IN THE NATIONAL AND STATE HOUSE OF ASSEMBLY

ELECTION PETITION TRIBUNAL (PANEL 3)

HOLDEN AT UMUAHIA, ABIA STATE

THIS WEDNESDAY THE 6TH DAY OF SEPTEMBER, 2023

BEFORE THEIR LORDSHIPS

HON. JUSTICE ABUBAKAR IDRIS KUTIGI - CHAIRMAN

HON. JUSTICE AHMAD MUHAMMAD GIDADO - MEMBER I

HON. JUSTICE MOMSISURI ODO BEMARE - MEMBER II

PETITTION NO.:EPT/AB/HR/19/2023

BETWEEN:

1. ENGR. OGBONNA IBEJI ABARIKWU
2. ALL PROGRESSIVEGRAND ALLIANCE (APGA)

PETITIONERS

AND:

1. INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC)
2. CHIEF OBINNA AGUOCHA
3. LABOUR PARTY (LP)
4. RT. HON. CHINEDUM ORJI
5. PEOPLES DEMOCRATIC PARTY (PDP)

RESPONDENTS

JUDGMENT

(DELIVERED BY HON. JUSTICE ABUBAKAR IDRIS KUTIGI)

The 1st Petitioner, the 2nd Respondent and 4th Respondent were candidates in the election to the Federal House of Representatives seat for Umuahia

North/Umuahia South/Ikwuano Federal Constituency held on 25th February 2023.

The 1st Petitioner contested the election on the ticket of the All Progressive Grand Alliance (APGA). The 2nd Respondent contested on the platform of 3rd Respondent, Labour Party (LP) while the 4th Respondent contested on the platform of the 5th Respondent, Peoples Democratic Party (PDP) among other candidates fielded by the other Political Parties.

At the end of the exercise, the 1st Respondent, Independent National Electoral Commission (INEC) declared and returned the 2nd Respondent as the winner of the Umuahia North/Umuahia South/Ikwuano Federal Constituency with a score of **48,191 votes.**The 4th Respondent scored **35,196** while the 1st Petitioner scored **2,758 votes.**

The Petitioners being dissatisfied with the conduct and indeed outcome of the election, filed this petition at this tribunal on 18th March 2023 to challenge the result of the election uponthe grounds as stated in **Paragraph 25** of the petition as follows:

(i) The 2ndRespondent whose election is challenged was, at the time of the election, not qualified to contest;

(ii) The election was invalid by reason of non-compliance with the provisions of the Electoral Act, 2022; and

(iii) The 1st Respondent was not duly elected by majority of lawful votes cast at the election.

The substance of the facts in support of the petition as averred by the petitioners is that the elections in the Ikwuano/Umuahia Federal

Constituency were not valid for non compliance with the Electoral Act 2022 and the INEC guidelines in that elections did not hold in over 70% of the polling units of the entire federal constituency.

In paragraph 7 of the petition, the petitioners contend that Ikwuano/ Umuahia Federal Constituency comprises of three local governments to wit: 1) **Ikwuano Local Government Area**, 2) **Umuahia South Local Government Area and 3) Umuahia North Local Government Area** with 62 wards and 1, 372 polling units and then in paragraph 8, the petitioners identified the Local Government Areas in the Ikwuano/Umuahia Federal Constituency, the registration areas and total number of polling units from pages 3 – 68 of the Petition. What however needs to be pointed out immediately is that in this tabulation, from pages 9 – 42 and contrary to the averment in paragraph 7 (supra), of the petition, the local governments which petitioners contends forms the federal constituency of **Ikwuano/Umuahia** was increased from three to six. **Isiala Ngwa North Local Government, Isiala Ngwa South Local Government**and **OsisiomaLocal Government** were added;these additional Local Governments which form part of the areas of complaints of Electoral Malpractices in this petition it must be stated do not form part of the **constituency** in question. The petitioners then in paragraphs 11 – 17 and 21 – 23 made varied allegations of failure of INEC to bring electionmaterials for the election to wit: result sheets and ballot papers in all the Local Government Areas of the constituency and that the petitioners agents laid complaints. The petitioners further averred that the election was marred by the attempt of the Resident Electoral Commissioner to

collect bribe from the 5th Respondent which led to his arrest by the DSS and that this then affected the election into the House of Representative in the constituency as nobody was in control of the elections.

They also further contend that the absence of electoral materials could not be addressed in over 70% of the polling units and that even where there were elections materials, there was untold malpractice, vote buying, disenfranchisement of voters due to failure of card reader and that officials of INEC failed to announce and transfer/transmit results from the polling units in the manner prescribed by the INEC guidelines. That INEC declared fictitious result for the constituency.

The petitioners in paragraphs 19 and 20 contend that "the double nomination of 2nd Respondent is invalid under the law" and further that the submission of the register of the 3rd Respondent in which the name of the 2nd Respondent is contained was not done in accordance or compliance with the Electoral Act.

The Petitioners then prayed the tribunal for the Reliefs set out in **paragraph 26** of the petition as follows:

A. **A declaration that the election was inconclusive as election did not take place in more than 70% of the polling units of the Ikwuano/Umuahia Federal Constituency thereby disenfranchising about 70% of the registered voters in the Ikwuano/Umuahia Federal Constituency.**
B. **Order that fresh election be conducted in the said affected areas of the Ikwuano/Umuahia Federal Constituency; so as**

to avail the disenfranchised voters the opportunity to exercise their right to vote.

C. **Declaration of the honourable tribunal that the 1st respondent was, at the time of the election, not qualified to contest.**
D. **Order of the honourable tribunal nullifying the result declared by the 1st respondent in favour of the 2nd respondent.**

In response to the petition, all the Respondents **filed replies** categorically and preciselyjoining issues with the Petitioners. The 1st Respondent by order of tribunal made on 24th May 2023filed an Amended 1st Respondent Reply on 24th May 2023. The 2nd Respondent filed his Reply on 12th April 2023 incorporating a Notice of preliminary objection. The 3rd Respondent filed its Reply on 4th April 2023 and equally incorporating a Notice of preliminary objection. The 4th and 5th Respondents on their part filed their Reply on 28th April 2023 and similarly incorporating a Notice of Preliminary objection.

The Petitioner then filed a Petitioner's Reply to the 1st Respondents Reply on 15/5/2023. With the settlement of pleadings, pre hearing sessions were held in accordance with the provisions of paragraph 18 of the 1st schedule of the Act in which all parties as represented by counsel fully participated.

It is important to state that interlocutory applications were taken at the pre hearingsessions and we indicated that in compliance with the law, Rulings on same will be delivered along with the final judgment. We also equally

indicated that addresses/submissions on the preliminary objections incorporated in the Replies of 2nd – 5th Respondents be made in the final addresses of parties and Rulings shall be delivered before the final judgment is read.

The tribunal then issued a pre hearing and scheduling report on **19/6/2023** which encompassed all matters agreed to by all parties with respect to the trial of the petition.

We shall now accordingly deliver the Rulings on the interlocutory applications taken at the pre hearing sessions and the preliminary objections incorporated in the Replies of 2nd – 5th Respondents.

