit 009 is not useless on the state of the pleadings. The Petitioners at Paragraphs 38 (Page 11 (a)) and 43 (page 15) of the Petition respectively pleaded that "election did not hold" and "BVAS failed to upload" the result. The original copy of the said exhibit is with the 1st Respondent and is not "faded". **EXH D2** on the context of the parties pleadings demonstrates that election was conducted in Ososu 2 Ward 4 Aba North and result uploaded by IREV all contrary to the Petitioners

contention. EXH D2 is therefore relevant and admissible and has the probative value of establishing conduct of election and uploading by BVAs. Since the Petitioners did not joint issues on the matter of scoring majority of the Lawful votes cast at the election, the alleged fadedness of **EXH D2** becomes irrelevant.

He submits that the above argument canvassed in respect of EXH D2 is, with humility adapted with respect to EXH D11 which is the (pink colour unit) unit result of unit 003 ward 9 tendered by D.W 7.

EXH D13, D16 and D20 are ward summary results issued by 3rd Respondent. Who retained the clear copies and the figures contained therein are in dispute on the state of the pleading. The witnesses who tendered the documents had personal knowledge and "relationship" with the documents. Consequently, Section 126 Evidence Act support the tenderability of the documents and their probative value on the state of the pleadings.

DOCUMENTS TENDERED BY D.W 15

(i) Learned counsel submits that **EXHS 24(a) and (b)** are copies of the 1st Respondents letters of resignation in respect of which he testified in oath that originals are with INEC and the party. Therefore, the photocopies are admissible on the state of the pleadings and foundation laid by D.W 15.

(ii) **EXHS D25 and D26** are original copies of Court Judgment order and Police report tendered in the sister petition HR/3/2023 copies of which were released by the Hon Tribunal and tendered laid by D.W 15.

He submitted that the Tribunal can (sic) judicial notice of the obvious fact that the original copies of the **EXHIBITS** are already tendered and in the tribunal custody. He cited **Section 122(2) (m)** of the Evidence Act 2011. He further submitted that the Law does not debar a party from tendering the original copy of a public document. He refers to the case of **FRN VS DANLADI (2020) 17 NWLR (PT 1752) Pg 130 at 155 Paragraphs C-D, IGE (J.C.A)** held:

"**Put differently, the only categories of public documents that are admissible are either the original document itself or in absence of such original certified copies and no other"**

See also **IORLIAM IORAPUU VS THE STATE (2020) 1 NWLR (PT 1706) Pg 391 at 400 Ratio 11.**

EXHS D68B (CTC OF BVAS RESPORT) & D69-D75 (CTC OF IREV RESULTS)

Learned Counsel submits that the Learned Senior Counsel withdrew objection to D68B (BVAS REPORT) without assigning any reason but objected to D69 - D75 series when the sets of documents are of the same adjectival pedestal.

However, on the state of the pleadings, EXHS D69 – D75 series of IREV results are relevant and admissible.

He submits that, in Paragraphs 43, 45 & 46 of the Petition and item No 11 of the List of Documents, the Petitioners profusely pleaded BVAS was not used for accreditation, BVAS failed to upload results and CTC of "documentary data from Bimodal Voters Accreditation system and INEC result viewing portal.

He submits that in the peculiar circumstances of the petition, most especially, the state of the Petitioners pleadings, that 1st Respondent is eminently entitled to lead evidence on and tender EXH D69 – D75 series. Attending to a factual scenarios similar to the extant petition in **ABUBAKAR VS INEC (2020) 12 NWLR (PT 1737) Pg 37 at 155 Paragraph B-C SANUSI J.S.C.** held with audacious finality that:

> "**The grouse of the appellants on this issue is that some of the documents i.e. R1-R26, P85 and P86 were wrongly admitted by the lower court even though they were not pleaded. Having rummaged through the record it is noted by me, that the said documents complained of were really pleaded. See pages 2383 – 2384 on Vol 3 of the record where it can be seen that they were explicitly pleaded. Even at that, it is not the Law that documents which are now front-loaded are inadmissible. See OGBORU v UDUAGHAN (2011) 17 NWLR (Pt 1277) 538, ADAMU MOHAMMED VS INEC (2015) LPELR – 266233 (SEC). It can even be observed that the documents were alluded to in the pleadings, hence there is nothing wrong when the lower court admitted their evidence. This issue is also resolved against the appellants".**

IN RESPONSE TO OBJECTION TO THE WITNESS DEPOSITION BY SUBPOENATED WITNESS

He submits that, with respect the contentions of the Petitioners that the deposition and evidence of the 3rd Respondents witnesses are liable to be struck out, are without merit and misconceived.

It is admitted that Paragraph 41(8) imposes a duty on a party to obtain leave of the tribunal or court to tender document, plan photograph or model, not file along with the petition or reply.

He submits that the subpoenaed witnesses are not "document, plan photograph or model". They are therefore, with humility, outside the ambit of Paragraph 41 (8) of the 1st Schedule to the Electoral Act"

Furthermore, he submits that the 3rd Respondent applied for and the Hon Tribunal granted and issued .a subpoena which at all material times is valid and subsisting. It is contended that "leave" simply means : permission". See **RADIOGRAPHERS REGD. BOARD NIG VS M & H.W.U.N (2021) 8 NWLR (PT 1777) Pg 149 Ratio 42.**

He submits, there is no application to set aside the subpoena issued by the Hon Tribunal and so they remain effective and operates as leave to call the subpoenaed witnesses pursuant to Paragraph 42 (10 of the 1st Schedule to the Electoral Act 2022.

The Petitioners who were served with the subpoenaed witnesses written deposition suffered no injustice, disadvantages, wrong nor injury.

He submits that the Petitioners are inconsistent in urging that the written depositions of these witnesses be expunged because in Paragraph 4.3 – 4.13 the Petitioner submitted thus: "Their evidence in Chief is what is struck out. The evidence in cross examination is a treasure for the Petitioners and same can be relied upon.

He finally submits that the Hon Tribunal has the powers to issue the subpoena and the written depositions of the witnesses are valid and competent.

On the Petitioners reliefs sought before this Tribunal to wit:

WHEREFORE THE Petitioners HAVE PROVED ALL OR ANY OF THE GROUNDS OF THE PETITION TO WARRANT THE GRANT OF ALL OR ANY OF THE RELIEFS SOUGHT

Learned Counsel for the 1st Respondent contends that the Petitioners relied on the allegation of forgery to content that the 1st Respondent was not disqualified from contesting that election. See paragraphs 6.1.1 – 6.1.24. The Petitioners contended essentially in paragraphs 6.13 that "the climax of the matter as stated in Paragraph 33 is that since the 1st Respondent had been found to have committed forgery, he stands disqualified at all times from contesting an election" The Petitioners relied on EXHS P71(b), P72 & P80, and the cases of **SALEH VS ABAH (Supra).**

He submits that contrary to the audacious assertion of the Petitioners, the 1st Respondent was never "found to have committed forgery".

The 1st Petitioner testified as P.W 36 and admitted that pursuant to EXH 74 (Judgment of the trial tribunal in EPT/AB/HA/20/2015 he did not make any formal report to the Police and is not aware of my indictment, prosecution and conviction of the 1st Respondent in respect of EXH P74.

He also submits that in view of the above, the 1st Respondent had never "been found to have committed forgery" and the Petitioners pleading is

clearly in conflict with the evidence and both liable to spurned and discarded.

Learned submits that the Petitioners made the alleged forgery of 1st Respondents "Success Certificate" and NYSC Certificate disqualifying matters against the 1st Respondent. See Paragraphs 28, 29, 30, and 31 of the Petition. See also Paragraph 6 and 7 of the Petitioner's Reply to the 1st Respondents Reply to the petition. These two (2) matters were also raised in EXH P74 (See Page 3, of the said EXHIBIT 74).

That in EXH P74, the following facts are obvious:

(1) The witness who testified on behalf of University of Port Harcourt – P.W 4 appeared on subpoena to produce document was never sworn nor cross examined.

(2) The document tendered by P.W4 was a letter in response to alleged letter by **"K.C. NWUFO SAN & ASSOCIATES"** which was never tendered in that tribunal.

(3) The issue of "NYSC discharged Certificate" was glossed over.

(4) "EXH F" tendered by the subpoenaed witness was not part of the document frontloaded in that petition but brought into the proceedings vide Paragraph 41(8) of the First Schedule to the Electoral Act 2010 (as amended) (See page 8 of EXH P74)

(5) Because of the peculiar circumstances of EXH P74, the Hon Tribunal directed "Police authority in Abia State to look into the issue of forged certificate.

The trial tribunal's ruling for "Police authority to look into the issue of forgery" was not made in vain and is amenable to activation by anybody unless and until it is set aside.

Consequently, it is respectfully submitted that the Police investigation and the Court proceedings that culminated in EXHS D25 & 26 remain valid, legitimate and binding unless and until they are set aside.

He submits in the extent petition, the Petitioners put the … of the 1st Respondents NYSC in issue and gave him notice to produce. See Paragraph 6 of the Petitioners Reply to the 1st Respondents Reply to the petition. The said NYSC was produced and tendered in the tribunal as EXH D77 and there is no challenge about this.

He also submits that in the petition, three (3) outstanding official documents are involved that have direct bearing on the alleged presentation/forgery of documents. These are:

(1) The Police Report – EXH D26

(2) Judgment/order – EXH D25

(3) NYSC Certificate – EXH D77

These are also official and independent documents cumulatively establishing that no certificate was forged by the 1st Respondent.

He submits emphatically that the authorities of **SALEH VS ABA (Supra)** and **PDP VS NGBOR & ORS (Supra)** cited by Petitioners are unhelpful to them in that:

(1) Both are pre-election matters.

(2) In **SALAH VS ABAH** there was conclusive, and definite unchallenged tribunal judgment on the forged document unlike in the instant case where the Tribunal expressly directed Police Investigation.

(3) In **SALAH VS ABAH** there was no other document allegedly forged unlike in the petition whereon there is allegation of forgery of NYSC Certificate which as at now and at all material times is unproven thereby strengthening why the tribunal ordered Police Investigation.

(4) In **SALE VS ABA** there was no subsequent Police and Court proceedings regarding the alleged forged document like in the present petition.

In view of the foregoing, learned counsel submits and circumstance of the extent petition materially and radically differ. Therefore, the former cannot serve as a binding authority on the later. That the Petitioners submissions in paragraph 6.1.19 – 6.1.23 are mere conjectures that do not detract from the admissibility and probative value of EXHS D25, D26 and D77. That oral evidence is inadmissible to controvert the contents of documents. Also being official documents, it is statutorily presumed that all formal requisites for their validity were complied with all the matters relating to formalities, deficiencies, defects or doubts on EXHS D25, D25 and D77 were the reasons the Petitioners should have taken steps to question the validity, veracity or authenticity of the said Exhibits.

He submits that having failed to challenge the said exhibits. Petitioners cannot rely on their written address the give evidence or cast aspersions against the said documents. This is because Counsels address is certainly not a substitute for evidence.

ON THE GROUND OF NON COMPLIANCE

Learnal counsel for the 1st Respondent submits that the Petitioners contentions in Paragraph 6.27 are untenable Uploading of results and use of BVAS can be used (sic) proved documentarily. In the petition both parties tendered BVAS reports while 1st Respondent tendered uploaded unit results as EXHS D70, D71, D72, D73, D74 & D75 series which are presumed valid and sufficient in Law

ON THE ALLEGATION THAT THERE WAS NO ELECTION & VOTER DISSENFRANCHISEMENT

Learned counsel, it is respectfully submits that the Petitioners woefully failed to prove these allegations and cannot rely on the mere ipse dixit of P.W's 1-7, 11, 12, 13, 32, 33, 34 & 10. The calling of these witness were no sufficient. They are obligated to tender the voters register, BVAS report and the result sheets. Furthermore, there are results of the elections were conducted in S/Nos 4, 5, 6, 8, 11 and 12 of the table contained at paragraph 6.4.4 of the Petitioners final written address.

ON LACK OF RESULT SHEET

Learned counsel, it is respectfully submits that contrary to the assertion of the Petitioners, the Respondents led evidence to prove that result sheets were duly distributed and substantially used in the conduct of the election. The 1st Respondent tendered unit results of the wards were the Petitioners alleged that there were no result sheets. The results of units and wards alleged in Paragraph 42 of the petition were contained on 1st Respondents EXHS D28, D29, D31, D36 & D38 series and also reflected in EXHS D52.

The alleged faded results were copies issued to the 1st Respondents and the figures were contained in the ward summary results duly tendered by the 1st Respondent to debunk the allegation of non-existence of result sheets.

My Lords, he submits that since there is no issue of who scored the majority votes between the Petitioners and 1st Respondent (but the existence of result sheets) the case of **JWAN VS ECO BANK NIG LTD** cited by the Petitioners is of no moment.

He also submits that the contentions in Petitioners Paragraph 6.5.10 and 6,5,11 are untenable. The Petitioners raised issues and pleaded facts on BVAS and IREV results. As submitted earlier on, the 1st Respondent is eminently entitled to lead evidence on some. He cited **ABUBAKAR VS INEC (Supra).** Consequently, the IREV unit results tendered as EXHS D70, D71, D72, D73, D74 and D75 series are admissible, duly admitted and ought to be accorded due probative value. Thus, he submits that the table or chart contained at Paragraph 6.5.11 of the Petitioners written address are misconceived.

ON OVER VOTING

Learned Counsel, it is respectfully submits that the contention of Paragraphs 6.6.2 and 6.6.3 are most untenable. No of accredited voters is 127 and No of spoiled votes is 125, the No of rejected votes is 2 while the No of spoiled votes (which is not reckoned with in computation according to INEC manual and guidelines) is 2. Therefore, there is no over voting.

ON THE ALLEGED CORROBORATIVE EVIDENCE OF D.W.S 6 & 13

Learned counsel submits that contrary to the contentions of Petitioners, the D.W 6 & 13 never said what was attributed to them. D.W 13 only said that election did not take place in Units 017, 021, 022 & 023 but took place in Unit 040 though voters did not turn up in the last unit 040 as it is a newly created unit. On his part D.W 12 said that election did not take place in units 008, 018, and 043 while in units 034 and 044 election took place as INEC staff but voters did not come out as they are newly created units. Therefore the Petitioners table is misleading as there is a difference between non conduct of election and failure of the voters to appear in a voting unit on election day.

He submits that the Petitioners woefully failed to prove non compliance that substantially affected the outcome of the election as mandated by Section 135 of the Electoral Act 2011.

He further submits that the law imposes a duty on the Petitioners not only to prove non compliance but to proceed further to demonstrate that the non compliance substantially affected the outcome of the election. See **BUHARI VS OBASANJO (Supra).**

He finally submitted that the general contention by the Petitioners that 1st Respondent dumped his exhibits on the tribunal through D.W 15 is grossly misconceived. The innovated **Paragraph 46 (4) of the First Schedule to the Electoral Act** provides that documentary evidence shall be deemed demonstrated in open Court and the Court shall be entitled to investigate and scrutinize same.

This Hon Tribunal is therefore most respectfully urged to discountenance the objection and contention on the alleged "dumping" of 1st Respondents case on the tribunal.

ON ARGUMENT ON MARGIN OF LEAD

Learned Counsel, it is submits that the alleged "Margin of Lead" argument has no effect on the election of the 1st Respondent. The 1st Respondent defeated the Petitioners who came distant third as follows:

(1) Petitioners – PDP - 13,358

(2) 1st Respondent – LP - 35,503

22,144 votes

The Hon Court is most humbly invited to dismiss the petition.

The 2nd Respondent on her part through her Counsel O.O Nkume Esq formulated and agreed 3 issues for determination before u to unit:

ISSUE NO. 1

Whether the 1st Respondent was at the time of the election qualified to contest the 2023 General Election into the Aba North/Aba South Federal Constituency held on the 25th day of February 2023.

ISSUE NO. 2

Whether the Petitioners proved any substantial noncompliance with the provisions of the Electoral Act 2022 that affected the result of the Election invalidate the entire General Election into the seat of the Federal House of Representatives for the Aba North and Aba South Federal Constituency held on the 25th February, 2023.

ISSUE NO. 3

Whether Petitioners proved that the 1st Respondent did not score the majority of lawful votes cast at the General Election in the Aba North/Aba South Federal Constituency held on the 25th February, 2023.

ON ISSUE NO. 1:

Whether the 1st Respondent was at the time of the election qualified to contest the 2023 General Election into the Aba North/Aba South Federal Constituency held on the 25th day of February, 2023.

The learned counsel, submit by way of preliminaries before canvassing argument under issue one that the Petitioners stated that one of the grounds for presenting this petition is that the 1st Respondent was disqualified to contest the election because of presenting a forged Degree Certificate from University of Port Harcourt attached to Form CF 001 submitted to INEC in 2015, and that the 1st Respondent was thereafter disqualified from contesting any future election and in perpetuity because the Election Tribunal disqualified the 1st Respondent for presenting to INEC in 2015 a forged Degree Certificate from the University of Port Harcourt attached to Form CF 001.

He submit that the three vital and pertinent initial questions begging for initial answers, are as follows:

Question No. 1: Did the 1st Respondent present a **forged degree certificate** from University of Port Harcourt attached to Form CF 001 to INEC in 2015?

Answer: He submits and answers **NO** because the 1st Respondent never presented **any forged Degree Certificate** from University of Port Harcourt attached to Form CF 001 to INEC in 2015, rather what was attached to Form CF in 2015 was a document captioned **"Success Letter"** and not **DegreeCertificate**.

Question No. 2: Was presentation of a forged Degree Certificate on Issue (2) before the Election Tribunal in **EPT/HA/20/2015** and before the Court of Appeal in CA/OW/EPT/HA/81/2015?

Answer: He submit **NO** because the issue at the Election Tribunal and Court of Appeal on 2015 was not allegation of submission of forged Degree Certificate from University of Port Harcourt to INEC but allegation of submission of a forged Success Letter to INEC.

Question No.3: Was the disqualification of the 1st Respondent by the Judgment of the Election Tribunal and court of Appeal based on presentation of forged Degree Certificate attached to Form CF 001 to INEC in 2015 by the 1st Respondent?

Answer: He submits **NO,** because it was based on attachment of a forged success letter from University of Port Harcourt and not forged Degree Certificate from University of Port Harcourt which is the issue in this petition.

Question No. 4: Does the disqualification in **Section 66 (1)(i) of the 1999 Constitution** contemplate and provide for presentation of a forged letter to INEC?

Answer: He submits **NO** because **Section 66(1)(i) of the 1999 Constitution** provided for the presentation of a forged Certificate to

INEC and not forged letter to INEC and both are two different documents.

Learned counsel, we therefore submit that by the state of the pleadings the Petitioners and the Respondents joined issues on the allegation of presentation of forged certificate to INEC in 2015 which is the basis of the allegation of Non qualification or disqualification to contest election in question in 2023.

He also submits that the 1st Respondent having denied submitting any forged certificate to INEC in 2015, the onus or burden of prove is on the Petitioners to place before the Honourable Tribunal the following:

1. **The alleged forged Degree Certificate to show it exists.**

2. **The certified True Copy (C.T.C.) of INEC Form CF 001 to which the Degree Certificate was attached as alleged by the Petitioners.**

3. **The Certified True Copy (C.T.C.) of the Forged Degree Certificate tendered at the Election Tribunal in EPT/HA/20/2015**or contained in the Records of Appeal in **CA/OW/EPT/HA/81/2015** and

4. **Any Evidence of the existence of any forged Degree certificate presented or submitting to INEC in 2015.**

He submit that none of these documentary evidence was presented by the Petitioners before the Honourable Tribunal thereby leaving the Tribunal to act on speculation or investigation which is not part of the adjudicatory functions of a tribunal or court of law.

He submits that a court of law or tribunal set up by law does not act on speculation or embark on investigation but acts on vital evidence before the tribunal which is lacking in the instant case.

