

**IN THE NATIONAL AND STATE HOUSE OF ASSEMBLY ELECTION
TRIBUNAL
HOLDEN AT UMUAHIA**

THIS MONDAY THE 11TH 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

PETITION NO. EPT/AB/HR/3/2023

BETWEEN:

1. HON IKWECHEGH ALEXANDAR IFEANYI	}	PETITIONERS
2. ALL PROGRESSIVES GRAND ALLIANCE (APGA)		

AND

1. EMEKA SUNNY NNMANI	}	RESPONDENTS
2. LABOUR PARTY (LP)		
3. INDEPENDENT NATIONAL ELECTION COMMISSION (INEC)		

JUDGMENT

(DELIVERED BY HON. JUSTICE AHMAD MUHAMMAD GIDADO)

The facts of this Petition bordered on the election into the office of House of Representative for the Aba North/ Aba South Federal Constituency General Election, conducted on the 25th February, 2023. Hon. Ikwechegh Alexander Ifeanyi (the 1st Petitioner) was a candidate at the Aba North/Aba South Federal Constituency General Election who was sponsored by the All Progressives Grand Alliance (APGA) (the 2nd Petitioner). Emeka Sunny Nnamani (the 1st Respondent) was sponsored by the Labour Party (LP) (the 2nd Respondent). The

Independent National Electoral Commission (INEC) (the 3rd Respondent) conducted the said election. At the end of the exercise, the 3rd Respondent declared and returned the 1st Respondent as the winner of the Aba North/Aba South Federal Constituency General Election with **thetotal score of 35,502 votes**. The 1st Petitioner on the other hand scored the **totalscore of 22,465 votes**.

The Petitioners being dissatisfied with the conduct and outcome of the election filed this Petition before this Tribunal on 16th March, 2023 to challenge the result of the election. The grounds upon which the Petition was brought were as contained in paragraph 11 of the Petition as follows:

- (1) That the 1st Respondent was, at the time of the election, not qualified to contest the election.**
- (2) That the 1st Respondent was not duly elected by majority of lawful votes cast at the election.**
- (3) That the election of the 1st Respondent was invalid by reason of corrupt practices or non compliance with the provisions of the Electoral Act, 2022.**

The Petitioners, as contained in paragraph 37 of the Petition, sought for following reliefs:

- (a) That the 1st Respondent was not qualified to contest the said Aba North/Aba South Federal Constituency Election held on Saturday, the 25th February, 2023.**
- (b) That the election and return of the 1st Respondent be nullified for not being qualified to contest the said election.**

(c) That the 1st Petitioner to be declared as elected and returned for Aba North/Aba South Federal Constituency Election held on Saturday, 25th February, 2023 having come second in the said election.

OR IN THE ALTERNATIVE

(d) AN ORDER for election to be conducted in all polling units in 11 specific Wards as contained in paragraph 37 (d) of the Petition dated 16th March, 2023.

Upon the receipt of the Petition, the 1st Respondent filed a three volume reply, dated and filed on 20th April, 2023 with a Preliminary Objection. The 2nd Respondent also filed a reply on 4th May, 2023 with a Preliminary Objection, whereas the 3rd Respondent filed a reply on 5th April, 2023. Accordingly, the Petitioners filed a reply to the 1st Respondent reply on 1st May, 2023; and therein incorporated a Preliminary Objection. The Petitioners also filed a reply each to the 1st to 3rd Respondents' replies to the Petition on 20th April, 2023. Consequently the parties properly joined issues.

Thus, at the commencement of the proceedings the Petitioners applied for the issuance of the pre-hearing forms, TF007 and TF008 on the 27th April, 2023. The Petitioners also filed answers to pre-hearing questions which were filed on 28th April, 2023, 1st May, 2023 and 14th May, 2023 respectively. Consequent upon which the 1st Respondent filed his answers on 15th May, 2023. The answer sheets, were therefore, adopted by the respective learned counsel for the parties to the Petition alongside issues raised. However, the 3rd Respondent did not raise any issue for determination; but adopted issues for determination of the 2nd Respondent.