Now at the pre hearing sessions, parties filed the following interlocutory applications as streamlined hereunder.

The Petitioners filed three(3) applications to wit:

i) **Application to amend their petition and filed on 15/4/2023 and dated.**

ii) **An application filed on 6/5/2023 dated 24/4/2023 praying that the court strike out the 3rd Respondents counter affidavit filed in response to the application under (I), supra.** This application will be taken first before the application under (i) above.

iii) Application to strike out the joint reply of 4th and 5th Respondents filed on 6/5/2023 and dated 24/4/2023.

The 3rd Respondent on its part filed **one application dated 28/4/2023** and filed on 5/5/2023.

We commence with the applications of Petitioners.

As stated above, we start with the application **under (ii)** above as a decision on it will affect the application **under (i)** above.

The Petitioners in their first application prayed for an order of court striking out the **3rd Respondents counter affidavit** filed on **21/4/2023** in respect of their motion to amend for being incompetent.

The **grounds** of the application are as follows:

1) The 3rd Respondent filed its counter affidavit in opposition of the Petitioners motion dated 14/4/2023 and filed on 15/4/2023, when it neither filed a memorandum of appearance or Reply to the petition.

2) The said counter – affidavit is therefore incompetent and constitutes an abuse of the process of court.

A very brief written address was filed to the effect that since the 3rd Respondent has not filed their Respondents Reply within 21 days as allowed by the law, that they cannot be heard to file a counter – affidavit.

At the hearing, counsel to the Applicants relied on the paragraphs of the affidavit and adopted the submissions in the written address in urging the court to grant the application.

The 3rd Respondent filed a counter – affidavit of eleven (11)paragraphs in opposition. A brief written address was filed to effect that nothing has been presented in law that will prevent the filing of the extant counter – affidavit as they have filed there Reply to the petition in time and which the Petitioners have responded to.

We have carefully considered the application and the submissions made by parties on both sides of the aisle. It is trite principle that whoever desires or seeks a relief from court must provide credible factual and legal basis allowing the court to grant the relief (s) sought.

In this case, the Applicants contended that the 3rd Respondent was served with their petition on **20/3/2023** but that the 3rd Respondent did not file a response within 21days and as such cannot file the **counter – affidavit**in issue or question.

What is however strange here is that there is absolutely nothing to support the assertion that the petition was served on **20/3/2023.**

Indeed from the record/file of the tribunal, which it can make reference to and make use of any document or relevant evidence, see **Famudoh V Aboro (1991) 9 NWLR (pt. 214) 210 at 229,** the record does not support the position advanced by the Applicants.

In their application for substituted service of the petition on 2nd and 4th Respondents dated 24/3/2023 and filed on 29/3/2023, the Petitioners

attached the **Affidavit of non service** on the 2nd – 5th Respondents respectively. Indeed in the affidavit of non service on 3rd Respondent dated **26/3/2023**, the court bailiff unequivocally stated that on **20/3/2023,** the petition was not served on 3rd Respondent.

There is therefore nothing to situate any service of the petition on 3rd Respondent on **20/3/2023** and accordingly no basis to start computing the 21 days for a reply to be filed from that date.

On the Record, the 3rd Respondent filed its Reply on 4/4/2023 and there is no challenge of any kind with respect to whether it was filed out of time.

It is therefore difficult to situate the factual or legal basis for the extant complaint.The Petitioners sued the Respondents including 3rd Respondent and they are entitled to be heard on any application filed in the **case.** It is a constitutionally guaranteed right, which must be adhered to. The right to a fair hearing cannot be compromised under any guise.

Again, it must be pointed out that there is no complaint here that the **counter – affidavit** was not filed within the time frame allowed by the Act and we really wonder at what was to be achieved by this application.

The application **lacks** any merit and it is dismissed. The Counter-Affidavit filed by the 3rd Respondent is thus competent and will be used to determine the merit of the next application by Petitioners.

The second application by the Petitioners is dated **14/4/2023** and filed on **15/4/2023.**The Petitioners prayed for:

1) Leave of the Hounourable Tribunal permitting the Petitioners to apply to amend their petition in accordance with paragraph 14 (1) of the 1st schedule of the Electoral Act, 2022.

2) Order of this Honourable Tribunal permitting the Petitioners to amend their petition in the manner stated in the schedule to their motion.

The **schedule to their motion** provides thus:

The amendment sought is to delete "IKWUANO/UMUAHIA FEDERAL CONSTITUENCY" where they occur in the petition and replace same with the words "UMUAHIA NORTH/UMUAHIA SOUTH/IKWUANO FEDERAL CONSTITUENCY"

The **grounds** of the petition are as follows:

(i) The Petitioners in good faith wrongly stated the name of federal constituency as delineated by the 1st Respondent; even though the name is very explanatory enough that none of the parties is mistaken as to the constituency under reference.

(ii) The Petitioners said mistake is a misnomer which the honorable tribunal has the jurisdiction to order its rectification.

(iii) The amendment sought is not such as is not permitted by the Electoral Act, 2022.

The application is supported by a 13 paragraphs affidavit and a written address.Submissions were then made on the issue which forms part of the Record of the tribunal. The summary of the submissions is that the amendment sought is to put in the **proper name of the federal**

constituency where the challenged election held. That the application simply seeks to correct a misnomer which the tribunal can readily grant as it does not in any way affect either of the grounds of the petition or the reliefs sought. The case of **Yusuf V Obasanjo (2003) 16 NWLR (pt. 857) 554** was cited.

At the hearing, counsel to the Applicants relied on the paragraphs of the supporting affidavit and adopted the submissions in the written address in urging the court to grant the application.

In opposition, the 3rd Respondent filed a counter affidavit of 14 paragraphs and a written address. The submissions therein equally form part of the Record of the tribunal.The case made out is that the amendments sought does not relate to a misnomer as contended by Applicants. That the amendment sought is to change the name of the electoral constituency referred to in the petition wherever it appears in the petition and that **in this case, it appears in all aspects or facets of the petition and as such**there is no way that such an amendment can be said to be a misnomer. That the amendment is overreaching as it seeks to present a new case outside the statutory period limited by law for filing a petition and after the Respondents had joined issues on the extant petition filed by the Petitioners.

At the hearing, learned counsel to the 3rd Respondent relied on the paragraphs of the counter affidavit and adopted the submissions in his written address in urging the court to refuse the application.

We have carefully considered the processes filed, including the written addresses and the oral submissions made in addition and the narrow issue is whether the Tribunal can grant the application to amend the extant petitionas prayed?

Generally, amendments of pleadings in civil proceedings is allowed for the purpose of determining the real question(s) in controversy. An amendment therefore ought to be allowed at any stage of the proceedings unless such amendment will entail injustice or surprise or embarrassment to the other party or the applicant is acting mala fide or by his blunder, the applicant has done some injury to the other party which cannot be compensated by cost or otherwise. In other words, the discretion ought to be exercised so as to do what justice and fair play may require in the particular case. See **Bank of Baroda V Iyalabani (2002) 13 N.W.L.R. 551 at 593 B-D.**

In election petitions however, the dynamics changes.Considering the peculiarities and sui generis nature of Election Petitions, time is of the essence and the Electoral Acthas situated clearly a time frame and the type of amendments to the petition that can be granted.