He also submits that it became absolutely imperative that the documentary evidence of the alleged Forged Degree certificate submitted to INEC is placed before the Honourable before the tribunal can make a finding on it when the 1st Petitioner in Form EC 9 denied ever presenting a "**Forged Certificate"** to INEC particularly when the 3rd Respondent in that **Exhibit P71d** stated that it does not have in its custody any Form CF 001 to which a forged certificate is attached which is conclusive evidence to prove that the 1st Respondent did not present any forged Degree certificate to INEC in 2015 and that the 1st Respondent was perfectly right when he stated in Form EC9 that he has never presented any forged certificate to INEC, moreover, the 1st Respondent maintained in this petition and proceedings that what he presented to INEC in 2015 was a success letter and a letter is not a certificate or the document envisaged by the provisions of **Section 66 (1)(i) of the Constitution.**

He also submit that the wordings of **Section 66 (1)(i)** is very clear and unambiguous and must be given its ordinary and natural meaning as presentation of a "**Forged Certificate"** which must relate to a qualification envisaged under **Section 65 (2) of the1999 Constitution** and not any other forged document or letter in the instant case.

He further submits that the Petitioners cannot expand the requirement stipulated in **Section 66 (1) (i)** of the Constitution as a forged

certificate to include any other forged document including a letter or otherwise and the Honourable Tribunal is not empowered with respect to expand the provision or stipulation of **Section 66 (1) (i)** to include a forged letter because the Petitioners failed to present any proof of the alleged forged certificate relied upon the this petition/

He submit that the Petitioners stated that a subpoena was served on the 3rd Respondent to produce a document which is not in the custody of the 3rd Respondent as shown in **Exhibit P.71d.** and therefore the 3rd Respondent cannot produce a document it does not have in its custody.

He also submit that the Petitioners in the pleadings served Notice to produce the alleged Form CF 001 to which is attached the forged Certificate, in which case what the law requires from the Petitioners in a circumstance of failure to produce the said documents by the 3rd Respondent is to tender what document the petitioners have, but the petitioners also failed to tender the forged certificate which is a conclusive evidence that it does not exist.

He further submit that even from the judgment of the tribunal and Court of Appeal further relied on by the Petitioners, it is crystal clear that what was in issue was a forged success letter and not a forged certificate, and it is settled that every case is an authority for what it decides and therefore that judgment is not binding on this tribunal since what was dealt with is not a forged certificate presented to INEC but forged letter or document which is not the disqualification document provided under **Section 66 (1) (i) of the 1999 Constitution** which clearly stipulated for a **forged certificate** and not any other document not provided therein.

Learned Counsel submits that they are aware of the decision in the case of **Saleh v. Abbey,** but they submit that it is not applicable in the instant case, because what was in issue in that case was a forged certificate, **"that is National Diploma Certificate"** which was in evidence before the Court or tribunal in which case, the forged certificate was presented and exists, upon which the tribunal made a finding on its existence unlike in the instant case where the petitioners have not proved the existence of a forged degree certificate and that such forged certificate was ever presented to INEC in 2015 by the 1st Respondent.

He also submit the fact that the Election Tribunal and Court of Appeal further directed that the police to investigate the alleged certificate forgery and which shows that the Judgment was not conclusive proof of forgery of certificate but conditional on the outcome of the police investigation which investigation was carried out as ordered by the Tribunal and Court of Appeal and in the outcome of **Exhibit D26** exculpated the 1st Respondent and proved that the 1st Respondent did not present any forged certificate in 2015 in this petition.

He therefore submits that allegation of presentation of forged certificate is a criminal offence which must be proved beyond reasonable doubt and in the instant case, **Exhibits D25 and D26** have shown that the 1st Respondent was exculpated from such allegation of forgery of degree certificate and that the Petitioners have woefully failed to proved the criminal allegation of presentation of a forged certificate to INEC in 2015 beyond reasonable doubt.

Learned Counsel further submit that instant case that the Petitioners failed to present any credible evidence in support or in proof of the ground of disqualification of the 1st Respondent for presenting a forged certificate to INEC in 2015.

My Lords, he submits that it may be expedient and necessary to state that the petitioners relied on presentation of forged degree certificate and not on any other forged document in this petition.

He refer to the averment in paragraphs 27 to **32** of the Petitions and in paragraph l32 where the Petitioners alleged that a forged degree certificate was presented to the 3rd Respondent in 2015 and that the 1st Respondent intentionally excluded his Degree Certificate which had been found by the Tribunal and Court of Appeal to have been forged and hence misled the 3rd Respondent.

He therefore submits that to succeed in this petition, the petitioners must plead and prove the following ingredients beyong reasonable doubt

1. That the Degree Certificate from University of Port Harcourt exists.

2. That the degree Certificate was forged.

3. That the forged Degree Certificate was presented by the 1stRespondent to the 3rdRespondent (INEC) in 2015.

He cited the case of Audu v. INEC (No. 2) (2010) 13 NWLR (1212) 456 At 465-466, Ration 2 where the Court of Appeal held as follows:

"In order to substantiate the allegation of presenting a forged certificate to the Independent National Electoral Commission (INEC), two conditions must be satisfied, namely:

(a) That the certificate presented by the candidate to INEC was forged.
(b) That it was the candidate that presented the certificate.

Pursuant to section 138 of the Evidence Act, the above two ingredients have to be proved beyond reasonable doubt. In the instant case, the appellant failed to p[rove that the 21st Respondent present a forged certificate to the 1st Respondent for the purpose of the election held on 29th March 2008.

And also the case of **IMAM V. SHERIFF (2005) 4 NWLR (PT 914) 80 AT 94 RAATION 7** where the Court of Appeal held thus,

In order to prove that a candidate of an election was caught by the provisions of Section 182 (1) (j) of the 1999 Constitution which provided that no person shall be qualified for election to the office of the Governor of a State if he has presented a forged certificate to the Independent National Electoral Commission, the following must be established, that is:

(a) That the certificates presented by the candidate to the Independent National Electoral Commission were forged and

(b) **That it was the candidate that presented the certificates.**

My Lords, he submits that the fact relied upon the allegation of presentation of forged certificate to INEC to disqualify the 1st Respondent to contest the questioned election under **Section 66 (1) (i) of the 1999 Constitution as amended** are contained in **Paragraphs 27, 28, 29, 30, 31 and 32** of the Petition and Witness Statement of the 1st Petitioner adopted as Evidence of PW36 which for and ease of reference are reproduced hereunder:

Para27. The petitioners aver that the 1st Respondent could not be declared winner of the said election because as at the time the said election was held, the1stRespondent was constitutionally disqualified from contesting the said election.

Para 28. That in the Form CF 001 submitted by the 1stRespondent to the 3rdRespondent during the 2015 election for the State House of Assembly in Abia State, he attached a forged certificate which he had allegedly obtained from the University of Port Harcourt. The Petitioners shall Form CF 001 submitted by the 1stRespondent during the 2015 Elections. The Petitioners have applied for the Certified True Copy of the said Form CF 001 with its attachments and the 3rd Respondent is given notice to produce the Certified True Copy of the said form. The Petitioners plead its application to the 3rdRespondent dated 14th March 2023.

Para 29. That the 1stRespondent was found not to be qualified vide the judgment in EPT/HA/20/2015 between Hon. Danne Blessing Okwuchi Nwangba & Anor vs. Emeka Sunny Nnamani & 4 ors. dated 19th October 2015 by the National and State

House of Election Petition Tribunal. The Petitioners hereby rely on and pleads the judgment of the National and house of Election Petition Tribunal.

Para 30. Further to the above the said judgment was further appealed to the Court Appeal, Owerri Judicial Division by the 1st Respondent. The Court of Appeal upheld the judgment of the lower court. The Petitioners rely on and plead the judgment of the Court of Appeal No. CA/ow/EPT/HA/81/2015 between Emeka Nwagba & 5 ors. dated the 10th day of October, 2015.

Para 31. However, that 1st Respondent while submitting his Form EC 9 otherwise called Affidavit of Personal Particulars to the 3rd Respondent while contesting with the 1st Petitioner and other candidates during the 2023 Federal House of Representatives for the Aba North and Aba South Federal Constituency intentionally attached his West African Secondary School certificate (WASSCE) and withheld the Degree Certificate from University of Port Harcourt. The Petitioners rely on and plead the certified true copy of the 1st Respondent's Form EC 9 submitted to the 3rd Respondent. The Petitioners have applied for the Certified True Copy of the said document and hereby give Notice to the 3rd Respondent to produce same.

Para 32. The Petitioners aver that the 1st Respondent intentionally excluded his degree certificate he had been found by the Tribunal and Court of Appeal to have been forged and hence, mislead the 3rd Respondent.

The 1st Respondentin his pleaded in paragraphs 13.3 to 13.6 as follows;

Para 13.3 The 1st Respondentdid not submit "forged certificate" during the 2015 election for the State House of Assembly in Abia State and did not submit any in the extent election.

Para 13.4 That pursuant to the directive of the Election Petition Tribunal in EPT/HA/20/2015, the police investigated the allegation of forgery and the 1st Respondent was absolved of any culpability. The 1st Respondent shall at the trial found upon copy of the Police report on the allegation of forging certificate against 1st Respondent.

Para 13.5 The 1st Respondent pleads further that allegation of forgery was the subject of litigation in Suit No. HUM/26A/2022 Egeonye Peter Vs. Emeka Sunny Nnamani. The 1st Respondent hereby pleads the judgment order and proceedings in the said case where in the Honourable court absolved the 1st respondent of the commission of the crime of forgery.

Para 13.6 The 1st Respondent avers that at all material times, he is a holder off West African Examination Certificate (W.A.E.C) which is a benchmark qualification to contest the said election and the allegedly forged University degree is a mere surplusage that never affected the qualification of the 1st Respondent at all material times.

He submits that by the State of the pleadings issues were joined on the forgery of degree certificate from University of Port Harcourt by the 1st Respondent in 2015 and not on any other document.

He submits that at the hearing of the petition, the Petitioners failed to lead or give relevant credible oral evidence and documentary evidence required to prove the allegation of **forgery of Degree Certificate** from **University of Port Harcourt** by the 1st Respondent as required by law failing to do the following in the proceedings:

1. Failing to tender on evidence or produce before the tribunal the forged degree certificate attached to Form CF 001 and submitted by the 1st Respondent to the 3rd Respondent (INEC) during the 2015 Election.

2. Failing to tender on evidence or produce the Form CF 001 with the attached forged degree certificate submitted or presented to INEC in 2015.

3. Failing to present any documentary evidence of the existence of the alleged forged degree certificate from the University of Port Harcourt presented to INEC in 2015.

4. Failing to produce the original degree certificate from which the forgery of the degree certificate was forged by the 1st Respondent.

5. Failing to present or produce any documentary evidence to prove that the forged degree certificate was ever presented to INEC in 2015 by the 1st Respondent.

6. Failing to produce any documentary evidence to prove that the forged degree certificate from University of Port Harcourt was in issue in **Exhibits P74 and P75**.

He therefore submit that by the above failures of the Petitioners to produce necessary documentary evidence in this petition to prove that the 1st Respondent presented forged degree certificate, the Honourable Tribunal was left to mere speculation or investigation by the Honourable Tribunal and a Court or tribunal set up by law does not act on speculation and has no competence to arrive at a conclusion of forgery degree certificate on speculation.

He cited the cases of **Ashiru V. INEC (2020) 16 NWLR (Pt 1751) 416 at 422 Ratio 5** where the Supreme Court held as follows:

"**A court of law is always confined to the evidence before it. A court of law has no competence to arrive at a conclusion on speculation and guess"**

And also the case of **INEC v. ACD (2022) 12 NWLR (Pt 1844) 257 at 268 Ratio 7** where the Supreme Court also held that:

"That court is not permitted to speculate on matters not before it".

He therefore submit that in the instant case, that the Honourable Tribunal is not permitted and has no competence to speculate on matters not before it as to following:

1. Whether there exists a forged degree certificate by the 1st Respondent, whether the 1st Respondent attached a forged degree certificate to Form CF001 and submitted to INEC in 2015.

2. Whether the presentation of forged degree certificate to INEC was the ground and issue in controversy in petition No. **EPT/HA/20/2015.**

3. Whether the record of the tribunal proceedings reveal that a forged degree certificate was presented at the Election Tribunal in 2015, whether a witness from the issuer of the certificate (University of Port Harcourt) was called to testify on oath and confirmed the forged degree certificate and

4. Whether a forged degree certificate was in issue or forged success letter in the judgments in **EPT/HA/20/2015** and **CA/OW/EPT/HA/81/2015** and

5. Whether the 1st Respondent was disqualified on the basis of presentation of forged degree certificate from University of Port Harcourt or on the basis of forged success letter, particularly when the 1st Respondent denied presenting a forged certificate to INEC but a mere success letter.

He therefore submits that it is settled that where a party asserts a fact or existence of a document and relies on such fact or document but fails or neglect to produce same; it shall be presumed that such evidence or facts do not exist, as in the instant case, that a forged degree certificate does not exists and that a forged degree certificate was not presented to INEC in 2015.

He also submits that for an allegation of forgery of the degree certificate to be sustained against the 1st Respondent to an election, certain

ingredients must be proved to arrive at a conclusion of forgery of degree certificate by the 1st Respondent which are as follows:

a. The existence of the Degree Certificate.

b. That the Degree Certificate must be forged

c. That the forged Degree Certificate was presented to (INEC) at the time of the election.

Also the case of **Saleh v. Abah (2017) LPELR – 4194 (SC) Para B – E.**

He therefore submits that the Petitioners failed to satisfy the above ingredients and criteria's in the instant petition and therefore failed to discharge the onus of proof on them or to prove their case which is liable to be dismissed and we so urged the Tribunal to do.

He further submits that for the Petitioners to succeed in the allegation of forgery of degree certificate in this petition, they must not only produce the forged degree certificate in this petition, they must prove amongst other requirements that a genuine original certificate exists from which the forgery was made, but the Petitioners also failed to satisfy this indispensable requirement of proof in this petition, which is fatal to the case of the Petitioners.

He refers us to the case of **APC V. PDP (2015) 15 NWLR (PT 1481) 1** the appellants alleged that the 2nd Respondent forged the HND Certificate, however at the trial, the appellants produced only the allegedly forged HND certificate without the production of the document from which the forgery was made, and the Supreme Court in **Ratios 21 – 22 at Page 31 – 32 held as follows:**

> **"Forgery is a criminal offence and when it is an issue in any proceeding it must be proved beyond reasonable doubt. Forgery is the noun form of the verb "forge" and to forge means, inter alia, to make a copy or an imitation of something in order to deceive people. Se Oxford Advanced Learner's Dictionary P. 463. It means to fabricate by false imitation. See Black's Law Dictionary Special Deluxe Fifth Edition P. 585"**

Learned Counsel further submit that it is not enough for the Petitioners who woefully failed to prove the allegation of presentation of forged degree certificate to INEC in 2015 by the 1st Respondent as required by law, to fall back and rely on the judgment of the Election Tribunal in **EPT/HA/20/2015** delivered on 19th October 2015 and the judgment of the Court of Appeal in **CA/OW/EPT/HA/81/2015** delivered on 10th day of October 2015, to make up for the shortfall the Petitioners must go further to prove from the records of the Tribunals or Courts proceedings and the judgments that the issue in controversy was allegation of **forged degree certificate** presented to INEC is 2015 by the 1st Respondent, and that it was adjudged that a forged degree certificate was presented to INEC in 2015 by the 1st Respondent.

He refer us to the decision of the Supreme Court in the case **APC V. PDP (supra)** which is binding on the Court of Appeal and the Election Tribunals.

It is the contention of learned Counsel in the circumstances, that the Petitioners failed to lead any evidence to prove that forged Degree

Certificate was the issue in contention both at the Election Tribunal and Court of Appeal and failed to produce before this Honourable Tribunal documentary evidence of the forged degree certificate and the original degree certificate of the University of Port Harcourt tendered and admitted as Exhibits in that proceedings in order to rely on those decisions.

He therefore submit that a letter and a certificate is not the same thing, and as such the decision in **EPT/HA/81/2015.** Are not only irrelevant but is applicable in this instant petition.

In the final analysis, he submit that the Petitioners having failed to produce the documentary evidence of the alleged forged degree certificate from University of Port Harcourt in issue in this petition, and having also failed to present oral evidence of the Issuer of the forged degree certificate to disown the forged degree certificate, the issue of presentation of forged degree certificate which is alleged to have been withheld and intentionally excluded in submitting **Form EC9,** that is affidavit of personal particulars to the 3rd Respondent cannot be determined or resolved in favour of the Petitioners but against the Petitioners.

He submits that it is settled that it is Issuer of a certificate in issue (if exists though not proved in the instant case) that settles the issue of the forgery exclusively. See the case of **AUDU V. INEC (NO. 2) (2010) 13 NWLR (PT. 1212) 456.** Where the Supreme Court held thus;

"On this issue, the body that has the Exclusive power to determine whether the certificate presented by the 21st

Respondent was forged or not is the West African Examination Council".

In the case of **ATIKU ABUBAKAR V. INEC (2019) LER AT 51,** the appellants contention was that the 2nd Respondent forged his WAEC qualification certificate, the Supreme Court held thus;

> ***"After becoming aware of the documents tendered by the 2nd Respondent, they ought to have led oral and/or documentary evidence to debunk the existence of authenticity of these certificates/documents. They did not also prove that these documents/certificates were forged. Without much ado, I pitch my tent with the lower court on its findings and decisions that the 2nd Respondent was "eminently qualified to contest the presidential election of 23rd February 2019."***

He therefore submits penultimately it could be revealed or shown from the reading of the contents of the following documents before the tribunal, that is:

1. **Exhibit P72 – Verification of Success Letter: Re: Nnamani Emeka dated 24/7/2015.**
2. **Exhibit P74 – C.T.C. of judgment in EPT/HA 2013 Between Hon. Dame Blessing Okwuchi Nwagor & Anor. V. Emeka Sunny Nnamani & 4 ors.**
3. **Exhibit P75 – Court of Appeal Judgment dated 10/10/2015 in Appeal No. CA/OW/EPT/HA/81/2015 Between Emeka Sunny Nnamani V. Hon. Dame Blessing Okwuchi Nwagba & 5 ors.**

4. **Exhibit D78 – Copy of Judgment in EPT/HA/20/2015 Between Hon. Dame Blessing Okwuchi Nwagba & Anor. V. Emeka Sunny Nnamani and**

5. **Exhibit D79 – Certified True Copy of Court of Appeal Judgment in CA/OW/EPT/HA/81/2015 Between Emeka Sunny Nnamani V. Hon. Dame Blessing Nwagba & 5 ors,** that the issue in those documents and Judgments was not allegation of presentation of forged Degree Certificate or any forged certificate whatsoever to INEC in 2015 by the 1st Respondent as constitutionally stipulated to disqualify a person from contesting the election.

In the circumstances of the above, he submit that presentation of **"forged success letter"** to INEC was not stipulated in **Section 66 (1) of the 1999 Constitution** to disqualify a person from contesting an election for the House of Representatives and as such the 1st Respondent cannot be disqualified in any election or in perpetuity from contesting any election. For to so do will amount to expanding the provisions of the Constitution which nobody or court has the powers to do in the circumstances.

He refers us to the case **ADEWALE VS. OLAIFA (2012) 17 NWLR PART 1330 AT 478, 515** Where the Court of Appeal held:

> **"To prove disenfranchisement of voters, the voters affected by the disenfranchisement must testify evidencing their registration in the unit provable by their voter card and presence of their names in the voters register of the unit which must be put in evidence coupled with oral evidence of the voters that**

they actually presented themselves to vote in the unit but were denied the right to vote…"

And in the case of CHIME VS. EZE (2009) 2 NWLR PART 1125 AT 263 The Court of Appeal held

"Everyone deprived of voting must come and show his voters card, express the disappointment to the denial of his right to exercise his constitutional right to pick candidate of his choice. The comprehensive voters register must be tendered, authentic evidence of what happened at each polling booth must be given and this will not admit of any generalization of evidence for local government or constituency as it will not serve the proposes"

In the light of the above, learned counsel for the 2nd Respondent to resolve Issue One (1) against the Petitioners and in favour of the 1st and 2nd Respondents.