Again at the trial, all documents pleaded, listed and/or frontloaded were admitted at the hearing and taken as read. These documents were sorted, arranged and

streamlined before they were tendered through respective witnesses. This Hon. Tribunal also reserved the determination of such objections and admitted the documents. The pre-hearing of this Petition was closed on 16th June 2023 and the report read on 20th June, 2023. Hearing of the Petition commenced on 5th July, 2023 where the 1st Petitioners called three witnesses. Whilst the 1st Respondent's Counsel called 4 witnesses; whereas the 2nd and 3rd Respondents' Counsel did not call any witness but relied on the evidence of 1st Respondent's Counsel Witnesses.

It is important to state that Interlocutory Applications were taken at the pre hearing sessions. We also equally indicated that submissions on the Preliminary Objections incorporated in the replies of the 1st to 3rd Respondents be made in the final addresses of parties. We however, indicated that in compliance with Section 285 (8) of the 1999 Constitution (as amended), the ruling on same will be delivered at the final judgment stage. Accordingly at the pre hearing session parties filed the following Interlocutory Applications as streamlined hereunder:

- (1) An application striking out 1st Respondent's reply dated 13th May, 2023 and filed on 14th May, 2023 for being incompetent.
- (2) An application dated 16th May 2023 and filed 18th May, 2023, praying for the following orders:
 - (i) An order striking out facts in support of the ground (i) of the petition for being cognizable in election petition and being statute barred.
 - (ii) An order striking out the 3rd ground (iii) in the Petition, for being incompetently formulated and for not having clearly delineated supporting facts as mandated by paragraph 4(2) of the 1st Schedule to the Electoral Act, 2022.

- (iii) An order striking out paragraphs 12(i) (iii) (iv); 25, 26, 29, 32 and 33 and relief "d" for being vague, ambiguous, and imprecise thereby infracting paragraph 4(i) (d) of the Schedule to the Electoral Act, 2022.
 - (iv) An order striking out paragraphs 5(i) (ii) (iv) (viii) (xi) (xii) (xiii) (xiv) and (xvi), 7, 8 and 9 of the Petitioners Reply to the 1st Respondent's Reply to the Petition 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(i)(a) of the 1st Schedule to the Electoral Act, 2022.
- (3) An applications dated 24th April, 2023 and filed 6th May, 2023; praying for the following orders:
- (i) An order dismissing or striking out paragraph 11(B) (ii), (iii) & (iv) of the Petition.
 - (ii) An order striking out paragraph 12 of the Petition.
 - (iii) An order striking out relief D of the Petition.
- (4) An application striking out the Petitioners' Reply to the 2nd Respondent's Reply filed on 20th April, 2023.
- (5) An application dated 24th April and filed 5th May, 2023, praying for the dismissal or striking out the Petition.

Under normal circumstances, we ought to proceed first to deliver our rulings on the above applications. However, the Petitioners in their Petitioners' Final Written

Address in response to the 1st Respondent's Final Written Address stated at page 32, that: **"It is obvious from the evidence put forward before this Honourable Tribunal by the Petitioners and from the testimony of the PW3, that the Petitioners have abandoned their Grounds 2 and 3 upon which the Petition is brought as well as the ALTERNATIVE RELIEF (D) SOUGHT in the petition"**.

Consequent upon these facts, the issue before this Hon. Tribunal is purely constitutional, all the issues raised at pre hearing session of this Petition on the Interlocutory Applications and the Preliminary Objections thereto are now overtaken by events. Upon this bedrock, the applications and their replies filed by parties in form of Motions on Notice and Notice of Preliminary of Objections, being substantially the same and interwoven become irrelevant. This is because the applications seek to question the competence of the Petitioner under section 134 of the Electoral Act, 2022 (as amended) and paragraph 4(1) of the first Schedule to the said Act. Whereas the issue before us now is purely constitutional regarding qualification and disqualification of the 1st Respondent to contest the 2023 General Election; hence, making resolution on same becomes an academic exercise. Thus, all the Applications and the Preliminary Objections filed before us; go to no issue and they are hereby struck out and expunged from the record of this court.

Likewise all issues for determination raised in the final written addresses which are not related to issue of qualification will be discountenance. Narrowing these submissions of parties into fundamentally a constitutional question, all the said Applications and Preliminary Objections are hereby struck out.