By section 132 (7) of the Electoral Act, an election petition shall be filed within 21 days after the date of the declaration of the result of the election. Paragraph 14 of the First schedule of the Electoral Act then provides for amendment of an election petition. In particular **paragraph 14 (2) (a) of the Act provides that "After the expiration of the time limited by –**

> **"Section 132 (7) of this Act for presenting of the election petition, no amendment shall be made -**

(i) Introducing any of the requirements of paragraph 4 (1) not contained in the original petition filed; or

(ii) Effecting a substantial alteration of the ground for, or the prayer in the election petition or ….”

The above provisions are clear. Amendment to an election petition is subjected to restriction as to time limitation and within the confines or purview of the above provisions.

Now what is the nature of the amendment the Petitionersseek here?

The Petitioners may have not i**dentified and defined in clear terms the paragraphs that is affected by the amendments** which appears to as a necessary imperative to enable the tribunal to properly situate the validity of the amendments sought, but let us out of abundance of caution take our bearing from the **schedule** in the application which appear to situate the nature of the amendmentsas follows:

The amendment sought is to delete “IKWUANO/UMUAHIA FEDERAL CONSTITUENCY” where they occur in the petition and replace same with the words “UMUAHIA NORTH/UMUAHIA SOUTH/IKWUANO FEDERAL CONSTITUENCY”

As we understand it, the application seeks to amend the reference to the wrong electoral constituency **Ikwuano/Umuahia Federal Constituencywherever** it occurs in the petition to the correct federal constituency, **Umuahia North/Umuahia South/Ikwuano**.

We have out of abundance of caution, perused the entire **26 paragraphs petition** and there is no doubt that the name of the electoral constituency used is **Ikwuano/Umuahia federal constituency** which the Petitioners concede is **non existent.** Now this non existent constituency appears practically everywhere in the critical elements or parts or building blocks of the petition. It appears in the heading of the petition; it appears in the paragraphs relating to the parties to the petition and also using this non existentconstituency situates the basis of the right of the Petitioners to bring the petition. The non existent constituency also appears in the **reliefs** sought.

In the petition and the facts relied on in support of the grounds of the petition and even in the deposition of the important evidence of 1st Petitioner, the non existent "Ikwuano/Umuahia Federal Constituency" used by the Petitioners appears in every material part of the petition.

Let us perhaps be more detailed even at the risk of cluttering our Ruling. In paragraphs 2, 3, 4, 7, 8, 10, 11, 21, 22, 23 and 26 of the petition, the constituency where Petitioners claimed election was held on 25/2/2023 is **Ikwuano/Umuahia Federal Constituency** which they agree does not exist. The right the Petitioners claim to exercise to present the petition is for an election into this non – existent constituency referred to as**Ikwuano/Umuahia Federal Constituency.**

On **holding of the election**, no election was thus held by the 1st Respondent into the National Assembly for Ikwuano/Umuahia Federal Constituency as conspicuously averred in the petition.

Finally in the reliefs sought, the tribunal is prayed to declare an inconclusive election that did not take place in **Ikwuano/Umuahia Federal Constituency** and order a fresh election to be conducted in the same non – existent **Ikwuano/Umuahia Federal Constituency**.

In the contextof election petitions and its special or sui generis nature, it is difficult to accept that the nature of the **existential amendments** sought as we have demonstrated at length can be categorized as a **mere misnomer** but for us, it is one of **reconstituting or rebuilding of the key essential building blocks of the petition.**

The amendments unfortunately seeks to rebuild the petition to become a reference to a **different election** other than the one subject of the extant petition and will be overtly overreaching.

The amendments therefore sought are clearly substantial alterations or amendments covering material parts of the petition and falls foul of the clear provisions of Section **132 (7)** of the Act and **paragraphs 14 (a) (i) and (ii)** of the 1st schedule of the Act.

The point to underscore is that by section 132 (7) of the Electoral Act, 2022, the Petitioners have 21 days after the date of declaration of results within which to file their petition. It logically follows that any substantial amendment(s) as sought here relating to the contents of a petition as envisaged by paragraph 4 of the first schedule of the Electoral Act must be done within the 21 days limited for filing an election petition.

In this case, the petition was filed on **8/4/2023**while the extant application for amendment was filed on **2/5/2023** clearly outside the time sensitive criteriaof 21 days statutorily provided.

The nature of the amendments as highlighted above are aimed at introducing the statutory requirements of the contents of a petition and bringing in prayers or reliefs which were not part of the original petition. The attempt to amend the petition at this late stage is clearly not only an infraction of the time frame allowed for such applications but also contravenes the provision on substantial alterations and will therefore be unavailing.

To allow the present application would mean allowing the presentation of the election petition outside the time allowed by lawfor its presentation. See **Mustapha V Gamawa (Supra); Odu V Duke (No. 2) (2005) 10 NWLR (Pt. 932) 142.**

On the whole, the **application** fails and it is dismissed.

The last application by the **Petitioners** is dated 24/4/2023 and filed on 6/6/2023 praying for

"An order of the Honourable tribunal striking out the joint reply of the 4th and 5th Respondents having been filed out of time"

The **grounds** of the application are:

1. The 4th and 5th Respondents filed their Respective Reply to the petition out of time.
2. The said Reply therefore constitute abuse of the process of the court.

The application is supported by an 8 paragraphs affidavit with one annexure and a written address.

The address simply projects the position that the 4th and 5th Respondents Reply to the petition was not filed within 21 days of the receipt of the petition and is thus incompetent.

At the hearing, counsel to the Petitioners relied on the paragraphs of the supporting affidavit and adopted the submissions in the written address in urging the tribunal to grant the application.

The 4th and 5th Respondent filed a reply address and contended that on the record, the petition was only served on the 5th Respondent on 17/4/2023 and their response or Reply was filed on 28/4/2023 just eleven days after the receipt of the petition and within time as prescribed by paragraph 12 (1) of the 1st schedule of the Act.

At the hearing, counsel to the 4th and 5th Respondents adopted the submissions in the address in praying that the application be dismissed.

We have carefully considered the processes filed and the submissions of counsel.Now the principle is again settled that an Applicant who seeks or prays for certain relief (s) from court must provide clear factual and legal basis to support the Reliefs sought.

In this case, the Applicants contend that the 4th and 5th Respondents Reply was filed outside the 21 days allowed by law after they were served. The question here is whether they made out such a case?

Now in paragraphs 3, 4 and 5 of the affidavit in support, the Petitioners deposed to the following facts:

> **"3. that this petition was filed on the 12th day of March 2023 and service copies were assigned to Mr. Sunday Ckukwu, a bailiff attached to the Honourable Tribunal for the purposes of effecting service on the Respondents.**
>
> **4. that the 4th Respondent was served with the petition on the 31st day of March 2023 pursuant to the order of the Honourable tribunal made on 30/4/2023 while the 5th Respondent was earlier served on the 20th day of March, 2023.**
>
> **5. the 4th and 5th Respondents filed their joint reply to the petition on the 28th day of April, 2023 which was outside the 21 days allowed them by law to file their Reply."**

We have carefully perused the extant affidavit of Applicants and no **affidavit of service** was attached to situate when 4th and 5th Respondents were served with the petition and the Tribunal cannot speculate in the absence of evidence to situate service and that is fatal. The critical and fundamental question of service cannot be determined in a vacuum, neither can it be a matter of guess work or speculations.