ISSUE NO. 2

Whether the Petitioners proved any substantial noncompliance with the provisions of the Electoral Act 2022 that affected the result of the Election (SIC) invalidate the entire General Election into the seat of the Federal House of Representatives for the Aba North and Aba South Federal Constituency held on the 25th February, 2023.

Learned counsel submits that it is trite that the allegations of non-compliance must be proved by credible evidence showing that non-

compliance was not only widespread but that it was of a scale that sufficiently affected the result of the said election. Non-compliance with the electoral rules which can render an election in a manner contrary to the principle of election by ballot and must be so great as to satisfy the court that it did affect or might have affected the majority of the voters, or in other words, the result of the election.

He further submit that a petitioner always has the burden to prove through credible evidence in order to succeed in an election petition alleging that there was no substantial compliance with Electoral Act or that the alleged irregularities, have substantially affected the election of the respondent. He cited the case of **NGIGE V. INEC (2015) 1 NWLR PT 1440 P. 281 AT 287 RATIO 3** where the Supreme Court held as follows:

> **"*The burden of proving any allegation of non-compliance with the Electoral Act in the conduct of elections remains with the petitioner. So it is left with a Petitioners to decide whether he should file a petition seeking the nullification of the election on the ground of non-compliance with the Electoral Act, knowing the herculean task involved in adducing sufficient evidence to prove substantial non-compliance leading to the nullification of the election.***

He also submit that the Petitioner in prove of the non-compliance with the electoral act in the conduct of question election relied on a prototype witness statement of oath of witnesses described as **APU 01 – 042** in which the Petitioners made a uniform deposition in paragraph

6 as follows: **that no election was held in the said polling unit because the INEC Ad-hoc staff were not present with the election materials.**

He submit that at the trial, the Petitioners called the said witnesses to adopt the said written depositions and under cross examination most of the said witnesses admit that election were held but the (SIC).

He submits in totality that the evidence of the 1st Petitioner **PW36** in **paragraph 39 and 43 of the Witness Statement on Oath** adopted as evidence is a clear case f admission against interest which negatizes the grounds of non-compliance complained of wherein the PW36 stated as follows:

Para 39: That the total number of permanent voters collected in Aba North and Aba South Federal Constituency is 29,117.

Para 43: Further or in the alternative, I contend that if the disenfranchised 29,117 voters were allowed to vote, it would significantly change the result and tilt the result in my favour.

He also refer this Honorable Tribunal to the admission of the 1st Petitioner under cross-examination as **PW36** by the 4thand 5th Respondents wherein he admitted thus: "**I stand by my paragraph 39 and 43 of my deposition".**

He submit that what is admitted needs no further prove since by the admission of the **PW36, the total number of permanent voters collected in Aba North and Aba South Federal Constituency is 29,117** is equal to the total number of disenfranchised voters in which case no voter who collected Permanent Voters Card voted in the

election which is contrary to the Certified True Copy (C.T.C) of the results tendered by the Petitioner and the duplicate carbon copies of the result tendered by the 1st Respondent.

He therefore submit that on the strength of the evidence of the Petitioners' witnesses and in particular evidence of the 1st Petitioner himself as **PW36**, the Petitioner woefully failed to prove that there was substantial non-compliance with the **Electoral Act 2022** in the conduct of the question election that the results of the election and invalidated the outcome of the election.

In the light of the above, we urge your Lordships to resolve Issue Two (2) against the Petitioners and in favour of the 1st and 2nd Respondents.

ISSUE NO. 3

Whether Petitioners proved that the 1st Respondent did not score the majority of lawful votes cast at the General Election in the Aba North/Aba South Federal Constituency held on the 25th February, 2023.

We submit that the 1st Respondent did not score the majority of lawful votes cast at the General Election in the Aba North/Aba South Federal Constituency held on the 25th February, 2023 by not pleading the invalid vote that ought not to be reckoned in the collation of the total lawful votes scored by the 1st Petitioner and not leading any evidence to show why the 1st Petitioner did not score the majority of lawful votes.

We therefore urge the Honorable Court to resolve issue No. 3 against the Petitioner and in favor of the 2nd Respondents for failure or for lack

of any credible in support of the ground and reliefs one sought by the Petitioner under this issue.

He finally urge the Honourable Tribunal to dismiss the Petition for lacking in merit.

The 2nd Respondent submits as follows to the points of law raised by the Petitioners in their final written address.

The Petitioners submits in paragraphs 6.1.21 (iii) as follows:

"**It is trite law that whoever wants a Court to pronounce on a document must tender the document before the Court". See (1) OGAH V/ IKPEAZU (2017) 17 NWLR (Pt. 1594) 299, N.P.A v. B.P PTE LTD. (2012) 18 NWLR (Pt. 1333) 454."**

They further submits in paragraph 6.1.22 as follows;

> "**With respect given the pedigree of this Tribunal, it must continue the charge of purging the society of people like 1st Respondent who, despite being indicted, wants to hold public office. Under cross examination, DW15 had no qualms about the fact that his failure to attach "Degree Certificate" to his Form EC9 sworn to before a Commissioner for Oaths. A degree he obtained in the year 2000. He attached success letter in 2015 and in 2023 after being cleared by UMUNNEOCHU HIGH COURT of "any crime whatsoever" still did not attach it. He did not tender it**

in Court but tendered unpleaded photocopy of an "NYSC" Certificate".

Learned Counsel for the 2nd Respondent submits that the aforesaid submission in paragraphs 6.1.21 (iii) and 6.1.22 of the said address, the Petitioners woefully and fatally failed to tender and produce in evidence before the Honourable Tribunal the alleged presented Forged Degree Certificate from University of Port Harcourt with the Form CF001 to which it was attached as pleaded by the Petitioners and relied upon by the Petitioners in this address.

On the contrary, he submits that the failure of the Petitioners to tender and produce in evidence the said "Forged Degree Certificate" and from CF001 before this Honourable Tribunal is fatal to the case of the Petitioners particularly when even the alleged Forged Success letter in **Exhibit P74 and P75** were also not tendered and produced in evidence in court instead the Petitioners tendered **P72** which was not the alleged forged success letter but a verification of the success letter as shown in the contents of **Exhibit P72**.

He therefore submits that the tribunal cannot rely on alleged forged documents not tendered as Exhibits before it, and that the failure to tendered the alleged forged certificate together with the Form CF001 and prove the forgery of the Degree Certificate beyond reasonable doubt before the tribunal is fatal to the Petitioners case on ground of disqualification which is liable to fail in the circumstance and we so urge.

He refers to the case of **NIGERIAN PORTS PLC V. B. P. PTE LTD (2012) 18 NWLR (PT. 1333) 454 AT 466 RATIO 9.** Where the Supreme Court held as follows:

"A trial court or an appellate court must not rely on a documents not tendered as an exhibit before it"

Also the case of **OLADELE V. AROMOLARAN 11 (1996) 6 NWLR (PT 453) 180**

And**OGAH V. IKPEAZU (2017) 17 NWLR (PT 1594) 299 AT 306 – 308 Ration 5** where the Supreme Court held as follows:

> ***"By virtue of Sections 131, 132 and 133 of the Evidence Act, 2011 the burden of establishing the existence of any fact lies on the person who asserts those facts. He who asserts must prove. And by Section 135 (1) of the act, where crime is imputed, it must be proved beyond reasonable doubt.***
>
> ***... similarly, whoever asserts that the candidate in an election had "presented forged certificate to the Independent National Electoral Commission" has the onus of proving beyond reasonable doubt that the candidate had in fact presented a forged certificate. In any proceeding where commission of crime by a party is directly in issue the proof beyond reasonable doubt is the standard of proof".***

He therefore submits that in the absence of the documentary evidence of the alleged forged Degree certificate and the Form CF001 to which it was attached and submitted to INEC in 2015 the Petitioners have woefully failed to prove the allegation of presenting a forged Degree Certificate to INEC in 2015.

It is his further contention in the circumstances, that the cases of the Tribunal and Court of Appeal in **Exhibits P74 and P75** are clearly, inapplicable and distinguishable from this case and that the Petitioners cannot rely upon the said judgments in this petition because the facts and issues before the Tribunal and Court of Appeal in **exhibits P74 and P75** are different from the facts and issue in the Petition before this Honourable Tribunal in that those cases revolve on allegation of "**forged success letter"** while in this case, the Petitioners are referring to forged Degree Certificate which was not presented in those cases and not before this Tribunal.

He refers the case of **OGAH V. IKPEAZU (supra) P311 Ration** where the Supreme Court held thus

"The best evidence of the content of a document is the production of the document"

ON THE PETITIONERS RELIANCE ON THE CASE OF SALEH V. ABAH, THE PETITIONERS SUBMITTED AT PARAGRAPH 6.1.10 AS FOLLOWS:

> ***"The facts of this case are similar to the facts in the case of HON HASSAN ANTHONY SALEH V. CHRISTIAN ABABAH ABAH (2017) 12 NWLR (PT. 1578) 100. In that case, the Respondent had been found to have presented a forged certificate by an Election Petition Tribunal in 2011 but he carefully removed the forged certificate when he was contesting for the 2015 election into the House of Assembly in Benue State".***

Learned Counsel for the 2nd Respondent submits on the contrary to the Petitioners submission that, the facts and issue in the case **SALEH V. ABBAH (supra)** are clearly distinguishable from the facts and issue decided in **Exhibit P4 and P5** as well as the fact and issue in the petition in which no allegation of presentation of forged certificate to INEC for the 2013 election is made, such that the decision in **Saleh v. Abbah** and the decisions in **Exhibits P4 and P5** are inapplicable in the instant case to disqualify the 1st Respondent in this election or in perpetuity.

He also submits that the facts and issues in **Salah v. Abbah** is the presentation of **forged certificate** that is, **National Diploma Certificate to INEC,** which is stipulated and circumscribed in **Section 66 (1) (i) of the 1999 Constitution** as a ground for disqualification to contest an election, while the fact and issue in **Exhibit P4 – Judgment of the Election Tribunal** and **P5 – Judgment of the Court of Appeal** is presentation of a **forged letter to INEC** which is not stipulated or circumscribed in **Section 66 (1) (i) of the 1999 Constitution** as a ground for disqualification to contest an Election.

He submits that **Section 66 (1) (i) of the 1999 Constitution (as amended)** provides as follows:

66(1) Noperson shall be qualified for election to the Senate or the House of Representative if:

(i) He has **presented a forged certificate** to the **Independence National Electoral Commission** (underlining for emphasis)

He therefore contends that in the interpretation and application of the above provisions of **Section 66(1)(i) of the 1999 Constitution (as amended).** The Supreme Court in **Saleh V. Abbah (supra)** has decided that only a **forged certificate** suffices and the **forged certificate** must be **presented to INEC** by the person standing election and that the certificate presented to INEC in the circumstance has been proved beyond reasonable doubt to be forged, and which is the intendment of the spirit of **Section 66(1) (i) of the 1999 Constitution** is the **Nothing more should be added to the provision** since the words of the provision are simple, clear and unambiguous.

See **Saleh V. Abbah (2017) 12 2 NWLR (PT 1578) 100 AT 107 and 110. Ratios 1 & 2** where the Supreme Court per PETER – ODILI, JSC. held as follows:

> **Ratio 1: "By virtue of section 66(1)(i) of the Constitution of the Federal Republic of Nigeria, 1999, no person shall be qualified for election to the Senate or the House of Representatives if he has presented a forged certificate to the Independent National Electoral Commission (INEC). The constitutional provision is unambiguous and its purpose is that anyone who has presented a forged certificate. INEC stands automatically disqualified for all future elections if a court or tribunal finds the certificate to have been forged".**

Ratio 2: "In the context of section 66(1)(i) of the Constitution of the Federal Republic of Nigeria, 1999, the burden of proof placed on a person who asserts that another person presented a forged certificate to INEC is proof that the certificate was forged and that it was presented to the Independent National Electoral Commission (INEC). And in proving the presentation of the forged certificate to INEC, the person asserting the positive does not have the duty to prove that the person who presented the forged certificate was guilty of forgery but that he made the presentation in the first place and that the certificate has been proved beyond reasonable doubt to be forged. That is the intendment of the spirit of the section 66(1)(i) of the Constitution and nothing more should be added to it since the words of the provisions are simple, clear and unambiguous".

He also submits that the **operative words** in **Section 66(1)(i)** and in decision in **Saleh v. Abbah** cited above are the proof of the following words of the Provision of the Statute and Judgment.

i. **Forged Certificate**
ii. **Presentation of the forged certificate to INEC and**
iii. **Finding by a Court or Tribunal that the certificate have been forged and**
iv. **Disqualification for presentation of forged certificate to INEC**

He therefore submits that the particular documents referred to in the provision of Section 66(1)(i) of the 1999 Constitution and the case of **Sale v. Abbah (supra)** is very specific and classified as **"Forged Certificate"** which admits of on exception, does not permit going outside the words or travelling outside the spefici words on voyage of discovery and in search of an interpretation which is generic in nature to accommodate **forged/false document to INEC in 2015**as submitted by the Petitioners or **forged letter** as decided in **Exhibits P4 and P5.**

He submits that the Rules governing interpretation of statute and duty of court with respect thereto, we commend the case of Araka v. Egbue (2003 17 NWLR (Pt. 848) 1 at 6-7 Ratios 4 and 5 where the Supreme Court held thus:

> **Ratio 4: "The duty of the court involved in the interpretation of a statute is to interpret the words contained in the statute and not go outside the words in search of an interpretation which is convenient to the court or to either or both of the parties before it. Even where the provision of a statute will result in inconvenience to the parties the court is bound to interpret the provisions once they are clear and unambiguous".**
>
> **Ratio 5: "In the interpretation of a statute the primary function of the court is to search for the intention of the lawmaker. Where a statute is clear and unambiguous, the court has to follow the literal rule of interpretation and cannot travel outside it on a**

voyage of discovery. The sole guide to the interpretation of a state in question is the statute itself and nothing except an Act of Parliament can alter it"

Learned counsel therefore submit that it is only presentation of **forged certificate** to INEC and no other forged document or letter or nothing else can disqualify except an act of the Legislature or Parliament alters it from forged certificate to forged letter or forged document.

Learned counsel submits that the limit to the interpretation jurisdiction of the court or tribunal, he further refer to the case of **Ugba v. Suswam (2013) a NWLR (pt 1345) 427 at 442 – 443 Ration 19** where the Supreme Court decided as follows:

Ratio 19: "The main function of a Judge is to declare what the law is and not to decide what it ought to be. The business of law-making is exclusively the responsibility of the National Assembly at the Federal level or State House of Assembly at the State level, all in Nigerian context. The populace looks forward to the Judiciary as the body to dispense justice but a Judge charged with that responsibility must always appreciate that the powers to so do are circumscribed by the dictates of the law. In short, justice to be dispensed by the judex must be in accordance with the law. It therefore follows that where the words of the provisions of the constitution or a statute are unambiguous and are rather clear in their ordinary and

grammatical meanings of the said provisions their literal, natural and grammatical meaning accordingly. It is often said that the Judge, in order to do justice in the exercise of his interpretative jurisdiction, must find out the intention of the legislature with regard to the relevant provisions of the constitution or statute that call for interpretation. There is intention to be sought is expressed in the words used in couching any of the provisions. In effect, though the interpretation of constitutional or statutory provision may lead to injustice, harshness or lack of fairness, yet the courts lack the powers to embark on judicial legislation".

He therefore submit that in the exercise of the interpretative jurisdiction of the tribunal in the instant case with regard to the relevant provision of Section 66(1)(i) of the 1999 Constitution that the intention to be sought is expressed in the actual very words used in the couching of the very provisions which in the instant statute is **forged certificate** andnothing else. It is therefore our submission that the very provision of section 66(1)(i) of the 1999 constitution, the 1st Respondent was not disqualified to contest the 2023 election or in perpetuity by reasons of the following:

1. No **forged certificate** has been shown to exist in this petition and in the judgment in **Exhibit P4 and P5** in this petition.
2. The 1st Respondent has never presented a forged certificate to INEC.

3. There is no evidence of the existence of a **forged certificate** presented to INEC by the 1st Respondent before this Honourable Tribunal and in **Exhibit P4 & P5.**

4. No Tribunal or Court of Appeal has made a finding that a **forged degree certificate** was presented to INEC in 2015 by the 1st Respondent.

5. This Honourable Tribunal or any other Tribunal or Court of Appeal has not in its decision proved beyond reasonable doubt that the certificate (if any) presented by the 1st Respondent to INEC in 2015 was forged and

6. The 1st Respondent has not been disqualified by any Tribunal or Court for presenting a forged certificate to INEC in 2015 when no such forged certificate has been shown by the Petitioners to exist in this case.

In the final analysis, he submit that the absence of the aforesaid instances in the instant petition renders the decision in Exhibit P4 and P5 and the case of Saleh v. Abbah (supra) as well as the provisions of Section 66(1)(i) of the 1999 Constitution in applicable to disqualify the 1st Respondent to contest the election or in perpetuity as erroneously and wrongly submitted by the Petitioners.

He further submit that every case is authority for what it decide and relying on case with different facts amount to citing a case out of the proper context.

He cited the case **AKEREDOLU V. ABRAHAM (2018) 10 NWLR 510 AT 519 RATIO 13** where the Supreme Court held as follows:

"**Legal principles established in decided authorities are not to be applied across board and in all matters without regard to the facts and issues submitted for adjudication in a particular case. A judgment should always be read in the light of the facts on which it was decided. The rules of stare decisis do not allow courts to apply the ration of a case across board and with little regard to the facts of the case before them. Each case remains authority for what it decided. Therefore, an earlier decision of the Supreme Court will only bind the court and subordinate courts in a subsequent case if the facts and the law which informed the earlier decision are the same or similar to those in the subsequent case. Where the facts and/or the legislation which are to inform the decision in the subsequent case differ from those which informed the court's earlier decision, the earlier decision cannot serve as a precedent to the subsequent one".**

Also the case of PDP V INEC (2018) 12 NWLR (PT 1634) 533 AT 539, RATIO 7 where the Supreme Court held as follows:

"A case is authority for what it decides. Relying on a case without relating it to the facts that induced it will amount to citing the case out of the proper context. The whole purpose of citing a case is for the law on it to be known"

On the Petitioners' allegation that there was no election as submitted in paragraph 6.4 of the address. Learned Counsel for the 2nd Respondent,

he submits that the contradictions in evidence of the Petitioners witnesses gave evidence that there was election only that there were no results led to non proof of the said allegation and rendered their evidence unreliable.

On the Petitioners issue of lack of result at paragraph 6.5 of the address, he submit that was countered by the duplicate carbon copies of the election result in Form EC8A (II) tendered by the 1st Respondent witness and identified by the various Polling agents at the Polling units and which documents are exhibit before the Honourable Tribunal and which we urged the Honourable Tribunal to place reliance upon contrary to the Petitioners' submissions.

On the Petitioners' issue of margin of lead in paragraph 7.0 of the address, he submits on the contrary that it is settled that the margin of leads alone does not result to cancelation or nullification of an election which was conducted in substantial compliance with the provisions of the electoral act.

Learned Counsel for the 2nd Respondent therefore urge us to discountenance the erroneous submissions of the Petitioners on the issue of disqualification of the 1st Respondent in this petition.

The 3rd Respondent on her part formulated and also argued the 5 issues in the 3rd Respondent's final written address as follows:

1. Whether the petition is competent having being prepared and dated even before the election.

2. Whether the ground 2 upon which this petition is competent.

3. Whether the ground 3 upon which this petition is presented is competent.

4. Whether the petitioners can rely on grounds 1, 2 and 3 of their petitioner at the same time.

5. Whether the petitioners have proved their petition to entitle them to the reliefs sought.

Issue 1: Whether the petition is competent having being prepared and dated before the election.