Having settled the issues involved in the Interlocutory Applications and the Preliminary Objections incorporated in the Petition and the Replies of parties thereof; the Tribunal shall consider and resolve the Petition on the merit.

JUDGMENT ON THE MERIT

It is pertinent to note at this juncture that, the only ground for the presentation of this Petition is in respect to the question of non qualification under Section 134(a) of the Electoral Act 2022 (as amended). This Section, *inter alia*, clearly provides as follows:

"An election may be 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..."

The above provision is very clear on questioning an election on the ground of qualification or non qualification to contest election. Questioning an election on the ground of qualification, as we understand it, is fundamentally constitutional. It is the constitution that prescribes qualifying and disqualifying factors. Thus, where the constitution stipulated the qualifying elements, and has covered the field as it is where, no other statute can add or subtract from that limited elements or ingredients set by the constitution. It is an unassailable principle of our law that the constitution is superior and prevails over all statutes. The provisions of statute, including the Electoral Act, are subject to and cannot render nugatory the provisions of the constitution; as it was held the case of **Gov. of Oyo State v. Oba Ololade Afolayan (1995) 8 NWLR (pt.413) 292 at 329 paras. D- E.**

Based on the content of this Petition, Paragraph 11 (B) (i) and (ii) categorically subsumed questioning this election on the basis of Sections 65 and 66 of the 1999 Constitution (as amended). Corollary to the content of this Petition, the substratum of the matter is that, these questions are both constitutional and statutory. Thus, the Constitution being supreme, the only relevant provisions to consider in this

Petition for the parties are Sections 65 and 66 of the 1999 Constitution (as amended).

Respondents in their final addresses raised various issues for the determinations. To start with, the 3rd Respondent formulated two issues for determination, viz.:

Issue One:

Whether the grounds and reliefs of the Petitioners are not contradictory and the reliefs mutually exclusive?

Issue Two:

Whether from the state of the pleadings, evidence adduced, documents tendered, and the state of our law, the Petitioners have adduced sufficient evidence to be entitled to the reliefs sought and the allegation of no election in over 100 polling units can be sustained in view of paucity of evidence before the court?

The 2nd Respondent also formulated 3 issues for determination, to wit:

Issue One:

Whether the Petitioners proved that the 1st Respondent was not qualified, at the time of the time of the election, to contest the election for the House of Representatives for Aba North/Aba South Federal Constituency, held on the 25th day of February, 2023 by virtue of the provisions of Section 134(1)(a) of the Electoral Act, 2022 and Section 65 & 66 of the Constitution (as amended)?

Issue two:

Whether the Petitioners abandoned Grounds (ii) & (iii) of the Petition at the trial?

Issue Three:

Whether the Petitioners led any evidence to prove that there were no elections in the enumerated Polling Units in the alternative relief to be entitled to the (sic) an order of re-run by the Honourable Tribunal?

Finally the 1st Respondent formulated one issue for determination, as follows:

Whether the Petitioner have (sic) adduced sufficient evidence as mandated to claimed reliefs?

It is our humble view that the extant Petition is founded on a solid constitutional ground. Since all the issues raised in the final addresses outside the qualification question were abandoned. We are of the considered opinion that twofundamental issues are raised for determination, viz.:

(1) Whether by the provision of Section 66 of the Constitution, this Petition falls under the purview of Section 134(1) of the Electoral Act, 2022 (as amended) thereby conferring this Hon. Tribunal with the requisite jurisdiction to entertain same?

(2) Whether having regard to Section 66 (1)(i) of the Constitution the 1st Respondent was qualified to contest the Membership of the House of Representative of the Federal Constituency Aba North/Aba South 2023 General Election?

We shall therefore deal with issue one as follows:

Whether by the provision of Section 66 of the Constitution, this Petition falls under the purview of Section 134(1) of the Electoral Act, 2022 (as amended) thereby conferring this

Hon. Tribunal with the requisite jurisdiction to entertain same?