It is true that 4th and 5th Respondents may have not filed a counter – affidavit to the extant application, but a counter – affidavit will not be

necessary if there is nothing in the affidavit which needs to be refuted or if the affidavit is self contradictory or the facts contained therein evenif presumed to be true, yet taken together are not sufficient to sustain the prayer of the Applicants as in this case.See **Folorunsho V Shaloub (1994) 3 NWLR (pt. 333) 413 at 421 A – B.**

In the affidavit in support, the Petitioners claimed without any evidence that the petition was served on the 4th and 5th Respondents on **31stand 20th March 2023** pursuant to the order of this tribunal granted on **30/4/2023.**

The clear implication here is that the purported service of the petition was even made in **March** well before the order for service made by the Tribunal in **April.** The service here which predates the order for service by the tribunal clearly is ineffectual and invalid and cannotbe a basis to compute when time begins to run for purposes of filing a Reply.

The averments supplied by Applicants on service are contradictory and are not credible. Indeed the averments fall into the category of averments that need not be challenged.

In the absence of clear evidence to support or show when the 4th and 5th Respondents were served, the extant application stands compromised, ab initio.

It fails and is **dismissed.**

The last interlocutory Application was that filed by the **3rd Respondent** dated**28/4/2023** and filed on **5/5/2023**.

The application prays for:

(i) An order striking out paragraphs 1, 2, 3, 7, 8, 10, 11, 22 of the petition and the reliefs sought in the petition.

(ii) An order dismissing or striking out the petition.

The **grounds of** the application are as follows:

(i) The Petition was filed in respect of a non - existent election alleged to have occurred in an electoral constituency known as "IKWUANO/UMUAHIA FEDERAL CONSTITUENCY" whichsaid constituency was not created by INEC.

(ii) Paragraphs 1,2,3,7,8, 10,11,22 of the Petition and the Reliefs sought in the Petition.

(iii) The 1st Petitioner lacks the locus standi to present the Petition.

(iv) The Petition is fundamentally defective as it lacks a competent ground under Section 134 of the Electoral Act, 2022, to ground the Petition.

(v) The grounds upon which the Petition is founded are mutually Exclusive.

(vi) The Tribunal lacks the jurisdiction to edit the Petition of the Petitioners and elect which of the grounds to delete on behalf of the Petitioners.

(vii) The Reliefs sought in the Petition are ungrantable.

The application is supported by a 9 paragraphs affidavit and a written address. No issue was framed but the address dealt with three defined grounds streamlined hereunder.

The first ground dealt with the competence of the grounds of the petition. It was contended that Section 134 (a) – (c) of the Act provides the grounds for questioning an election. It was contended that the petition in this case is incompetent having lumped ground (c) of section134, being a complaint that the Respondent did not score the majority of lawful votes cast at the election with other grounds when the legislature provided that the grounds should be construed disjunctively. The case of **Abubakar V Yar adua (2008) 36 NSCLR 231** was cited.

The second ground is on the non existentIkwuano/Umuahia Federal Constituency. That paragraphs 1, 2, 3, 7, 8, 10, 11 and 22 of the petition and the reliefs sought are in respect of this non existent constituency and accordingly that they are incompetent and should be struck out.

Finally on the right of the Petitioners to present the petition, it was submitted that since the Petitioners averred in the petition, that they contested election in a non existent electoral constituency, the implication is that they lack the right and locus standi to present the petition and accordingly that the petition be dismissed.

At the hearing, counsel to the 3rd Respondent relied on the paragraphs of the supporting affidavit and adopted the submissions in the written address in urging the court to grant the application.

The Petitioners in response filed a counter – affidavit of 14 paragraphs and a written address in which the following issues were raised as arising for determination to wit:

(i) Whether the preliminary objection is competent and does not constitute abuse of process of this tribunal and in the alternative;

(ii) Whether there is substance in the preliminary objection as to leadto the striking out or dismissal of the petition.

On the issue 1, it was contended that there is no proof that counsel for the 3rd Respondent has paid for the NBA stamp and seal which must be mandatorily fixed to the process or evidence for payment for the stamp and seal shown. That in this case, the 3rd Respondent merely attached his practicing fee receipt which is different from the required NBA stamp and seal. That the extant objection is thus defective and should be struck out. The case of **Ardo V INEC (2017) 13 NWLR (pt. 1583) 450 at 483** was cited.

It was also contended that since the issue of the wrong reference to the right constituency is now subject of an amendment application, that it cannot be subject of a preliminary objection. The Petitioners also submitted that the paragraphs which the 3rd Respondent have challenged has not been shown to be offensive to the rules of pleadings or the Electoral Act to warrant it been struck out. That any complaint about the paragraphs are at best issues of evidence at the trial.

On the second issue, it was contended that the 3rdRespondent has not placed requisite materials to enable the tribunal grant the objection. That the petition complied with the provision of Section 134 of the Act and is thus competent.

At the hearing, counsel to the Petitioners relied on the paragraphs of the counter – affidavit and adopted the submissions in the written address in urging the court to refuse the application.

We have carefully considered the submissions on both sides of the aisle and the narrow issue is whether the court should grant the application dismissing or striking out the petition.

Before dealing with the substance of the application, let us quickly resolve the preliminary point raised by Petitioners that there is no proof that counsel paid for NBA stamp and seal which ought to be attached to the process. That the 3rd Respondent merely attached his practicing fee receipt which according to the Petitioners is different from the required NBA stamp and seal.

We are not sure this is a matter we should dissipate any energy on. It is a matter of general knowledge that the payment of Bar practicing fees for the year entitles counsel quaadvocate to issuance of the NBA stamp and seal. It is also a matter of general knowledgethat the NBA seal and stamp may not be readily available at all times when payment is made by counsel. The **evidence of payment of the Bar practicing fee**and the attachment of the receipt to the court process is clear evidence that

counsel has done all that is required and the non availability of same or the failure to affix the NBA seal cannot be fatal.

In this case the Bar practicing fee receipt of counsel, Offia Valentine was attached to the application and he made payment on **28/3/2023,** well before the filing of the extant application. There is here no challenge or complaint on the validity of the receipt or that it did not proceed from the appropriate issuing authority.

The objection thus has no merit and it is **discountenanced**.

Now to the **merits**. As stated earlier, no issue was raised or streamlined by the 3rd Respondent/Applicant as arising for determination but the address dealt with three grounds and we shall accordingly resolve the application on those grounds.

The first ground revolve around the competence of the petition. It was contended that section 134 (a) – (c) of the Act provides for the grounds of questioning an election. That in this case, ground c of the petition under section 134 (c) of the Electoral Act was lumped with other grounds thus making the petition incompetent and liable to be dismissed.

Now we had earlier in this judgment situated that 3 grounds of the petition as stated in **paragraph 25** of the petition. We need not repeat the grounds.