Learned Counsel submits that election petition is dated and filed after the conduct of an election that the outcome is being challenged and not the other way round. In this instant case the petition is dated 18th day of February, 2023 while the election in issue was conducted on the 26th day of February, 2023. He therefore submit that this petition is incompetent having being dated before the date of the election. The implication is that the wrongly dated process is similar to an undated process which made the process/petition worthless. We therefore urge Your Lordships to resolve this issue in favour of the 3rd respondent.

Issues 2, 3 & 4 that is:

i) Whether the ground 2 upon which this petition is presented is competent.

ii) Whether the ground 3 upon which this petition is presented is competent.

iii) **Whether the petitioners can rely on grounds 1, 2, and 3 of their petitioner at the same time**

1. Learned Counsel submit that issues 2, 3, and 4 will be argued jointly. Consistent with this issue, we submit that ground 2 and 3 upon which this petition is presented are incompetent and that the petitioners cannot rely on grounds 1, 2 and 3 of their petitioner at the same time.
The petitioners at the paragraph 26 of their petition stated ground 2 upon which their petition is presented thus:
"**the election was invalid by reason of corrupt practices or non-compliance with the provisions of Electoral Act"**
Section 134(1) of the Electoral Act 2022 (As amended) provides thus:
(a) An election may be questioned on any of the following grounds, that is to say:

(b) That the election was invalid by reason of corrupt practices or non-compliance to the provisions of this act.

Learned Counsel submits that the ground of corrupt practices and the ground of non-compliance with the Electoral Act cannot be joined together under one ground as seen in paragraph 7 of the petition before this Tribunal. Where a petitioner intends to rely on both corrupt practices and non-compliance with the provisions of Electoral Act, he must plead them separately and not joining them together. **The use of the word "OR" in the Electoral Act connotes "Alternative" or "an option" and not a "conjunction". See HON. AMOS GOMBI GOYOL & ANOR VS INEC & ORS (2011) LPELR – 9235 (CA).**

Learned Counsel submits that where a petitioner intends to rely on both corrupt practices and non-compliance with the Electoral Act, he should plead them separately and not join them in one ground. He cited the

case of **HON. AMOS GOMBI GOYOL & ANOR V. INEC & ORS. (2011) LPELR-9235 (CA),** where the Court of Appeal said as follows:

> "**A literary construction of section 138 (i)(b) reflects that a person can question that the election was invalid because of corrupt practices or non compliance with the provision of the Electoral Act. In other words once election is questioned on the basis of invalidity it can be predicated on corrupt practices or non compliance. The use of "or" connotes an alternative or an option. <u>Consequently both corrupt practices and non compliance SHOULD NOT BE JOINED TOGETHER as one ground.</u> A petitioner can ground a petition on corrupt practice or non compliance with Electoral Act. It is instructive to note that a ground on corrupt practices invariably relates to non compliance to the provision of Electoral Act as it relates to allegations bordering on criminal allegation. Therefore a petition predicated clearly on non compliance to Electoral Act can be predicated solely on breach of civil obligations in the Electoral Act and irregularities arising from the election which are civil in nature or non compliance to Electoral Act in relation to criminal allegation. "Per NWODO, J.C.A. (Pp. 13-14, paras. B-C)"**

Also in **ALHAJI ATIKU ABUBAKA, GCON & ORS. V. ALHAJI UMARU MUSA YAR'ADUA & ORS (2008) LPELR – 51 (SC),** the Supreme Court stated as follows:

"The word "or" is defined in Black's Law Dictionary, Sixth Edition in the following terms: "A disjunctive participle used to express an alternative or to give a choice of one among two or more things." In the case of Aruba v. Aiyeleru (1993) 3 NWLR (Pt. 208) 126 at 141-142 this court in constructing the word "or" stated thus: ..... The power given to the court under the rule is to either strike out or amend, the word "or" having a disjunctive connotation, it does not give the court the power to strike out and amend...."

Also in the case of Abia State University v. Anyaibe (1996) 3 NWLR (Pt. 439) 646 at 661 the Court of Appeal per Katsina-Alu, J.C.A (as the then was) held:

".... it is to be noted that twelve months period is separated from the next period following by the word "or". This word always bears the disjunctive meaning in an enactment, that is to say separates the provision preceding it from the provision coming after it. Its role is to show that the provisions in which it is appearing are distinct and separate one from the other, in Black's Law Dictionary Sixth Edition the word "or" is defined inter alia: A disjunctive participle used to express an alternative or to give a choice of one among two or more things. "Per Katsina-Alu, JSC (P. 23, paras B-C)"

Similarly, in **Buhari v. INEC (2008) 4 NWLR (Pt. 1078) 546 at Pp. 643 – 644 paras B, the Court of Appeal** re-emphasized the point thus:

"**The word "or" is a disjunctive participle used to express an alternative or to give a choice of one among two or more things. It separates the provision preceding it from the provision coming after it. Its role is to show that the provision in which it is appearing are distinct and separate one from the other. (Aruba v. Aiyeleru (1993) 3 NWLR (Pt. 280) 126; Abia State University v. Anyaibe (1996) 3 NWLR (Pt. 439) 646" Per Fabiyi, J.C.A.**

Learned Counsel submits that Ground 3 of the petition states thus:

"**The respondent was not duly elected by majority of lawful votes cast at the election".** Learned counsel submits that there are 5 respondents in this petition and the petitioners did not specify which of the 5 respondents they are referring to under this ground. This Honourable Tribunal cannot embark on the voyage of discovery to find out who are the petitioners referring to. Accordingly, failure to state the name of the respondents they are referring to renders this ground incompetent and we urge Your Lordships to hold.

We submit further that the petitioners cannot rely on ground 3 and any other grounds at the same time. Doing so will amount to contradictory grounds.

By virtue of the foregoing, he urge us to resolve these issues in the negative and in the result find and hold that Grounds 2 and 3 of the petition set out at Paragraph 26 of the petition thereof are incompetent and to accordingly strike them out.

He therefore, urge us Lordships to resolve these issues in favour of the 3rd Respondents and strike out the offending ground.

Issue 5: whether the petitioners have proved their petition to entitle them to reliefs sought

Learned counsel submits that the petitioners have failed to prove all the allegations in their petition. The petitioner alleged that the election was marred by corrupt practices and non-compliance with the Electoral Act. That there were ballot box and papers snatching, no voting in some polling units and over voting in some polling units.

On **ALLEGATION OF CORRUPT PRACTICES**; learned Counsel submit that the facts relating to corrupt practice were not pleaded in the petition. The petitioners only stated that the election was invalid by reason of corrupt practices. They did not proceed to state those acts that amount to corrupt practices and who committed those acts. We submit that failure to plead and lead in evidence the acts which the petitioners considered to be corrupt practices means that this ground is deemed abandoned by the petitioners. We submit that the allegation of corrupt practice must be attributed to a particular respondent/candidate. This is because allegation of corrupt practice which is not linked to a candidate cannot affect his election. An elected candidate cannot have his election nullified on the process of the election unless it can be proved that the candidate expressly or impliedly authorized them. It is also immaterial that the alleged malpractices are very serious if there was no evidence to connect them to or with the person returned elected. He cited the case of **BUHARI V. OBASANJO (2005) ALL**

FWLR (Pt. 273) 1 at 158, PDP V. INEC & ORS (2012) LPELR – 8406, AMOSUN V. INEC & ORS (2010) LPELR – 4943.

On **ALLEGATION OF OVER VOTING;** learned counsel submits that the allegations of over voting is contained in paragraphs 40 and 41 of the petition, which the petitioners alleged to have occurred in some polling units in Aba North and Aba South. However the petitioners failed to state those polling units in Aba North where they claimed there was over voting.

In Aba South they pleaded over voting in **Ward 5, unit 013, Ward 6 Unit 002, 003, 006 and 009, Ward 11 Units 016 and 025.** However the petitioners did not state the number of accredited voters in these polling units and the total number of votes casted.

Learned counsel submit that in order to prove over voting, the petitioner must do the following:

a. Tender the voters register used in the election for the polling units in issue.
b. Tender the statement of results in appropriate forms which would show the number of accredited voters and number of actual votes.
c. Relate each of the documents to the specific area of his case in respect of which the documents are tendered.
d. Show that the figure representing over voting, if removed, would result in the victory for the petitioner. **See IKPEAZU V. OTTI & ORS (2016 LPELR – 40055 (SC), LADOJA V. AJIMOBI & ORS (2016) LPELR – 40658 (SC).**

In this instant case learned counsel submits that the petitioners have failed woefully to satisfy the above conditions.

On **ALLEGATIONS OF NON-COMPLIANCE TO THE PROVISION OF THIS ACT;** Learned counsel submits that the petitioners made allegations of non compliance with the provisions of Electoral Act such as; no result sheets, lack of sufficient ballot papers, failure to use BVAS to upload result to IREV lack of materials and staff etc. See **paragraph 42, 43, 44, 45, 46, 47, 48, 49, 50, 51 and 52** of the petition.

Learned counsel that the petitioners failed to lead credible evidence to establish these allegations. In fact these allegations were abandoned in evidence as the witnesses called mainly testify on no voting in their purported polling units. Facts pleaded and no evidence given is deemed abandoned.

He submits also that in paragraph 16 of the petition, the petitioners pleaded that the Returning officer (sic) the result as follows:

a. The number or registered voters 452, 732.
b. The accredited voters 78,777.
c. Number of valid votes 75,508.
d. Number of rejected votes 1,569
e. Total number votes cast 77,077

He submits that from the petitioners pleading in paragraph 16, the total number of votes cast which is 75,508 is less than the number of accredited voters which is 78,777, thus there is no issue of over voting.

Furthermore, learned counsel submits these allegations were discredited by documentary evidence of Forms EC8As, EC8Bs, BVAS report and IREV result tendered by the 1st respondent and also by the uncontradicted evidence of the witnesses called by the 3rd respondent.

He submits further that the petitioners are under mandatory obligation to not only prove beyond reasonable doubts the allegation of corrupt practices, non compliance with the provision of the Electoral Act, irregularities, over voting but to also prove in evidence that the non compliance has indeed substantially affect the overall result of the election in the said constituency.

On **ALLEGATION OF NO VOTING;** Learned counsel submits that the allegations of no voting are contain in **paragraphs 21, 22, 23, 24 and 38 of the petition.** That the petitioners specifically pleaded in paragraph 38 that election did not hold in 78 polling units in both Aba South and Aba North. However the petitioners contradicted themselves under the same paragraphs where they showed in tabular forms units where election did not hold in Aba North and Aba South. From these tables election did not hold in 102 polling units in the 12 wards of Aba North and in 67 polling units in 9 wards of Aba South. Meaning election did not take place in about 169 polling units in Aba South and North. The question now is which of the allegations the petitioners want this Honourable Tribunal to accept. It is that election did not hold in 78 polling units or in 169 polling units?

He submits that for the court to order for supplementary election in the polling units where the petitioners claimed there was no election, the petitioners must plead and lead credible evidence on the names and location of these polling units, number of the registered voters in the polling units, number of PVC collected and above all they must tender the voters registrar of these polling units in issue. In this instant case the petitioners have failed to do so.

He submits that the witnesses called by the petitioners to prove the allegation of no voting claimed that INEC officials/officers including presiding officers did not visit their polling units. Some even claimed that they only concentrated on their polling unit and could not know or see if election is ongoing in other polling units within the same centre. However these allegation and evidence of these witnesses were these allegations were discredited by documentary evidence of Forms EC8As, EC8Bs, BVAS report and IREV result tendered by the 1st respondent and petitioners and also by the uncontradicted evidence of the witnesses called by the 3rd respondent.

From the BVAS report tendered by both the petitioners and 1st respondent there were accreditations in Ohazu II Ward, Units 013, 001 and 028, Enyimba Ward, Unit 005, Eziama Ward, Unit 010 and Igwebuike Ward in unit 009 contrary to the evidence of PW 4, 5, 10, 6, 8 and 9 respectively.

Also from the BVAS report there were accreditation in the following Wards and Polling Units in Aba North.

a. Eziama Ward in Units 010, 034 and 047
b. Industrial Area Ward in Units 003, 019 and 029
c. Osusu I Ward in Units 001, 002, 004, 009, 012, 014, 015, 018, 026, 031 and 037
d. Osusu II Ward in Units 001, 004, 008, 012, 014, 016 and 034
e. St Eugen Ward in Units 012 and 013
f. Uratta Ward in units 002, 003, 005, 006, 009, 010, 014, 033, 040 and 041
g. Old Aba GRA Ward in units 010, 021, 022 and 035

h. Umuola Ward in units 004, 007, 021, 022, 023, 025 and 027

i. Ariaria Market Ward in units 001 t0 029, 032, 033, 038, 041, 051 to 056, 062, 064, 065 to 070, 073, 075 and 077

j. Ogbor Hill I in units 020, 025 and 031

k. Ogbor Hill II in units 006, 007, 008, 010, 016, 022, 023 and 025

l. Umuogor Ward in unit 012.

Learned counsel submits that from the pleadings of the petitioners election did not hold in all the polling units listed in paragraphs 17 above. However this allegation has been discredited and contradicted by the BVAS report tendered and evidence of the witnesses of the 3rd respondent. This falsehood also occurred in the polling units in Aba South where the petitioners claimed there were no election contrary to the BVAS report.

He submits that it is clear from the above that the case of the petitioners at the trial court was marred by contradictions and inconsistencies and he urged us to adopt the reasoning of Per Nsofor J.C.A in **Igbojimadu v. Ibeabuchi (1998) I NWLR (Pt 533) 179 at 201 para D** where he stated thus:

> **"The consequences of these multiple contradiction are clear. They succeed to destroy the case of the appellants as presented. They completely knocked the bottom out of the case of the appellants. On the other hand, they succeeded in making and keeping the case of the respondent solid, fortified and monolithic".**

On **THE RESPONDENT WAS NOT DULY ELECTED BY MAJORITY OF LAWFUL VOTES CAST AT THE ELECTION,** learned counsel

submits that they have earlier argued that this ground is incompetent because the petitioners did not state which of the respondents they are referring to. Notwithstanding that argument, we submit that by this ground the petitioners are questioning the validity/legality of some or all the votes/results declared by INEC. In other words, the petitioners are simply alleging that some unlawfully or invalidly obtained votes or results were added to the respondent to give him the majority of the votes declared by INEC by which he merged winner. The task of the petitioner in this ground therefore is to identify and offer proof of the figure of votes he alleges were unlawfully obtained by or credited to the respondent and if he satisfies the Tribunal, those figures of votes will be cancelled, deducted from the total, the remaining valid votes recalculated and the person who obtained the majority of the recalculate valid votes determined. It is a trite law that in such cases the petitioner must plead and prove two sets of results to wit; the valid one claimed by him and the false one he alleges was declared by INEC.

He submits that in the case of **SENATOR MUSA BELLO & ANOR V. ALHAJI MUKTAR AHMED MOHAMMED ARUWA & ORS (1999) LPELR – 6750 (CA),** the Court of Appeal held thus:

> "**The law on the requirement of proof of falsification of result of an election is trite. To prove such falsification, there must be two sets of results, one considered genuine or authentic while the other is considered falsified. The two would then be compared to determine falsity. In Sabiya V. Tukur (1983) NSCC559 at 560 Irikefc JSC (as he then was) stated the law as follows:.**

"in my view to prove falsification it is basic that there should be in existence at least two results, one of which could be stigmatizes as genuine and the other false".

Again in Nwobodo v Onoh (1984) 1 SCNLR 1; (1984) NSCC 1 at 22 Bellow JSC (as he then was had this to say:

"To prove falsity beyond reasonable doubt of the collated results of the deputy returning officer, a petitioner must not only prove the results collated by assistant returning officer but must also prove the votes counted by the presiding officer and the scores of each candidate at the polling booths which were the basis of the collation. Production of the results of the poll counted at the polling booths by the presiding officer is an essential element of the burden of proof under the circumstances of the petition"

In the instant case, having regards to the alleged genuine total votes scored by the candidates as pleaded by the appellants and the total number of such alleged genuine votes as contained in the appellants brief of argument, it is obvious that even the appellants themselves are not sure of the total number of the alleged genuine votes upon which the 1st appellant should have been returned as duly elected. The mere tendering of Forms EC8A and other documents before the tribunal without showing how the alleged genuine votes could have been extracted

from such documents certainly did not satisfy the standard of proof required under the law. Thus, having regards to the circumstances of this case where appellants as petitioners has woefully failed to prove their case, the tribunal was not only right in dismissing their petition but was actually duty bound to do so…"

Also in **OBAFEMI & ANOR V. PDP & ANOR (2012) LPELR – 8034(CA)** the Court of Appeal held as follows:

"**The lower Tribunal could not have been correct to state that the appellants admitted the allegation of manipulation of results of Ward 8 of the constituency on the pleadings … It was accordingly, wrong for the lower tribunal to hold that the allegation was admitted or could be proved on the pleadings. Manipulation or alteration of result of an election is a criminal offence commonly called forgery. The 1st – 2nd respondents were therefore required to put in evidence the genuine result pitted against the manipulated result. after putting the two sets of results in evidence as exhibits, the 1st – 2nd respondents were obligated to call witness conversant with the entries in the genuie and the manipulated or false results to marry or tie the entries therein to the allegation in the petition …."** See also **AUDU V. INEC (NO. 2) (2010) 13 NWLR (PT 1212) 456, ANNP V. INEC (2010) 13 NWLR (PT 1212) 549"**

In this instant case, learned counsel submits that the petitioners did not comply with the above position of the law and we accordingly urge this tribunal to dismiss this ground.

He therefore urge us to resolve this issue in favour of the Respondents and dismiss this petition on this ground.

In conclusion, the learned counsel urged us to strike out this Petition for being incompetent and for the failure of the petitioners to prove their case.

The 3rd Respondents in his reply on points of law raised by the petitioners in the final address, submits as follows.

1. ON WHETHER DW16, D17 AND DW18 CAN TESTIFY WITH AS WITNESSES WITH DEPOSITIONS

Learned counsel submits that witnesses subpoenaed by the court can testify with deposition and failure to obtain the leave of court before filling their deposition does not render their depositions already filed as incompetent. See **BASHIR & ANOR V. KURDULA & ORS (2019 LPELR – 48473 (CA)**

2. ON ALLEGATION OF NO ELECTION

Learned counsel submit that BVAS report tendered by the petitioners is against their allegation of no voting. This is a contradiction in the case of the petitioners.

Furthermore the petitioners only gave evidence on no voting in only 14 polling units and the evidence give have been contradicted.

Learned counsel submits that it is clear from the above that the case of the petitioners at the trial court was marred by contradiction and inconsistencies and he urged us to adopt the reasoning of Per Nsofor

J.C.A in **Igbojimadu V. Ibeabuchi (1998) I NWLR (Pt. 533) 179 at 201 para D** where he state thus;

> **"The consequences of these multiple contradictions are clear, they succeed to destroy the case of the appellants as presented. They completely knocked the bottom out of the case of the appellants. On the other hand, they succeeded in making and keeping the case of the respondent solid, fortified and monolithic"**

Learned counsel therefore urge us to strike out this Petition for being incompetent and for the failure of the petitioners to prove their case.

The 4th and 5th Respondents vide their counsel K.C. Nwufor, SAN filed their final written address on the 11/8/2023 in which the canvassed as follows:

ISSUE NO. 1:

Whether the Respondent was qualified abinitio to contest the 2023 General Election into the Aba North/South Federal Constituency?

ISSUE NO 2:

Whether where Issue No. 1 is answered in the negative and the 1st Respondent disqualified, the 4thRespondent and not the 1st Petitioner shall be declared winner of the said Election by this Tribunal by virtue of Section 136(2) of the Electoral Act 2022?

ISSUE NO. 3

Whether on the principle Margin of Lead arising out of re-computation of votes excluded as canvassed by Petitioner, any subsequent rerun election in such areas, will not be only between the 1st Respondent (if not disqualified) and the 4th Respondent who scored the next highest number of votes cast to the exclusion of the Petitioners?

PRELIMINARY OBJECTION

Learned counsel submits that the petition is incompetent for non compliance with stipulated provision of the Electoral Act as specified and that such non compliance is fatal to this petition. He referred us to the cases of **UDEAGHA VS OMEGARA (2010) 11 NWLR (PT 1204) 169 AT 199 PARAS E – F** and **UDENE VS UGWU (1997) 3 NWLR (PT 491) 59,** where it was held that where the law prescribes a procedure, method or avenue for doing an act, anything done contrary thereto would be set aside. He also cited the case of **DICKSON VS. BALAT (2004) 1 EPR 240 AT 276, PER SALAMI JCA** (as he then was) held, that the provisions of the paragraphs to the Electoral Act on practice and procedure are mandatory and that such Rules of Court are made to be obeyed and thus failure to so obey (and in that instance, failure to state address for service and occupiers at the feet of the petition) is fatal to the Petitioner.

Learned counsel submits that paragraph 2 of the First Schedule to the Electoral Act, especially sub paragraphs (1) (2) and (4) thereof provide for the Petitioners paying security for cost at the time of presenting the Petition but in the instant case and as pointed out by way of objection during the Hearing and Pre-hearing session, the petitioners herein failed

to comply with this mandatory provision and it is very immaterial that they may have paid the said fee at any other time subsequent to the presentation of the petition as it was rightly held by the Court of Appeal in the case of **KAMBA VS BAWA (2004) LPELR- 7376 (CA)** thus:

"Having failed to pay the requisite security as at when they were supposed to at the presentation of the petition, the payment made later came not to their aid"

Learned counsel submits further on the other leg of our Preliminary Objection that by the failure of the Petitioner to specify the parties interested in the petition in their petition, as provide in paragraph 4(a) of the First Schedule to the Electoral Act, the petitioners rendered their petition liable to be struck out. He cited the case of **UKPONG VS ETUK (2011) LPELR 14270 (CA)** and **OJOVS RASAKI (2009) LPELR – 4704 (CA),** where it was held that the word "**SHALL"** as used in the said paragraph is mandatory and compel compliance, which failure is fatal to the petition. Learned counsel enjoin us to peruse the entire petition and see for ourselves that the parties interested in the petition were not specified.

Learned counsel submits that the third subtraction of their objection is to the non juristic nature of the parties listed as 2nd petitioner and 5th Respondent respectively. It is trite that by virtue of paragraph 15 of Part One of the Third Schedule to the 1999 Constitution (as variously amended), the 3rd Respondent is vested with the powers to among other functions, Register Political Parties in accordance with the Provisions of the Constitution band an Act of the National Assembly and

this provision is further repeated in Section 75 of the Electoral Act 2022 and Section 77 (1) of same Act provide thus:

"**A political Party registered under this Act shall be a body corporate with perpetual succession and a common seal and may sue and be sued in its name"**

The corollary to the above is that a political party derives its juristic personality from its registration and in the name alone in which it is registered and can only either sue or be sued in its registered name and not otherwise. This was give judicial recognition in the cases of **KHALI VS YAR'ADUA (2004) ALL FWLR (PT 225) 111 AT 142** and **DALHATU VS DIKKO (2005) ALL FWLR (PT 242) 498.**

Learned counsel submits that in the instant case, there is no political party known as **"Peoples' Democratic Part"** but **Peoples Democratic Party"** and no Political Party known to INEC as "**All Progressive Grand Alliance"** but "**All Progressives Grand Alliance"** and thus, the two entities as they appear on record are non juristic, especially in the light of failure of the Petitioners to apply to amend or correct these errors even when put on notice as in this case. It therefore cannot be dismissed as mere misnomer in the light of this failure to amend or so apply and we so urge.

Learned counsel therefore urge us to uphold their Preliminary Objection especially as they related to the violations or non compliance with mandatory Provisions of the Electoral Act 2022.

ISSUE NO. 1:

Learned counsel submits that it is their firm position in agreement with Ground 1 of the Petition, that the 1st Respondent, **Emeka Sunny Nnamani** is not constitutional qualified to contest the election into the Aba North/South Federal Constituency into the House of Representative held on the 25th day of February, 2023 and to this extent, they place reliance on the petitioners exhibits in that regard as already highlighted in our introduction and more importantly as they hinted in their introduction, they shall, of course with our permission and indulgence adopt in further argument of this issue, their submissions in the Issue No. 2 at Page 20 Paragraphs 4.11 – 4.34 of their Final Address in the Sister Petition – **EPT/AB/HR/3/2023** between **Hon. Ikwecheghi Alexander Ifeanyi & Anor Vs. Emeka Sunny Nnamani and 2 Ors** presently pending before the tribunal and which Final Address is dated the 8th day of August, 2023 and they adopt same with all authorities therein cited, especially with particular emphasis on the authority of **HON HASSAN ANTHONY SALEH VS CHRISTIAN BADABAH ABAH & 2 ORS (2017) 12 NWLR (PT 1578) 100 AT 107 – 118** especially with highlight on ration 6 where **OGUNBIYI JSC** held thus:

"The finding by the Tribunal on the authenticity of the 1st Respondent's Certificate on 6/9/2011 has put a seal against its use for any other purpose and at anytime till eternity. The same document which was declared forged in 2011 could not have its nature in 2015. The said purported document was never competent for any purpose whatsoever."

Learned counsel submits that in the event that the 1st Respondent argues that he did not submit the same certificate in the 2033 Election,

the holding of the Supreme Court per **OGUNBIYI JSC AT RATIO 2** is very (sic) thus:

> **"The Court below should have looked at the certificate which the 1st Respondent presented to INEC in 2011. The failure by the 1st Respondent to include the National Diploma Certificate in INEC's Form CF 001, 2015 General Election, is not to say the 1st Respondent did not commit forgery. For all intents and purposes therefore, the 1st Respondents has no business to do with Election held in 2015. He was done finished with since 2011".**

He submits that a finding of forgery by either a Tribunal or court dealing with an Election Petition enures in **perpetuity** against any unfortunate perpetrator of such vice and so, the 1st Respondent cannot play smart by jettisoning the said ill-fated certificate and worse still, his response to the question in Form EC 9 as to whether he had at any time submitted forged certificate to INEC constitutes perjury as same was made under Oath.

Learned counsel urge us on issue 1 to hold, that the 1st Respondent was/is in violation of section 66(1) (i) of our extant constitution and accordingly disqualify him.

ISSUE NO. 2

Learned counsel submits that it has to deal with the likely consequence of the resolution of Issue No. 1 above in their favour and coincidentally, also in favour of the petitioners herein and contrary to the position of

the petitioners, the disqualification of the 1st Respondent cannot ensure to their benefit as Section 136 (2) of the Electoral Act 2022 is very clear on what the outcome in such circumstance should be to wit:

"where an Election tribunal or Court nullifies an election on the ground that the person who obtained the highest votes at the election was not qualified to contest the election, the Tribunal or Court shall declare the person with the second highest number of votes in the election and who satisfies the same condition shall be declared the winner". (underlining, ours)

He submits that they intentionally stopped short of the provision thereto as it is inapplicable to the 4th Respondents who came second in the election and is still at press time, a member of the 5th Respondents on whose platform, he contested the election.

He submits therefore that in the likelihood what the 1st Respondent is disqualified, this Tribunal is statutorily empowered to declare the 4th Respondents the winner and certainly not the 1st Petitioner, who came a distant third, unless there is a re-computation of figures that will catapult the Petitioner to the second position but unfortunately for him, apart from the issue of non qualification of the 1st Respondent, the issued of over voting contained in the petition was overtly abandoned in evidence as the witnesses called by the petitioners, especially the agents at the various polling units, only testified that election did not hold in their units and over voting can only take place where there is voting in the first place.

Learned counsel submits that it is not enough for the petitioner to allege that even if the 1st Respondents is disqualified, that the 4th Respondents

ought not to be declared winner because he did not secure the second highest number of votes cast in the election without proving how same is true. In the case of **NADABA VS DABAI (2012) 7 NWLR (PT 1300) 538 at 560 PARAS E – H, OKORO JCA** (as he then was) held thus:

"when the petitioner is alleging that the Respondent was not elected by majority of lawful votes, he ought to plead and prove, the votes cast at the various polling stations, the votes illegally credited to the "winner", the votes which ought to have been deducted from that of the supposed winner in order to see if it will affect the result of the election where this is not done, it will be difficult for the court to effectively address the Issue".

Learned counsel submits that from the foregoing, it is clear that the petitioner failed woefully to establish how, in the event of the disqualification of the 1st Respondents, the 4th Respondents did not score majority of the lawful votes cast especially in the light of the presumption of the validity of the results declared by the 3rd Respondents.

He urge the Tribunal to discountenance the petitioners allegation on the regard as same is yet to be established in evidence.

ISSUE No. 3: MARGIN OF LEAD

Learned counsel submits that it is trite by the manual and regulation published by INEC, that the principle of Margin of Lead as a ground for rerun election arises only when the difference between the total number

of votes scored by the presumed "winner" and the candidate following him is less than the number of total votes in areas where either election did not take place or where cancelled for whatever reason.

He submits in the instant case, the petitioner alleges that elections did not take place in certain polling units within the Aba North/South Federal constituency and even tendered the voter register and copies of BVAS entries in respect thereof and perhaps to the extent to which he may have proved the need for the application of the Margin of Lead, such proof will not ensure to his benefit as such re-run can only be between the declared winner and the 1st runner up and in this case between the 1st Respondents and the 4th Respondents except the number of lawful votes gotten by candidates are re-computed to make the 1st petitioner the 1st runner-up in the election but unfortunately, there is no evidence to support this.

He also submits that the petitioners' allegations which bother on disenfranchisement must be proved by not only tendering the Voters Register by subpoenaing relevant INEC officers but more importantly, by producing these disenfranchised to give evidence of the facts. That not only were they registered in the affected polling units but also presented themselves for voting on election day but were disenfranchised and one doubts whether the petitioner herein attained this standard of proof. See the case of: **NNAJI VS. AGBO (2006) 2 EPR 867 AT 890 -891** and **ADEWALE VS OLAIFA (2012) 17 NWLR (PT 1330) 478.**

Learned counsel submits without prejudice to the proof or non-proof of the exclusions, our position succinctly put is that the Margin of Lead when and where applied cannot help the petitioner given his distant

position in votes scored and any re-run can only be between the 1st Respondents and 4 Respondents in order of performance at the polls as declared by INEC and we so submit.

In all, learned counsel for the 4th and 5th Respondents urge us to dismiss this petition for being incompetent and failure of the petitioners to show that even in the event of proving the major grounds of their petition, to wit, non qualification of 1st Respondents or Margin of Lead arising from exclusion of votes that he is entitled to his reliefs either in the main or in the alternative.

We have painstakingly read through this petition filed by the petitioners in this petition. We have also read extensively the replies filed by the 5 Respondents, and equally read the evidence, both oral and documentary that were adduced before us in the course of the trial, the final written addresses of all parties as well as the replies on points of law.

We are of the view that the issues that should be resolved by this Tribunal are as follows.

1. Whether the petition as presented before us is competent bearing in mind that it was dated before the election (as formulated by the 3rd respondent)

2. Whether from the totality of the facts on record, the petitioners have proved their case and are entitled to the reliefs sought before the Tribunal.

3. Whether the petitioners have presented sufficient facts on record to warrant the invocation of the principles of margin of lead in their favor.

We shall begin with the Interlocutory Applications filed in this petition.

INTERLOCUTORY APPLICATIONS

At the pre- hearing sessions counsel moved all the applications they filed in this petition and ruling were reserved till judgment. We shall begin with the interlocutory application.

The 1st Respondents filed 2 applications.

The first application was filed on the 13th June 2023. andbrought pursuant to paragraphs 12 (5) 47 (1), (2) and (3) and 49 of the 1stSchedule to the Electoral Act 2022 and Section 6 (6) (b) of the 1999 constitution (as amended) praying for the following reliefs:

1. **An order striking out the petition for failure to comply with a condition precedent for valid and competent institution of the petition**.

The motion is predicated on 3 grounds which are:

1- Ex facie the originating petition, the petitioners sued and made two(2) candidates and their political parties, parties to the petition.

2- Contrary to the mandatory requirement of the law, the Petitioners/ Respondents did not pay the fees and taking of security in respect of the two candidates and their political parties.

3- Failure to pay the requisite and mandated fees (including security deposit) render the petition incompetent and concomitantly deprived the Hon. Tribunal of the vires to entertain the petition.

The application is supported by a 5 paragraphs affidavit deposed to by the 1st respondent and also in support is a written address on behalf of the 1st respondent. In the address the following issue was raised as arising for determination.

WHETHER THE PETITIONER/ RESPONDENT PAID THE REQUISTE MANDATORY FILLING FEE AND SECURITY.

It is the submission of the learned counsel for the 1st respondent that for a Court or Tribunal to assume proper jurisdiction over a matter, such a matter must be duly initiated by the requisite mandatory condition precedent otherwise the court or Tribunal would be divested of the jurisdiction to enquire into the matter. He refers us to the case of **MADUKOLU V NKEMDILIM (1962) 2 SCNLR pg 341 (1962) 1ANLR pg. 587.**

Learned counsel submits that paragraph **49 of the 1stSchedule to the Electoral Act** is to the effect that where the petitioner sues two or more candidates as parties in an election petition, the petitioners are under obligation to pay for two separate petitions including deposit for security.

Learned counsel submits that the election petition is**sui-generis** and failure to pay the necessary and mandatory fees renders the petition incurably defective. He cited the case of **OBIEKWE V OBI (2005) 10 NWLR (PT 932) pg 60 at 76** paras A-B. Per Galadima JCA (as he then was).

Learned counsel urged us to grant this application as prayed.

In response to this application, the petitioners filed a counter affidavit of 9 paragraphs deposed to by one Ogwo Comfort on the 17/6/2023. In

support of the affidavit are 3 annexures namely exhibit. EBS1, exhibit. EBS 2, exhibit. EBS 3 as well as written address.

The sole issue for determination formulated by the petitioners is:

Whether in the circumstance of this case, the Applicants Application is meritorious.

Learned counsel for the petitioners submits that, it is trite law that when an application, claim or relief is found lacking in merit, the proper order of the Court is for such application to be dismissed. He referred us to the case of **OMOMEJI & ORS V KOLAWOLE & ORS (2008) LPELR 2650 (SC)**

Learned counsel relying also on the case of **MADUKOLU V NKEMDILIM**

(1962) 2 SCNLR pg 341 (1962) 1 ANLR pg 587, submits, that failure to pay two million naira as security deposit robs the Court of jurisdiction. Learned counsel submits also that the petitioners complied with paragraph 3 of the 1stSchedule to the Electoral Act 2022 with respect of payment of filling fees.

Learned counsel submits among others and most importantly too, thatthe petitioners deposited the total sum of 2,000,000=00 as shown inExhibit EBS 2 &Exhibit EBS3.

Finally learned counsel submits that the application of the 1st respondent is lacking in merit and vexatious and should be dismissed.

Having gone through the application of the 1st respondent, the accompanying affidavit and written address as well as the counter-affidavit of the petitioner and its accompanying annexures and written address, we wholly adopt the issue for determination as formulated by the petitioners with no modification that is:

Whether in the circumstance of this case the Applicant's application is meritorious.

Filing of court process, assessment and payment of all necessary and mandatory fees are solely and exclusive the duty of the Court or Tribunals registry or secretariat as clearly provided for under paragraph 3 of the 1st schedule to the Electoral Act 2022. We shall make reference to the records of the secretariat in order to resolve the payment or non-payment of requisite and mandatory fees including security deposit by the petitioners as required by paragraph 2 and 3 of the 1stSchedule to the Electoral Act 2022.

First of all, on the face of the petition filed by the petitioners dated 19/3/2023, it has the cashier stamp and the stamp of the registry of the Election Petition Tribunal Abia State. A total sum of 62,000.00 was paid by the petitioners with receipt number RRR:1008-0727-5594 also written clearly on the face of it.

From the record of the registry of this Tribunal also, and from the master list of deposit into the Election Petition Tribunal Abia Zenith bank account; two separate payments in respect of petition filed by the petitioners are extracted below as follows:

1- 1st payment was made on 9/3/2023 and record entered as NIP/GTB/IHEDIWA UCHENNA CHINEYE GT-WORLD= AMOUNT-1,000,000-O.

2- 2ND payment made on 16/3/2023 and record entered as NIP/GTB/IHEDIWA/UCHENNA CHINEYE GT- WORLD=AMOUNT-1,000,000-00.

These payments were made before 19/3/2023 when the petition was filed before this Tribunal.

The above record from the registry of the Tribunal corroborates exhibit. EBS 2 and Exhibit EBS 3 annexed to the counter affidavit of the petitioners. This goes to prove that the petitioners are not in contravention of any of the provisions as to cost, fees or security deposit as alleged by the 1st respondent.

In the circumstance, we therefore hold that this application of the 1st respondent lacks merit.The application fails and it is accordingly dismissed.

The 2nd application is also dated the 16th/May/2023 and filed on the 18th may 2023 praying for the following reliefs.

1- An order striking out the petition for failure to specify those interested in the petition contrary to the mandatory provision of paragraph 4 (1) (a) of the 1st schedule to the Electoral Act 2022.

2- An order striking out the 2nd ground upon which the petition is brought in that it was improper an incompetently formulated.

3- An order striking out the facts in support of the 1st ground of the petition for not being cognizable in election petition.

4- **An order striking out paragraphs 1,2,3,4,5,6,7,8,10,11,12, and 13 of the petitioners reply to the 1st respondent reply for being repetitive of the petition and also seeking to bring in new facts tending to add to the content of the petition contrary to paragraph 16 (1) (a) of the 1st schedule to the Electoral Act 2022.**

The grounds upon which the application is predicated are as follows:

1- The petition did not specify the parties interested in the election petition as strictly mandated by paragraph 4 (1) of the 1st Schedule to the Electoral Act 2022.

2- The 2nd ground upon which the petition is predicated is incompetently formulated.

3- The facts in support of ground 1 of the petition are essentially pre-election matters not cognizable in election petition.

4- Paragraphs 21,25, 38 and 49 of the petition are vague and imprecise contrary to paragraph 4 (1) (d) of the 1st Schedule to the Electoral Act 2022.

5- The enumerated paragraphs of the petitioners' reply to the 1st respondent reply contextually repeated the contents of the petition and also brought in new facts tending to add to this contents of this petition.

In support of the motion is a 3 paragraphs affidavit deposed to by the 1st respondent Emeka Sunday Nnamani, also filed along with the affidavit is written address in support of the motion on notice upon which the 1st respondent seeks to rely.

The sole issue for determination by the 1st respondent in his written address vide his learned counsel is to wit:

Whether the 1st Respondent/Applicant placed sufficient materials before the Hon Tribunal to justify the granting of the motion on notice.

It is the submission of the 1st respondent vide his learned counsel that the petitioners' petition has fallen foul of the fundamental requirement to specify the parties interested in the petition thereby divesting this Tribunal of the jurisdiction to entertain this petition.

Learned counsel further submits that ground 2 of the petition as formulated are presented by the petitioners is incompetent, in that, it infringed on the provisions of section 134 of the Electoral Act 2022. He referred us to the case of **GOYOL V INEC (2012)11 NWLR (PT. 1311) PG 207** where it was held that a petitioner is not entitled to simultaneously allege corrupt practices and non- compliance with the Electoral Act in the ground of the petition. Where this is done as in the instant case, the petition becomes incurably incompetent.