Now it is equally true that section **134 (1) (a) – (c)** of the Electoral Act provides as follows:

(1) An election may be questioned on any of the following grounds, that is to say:

(a) A person whose election is questioned was at the time of the election not qualified to contest the election;

(b) The election was invalid by reason of corrupt practices or non-compliance with the provisions of the Act; or

(c) The Respondent was not duly elected by the majority of lawful votes cast at the election.

Now the law is settled that before a petitioner can question the election of a respondent, his petition must fall within the grounds specified by law. See **Oyegun V Igbinedion & ors (1992) 2 NWLR (Pt 226) 947.** In **Nyesom V Peterside (2016) 17 NWLR (Pt 1512) 452 at 528,**the Supreme Court held that grounds for questioning an election provided in the Electoral Act are sacrosanct and admits of no addition. **Any** ground based on section 134 (1) of the Electoral Act 2022 is competent.

Now in this case, the grounds of the petition is predicated on:

i) Qualification

ii) That the election was invalid by reason of non-compliance with the provision of the Electoral Act and

iii) That the 1st Respondent was not duly elected by a majority of lawful votes cast at the election.

The above grounds as independently streamlined appear to us competent grounds within the confines or purview of section 134 (1) of the Electoral

Act. We do not see how the formulation of the grounds in this petition falls foul of this provision.

We also fail to see where the grounds were lumped together as argued. In any event, any of these grounds, **on its own,**validates the competency of an election petition. This ground is therefore not availing.

The last **two grounds** on the alleged non existence of **Ikwuano/Umuahia federal constituency** and accordingly that the right to present the election cannot logically arise in the circumstances, are matters we feel go to the substance of the petition and which ought to be determined as substantive issues.

We do not consider that any side will suffer any prejudice since the extant complaints will be considered in the main judgment. This approach also allow for a full ventilation of the grievance of the petitioners.

The petitioners in our considered opinion should be given every opportunity to have their electoral grievance determined on the merits and our tribunals have been urged to do everything to favour the fair trial of the questions before them. Our courts are now consistently urged to pursue the course of substantial justice. See **Ikpeazu V Otti (2016) 8 NWLR (Pt 1513) 38 at 97** per Galadima JSC.

On the whole, **except for the issues relating to the second andthird grounds which we defer to the substantive judgment,** the application fails and is dismissed.

Having delivered the rulings on the interlocutory applications taken at the pre-hearing, the next stage is to determine the three preliminary objections

raised by the 2nd, 3rd and 4th and 5th Respondents. We note that no issue was raised or addressed by these parties on the **objections specifically** which all bother on the competency of the petition which is based on a non – existent electoral constituency – Ikwuano/Umuahia Federal Constituency, a constituency unknown to Law or INEC. However we equally note that in the final addresses, the issues framed and submissions made all cover these critical issues or questions raised by the preliminary objections. We equally note that these same questions were raised by the application of the 3rdRespondent heard at the pre-hearing sessions and we indicated that we will consider those issues in the substantive judgment.

In the circumstance, since the objections were not treated as distinct but submissions were made on the issues raised by the objections in the substantive case, we shall accordingly resolve the issues along with the substantive **judgment.**

JUDGMENT ON THE PETITION

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

In the course of trial and in proof of their case, the petitioners called **only four(4) witnesses.**

The 1st witness for the petitioner was **Daniel Ezeocha** who testified as PW1. He adopted his witness statement dated 18/3/2023. He is a registered voter and that he was a domestic observer and covered the entire **Umuahia North Local Government** with respect to the National Assembly Election held on 25/2/2023. He stated that most of the polling

units he visited such as Lodu 1 (unit 008), Ofeke (Unit 014), electoral materials arrived as late as 3.00 pm and as such accreditation could only commence at about 3pm and 4pm in other units and by that time, a good number of the voters had left in anger.

PW1 also averred that there was a gross shortage of electoral materials and that Electoral officials did not bring result sheets and ballot papers for the House of Representatives election and that only the election for the Presidential election held.

He further stated that party agents were angry and that in the few units where a handful of the election materials for Senate and House of Representatives were later brought, election continued till 9pm with officials of INEC using their phone torch lights to record. Further that there was open canvassing for votes and vote buying in the presence of security operatives who turned a blind eye.

John Ndubuisi testified as **PW2.** He deposed a witness statement which he adopted at the hearing. He said he was a registered voter and a polling unit agent. He concentrated on a particular unit (Okwe Community School Iv)

PW2 stated that electoral materials arrived as late as 3.00pm and accreditation also commenced by 3pm and by that time a lot of voters had left in anger. That before the election, they demanded to see the electoral materials which officials of INEC showed them reluctantly and they discovered that only materials for presidential and few materials for Senate were brought and none for House of Representative. That they were

assured that election materials for House of Representatives will soon arrive but none came or arrived up till when he left his polling unit by 7.00pm.

PW3 was one **Ukwubiri Chinedu.** He deposed to a witness statement which he adopted at the hearing. He was a registered voter and also acted as a polling unit agent. He also stated that electoral materials arrived as late as 3.20pm and that accreditation only commenced at 4.00pm by which time a good number of voters had left. He stated that before the accreditation, they demanded to see the electoral materials and they discovered that only materials for Presidential election were brought and insufficient result sheets for the Senate and House of Representative elections were brought.

That so many people could not be accredited due to the failure of the card reader. He was able to collect the result sheet for his polling unit but that the total number of those who voted were lesser than those who came to vote but were not accredited.

The 1st Petitioner testified himself **PW4** and the last witness for the Petitioners. He adopted his witness deposition on pages 73 – 148 of the petition which is essentially a rehash or repetition of the facts stated in the petition which we have already produced.

On the record, the petitioners tendered in all **Exhibits P1 – P9 (1 – 9)** comprising of voters card, election observer tag, polling unit agent tag, APGA membership card; the Nomination form for member House of

Representative for 1st Petitioner (PW4), Certificate of Local Government of Origin, tabulation of registered voters downloaded by PW4.

With the evidence of the **1st Petitioner as PW4**, the petitioners closed their case.

The 1st Respondent chose not to call any witness and closed their case. They stated that they will be relying on the evidence led by the Petitioners.

The 2nd Respondent on his part called only one witness. **Leonard Ifenacho Ogbonna** testified as DW1. He adopted his witness deposition dated 12/4/2023 and tendered in evidence his voters card and Labour Party membership card which was admitted in evidence as **Exhibit D1a & D1b**. The summary or substance of his evidence is that there is no electoral constituency known as "Ikwuano/Umuahia Federal Constituency" in Nigeria. That only the 1st Respondent has the authority to delineateelectoral constituency in Nigeria and that it has not created such a constituency. That the 3rd Respondent never contested an election nor sponsored any candidate for any election to the Ikwuano/Umuahia Federal Constituency.

DW1 stated that the Petitioners filed a case in a none existent electoral constituency. That the units listed in the petition are not within the electoral constituency delineated by INEC. That the election 3rd Respondent participated in was in **Umuahia North, Umuahia South, Ikwuano Federal Constituency** and that all electoral materials including polling unit result sheets were distributed in all polling units and that it is not true that elections did not hold in 70% of the constituency.That the results

entered in the result sheets represented the actual scores of the parties which were not arbitrarily allocated.