Learned counsel submits that the facts in support of the 1st ground of the petition deal entirely on pre- election matters and are therefore not cognizable in election petition. he referred us to the case of **ATIKU ABUBAKAR V BUHARI (2020) 12 NWLR (PT. 1737) PG 37 AT 162-163 PARA B -D PER EJEMBI EKO.**

Learned counsel further submits that paras 21, 25, 38,39 & 48 of the petition are vague, imprecise and inoperative contrary to paragraph 4(1) (d) of the 1stSchedule to the Electoral Act 2022 and therefore liable to be struck out.

He referred us to the Supreme Court case of **IKPEAZU V OTTI (2016) 65 NSCQR VOL3 PG. 1565 AT 1637** where it was held that:

> **"…. in the case at hand, I am of the firm view that the trial Tribunal was right to have struck out those paragraphs for not complying with paragraphs 4(1) (d) and 2 of the 1stSchedule to the Electoral Act.**
>
> **The petitioner is required as a matter of necessity to state in clear terms the facts giving rise to**

ground/grounds upon which he based his petition. Anything short of that renders the grounds ambiguous, vague and incomprehensive, capable of beclouding the mind of the respondent, making him unable to understand what is required to respond to. Where such a situation presents itself the trial Tribunal has no alternative but to strike out such grounds of petition"

Learned counsel also submits that paragraph 1-8 and 10-13 of the petitioners' reply to the 1st respondent reply to the petition is essentially repetitive of the petition and the averments therein, that was why the petitioners employed the terms **maintain, further-aver,etcetera**, in paras 1-8 and 10 -11 of the said petitioners reply, which is not permissible.

Learned counsel submits that paragraphs 4,5,7,8, and 9 of the said petitioners reply employed the use of words such as **"convicted, conviction for forgery, NYSC certificate, perjury by lying, pardon, disclosing the existence of a conviction, expert opinion. Etc** which tends to introduce new facts to the petition contrary to Paras 16(1) (a) of the 1stSchedule to the Electoral Act 2022 and so should be struck out.

Finally learned counsel for the respondents urged us to grant this application as prayed.

In response to this application the petitioners vide there learned counsel filed a counter affidavit of 7 paragraphs deposed by one Mr. Alexander

Kubanie Onwulata dated 29/5/2023, accompanied with a written address in support of the counter- affidavit.

The issue for determination as captured by the petitioners in their reply is thus:

Whether this Hon Tribunal can grant the Applicant's Application.

On ground one of the 1st respondent application, learned counsel for the petitioners submits that the 1st respondent relied on the case of **GOYOL V INEC (SUPRA)** and contends that the petition cannot be questioned on the grounds that **"it was marred by corrupt practices or non-compliance with Electoral Act",** that a ground should be based on corrupt practices simpliciter or non-compliance with the Electoral Act. Both cannot go together. Learned counsel submits that the question the Applicant should answer is, in which sub section of section 134 of the Electoral Act 2022 can both facts emanating from a polling unit be pigeoned-holed when questioning an election? Learned counsel for the petitioners referred us to the case of **OJUKWU V YAR ADUA (2009) 12 NWLR PT (1154) 50 and S.D.P V INEC (2009) 3 SCNJ 45** where the Supreme Court had warned lawyers to stick to the wordings of the grounds in Sec 134 of the Electoral Act or risk their petition being struck out. Learned counsel referred to the holdings of the Supreme Court in **OJUKWU V YAR ADUA (SUPRA)** in his written address in support of the counter affidavit. He also cited the case of **BARR. BASHIR MOHAMMED & ANOR V HON RASIDA ABDULLAHI (2015). LEPLR 4632 CA. also ALAMU & ANOR V RUUA & OR (2021 LPELR-55639 (CA) where the Court held that.**

"section 138 (1) of the Electoral Act 2010 (as amended) provides

1- An election maybe questioned on any of the following grounds,

(a) That a person whose election is questioned was at the time of the election not qualified to contest the election;

(b) That the election was invalid by reason of corrupt practices on non-compliance with the provision of this Act;

(c) That the respondent was not duly elected by majority of lawful votes cast at the election or;

(d) That the petitioner or its candidate was validly nominated but was unlawfully excluded from election.

Learned counsel submits that the 1st Respondent/Applicants submissions on ground one of his application is misconceived and should be struck out.

Learned counsel submits that that if the documents submitted to the INEC contains perjury, it is a pre -election matter. After election, qualification takes a critical direction. He submits that any person or political party that took part in the election can question the qualification of the winner. He cited **Sec 134 (1) (a) Electoral Act 2022.** He submits that **Sec 29 (5) of the Electoral Act 2022** is radically different from the old **Sec 31 (5) of the Electoral Act 2010. That Sec 29 (5) Electoral Act 2022** limits those that can challenge a declaration in form EC9 (old TFOO1) to only those in the same party that contested the primary election unlike that obtainable under **Sec 31(5) Electoral Act 2010** where any member of the public can

question inclusion of a false information in form TF007. That right was taken away by section 29 (5) Electoral Act 2022.

Learned counsel submits that qualification and disqualification for an Election for the seat of House of Representative is contained in **Sec 65 and Sec 66 of the 1999 constitution (as amended).** He also referred us to the cases of:

1- ALHASSAN & ANOR V ISHAKU & ORS (2016) LEPLR 40083 SC

2- PDP V INEC (2014) 17 NWLR (PT. 1437) PG 525 AT 559-560

3- KACHI V PDP (2014) NWLR (PT. 1430 P 424 -425) PARAS C-E.

Learned counsel further submits that if it is established that the 1st respondent had presented a forged certificate to INEC then he stands disqualified to contest the election. This situation activates **Sec 34 (1) (a) of the Electoral Act 2022**. He referred us to the cases of**ANACHE & ANOR V BAKO & ORS (2019) LPELR-55316 (CA); MAIHAJA V GAIDAM (2017) LPELR 42474 (SC); SALEH V ABAH &ORS (2017) LPELR 41914 OR (2017) 12 NWLR (PT 1578) PG 100; DIDE & ANOR V SELEKETIMBI & ORS (2009) LPELR-4038 (CA).**

Learned counsel urged us to discountenance with 1st respondents ground 2.

On ground 3 of the application, learned counsel submits that the requirement in Paragraph **4 (1) (a) of the 1stSchedule to the Electoral Act 2022** did not say that in a petition, a petitioner must

specifically assert or put as a sub -head " parties interested in the petition". what is required in the Paragraph is that an in an election petition, all those that are necessary parties must be joined. Learned counsel cited the Provisions of **Sec 133 of the Electoral Act 2022,** which outlines parties to Election Petition.

Learned counsel went on and submitted that, on the face of the petition, the Petitioners and the Respondent are clearly stated. Paragraphs explaining who they are, also incorporated. The Applicant has not told the Tribunal that there is a necessary party that is not before it. He submits that the 1st respondent objection is clearly hinged on technicality and the law has moved away from technicality in favor of substantial justice. He referred us to the cases of **OKONJO V ODJE (1985) NWLR 10 SC 267 OSITA NWOSU V IMO STATE ENVIRONMENTAL SANITATION AUTHORITY & ORS (1990) 2 NWLR (PT 135) 717 PARAS F – H; BRITISH-AMERICA INSURANCE CO LTD V EDEMA SILLO (1993) 2 NWLR (PT 227) 570 - 639 RATIO 4.**

On ground 4 of the 1st respondents application that is, that Paragraphs 21,25,38,39, and 49 of the petition are vague, imprecise and contrary to paragraph 4 (1) (d) of the 1stSchedule to the Electoral Act 2022,learned counsel for the petitioners contends that the above paragraphs above are not vague, neither are they imprecise nor imperative. He cited the case of **RUBICON PROPERTIES AND DEVELOPERS LTD & ANOR V NACRDB LTD (2021) LPELR (PT 27-28 PARAS F)** on the definition of vague.

Learned counsel submits that a careful reading of paragraphs 21 and 25 for example, shows that the petitioners were contesting the facts that elections did not hold in some parts of the constituency.He placed reliance on the letter of protest written to the 3rd respondent and also relied on the 3rd respondents original result sheet to support their averments.

Learned counsel submitted that paragraphs 38 and 39 contested the margins of lead while paragraphs 48 refers to other areas where the petitioners are contesting the irregularities evident in the election process where the BVAS was not operational.

Learned counsel also submits that if the respondents have read all these paragraphs with their preceding paragraphs, they would have not claimed that the paragraphs of the petition were vague. On the reading of the pleadings as a whole and not in isolation, learned counsel refers us to the case of **MAMAH & ANOR V AGBO & ORS (2015) LPELR 40671 (CA) PP 31- 32 PARAS F and AGI V PDP & ORS (2016) LPELR- 42578 (SC).**

On ground 5 of the 1st respondent motion on notice, learned counsel submits that petitioners' reply was not a repetition of the petition neither did he introduce new facts. Learned counsel submits that the 1st Respondent/Applicant did not point out the repeated paragraphs and the Tribunal/Court cannot delve into that, as doing so will amount to the Tribunal doing cloistered justice. He referred us to the case of**DURUMINIYA V C.O.P (1961) ALL NLR 70; WEST AFRICAN BREWERIES LTD V SAVANA VENTURES LTD & ORS 10 NSCLR**

(PT 2) 875C-; CHIME V OKEY EZEA & ORS (2009) 2 NWLR PT 1125 PG 263 at 380 -3

81.

Learned counsel submits that the 1st respondent in his paragraph 13.2-13.5 introduced the issues of form submitted to the INEC office in 2023 election and alleged acquittal by Abia State High Court for his conviction and in paragraph 13.6 he contended that possessing of a University Certificate was a mere surplusage to possessing School Certificate. Learned counsel for the petitioners submits that paragraph 4,5,6,7,8, and 9 of their reply deals with the facts introduced by the 1st respondent in his reply to the petition. That the petitioners paragraphs11,12 and 13, are a reaction to the 1st respondent's paragraphs 18.7 which denied that certain irregularities did not take place and petitioners paragraphs 13 only pleads reliance on documents that are connected to the reply. Learned counsel finally urged us to dismiss the 1st respondent's application with cost.

We have meticulously gone through the application of the 1st respondent and the reply of the petitioners. We have resolved to adopt the sole issue for determination as formulated by both parties to this application which is:

Whether or not the 1st Respondent/Applicant has placed materials sufficient enough before this Tribunal to justify the granting of this application.

On relief 1 of the motion on notice of the 1st Respondent which is:

"An order striking out the petition for failure to specify those interested in the petition contrary to the mandatory provision of paragraph 4 (1) (a) of the 1st Schedule to the Electoral Act 2022"

Without much ado, the said Paragraph 4 (1) (a) of the 1st Schedule to the Electoral Act 2022 provides that:

4 (1) (a)

"An election petition under this Act shall;

(a) specify the parties interested in the election petition"

Taking a look at the petition filed on the 19/3/2023 and from the face of petition vol 1, the petition clearly indicated who the petitioners are and the respondents as follows:

-PETITIONERS BEING

1- CHIMAOBI EBISIKE IHEANYICHUKWU

2-PEOPLES DEMOCRATIC PARTY

AND

-RESPONDENT BEING

1- EMEKA SUNDAY NNAMANI
2- LABOUR PARTY
3- INDEPENDENT NATIONAL ELECTORAL COMMISSION
4- ALEX IFEANYI IKWECHEGHI
5- ALL PROGRESSIVES GRAND ALLIANCE

Paragraphs 1- 13 at pages 1-3 of the petition clearly states who the petitioners are and their rights of standing before the Tribunal as well as that of the 1st- 5th respondents. There is no ambiguity nor confusion in the said paragraphs as to who the parties to this petition are. We see no where and how the petitioners have contravened the said paragraphs of the Electoral Act 2022. The 1st respondent in his submission has not shown us the alleged contravention of the said paragraphs in his brief in support of the application either.

The relief1 of this application is therefore refused as the 1st respondent has not proved same and consequently fails.

ON RELIEF 2-

"An order striking out the 2nd ground upon which the petition is brought in that it was improperly and incompetently formulated"

The provisions of Section 134 (1) (b) of the Electoral Act 2022 provides as follows:

(1)-An election may be questioned on any of the following grounds that is to say that;

(b) the election was invalid by reason of corrupt practices or non-compliance with the provision of this Act.

The above extraction is the 2nd ground upon which an election may be questioned as provided for under the Electoral Act 2022.

The 2nd ground upon which the 1st respondent election is being questioned by the petitioners in their petition is reproduced below

GROUND UPON WHICH THE PETITION BROUGHT-

2- The election was invalid by reason of corrupt practices or non-compliance with the provision of the Electoral Act.

By the authority of **OYEGUN V IGBINEDION & ORS (1992) 2 NWLR PT 226 AT 947,** Before a petitioner can question the election of a respondent, his petition must fall within the grounds specified by the Act.

The grounds for questioning an election provided in the Electoral Act are sacrosanct and admits no addition.

From the letters of the 2nd ground of the petitioners petition, we see no infraction nor addition to the wordings of the 2nd petitioners 2nd grounds for questioning an election provided for under sub- paragraph (1) (b) to Section 134 of the Electoral Act 2022 which has substantially or minimally affected its purport or meaning and which has made the petitioners 2nd ground to be improperly and incompetently formulated as submitted by the 1st respondent.

The impropriety and incompetent formulation of the petitioner's 2nd ground of the petition has not been established by the 1st respondent in his submission.

The relief 2 of the application of the 1st respondent therefore, also fails and accordingly refused.

ON RELIEF 3

"An order striking out the facts in support of the 1st ground of the petition for not being cognizable in election petition.

Ground 3 of the application touches on the facts upon which ground 1 of the petition is alleged and this goes into the substance of the petition on ground 1.

Looking at ground 1 of Section 134 (1), one may easily conclude that it clearly deals with pre-election matters. With respect to disqualification or non-disqualification for election to the Senate or the House of Representatives, the disabilities are clearly spelt out in sec 66 (1) (i), which, clearly deals with a candidate presenting forged certificate toINEC.It provides that

Sec 66 (1)- no person shall be qualified for election to the Senate or House of Representatives if

(i)- He has presented a forged certificate to the Independent National Election Commission

The above section of the constitution is clearly a Constitutional disqualification which was alleged by the petitioner against the 1st respondent and which by the authority of **ATIKIU ABUBAKAR V & ANOR V INEC & ORS LER (2019) CA/PEPC/O02/2019**samecan properly constitute a ground upon which a person's election can be questioned in an election petition. A person's disqualification based on or arising from the domestic nomination exercise of his political party is clearly a pre-election matter over which the Election Tribunal has no jurisdiction.

The facts put forward by the petitioners supports the allegation of forged certificate which can be determined by this Tribunal and striking out same will occasion injustice as it will leave the petitioner with no

facts to prove the allegation put forward. The relief No 3 of the 1st respondent is therefore accordingly refused.

On relief 4 and 5 which prays for the following reliefs

4- An order striking out paragraphs 21,25,38,39 and 48 for being vague, imprecise and ambiguous.

5-An order striking out paragraphs 1,2,3,4,5.6,7,8,10,11,12, and 13 of the petitioners reply to the 1st respondents reply for being repetitive of the petition and also seeking to bring in new facts tending to add to the content of the petition contrary to Paragraphs 16(1) (a) of the 1stSchedule to the Electoral Act 2022.

In the case of **ATIKU ABUBAKAR V INEC (SUPRA) it was held as follows:**

"A party making an allegation must profer credible evidence in order to sustain the allegation as a prelude to grant of the relief sought thereupon"

See also BELLO V EMEKA (1981) 1 SC 101

Reliefs 4 and 5 are different reliefs sought by the 1st respondent in respect of the aforementioned paragraphs but we shall trash them together.

There are no facts before us as to how the paragraphs mentioned in reliefs 4 and 5 of the 1st respondent's motion either, contravenes the said paragraphs 16(1) (a) of the 1stSchedule to the Electoral Act 2022 or are vague, imprecise, or ambiguous. It is the duty of the 1st respondent

to place before the Tribunal all the materials he is relying upon in order to obtain the reliefs sought and failure to do so means his application must fail. **BELLO V EMEKA (SUPRA).** Having placed nothing before us in order substantiate his claims, reliefs 4 and 5 sought by the 1st respondent also accordingly fails.

With all the reliefs sought by the 1st respondent having failed before us the motion on notice filed on the 18/05/2023 by the 1st respondent is accordingly dismissed for lacking merit.

We now address the preliminary objections

PRELIMINARY 0BJECTION

The 1st respondent preliminary objection to the petition was filed on the 18/4/2023.

The preliminary objection of the 1st respondent was not argued before us in the course of the trial nor raised in the 1st respondent final written address.

It is important to remind ourselves that a party who files a preliminary objection and fails to move it, is deemed to have abandoned it and same would be struck out. The preliminary objection filed by the 1st respondent dated 18th/4/2023 is hereby struck out for being abandoned, we refer to the case of **NBN LIMITED V TASA LTD (1996) 8 NWLR (PT468) 511.**

The 4th and 5th Respondents preliminary objection challenging the competence of this petition was filed on the 27th/4/2023 and is titled **"Notice of preliminary objection brought pursuant to Paragraph 12 of the 1stSchedule to the Electoral Act 2022."**

Their arguments on the said preliminary objection is contained in their final written address which was filed on the 11/8/2023.

The preliminary objection is premised on the following grounds:

(a)- That the petition did not comply with the mandatory provisions of the Electoral Act 2020 and the rules made pursuant thereto in the presentation of the petition in that:

(i) there was failure by the petitioners to specify the parties interested in the petition pursuant to Paragraph 4 (1) (a) of the 1st Schedule to the Electoral Act, 2020.

(ii) failure to pay requisite security fee as at the time of presentation of the petition.

(iii) And it is our further contention by way of objection that the 2nd petitioner and the 5th Respondent are not recognizable as political parties in Nigeria and thus, are not juristic entities capable of suing and being sued as the 3rd Respondent did not register any parties described in the petition.

Learned counsel submits that the petition as filed before this Tribunal is incompetent for non- compliance with stipulated provision of the Electoral Act as specified and thus fatal. He cited in support of his assertion the case of **UDEAGHA V OMEGARA (2010) 11 NWLR PT 1204 AT 169 AT 199 PARAS E-F AND UDENE VS UGWU (1997) 3 NWLR PT 491 AT 59** where it was held that

"**Where the law prescribes a procedure, method or avenue for doing an act, anything done contrary thereto would be set aside"**

He also cited the case **of DICKSON V BALAT (2004) EPR 240 AT 276 PER SALAMI JSC** (as he then was)

"**The provisions of the paragraphs to the Electoral Act and practice and procedure are mandatory and that such rules of court are made to be obeyed and thus failure to so obey (and in the instance case failure to state address for service and occupiers at the feet of the petition) is fatal to the petition"**

Learned counsel submits that Paragraph 2 of the 1st Schedule to the Electoral Act especially sub paragraph (1) (2) and (4) provides for the petitioners paying security for cost and that the petitioners have failed to comply with the mandatory provision and it is very immaterial that they may have paid the said fee at any other time subsequent to the presentation of the petition as it was rightly held by the Court of Appeal in the case of **KAMBA VS BAWA (2004) LPELR-7376 CA that**

"Having failed to pay the requisite security as at when they were supposed to at the presentation of the petition, the payment made later came not to their aide"

Learned counsel submits that on the other leg of their preliminary objection- that failure of the petitioners to specify the parties interested in the petition as provided in Paragraph 4(a) of the 1st Schedule to the Electoral Act, rendered the petition liable to be struck out, and he cited the case of **UKPONG V ETUK (2011) LPELR 14270 (CA) and OJO V RASAKI (2009)LPELR 4704 (CA)** where it was held that:

"The word "shall" as used in the said paragraph is mandatory and compel compliance which failure is fatal to the petition"

He enjoined us to peruse the entire petition and see for ourselves that the parties interested in the petition were not specified. He further submits that the 3rd aspect of their objection is the **juristic nature of the 2nd and 5th Respondent as listed on the petition.** Learned counsel submits that it is trite that by virtue of paragraph 15 of part one of the 3rdSchedule to the 1999 Constitution (as amended), the 3rd Respondent is vested with the powers to among other functions register political parties in accordance with the provisions of the Constitution and an Act of the National Assembly and this provision is further repeated in Section 75 of the Electoral Act 2022 and Section 77 (1) of same Act provide thus:

"**A political party registered under this Act shall be a body corporate with perpetual succession and have a common seal and may sue and be sued in its name"**

Furthermore, he submits that, a political party derives it juristic personality from its registration and in its name alone can only be sued or sue. He cited the case of **KHALI V YAR ADUA (2004) ALLFWLR (PT 225) 11 AT 142 and the case of DALHATU V DIKKO (2005) ALLFWLR (PT242) 498.** He also submits that in the instant case, there is no party known as " **Peoples' Democratic Party"**but **" PEOPLES DEMOCRATIC PARTY"** and no political party known to INEC as **" All Progressive Grand Alliance",** but**"ALL PROGRESSIVES GRAND ALLIANCE"**,thus, the 2 parties as they appear on the record are non- juristic as the petitioner's failed to apply to correct this errors even when put on notice. He submits that it is not a mere misnomer in the light of failure to amend.

Learned counsel for the 4th and 5th Respondents urged us to uphold the preliminary objection.

In the absence of any response from the petitioners, we shall proceed to resolve the issues raised by the preliminary objections.

On ground one of the preliminary objections, which is:

1.**There was failure by the petitioner to specify the parties interested in the petition pursuant to Paragraph 4(1) (a) of the 1stSchedule to the Electoral Act, 2022**.

The provisions of Paragraph 4 (1) (a) of the 1stSchedule to the Electoral Act, 2022. Provides that:

4 (1)

An election petition under this Act shall.

(a)- **specify the parties interested in the election petition**

From the face of the petition vol 1 filed by the petitioners on the 19/3/2023, the parties to this petition are clearly specified in accordance with the section cited above by the petitioners as follows:

PETITIONERS BEING

1- CHIMAOBI EBISIKE IHEANYICHUKWU

2- PEOPLES DEMOCRATIC PARTY

AND

RESPONDENT BEING

1- EMEKA SUNDAY NNAMANI

2- LABOUR PARTY

3- INDEPENDENT NATIONAL ELECTORAL COMMISSION

4- ALEX IFEANYI IKWECHEGHI

5- ALL PROGRESSIVES GRAND ALLIANCE

Paragraph 1-13 at pages 1-3 of the petition clearly describes who the petitioners are and their rights of standing before this Tribunal as well as that of the 1st-5th Respondent.There is no ambiguity and no confusion in the said paragraphs as to who any of the parties to this petition are.

We see no where and how the petitioners have contravened the said Paragraph 4 (1) (a) of the 1stSchedule to the Electoral Act 2022. The petitioners to our minds have not fallen foul of the said paragraph and we so hold. The 1st ground of the preliminary objection of the 4th and 5th Respondents therefore fails and it is accordingly refused.

On the 2nd ground of the preliminary objection which is:

"failure to pay requisite security fee as at the time of the presentation of the petition"

By the provision **of paragraph 2 & 3 of the 1stSchedule to the Electoral Act 2022**, all presentations of petition, replies, all payment of security for cost and other fees in respect of processes in any petition are done at the secretariat of the Tribunal with a secretary manning the said secretariat or registry as the case maybe.On the face of the petition filed by petitioners dated 19/3/2023, it has the stamp of the cashier and that of the registry of the Election Petition Tribunal Abia state, and a total sum of sixty two thousand (62,000) naira was paid by the petitioners with the receipt number RRR 1008-0727-5594 is also written clearly on the face of it.

From the records of the registry of this Tribunal, and from the master list of deposit into the Election Petition Tribunal, Abia zenith Bank account two separate payments in respect of the petition are extracted below as follows.

1- 1st payment was made on 9/3/2023 and the record entered as NIP/GTB IHEDIWA UCHENNA, CHINENYE GT-WORLD=AMOUNT 1,000,000.00.

2- 2ND Payment was made on 16/3/2023 and record entered as NIP/GTB/ IHEDIWA CHINYENYE GT WORLD= Amount 1000,000.00

These payments were made before 19/3/2023 when the petition was filed before this Tribunal.

The above records of payments from the registry of the Tribunal goes to prove that the petitioners are not in contravention of the provisions that govern security for cost, fees, or any form of cost relating to the presentation or filing of a petition under the Electoral Act 2022

The 2nd ground of the 4th and 5th preliminary objection also fails and it is accordingly refused.

On the 3rd ground of the objection which is:

That the 1stpetitioner and the 5TH Respondent are not recognizable as political Parties in Nigeria and thus are not juristic entities capable of suing and being sued as the 3rd Respondent did not register any parties described in the petition.

These grounds 3 of the 4th and 5th Respondents preliminary objection are clearly among the kinds of grounds of preliminary objection frowned at by the Supreme Court in especially Election Petition cases which are grounds of objection based squarely on technicalities". We refer to the

Supreme Court case of **AKEREDOLU V ABRAHAM & ORS (2018) LPELR 44067(SC)-** where the supreme court in the case clearly enunciated thus **"technicality in the administration of Justice shuts out Justice. A man denied Justice on any ground, grudges the administration of Justice, it is better to have a case heard and determine on merit than to leave the Court with a shield of victory" obtain on mere technicality.**

We also refer to the holding of Niki Tobi JSC in the case **YUSUF V ADEGOKE & ANOR (2007) LPELR-3534 (SC)** where he strongly urgedCourts to give blind eyes to "**NAUGHT TECHNICALITIES**" in favor of substantial Justice.

In the light of the above cited Supreme Court decisions, we therefore in the circumstance hold that the ground 3 of the 4th and 5th Respondent preliminary objection also fails for lack of substance and being purely a technical ground**.**

The three 3 grounds of the 4th and 5th preliminary objection having failed, we accordingly dismiss same.

We shall now proceed with the substantive petition and resolve the issues we formulated therein.

JUDGMENT ON THE PETITION

On issue 1- that is:

"whether the petition as presented before us is competent bearing in mind that it was dated before the Election (as formulated by the 3rd Respondent)."

Competency of any suit civil or criminal touches on the jurisdiction of the Court/Tribunal to entertain the suit from inception. In order not to embark on "**energy wasted and no work done** journey," we shall

first of all resolve this first issue as raised by the 3rd Respondent on the competency of the petition.

The case of **GABRIEL MADUKOLU V JOHNSON NKEMDILIM (1962) NGSC 59** readily comes to mind on the issue of competence of Court to entertain a suit, where the Supreme Court held as follows:

"Before discussing those portions of the record, I shall make some observations on jurisdiction and the competence of a Court. Put briefly, a Court is competent whenthe case comes before the Court initiated by the process of law and upon fulfillment of any condition precedent to the exercise of Jurisdiction.

And defect in competence is fatal, for the proceedings are a nullity however well conducted and decided: the defect is extrinsic to the Jurisdiction.

The 3rd Respondent to this petition advanced his argument on issue one on pages 3-4 of the final written address of 3rd Respondent filed on the 10th -Aug/2023 wherein he submitted that this petition is incompetent having being dated on the 18/2/2023,while the election was conducted 25/2 2023.

From the record we have before us from the registry of this Tribunal, in this petition No **EPT/AB/HR/26/2023** Between:

1 Chimaobi Ebisike Iheanyichukwu.....Petitioners

2 Peoples Democratic Party

AND

1 Emeka Sunday Nnamani.....Respondent

2 Labour Party

3 Independent National Electoral Commission

4 Alex Ifeanyi Ikwecheghi

5 All Progressives Grand Alliance

This petition was filed on the 19/3/2023, though dated on the18/2/2023.

To adequately resolve issue 1, we shall refer to the Supreme Court case of **PML (NIG) LTD VS FRN (2017) LPELR 43480 (SC)-** where it was held that:

"....Secondly the said amended charge may be dated 17/12/2008 but it was filed on 18/12/2008, and the law makes clear distinction between the day a court process is dated and the date same filed. The material date is the date of filing the process not the date a party or legal practitioner appended on it (per Augie JSC)."

In line with the decision of the Supreme Court in **PML (NIG) LTD V FRN (SUPRA**), the petition before us may well have been dated on the 18/2/2023, but as long as it was not filed as aCourt process on the said 18/2/2023, this tribunaldid not take cognizance of same. This petition was filed as a process before us on the 19/3/2023 after the Election which was held on the 25th/2/2023. The Tribunal therefore took cognizance of the said petition on the 19/3/2023 when it was filed and not the 18/2/2023 when it was dated. We also refer to the case of **EKE V OGBONDA (2006) 18 NWLR (PT1012) 505** where the Supreme Court held that:

> **"In the present case however,as the appellants application dated 23/6/1998 for enlargement of time to file his Respondent brief was not filed before the**

court below until 25/6/1998, 2 days after hearing the respondent appeal on 23/3/1998, the motion cannot be said to be pending before the Court on the date the appeal was heard. Thus, not being a pending matter before the Court, the Court cannot be accused of refusing to entertain it before proceeding to hear the appeal on 23/6/1998"

In this petition before us, the petition dated 18/2/2023, not being a process before us until it was filed on the 19/3/ 2023cannot be incompetent as at 18/2/2023, and since it was filed before us on the 19/3/2023 and this Tribunal having taken cognizance of same on the said 19/3/2023 after the declaration of the said elections of 25th/2/2023, the petition is competent before us and we so hold. The 3rd respondent issue one therefore fails and it is resolved in favor of the petitioners.

On issue 2 that is:

Whether from the totality of the facts on record, the petitioners have proved their case and are entitled to the reliefs sought before the Tribunal.

We shall resolve this issue by dealing seriatim with the three grounds of the petition.

GROUND ONE

"That the 1st Respondent whose Election is being questioned was at the time of the Election, not qualified to contest the Election.

By the provisions ofSection 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 facts which he asserts shall prove that those fact exist"

This provision has totally saddled the petitioners with the duty to prove their ground 1 of the petition before us.

From the facts on record before us, **EXHIBITS P74**whichis the Certified True Copy (CTC) of the Judgement of the Election Petition Tribunal that heard the allegation of forgery in 2015 and **P 75**- which is the CTC of Court of Appeal Judgment affirming the Judgment **in EXHIBIT 74** are not in contention at all. What seems to be the major bone of contention in respect of ground one of the petition, is that the 1st Respondent did not present a forged certificate but rather, a **success letter,EXHIBIT P72** and that the 1st Respondent was absolved or exculpated of the allegation of forgery by **EXHIBIT D25** which is a Judgment Order of High Court of Abia state, Umunneochi Judicial Division and also**EXHIBIT D26** which is **Police Report** Titled- RE: MR Emeka Sunny Nnamani.

We shall be looking at the facts before us vis-a vis the position of the law and decided authorities on the issue of disqualification boardering on allegation of forgery, as provided under **S 66 (1) (i) of the 1999 Constitution as amended**.

It is very important to state categorically here that, the 1st ground of the petition and the facts in support of same boarders on constitutional disqualification as provided for under **SECTION 66 (1) (i) OF THE CFRN** and by the authority of **ATIKU ABUBAKAR & ANOR V INEC & ORS LER (2019) CA/PEPC/002/2019,** an allegation based on **S 66**

(1) (i) which provides that **S 66 " no person shall be qualified for election to the Senate or the House of Representatives if**

1 he has presented a forged certificate to the Independent National Electoral Commission.

Can properly constitute a ground upon which a person's election can be questioned in an election petition. A person's disqualification based on or arising from the domestic nomination exercise of his political party is clearly a pre -election matter over which the Tribunal has no Jurisdiction. The submission of the 1st Respondent that ground one of the petition is purely a pre-election matter is therefore misconceived.

The wordings of **Sub- Section 1 (i) of Section 66 (supra) which states that…. "if he has presented a forged certificate to the Independent National Electoral Commission"** Is clear and must be given literal meaning.

The petitioners alleged that at the 2015 Elections, the 1st Respondent presented a certificate to INEC along with his other documents which certificate was found to be a forged by the pronouncement of **EXHIBITP74** and further affirmed by the pronouncement in **EXHIBITP75.**

The 1st and 2nd Respondents contested that the 1st Respondent did not submit a forged certificate but a **success letter** at the 2015 elections.

EXHIBIT P74 is the certified true copy of the decision of the Election Petition Tribunal that heard the petition in 2015 in which the 1st Respondent was found to have presented a forged certificate.

The exact words of the decision of the Tribunal at page 17 of the Exhibit is produced below:

However, I found this case as

1. That the 1st Respondent is found to have presented forged certificate of graduation from a university contrary to section 107(1) (h) of the CFRN 1999 (as amended).

Also from the 3rd to the last paragraph of **EXHIBIT P 74** it states at page 18 of the EXHIBIT as follows:

"**However since the 1st Respondent is not only to found to be not qualified to be voted as he is not a voter in Aba North constituency, he is also disqualified for presenting a forged certificate to INEC"**

The 2nd to the last paragraph on the same Exhibit at page 18 reads thus:

"**We therefore advice police in Abia state south command to look into issue of forged certificate in the possession of the 1st Respondent for the purpose of possible prosecution"**

The 1st Respondent filed an Appeal against**Exhibit P74** to the Court of Appeal Owerri Judicial Division and the Judgment in Exhibit P74 was affirmed by the Appellate Court as seen in **EXHIBIT P75.** On pages 34-35 thereof, part of the decision of the Court of Appeal read thus:

> "…..**Now with the resolution of issue one against the Appellant, the bottom has in effect been knocked out of the Appellants appeal and resolution of the other issues will in my humble view amount to an academic exercise. In arriving at this position I am mindful of the facts that the decision of the trial Tribunal in nullifying the election of the Appellant and ordering for a fresh election in Aba North constituency was predicated principally on the fact of non-qualification**

of the Appellant to contest the said election for presenting a forged certificate to the 3rd Respondent contrary to the clear provisions of Section 107(i) of CFRN 1999 (as amended). In the light of my discourse In this Judgment, I find the appeal to be devoid of merit and same is hereby dismissed"

The argument by the 1st and 2nd Respondent that the document was **success letter** and not a forged certificate is not for this Tribunal to determined. This Tribunal cannot and will not review the decision of the Tribunal that sat in 2015. It was the duty of the SuperiorCourt of Appeal Owerri Division and the Appellate Court had discharged its duty accordingly. Again this Tribunal cannot review the decision of the Appellate Court in this matter.Itis for the 1st Respondent to further Appeal to the Supreme Court to do so if he so desires. The Bar and the Bench in Nigeria both know that a Judgment and this include ruling of Courts of law is valid or so presumed until it is set aside on appeal, **We refer to the supreme court case of EKANEM EKPO V A.C.B INTERNATIONA BANK LIMITED PLC & ALHAJI KABIRU RUFAI S.C 391/2001.**

To the best of our knowledge and from the records, we have no Supreme Court Judgment setting aside or reviewing the Judgement of the Court of Appeal in the **EXHIBIT P 75.**

By section **240 of the CFRN,** Appeals from Election Petition Tribunals shall lie to the Court of Appeal under the appellate Jurisdiction of the Court of Appeal, and not to the police or a High court of a State.

To the best of our knowledge also, the Police is not the Court of Appeal and **EXHIBIT D26** cannot affect either positively or negatively the

decision of the Tribunal in **EXHIBT P74** or that of the Court of Appeal in **EXHIBIT P75.** The decision in**EXHIBIT D25** is also a "lonely Londoner" as is said in popular parlance and cannot set aside, nor review any of the decisions in either **EXHIBITS P74 nor P75.**

The contention of the 1st Respondent that he was exculpated or vindicated by **EXHIBITS D25 and D26** is of no moment as the Police and the High Court are neither the Court of Appeal nor the Supreme Court whose decision can change or alter the position of the 1st Respondent with regards to **EXHIBITS P74 AND/OR P75** respectively.

The provision of **Section 66(1)(i)**talks about if the person **"has presented a forged certificate".**This phrase has been clearly explained by the Supreme Court in the case of **HON HASSAN ANTHONY SALEH V CHRISTIAN ADABAH ABAH & 2ORS SC/144/2016-(2017) 12 NWLR (PT 1578)100.**

The extant case and the instant case before this Tribunal, are on all fours, and on a forged certificate presented by the different 1st Respondents. The facts in **SALEH V ABAH (SUPRA)** are in substance, the same with the facts before us.

The facts in the case of **SALE VS ABAH (SUPRA**) and the facts in the instant case must be appreciated.

First of all, the issue of forged certificate was never before the Court in 2015 in **SALE V ABAH (SUPRA)** just as the instant petition. Secondly, the case of forgery in**SALEH V ABAH (SUPRA)** was raised before the Tribunal in 2011 not in 2015, just as in this case also,and thirdly just as in the instant case, the 1st Respondent in **SALEH V ABAH (SUPRA)**withdrew the said forged certificate he presented in 2011 and

did not present same in 2015.The forged certificate was also not placed before us but before the Tribunal of 2015.

At this point, we want to state clearly that, whether it was a forged certificate or a success letter is very immaterial because the Judgment in **EXHIBITS P74 AND P75** said it was a forged certificate and this Tribunal can do nothing about it neither, can the 1st and 2nd Respondent at this stage. So, forged certificate it is until set aside on appeal.

The Supreme Court further held in **SALEH V ABAH (SUPRA)that…. the constitutional provisions ofSec 66 (1) (i) is "unambiguous and its purpose is that anyone who has presented a forged certificate to INEC stands automatically disqualified for all future elections if a court or tribunal finds the certificate to have been forged. And it is irrelevant whether or not such facts are further fraudulently or desperately concealed in subsequent election or declaration forms. In this case the election Tribunal found that the 1st Respondent presented a forged certificate to the 3rd Respondent prior to the 2011 election, further the 1st Respondent denied that fact in the form he submitted for the 2015 general election. In the circumstance, the 1st Respondent was not qualified to contest election in to the House of Representatives in the 2015 general election.**

Again, just as in the findings of the Supreme Court in **SALEH V ABAH (supra)** the 1st Respondent instant case was asked on oath by the contents of **EXHIBIT P71**, prior to the 2023 Elections if he has ever presented a forged certificate to INEC, and he answered, NO: if the 1st Respondents answer is NO, who then is the Emeka Sunny Nnamani that

contested for the seat of the Aba North LGA House of Assembly election against Hon Dame Blessing Okwuchi Nwagba in 2015?

The Supreme Court held that this scenario plays itself out the provisions of **Section 66 (1) (i) CFRN 1999 (as amended) see paragraph B at pg 133 of the decision.**

The learned counsel for the 1st Respondent submitted that the Judgment in **EXHIBIT P74** contains a directive for the Police to look into the issue of forged certificate for the purpose of prosecution which eventuated into **EXHIBIT D25.** The question the 1st Respondent has not answered is this, is the **EXHIBIT D25** which was tendered by him a superior court decision or Judgment which can or has set aside or nullified the decision as contained in **EXHIBIT P74 and P75,** the existence of which the 1st Respondent is not in denial of? We shall assist the 1st Respondent with the answer which is CAPITAL NO.

The 2nd Respondent contented that the issue of forged certificate or forgery is not before us and so we are only left to speculate or investigate same which is not part of the functions of the Tribunal. This contention of the 2nd Respondent is very misconceived. We shall draw his attention backto the Supreme Court decision in **SALEH V ABAH (SUPRA) where it was held thatall that the petitioners needed to prove or show before us was that there was a judicial pronouncement on the facts of whether or not the 1st Respondent presented a forged certificate to the 3rd Respondent for the purpose of an election- we refer to paragraph B-C at page 132** of the decision. This, the petitioners have uncontrovertedly done by **EXHIBIT P74 and EXHIBIT75** and by the provision **of Section 122** of the Evidence Act it falls within facts that

this tribunal should take Judicial notice of.The 2nd Respondent should also note that the Supreme Court used the word **THERE WAS** in the decision meaning- past tense.