He further averred that in the Umuahia North, Umuahia South, Ikwuano Federal Constituency, there was no cancellation of results due to over voting and that BVAS machine was used to accredit voters in the constituency.

DW1 further stated that the 2nd Respondent is a member of 3rd Respondent and represented 3rd Respondent in the election for House of Representative for Umuahia North, Umuahia South and Ikwuano Federal Constituency and that no other political party sponsored or nominated 2nd Respondent for the said election. With his evidence, the 2nd Respondent closed his case.

The 3rd Respondent, 4th and 5th Respondents did not call any evidence and they all closed their cases.

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

In the **final written address of 4th and 5th Respondents dated 3/8/2023** and filed same date at the courts registry, one issue was raised as arising for determination as follows:

"Whether having regards to the pleadings of the parties and evidence in this petition, the plaintiffs are entitled to be granted the reliefs sought in this petition".

Submissions were made in the address which forms part of the record of the tribunal to the effect the petitioners have woefully failed to make out a case on the pleadings and evidence to entitle them to the Reliefs sought.

In the **final address of the 3rd Respondent dated 28/7/2023 and filed on 3/8/2023,** the 3rd Respondent also raised one issue as arising for determination:

"Whether the petition is competent and ought not to be dismissed"

Submissions were equally made in the address to the effect that the petition is ab-initio incompetent as it is predicated on a non-existent federal constituency and that the petitioners have not made out any case to allow for the grant of the reliefs prayed for.

The **2nd Respondent in his address dated 30/7/2023 and filed on 3/8/2023,** also raised one issue as arising for determination:

"Whether the petitioners established the three grounds upon which the petition is anchored"

Submissions were also made on the above issues which forms part of the Record of the tribunal to the effect that the petitioners did not adduce any iota of evidence to support any of the three grounds of the petition and accordingly that the petition is bound to fail.

The **1st Respondent on its part in there address 2/8/2023 and filed on 4/8/2023 raised** two issues for determination as follows:

1) **Whether the election of 25th February 2023 was conducted in compliance with the provisions of the Electoral Act 2022 and if not, whether the non-compliance was substantial enough to affect the result of the election.**
2) **Whether the petitioner proved that election did not take place in more than 70% of the polling units in the Umuahia North Umuahia South/Ikwuano Federal Constituency.**

Submissions were equally made on all the above issues which also forms part of the Record of court to the effect that no evidence was led to show or establish that the election was not conducted in compliance with the provisions of the Electoral Act and that there was equally no evidence to establish that elections did not hold in 70% of the polling units in the constituency.

On the part of the **petitioners, their final address is dated 5/8/2023 and filed on 11/8/2023**. In the address, 2 issues were raised as arising for determination, to wit:

1) **Whether the 2nd Respondent was qualified to contest the election; and**
2) **Whether the election was not rendered invalid by gross non-compliance with the relevant provisions of the Electoral Act, 2022.**

Submissions were similarly made on the above issues by the petitioners which forms part of the Record of the tribunal to the effect that on issue 1, that the 2nd Respondent was not qualified to contest the election on the

basis that he did not resign from PDP before joining the Labour Party and that his name was not on the register of members of Labour Party at least 30 days before their party primaries in violation of provision of section 77 (3) of the Electoral Act. On issue 2, it was contended that there was lack of supply of adequate Electoral materials and that results were not announced in over 70% of the polling units and that all these constitute gross non-compliance with the provisions of the Electoral Act rendering the election invalid. The 2nd Respondent and the 4th and 5th Respondents then filed replies on points of law respectively on 17/8/2023 and 16/8/2023. The replies essentially accentuated the points earlier made.

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

Nevertheless, upon a careful and thorough perusal and consideration of the entirety of the pleadings, the reliefs claimed and the grounds thereof, the totality of the evidence led on record by parties and the final addresses, it seems to us that the single issue raised by the 2nd Respondent which the tribunal will slightly modify has captured the essence and crux of the dispute and it is on the basis of this issue which has fully encapsulated all the issues raised by the parties that we shall proceed to resolve the present electoral dispute.

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

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

The issue on which this case will be determined is **"whether the petitioners established the three grounds upon which the petition is anchored to entitle them to the reliefs sought?"**

In determining this issue, it is expedient for us to predicate our consideration on certain basic principles of law. **Our** first port of call must necessarily be sections 131 (1), 131 (2) and 132 of the Evidence Act 2011 which stipulate as follows:

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

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

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

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

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

We had earlier in this judgment situated the **facts** presented by the petitioners in support of **the petition**. Indeed the **petition** in this case unequivocally **projects** the case of the petitioners and they are bound by it and cannot go outside it to lead evidence or rely on facts extraneous to those pleaded. See **Kyari V Alkali (2001) 11 NWLR (Pt 724) 412 at 437 – 434 paras H – A.**

The pleadings therefore streamlines and defines the issues in dispute. Parties as stated earlier are thus bound by the case they put before the tribunal. The court and or tribunal is equally circumscribed to determine only the issues as situated in the pleadings.

In this case, in the petition, the petitioners in paragraphs 2, 3, 4, 7, 8, 10, 11, 21, 22, 23 and 26 containing the**substantive Reliefs** sought by them,**consistently** asserted and **projected** that the extant **petition** they filed is in respect of an Electoral Constituency which they referred to as **"Ikwuano/Umuahia Federal Constituency".**

Now on the pleadings and in evidence it is common ground that there is no such known constituency described by the petitioners as **"Ikwuano/Umuahia Federal Constituency"**for which elections held for any House of Representative seat on 25/2/2023.

All the Respondents in this case in their pleadings joined issues with petitioners on that issue and all averred that **there is no such electoral constituency known as Ikwuano/Umuahia Federal Constituency.** It may perhaps be instructive to here refer to the averments of **INEC,**the body statutorily charged with the conduct of the election.

In paragraphs 3 and 5 of these Respondent's Reply, they averred as follows:

> **"3. In response to paragraphs 1 to 3 of the petition, the 1st Respondent avers that there is no electoral constituency known as Ikwuano/Umuahia Federal Constituency and therefor puts the petitioners to the strictest proof of that and other averments contained therein.**
>
> **5. The 1st Respondent in further response to paragraphs 8 and 9 of the petition avers that it never conducted any election into "Ikwuano/Umuahia Federal Constituency on 25/2/2023 as same is none-existent, rather it conducted election in respect of Umuahia North/Umuahia South/Ikwuano Federal Constituency and that the said election was won by the 2nd and 3rd Respondents and that "scores"or votes were not allocated to any candidate rather the votes scored by each candidate was what was announced and declared by the 1st Respondent as shown in forms EC8A, EC8B, CE8C, EC8D and EC8E of Umuahia North/Umuahia South /Ikwuano Federal Constituency".**

The above unchallenged averments by **INEC** is important because it undermines completely the integrity and validity of the claims by Petitioners that an election was conducted by INEC on 25**/2/2023** in **Ikwuano/Umuahia Federal Constituency** which is the **fulcrum** of the present election petition.

Indeed in evidence, the 1st petitioner himself conceded under cross – examination that the existing electoral constituency is not **"Ikwuano/Umuahia Federal Constituency"** which they had used in the petition but "**Umuahia North/Umuahia South/Ikwuano Federal Constituency".**

Now it is true that the petitioners applied to amend the petition, on **which** a **ruling** was delivered earlier in this judgment **refusing** same. We had given very detailed reasons why the **whole salestructuralamendments** sought to be made to the petition cannot be availing. We need not repeat ourselves.

The import of our ruling is clear that the petition was filed in respect of a non – existent electoral constituency where no **election occurred.**

To further worsen the case of the petitioners and to situate the complete lack of clarity and the contrived confusion that the petition has projected; the petitioners streamlined their complaints as covering the entire non – existent **"Ikwuano/Umuahia Federal Constituency"** and on **pages 3 – 68** of the petition, they stated or indicated the local governments in the constituency, the registration areas, polling units, delimitation and total number of polling units where those problems allegedly occurred.

Now **what is strange** about these averments is that from **pages 20 – 42 of** the petition, they referred to various polling units in **Isiala Ngwa North Local Government Area; Isiala Ngwa South Local Government Area and Osisioma Local Government Area** which do not form part of the **unknown "Ikwuano/Umuahia Federal Constituency"**or the correct constituency known as **"Umuahia North/Umuahia South/Ikwuano Federal Constituency".**

Again under cross – examination the 1st Petitioner again conceded that all the polling units mentioned in their pleadings and his evidence with respect to **Isiala Ngwa North, Isiala Ngwa South** and **Osisioma Local Government Area** are all not under **Umuahia North/Umuahia South** and **Ikwuano Federal Constituency.**

Again, as earlier alluded to,**reference to local governments outside the Umuahia North/Umuahia South/Ikwuano Federal Constituency** to form the basis of the extant petition, again compromises the validity of the petition. A **petition** we hold must be filed in an existent electoral constituency covering only local government areas within the constituency, not those outside it as done here.

It is settled principle of general application that the primary function of **pleadings** is to define and delimit with clarity and precision, the real matters in controversy between parties upon which they can prepare and present their respective cases. It is designed to bring the parties to an issue on which the court or tribunal will adjudicate between them. See **Kyari V Alkali (Supra) 412 at 433 – 434 H – A.**

Where however a case or pleading is formulated in such haphazard manner as in the case, with the complaints completely obscure, imprecise, unclear and rooted in a **non-existent electoral constituency** and **somelocal governments** outside the constituency, it is difficult to situate how a court of law qua justice can meaningfully make an inquiry into such a dispute and fairly determine same in such contrived state of confusion. The principle again must be underscored that in all cases particularly election disputes, a party must present his grievances in clear and discerning manner leaving no room for doubt or conjecture.

In **Abubakar V Yar' adua (2008) LPELR – 51 (SC) at 131 – 132 paras G – A** the Supreme Court held thus:

> **"One of the basic principles of pleadings is that the facts pleaded must be exact, precise and should not give rise or room for conjectures. The facts pleaded must be concise and not rigmarole"**

The extant **petition** completely runs foul of these principlesstated by the Supreme Court. It is thus obvious that the **key paragraphs of the petition** earlier highlighted and the **reliefs sought** clearly, as a common ground, are in respect of a non – existent Federal Constituency described as "Ikwuano/Umuahia Federal Constituency"by the petitioners. **The three additional local governments** added into the frame by petitioners does not also form part of the non-existent constituency or even the right federal constituency.

As a logical corollary, we hold that there is no such electoral constituency created by **INEC** and referred to as Ikwuano/Umuahia Federal Constituency. See section 122 of the Evidence Act 2011 which empowers the tribunal to take judicial notice of the division and delimitation of electoral constituencies in Nigeria.

The petitioners by their own showing have fatally compromised any right they may have to present this petition. By their pleadings they participated in the election for a non – existent constituency for Ikwuano/Umuahia Federal Constituency. INEC did not conduct any election for that constituency on 25/2/2023 and the Respondents did not equally participate in any election for that constituency. The election won by 2nd Respondent was also not for that unknown constituency.

Consequently since the petitioners did not present a **petition** situated within the Umuahia North, Umuahia South, Ikwuano Federal Constituency, they cannot validly present a **petition**in respect of an unknown constituency under the Electoral Act and extant-laws.

Now, out of abundance of caution, let us even look at whether on the evidence, the Petitioners have even made out a case to warrant the grant of the reliefs sought.

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

The first ground of the petition is that the 2nd Respondent whose election is challenged was at the time of the election not qualified to contest.

Now in the entire petition, it is only in **paragraph 19** where petitioners contend that **"Thedouble nomination of 2nd Respondent is invalid under the law. The 5th Respondent is hereby put on notice to produce the 1st Respondent's Nomination Form for House of Representatives primary election code PD 003/NA withserial No 02115 and Expression of interest form for House of Representative serial No 01046."**

And in paragraph 20, all they stated is that **"The 3rd Respondent is put on notice to produce the 1st Respondents Nomination form for House of *Senate primary election*and *Expression of interest for House of Senate which paved way* for him to contest in the challenged election".**

Again, it is difficult to understand the basis of the complaint on **qualification.** The above paragraphs are difficult to fathom or understand. The petitioners talk about double nomination without giving details or particulars of the alleged double nomination. The petitioners talk of nomination form for **House of Representatives primary election** and **nomination form**for **House of Senate** primary election and **Expression form for House of Senate** and one then wonders as to the specific complaints of Petitioners. Is the double nomination to the **House of Representatives** or to **House of Senate,** whatever this means. The 1st Petitioner in his evidence also made this same confusing assertions, to wit: **House of Representatives** and or **House of Senate** and one then really wonders if the petitioners even know the elections they contested for?

The complaint of **qualification** as in most of the complaints of petitioners was not properly made out on the pleadings and without doubt incompetent.

There is equally absolutely no credible evidence beyond bare challenged oral assertions to support this allegation of double nomination. None of the alleged **nominations** to either the **House of Representatives** or **House of Senate** was tendered by the petitioners and this is fatal. Even if they had tendered these nomination forms, we really wonder at what purpose it will serve to the clear extent that this electoral dispute has absolutely nothing to do with the **Senate.** It is trite law that facts deposed to in pleadings must be substantiated and proved by evidence, in the absence of which the averments are deemed abandoned. See **Aregbesola V Oyinlola (2011) 9 NWLR (Pt 1253) 458 at 594 paras A – B.**

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

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

Let us just add that on the authorities, the position is settled that the issue of nomination of candidates to represent a political party in an election is strictly an internal affairs matter of the political party. This means that outsiders, other political parties and persons who did not participate in the primaries being complained of are precluded from instituting any action challenging same. See **Allied Peoples Movement V INEC & 2 ors (2023) 9 NWLR (Pt. 1890) 419 at 514 – 515.**

In conclusion on this point, may we add that the qualifying factors for a person seeking a seat for the House of Representatives is situated within **section 65** of the constitution while the disqualifying factors are situated within the provision of **section 66** of the 1999 constitution.