Learned counsel for the 2nd Respondent also submitted that the allegation of presentation of forged certificate is a criminal offence which must be proved beyond reasonable doubt. We shall still refer back to the decision of the Supreme Court in **SALEH V ABAH (SUPRA) at page 110** where it was held by the apex Court that:

> "….. **In the context of section 66(1) (i) of CFRN 1999, the burden of proof is placed on the person who asserts that another person presented a forged certificate to INEC is, is proof that the certificate was forged and that it was presented to INEC. And in proving the presentation of the forged certificate to INEC the person asserting the positive does not have the duty to prove that the person who presented the forged certificate was guilty of forgery but that he made the presentation in the first place and that the certificate has been proved beyond reasonable doubt to be forged"**

In the instant case and also in the extant case, the proof of beyond reasonable doubt of the forged certificate are the pronouncements of the Tribunal and the Superior Court of Appeal that the certificate presented by the 1st respondent was forged in**EXHIBIT P74** and **P75.** Which has not been appealed against by the 1st Respondent.

We must not fail to mention the Supreme Court case of **ENGR MUSTAPHA YUNUSA MAIHAJI V ALHAJI IBRAHIM GAIDAM**

LCN/4909/SC. This case heavily relied upon by the 1st and 2nd Respondent's cannot help their position. This case of **MAIHAJA V GAIDAM (supra)** cannot apply in the instant case. The Supreme Court in the case of **MAIHAJA V GAIDAM (SUPRA)** did not disturb the findings of the trial Tribunal because the 1st Respondent certificate was not found to have been forged and so his election was not disturbed. The facts are different though on the case of forgery. The petitioner failed to established that the testimonial of the 1st Respondent was forged. The case of **MAIHAJA V GAIDAM (supra)** is very different to the extent that, there are Court pronouncements which found the certificate presented by the 1st Respondents to INEC in the instant case and **SALEH V ABAH (supra)** caseto be forged. In the instant case **EXHIBIT P74 AND P75** respectively.

We therefore hold that the Supreme Court case of **MAIHAJA V GAIDAM** (supra) is not applicable to this petition.

The 1st and 2nd Respondents have canvassed so much in favour of the 1st Respondent before us, but these are submissions better made at the Superior Court of the Supreme Court to be precise. The position of the Supreme Court cannot be altered or changed in the light of **EXHIBIT 74 and 75** and the case of **SALEH V ABAH (supra)**. The Supreme Court has laid down principles to be followed in case with similar facts as in **SALEH V ABAH (supra)** which this petition happen to be one of such. Perhaps if the 1st Respondent had before now appealed the decision in **EXHIBIT P75** and canvassed all these issues they presented before us, which should have been canvassed at the trial Tribunal in 2015, the position of the 1st Respondent could have been different.Be as it may, in the absence of no superior decision against

EXHIBIT 75 which affirm **EXHIBIT 74**, we align ourselves with the apex court decision in **SALEH V ABAH (supra**)and the submissions of the learned SAN for the petitioner's and resolve ground one of the petition in favor of the petitioners against the 1st and 2nd Respondents only.

GROUNDS 2 and 3

2. That the election was invalid by reason of corrupt practices or non-compliance with the provision of the Electoral Act

3. That the Respondent was not duly elected by majority of lawful votes cast at the election.

We shall resolve grounds 2 and 3 under together.

The learned SAN had earlier told this Tribunal on record on the 25/8/2023, that at the trial, the petitioners concentrated on adducing evidence on non-compliance with the provisions of the Electoral Act only. Therefore we hold that the grounds for corrupt practices in ground 2 of the petition have been abandoned by the petitioners.

This lays to rest the submissions on the 3rd Respondent on whether ground of non-compliance with the Electoral Act can be joined together under one ground- He referred to paragraph 7 of the petition. But in order to lay this issue properly to rest, we shall refer to the case of **DEEN & ANOR V INEC & ORS (2019) LPELR-49041 (CA)** whereit was held thus:

"…. whether ground of non-compliance and corrupt practices can be joined together as a ground in an election petition under Section 138(b) of the Electoral Act 2010 (as amended)"

This provision drafted in**S 138 (1) (b) of the Electoral Act 2010** is in pari materia with**Sec 134 (1) (b) of the Electoral Act 2022 (as amended)** it provides thus **134 (1)**:

"An election may be questioned on any of the following grounds

(b) that the election was invalid by reason of corrupt practices or non-compliance with the provision of the Act"

The Court of Appeal per Biobele Abraham Georgewill held that:

> **"Assuming the intention of the legislature was to provide for two distinctive grounds under section 138 (1) (b) of the Electoral Act 2010 (as amended) the two grounds could as well been separated like all other grounds into separate paragraphs.In my view, section 138 (1) (b) of the Act gives the petitioner the option to plead or either rely on either the allegation of non-compliance with the Electoral Act or corrupt practices or both. This is why they are in one paragraph under Section 138 of the Act, it only means Section 138 (1) (b) has two legs of one ground and definitely not two grounds of question on election. I do not see anything wrong if a petition relies on any of these or both distinct grounds"**

We totally adopt the position of Court of Appeal in **DEEN & ANOR V INEC & ORS (SUPRA)** to resolve the contention of the 3rd Respondent as to whether the grounds of corrupt practices and the grounds of non-compliance with the Electoral Act can be joined together under one ground in a petition and we resolve same in favor of the petitioners.

On the allegation of non- compliance with the Electoral Act, the petitioners called a total number of 36 witnesses including himself. The petitioners in paragraph 38 at page 10 of the petition vol 1 alleged that election did not take place in 78 polling units in both Aba North and Aba South federal constituency and yet in paragraph 38 at page 14 of the said petition, they alleged that the total number of disenfranchised voters is 29117 voters. In paragraph 40-48 also the petitioners alleged incidence of over-voting, non or absence of result sheets, failure of BVAS to upload, absence of materials and INEC staff, failure of BVAS to accredit, failure of BVAS to function, wrong location of polling units leading to voters disenfranchisement, disparity between the numbers of accredited voters and the number of people who voted at the election and late arrival of INEC staff and materials.

In the Supreme Court case of **ADEGBOYEGA ISIAKA OYETOLA & ANOR V INEC & 0RS (2023) 11 NWLR (PT 1894) 125 AT 168 PARAS A-B**

it was held that:

"therefore 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 depends on the existence of facts which he asserts must prove that those facts exist"

We are bound to first consider if the evidence produced by the petitioners established the existence of the facts alleged in the petition before considering the evidence produced by the Respondents to find out if the evidence disproved the case established by the petitioners on

the balance of probability- **OYETOLA V INEC (SUPRA)PARAS B-D AT PG 168.**

By the authority of the Supreme Court in **OYETOLA V INEC (SUPRA),** the evidence required to prove non-accreditation, improper accreditation and over-voting alleged by the petitioners before us under the Electoral Act 2022 are the, **BVAS, the register of voters and the polling unit result in INEC form EC8A by virtue of Sec 47 (1) (2) and 51(2) of the Electoral Act 2022. Regulations 14,18,19(b) (i-iv) (e) (i-iii) and 48 (a) of the INEC Regulation and Guidelines for Conduct of Election see para F of OYETOLA V INEC (supra) also paras G-F pages 168- 167 of the lead Judgment.**

From the records of this Tribunal, the petitioners tendered the CTC of the INEC form EC8A of various polling units as EXHIBITS P32-P56 series at the trial. They did not tender the BVAS devices of any polling units alleged nor did they tender the voter's registers of any of the polling units in question.

The petitioners tendered **EXHIBIT P80 (a) (b) and(c) (i) (ii) and (iii)EXHIBIT P80 (a)-** is a certified true copy of an application letter written by the petitioners requesting for the certified true copy of voters register for Aba North and South. **EXHIBIT P80 (b)-** is a flash drive purportedly issued by INEC containing the voters register of Aba North and South. **EXHIBIT P80(c) (i) (ii)and (iii)-**are3 copies of **EXHIBIT P80 (b)** produced by the petitioner for the panel.

The admissibility of this exhibits in evidence were vehemently objected to by the 1st to the 5th Respondents but none of them have specifically raised their objection in their respective final addresses or replies.

We shall proceed to make our findings in respect of **EXHIBIT P80 (b)and (c) (i) (ii) and (iii)** and accord the necessary probative value.Exhibit P80 (b) according to the petitioners, was issued by INEC, which means it is a public document. It was not pleaded in the petition, so, it therefore goes to no issue. We refer to the case of **AKANINWO V NSIRIM (2008) 9 NWLR (PT1093) 439 at 472-473 paras H, A-B-** Niki Tobi JSC state that

" Normally evidence not pleaded will go to no issue."

In line with the holding of Niki Tobi JSC we hold that **EXHIBIT P80 (b)** goes to no issue in this petition.Besides not being pleaded, it is purportedly a public document purportedly issued by INEC.There is no certification by INEC before us to evidence issuance of this Exhibit by INEC in accordance with **Sec 104 (1**) of the Evidence Act 2011 and since **EXHIBIT P80 (b)** goes to no issue, **EXHIBIT P80 (C) (i) (ii) and (iii)** made from **EXHIBIT P 80 (b)** also goes to no issue as it contravenesthe provision of **Sec 104 of the Evidence Act.**These Exhibits cannot be admitted in evidence in favor of the petitioners.**EXHIBIT P80 (b) (c) (i) (ii) and (iii)** are therefore marked tendered but rejected.

In order for the petitioners to successfully proveover-voting, non-accreditation, improper accreditation, no- voting, absence of result sheets, failure of BVAS to upload, failure of BVAS to function, and disparity between the numbers of accredited voters and the number of people who voted at the election, under the Electoral Act 2022 the Supreme Court held that the record of accredited voters in the BVAS and the polling unit result in form EC8A are required. That it is worth stating that in the event of conflict between the record of accredited

voters in the BVAS machine and the ticked names in the register of voters due to human errors in ticking of the names in the register of voters, the BVAS record shall prevail- **OYETOLA V INEC (supra).**

The petitioners before ushave not produced any of the BVAS machines used in any of the polling units they complained of. They have not produced the register of voters in order for the Tribunal to check to resolve the disparity between the number of accredited voters and the number of people who voted at the election as their allegation is that the election at certain polling units of Aba North and Aba South federal constituency was not in substantial compliance with the provisions of the Electoral Act 2022 and the Regulations and Guide lines made thereto.

It is also very important to state that under the clause 19(b) of the Regulation and Guidelines for the Conduct of Elections, the register of voters is still relevant in conducting accreditation of voters and proving allegation of non-accreditation of voters.We refer to the case of **OYETOLA V INEC (supra).** In the instant petition, the BVAS device of each of the units complained of as seen from **EXHIBIT P32- P56 SERIES**,which the petitioners heavily relied on as the bases for ground 2 and 3 of their petition were not produced and tendered by them as evidence in support of their case. They sought to prove their case as it were, with the **EXHIBIT P32- P56 series.** It is very clear from the provisions of **S 47 (1) and (2) of the Electoral Act and Regulations 14 (a) and (b), 18 (a) and (b) 19 (b) and (c)** that the register of voters for each polling unit was relevant evidence to prove the allegation of non- accreditation of voters as well as over-voting. **OYETOLA V INEC (SUPRA**).

All the witnesses called by the petitioners inclusive of the 1st petitioner, did not elicit any credible oral evidence of non- accreditation, over-voting, dis-enfranchisement of voters nor absence of result sheets, failure of BVAS to upload, failure of BVAS to function, failure of BVAS to accredit, and all the allegations as contained in paragraphs 40-48 of the petition as to non-compliance with the provision of the Electoral Act 2022 and the Regulations and Guidelines made thereto.

There is no credible oral evidence and no credible documentary evidence before us. It is glaring from the evidence before us on record that the petitioners did not adduce relevant and admissible evidence to prove all the allegations as contained in paragraph 40 -48 of the petition in that the election of Aba North and Aba South was not conducted in compliance with the provisions of the Electoral Act 2022 and the Regulation and Guidelines made there to.It is also impossible to establish that the 1st Respondent did not score the majority of lawful votes cast at the election without the BVAS machine and the register of voters tendered by the petitioners in evidence. The petitioners did not adduce oral evidence with respect to Exhibit P 32 to P 56 series. His witnesses did not adduce evidence with respect to over voting at the said election as well as ground 3 of the petition which is that the 1st respondent did not score the lawful majority of the votes cast at the election.The certified true copies of Exhibit P 32 to P56 SERIES which are the various polling unit result tendered by the petitioners cannot provide the question of who scored the majority of lawful votes cast at the election the document must be subjected to the test of veracity and credibility and where it involve mathematical calculations, how the figures are arrived at must be demonstrated in open Court and finally

the correctness of the final figures must also be shown in open Court…. It is not the duty of the COURT to sort out the various exhibits, the numerous figures and do calculations in chambers….. we refer to the case of **ANDREW V INEC (2018) 9 NWLR PT 1625 PG 577 AT 558.**

By virtue **of S 131 (2)and 133 (1)** of the Evidence Act which are produced below:

"Sec 131 (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."

"Sec I33 (1) In civil cases the burden of first proving existence or non- existence of facts lies on the party against whom the judgment of the court would be given if no evidence were produced on either side, regard being had to any presumption that may arise on the pleadings"

The petitioners have the primary legal burden to prove the existence of the facts asserted by them in proof of grounds 2 and 3 of the petition.

By virtue of **Sec 133(2) of the Evidence Act 2011** which provides:

> **" If the party referred to, in sub sec (1) of this section adduces evidence which ought reasonably to satisfy the court that the fact sought to be proved is established, the burden lies on the party against whom Judgment would be given if no more evidence were adduced, and so on successively, until all the issues in the pleadings have been dealt with"**

It is only when the petitioners have discharged their burden, that the evidential burden would shift to the respondents to adduce evidence to disprove the case made by the petitioners. It is very obvious before us,

that the petitioners case on ground 2 and 3 of their petition collapsed by their evidence as their pleading and the oral evidence they called made no case that required the respondents and particularly the 4th and 5th respondents in this petition to disprove by way of evidence, and so it is proper that no evidential burden shifts to the respondents. On the whole, the petitioners have failed to establish grounds 2 and 3 of their petition by calling credible and admissible evidence at the trial, both oral and documentary. We therefore resolve grounds 2 and 3 in favor of the respondents.

On issue 3 which is:

Whether the petitioner have presented sufficient facts on record to warrant the invocation of the principles of margin of lead in their favor.

Having succeeded on ground 1 of the petition, but failing to establish ground 2 and 3 of the petition, can the principle of margin of lead be now invoked in favor of the petitioners?

The margin of lead principle provided for under**Regulations 62 of the Regulations and Guidelines for the Conduct of Election 2022** states that:

> **" Where the Margin of Lead between the two leading candidates in an election is not in excess of the total number of voters who collected their permanent voters card (PVC) in polling units where elections are postponed, voided or not held in line with sections 24 (2 and 3), 47(3) and 51 (2) of the Electoral Act, the returning officer shall decline to make a return. This is the Margin of Lead principle and shall apply wherever**

necessary in making returns for all elections in accordance with these Regulation and Guidelines"

The petitioners contended in paragraph 7-11 of their final written address that **Sec 136 (2)** provides that where the winner is disqualified, the runner up would be declared the winner if he satisfied the requirements of the constitution and this Act as duly elected.

We had earlier on held that the petitioners had failed to establish their case in respect of grounds 2 and 3 of their petition.

Having settled this, the figures alleged by the petitioners beingthe difference between the 1st petitioner's and the 4th respondent's scores is 1107 voters and this is less than 22,044 which represents the petitioners' computation of the PVC collected in impugned units.This fact cannot be verified by this tribunal in the absence of the BVAS machine for the polling units and the register of voters in all this polling units of the alleged 22,044 PVC. This tribunal cannot speculate or work on evidence not placed before it by the petitioners.

In any case, the margin of lead principle is applicable between the two leading candidates in an election not the three leading candidates in an election as correctly submitted by the petitioners themselves. The position of the 1st petitioner and the 4th respondent is not in issue from the facts of this case. The 1st petitioner came 3rd with 13,358 votes while the 4th respondent came 2nd with 22,465 votes respectively. The application of margin of lead cannot be invoked in favor of the petitioners, the applicable section to be invoked in this case is **Sec 136 (2) of the Electoral Act 2022.**

- **Section 136 (2) Electoral Act provides as follows:**

"where an election tribunal or court nullifies an election on the ground that the person who obtained the highest votes at the election was notqualified to contest the election, the election tribunal or court shall declare the person with the 2nd highest number of valid votes cast at the election who satisfies the requirements of the Constitution and this Act as duly elected,

Provided the person with the highest number of valid votes cast at the election remains a member of the political party on which platform he contested the election otherwise the candidate with the next highest number of votes in the election and who satisfies the same conditions shall be declared the winner of the election."

By the provision of **Sec 136 (2) of the Electoral Act 2022,** the petitioners have nor provided before this Tribunal any disqualifying factor against the 4th and 5th respondents in this petition either in the Constitution or the Electoral Act 2022, or that the 4th respondent has ceased from being a member of the 5th respondent, All Progressives Grand Alliance (APGA).

We therefore on issue 3, resolve same in favor of the 4th and 5th respondent. This petition accordingly succeeds in favor of the 4th and 5th respondent but against the petitioners.

The Supreme Court has laid down succinct guiding precedent on cases within the purview of sec 66 sub (1) (i) of CFRN 1999 (as amended) and

this Tribunal must follow this laid down precedence no matter the biting effect of it.

Having resolved all the issues we have raised in this petition, we hereby make the following pronouncements:

1- That the 1st respondent Emeka Sunny Nnamani was not qualified to contest the election in to the Aba North and Aba South Federal Constituency of the House of Representatives of Abia state which was held on the 25th day of February 2023, having been found to have presented a forged certificate to the Independent National Electoral Commission prior to the elections of 2015,by the Judgement of Election Tribunal, in petition No **EPT/HA/20/2015**, between **HON DAME BLESSING OKWUCHI NWAGBA & ANOR V EMEKA SUNNY NNAMANI,** -Exhibit P74 which Judgment was affirmed by the Court of Appeal Owerri Judicial Division in Appeal No **CA/ OW/ EPT/HA/81/2015 between EMEKA SUNNY NNAMANI V HON DAME BLESSING OKWUCHI (PHD).**

2- That having been disqualified by this Tribunal, the election and return of the 1st respondent, Emeka Sunny Nnamani as member representing Aba north and Aba South Federal Constituency Abia state into the House of Representatives is hereby and accordingly nullified.

3- That having nullified the election of the 1st Respondent, the 3rd respondent, the Independent National Electoral Commission is hereby ordered to forthwith withdraw and cancel the Certificate of Return she issued to the 1st respondent Emeka Sunny Nnamani as the elected member Aba North and Aba South Federal Constituency, Abia state in the House of Representatives with immediate effect.

4- That having disqualified and nullified the election of the 1st Respondent, by the provisions of section 136 (2) of the Electoral Act 2022, the 4th respondent Alex Ifeanyi Ikwecheghi is hereby declared the duly elected member of the Aba North and Aba South Federal Constituency of Abia State in the House of Representative, having scored the 2nd highest number of valid votes cast at the election of the Aba North and Aba South Federal Constituency which was held on the 25th February 2023 and having satisfied the requirement of the Constitution and the Electoral Act 2022.

5- That the 3rd Respondent Independent National Electoral Commission is hereby ordered to issue the 4th Respondent ALEX IFEANYI IKWECHEGHI with the requisite Certificate of Return.

THIS IS THE JUDGMENT OF THIS TRIBUNAL

HON. JUSTICE MOMSISURI BEMARE ODO

MEMBER II

APPEARANCES:

1. Chief Uche Iheadiwa SAN for petitioners

E.O Nwosu (Mrs), Esq A.C Nnakwe Esq and A. C Ukanwoke Esq

2. C.J Okoli Akira Esq for the 1st Respondent

Max I Njokwu Esq

3. O.O Nkume Esq for the 2nd Respondent

4. Ladu N Martins Esq for the 3rd Respondent

5. Chief K.C Nwafor SAN for 4th and 5th Respondents

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