There is nothing in the **petition**where it was pleaded that the 2nd Respondent has not met the constitutional threshold or is within the purview of the disqualifying factors in **section 66**.

The petitioners also in paragraph 23 of the petition contend that the 2nd Respondent was not qualified to contest the election because his name was not on the register of Labour Party members submitted to INEC at least 30 days before the conduct of party primaries.

Again, where is the evidence to sustain this allegation? Nothing was proffered in evidence to credibly support or sustain this allegation. If the name of 2nd Respondent is not in the register of members of Labour Party, as alleged, where is the proof? The petitioners are not Labour Party members, so what is the basis of the complaint? This complaint is rooted on nothing and must be discountenance without much a do.

Again, we only need add that the provisions dealing with qualifications or disqualifications as a member of the House of Representatives are sections 65 and 66 of the constitution. The qualification requirements as it relates to membership of a political party is in section 65 (2) (b) of the constitution which provides that a person shall be qualified for election as member of the House of Representative if he is member of a political party and is sponsored by that party. There is nothing in these provisions that requires or states that a person's name must be on the register at least 30 days before the party primaries. This proposition has no legal basis and is an attempt to read into the constitution what is not contained therein. See **Allied People's Movement V INEC & 2 ors (Supra) 419 at 514 – 515 H – C.**

The complaint situated **on ground 1** is resolved against the Petitioners.

Ground 2 of the petition is that the election was invalid by the reason of non-compliance with the provisions of the Electoral Act 2022.

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

Indeed the burden on petitioner to prove non-compliance is three fold. First, he shall effectively plead the acts which amounts to the alleged non-compliance and adduce credible evidence sufficient to prove their occurrence.

In **Waziri & Anor V Geidam & ors (1999)7 NWLR (Pt 630) 227 CA,** it was held that for the Petitioners to succeed in their allegations of non-compliance, they mustfirst plead in their petition the heads of non-compliance alleged. They must then situate clear and precise pleading necessary to sustain the evidence in proof of such allegations. Secondly, they must render cogent and compelling evidence to prove that such non-compliance took place in the election and thirdly and finally, that the non-compliance substantially affected the result of the election to the detriment of the petitioners.

In this case, in paragraph 7 of the petition, the Petitioners averred that there are **62** wards and **1, 372** polling units in the federal constituency. In evidence the petitioners only called **4 witnesses** including the 1st Petitioner. Pw2 and Pw3 were the only polling unit agents called and who only alluded to late arrival of electoral materials and late commencement of voting andthat because of the late arrival, some undetermined voters left. No more. PW1 claimed to be a domestic observer and identified about 4 units he visited and alluded to short supply of electoral materials like ballot papers and result sheets.

Apart from the party membership cards, voters cards and their agents tags, absolutely no other cogent and compelling evidence was tendered to prove

any non-compliance as alleged and how the non-compliance substantially affected the result of the election to the detriment of petitioners. The petitioners did not tender a single result of any unit or any Electoral document to support their claims of non-compliance with the Electoral Act and or that elections were not held in 70% of the polling units in the non – existent constituency. No single witness was produced to situate any disenfranchisement of voters as alleged.

The evidence of 1st Petitioner (PW4) as stated earlier was simply a rehash of the petition and covers or is in respect of the **non-existent Ikwuano/Umuahia Federal Constituency** and also **non-existent Local Governments** of the constituency.

His evidence as alluded to already is full of fatal contradictions and will lack any probative value. In paragraph 1 of his deposition, he said he was a candidate for **Abia Central Senatorial District.** In paragraph 3, he alluded to contesting for **National Assembly (House of Representative)** in respect of **Ikwuano/Umuahia Federal Constituency**. Furthermore in paragraph 20 of his deposition, he was demanding for the expression of interest form of 2nd Respondent for the **"House of Senate"** which paved way for him to contest the challenged election? The 1st Petitioner adopted this very flawed deposition without explaining these self created contradictions to the satisfaction of court and we are really at a loss at what to make of such a deposition that lacks cogency, quality and credibility. It is not the duty of court to in chambers resolve these fatal contradictions.

Again all the contested assertions he made in this flawed deposition are all product of what he claimed **his agents told him** which clearly amounts to hearsay evidence and inadmissible. See sections 37– 38 and 126 of the Evidence Act, 2011.

The evidence of these four witnesses particularly PW2 and PW3 who served as unit agents of two units which did not prove or establish anything, even if accepted as credible (and we make clear that they are not) affecting only 2 or 3 units out of **1, 372 units** in **62 wards** being contested is clearly insufficient to negatively affect the election and the return of the 2nd Respondent. See **Isiaka & Anor V Amosun & Ors (2016) 9 NWLR (Pt 1518) 417 at 441 – 442 F – A; Omisore V Aregbesola (2015) 15 NWLR (Pt 1482) 205 at 280 – 281 para G – A, 298 B – F.**

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

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

This **issue** is resolved against Petitioners.

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

We are here again confronted with a situation where a complaint is averred in the pleadings without evidence to support same.

The law is settled that where a petitioner is alleging that the respondent was not elected by majority of lawful votes, he ought to plead and prove that the votes cast at the various polling units, the votes credited to the winner, the votes which ought to be credited to him and also the votes which should have been deducted from that of the supposed winner in order to see if it will affect the result of the election. If this is not done, it will be difficult for the court to effectively address the issue. See **Nadabo V Dubai (2011) 7 NWLR (Pt 1245) 153.**

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

This **issue** is also resolved against the Petitioners.

On the whole, **the single** issue raised is resolved against the Petitioners. The **whole reliefs** sought are vague, contradictory and ungrantable. The

Petitioners have woefully failed to prove by any relevant, credible and admissible evidence their unclear allegations which now turn to us, to lack factual and legal basis. Contradictory and inconsistent facts may have been pleaded but no witnesses were produced to establish those facts. For the avoidance of doubt,all the reliefs/prayers contained in **paragraph 26**of the petition are wholly incongruous and fail.

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

This petition cries to high heavens in vain to be fed with relevant and admissible evidence. The petitioners fail to realize that judges do not act like oracles. Judges cannot perform miracles in the handling of matters before them, neither can they manufacture evidence for the purpose of assisting a party to win his case. Cases are determined on the strength and quality of the evidence adduce before the Court.

This petition is wholly bereft and devoid of any merit or substance. It is hereby dismissed with ₦250, 000 costs payable to the Respondents; (₦50, 000 naira to each Respondent).

HON. JUSTICE ABUBAKAR IDRIS KUTIGI
CHAIRMAN

Appearances:

1. **Professor C. O. Chijioke, Esq., with C. AzumaEsq.,for the Petitioners.**

2. **E. M. Asawalam, Esq., with I. F. Osaguona Esq.,for the 1st Respondent.**

3. **Anaga Kalu Anaga, Esq. with T. N. Nwosu, Esq., for the2nd Respondent.**

4. **Valentine Offia, Esq., with Adekunle Kosoko, Esq., for the 3rd Respondent.**

5. **O. O. Nkume, Esq. with Isaac Anya, Esq., for the 4th and 5th Respondents.**