Now the provisions of sections 65 and 66 of the Constitution (the Forth Alteration 2017) outlined the factors for qualification and disqualification of the candidates for election of the National Assembly. Section 65 provides as follows:

"65. Qualification for election:

- (1) Subject to the provisions of section 66 of this constitution, a person shall be qualified for election as member of:
 - (a) the Senate, if he is a citizen of Nigeria and has attained the age of thirty-five years; and
 - (b) the House of Representatives, if he is a citizen of Nigeria and attained the age of twenty-five years;
- (2) A person shall be qualified for election under subsection (1) of this section if:
 - (a) he has been educated up to at least School Certificate Level or its equivalent; and
 - (b) he is a member of a political party and is sponsored by that party."

Sections 66 provides as follows:

66. Disqualifications

- (1) No person shall be qualified for election to the Senate or the House of Representatives if:
 - (a) subject to the provisions of section 28 of this Constitution, he has voluntarily acquired the citizenship of a country other than Nigeria or, except in such cases as may be prescribed by the

National Assembly, has made a declaration of allegiance to such a country;

(b) under any law in force in any part of Nigeria, he is adjudged to be a lunatic or otherwise declared to be of unsound mind;

(c) he is under a sentence of death imposed on him by any competent court of law or tribunal in Nigeria or a sentence of imprisonment or fine for an offence involving dishonesty or fraud (by whatever name called) or any other sentence imposed on him by such a court or tribunal or substituted by a competent authority for any other sentence imposed on him by such a court;

(d) within a period of less than ten years before the date of an election to a legislative house, he has been convicted and sentenced for an offence involving dishonesty or he has been found guilty of a contravention of the Code of Conduct;

(e) he is an undischarged bankrupt, having been adjudged or otherwise declared bankrupt under any law in force in any part of Nigeria;

(f) he is a person employed in the public service of the Federation or of any State and has not resigned, withdrawn or retired from such employment thirty days before the date of election;

(g) he is a member of a secret society;

(h) deleted from the Constitution

(i) he has presented a forged certificate to the Independent National Electoral Commission.(Bolding mine)

(2) Where in respect of any person who has been:

a) adjudged to be a lunatic

b) declared to be of unsound mind

(c) sentenced to death or imprisonment; or

(d) adjudged or declared bankrupt, any appeal against the decision is pending in any court of law in accordance with any law in force in Nigeria, subsection (1) of the section shall not apply during a period beginning from the date when such appeal is lodged and ending on the date when the appeal is finally determined or, as the case may be, the appeal lapses or is abandoned, whichever is earlier.

(3) For the purposes of subsection (2) of this section “**appeal**” includes any application for an injunction or an order *certiorari*, *mandamus*, prohibition or *habeascorpus*, or any appeal from any such application.

Now by the canons of statutory interpretation which includes the constitution, a Judge’s duty which is even a command on him, is to interpret the clear and unambiguous words according to their ordinary, natural and grammatical meanings and he must not add to or remove any word therefrom; the well established canon of interpretation requires that, if the intention of the framers of a statute or constitution must be ascertained, it can be from no other source than the words used by them in couching the provisions and it is there their intention is entrenched. See **Action Congress V INEC (2007) 12 NWLR (Pt. 1048) at 318 E – H.**

The provisions of **sections 65 and 66** are clear and unambiguous; they must, thus, be given their plain literal meaning. These provisions situate clearly the qualifying and disqualifying factors. It is equally to be noted that the provision of section 65 commences with the phrase “**subject to**”. Its import must not be glossed over. Before situating the import of the phrase let us perhaps streamline the qualifying factors provided by section 65.

The **qualifying factors** for the House of Representative as discerned from section 65 are as follows:

- 1) **Nigerian Citizenship;**
- 2) **age restriction; he must have attained the age of twenty five (25) years;**
- 3) **educational qualification up to at least School Certificate level or its equivalent; and**
- 4) **he is a member of a political party and is sponsored by that party.**

We now address the import of the “**subject to**” phrase in section 65. It must be noted, straight away, as stated earlier that a significant phrase appears in the opening words of section 65 which is “**subject to**”. It is a significant phrase and it appears in many legislations.

It should be noted that, the phrase has been interpreted by the Supreme Court in many cases to mean an expression of limitation which is “subject to”, and shall govern, control and prevail over what follows in the section or subsection of the enactment. It simply means that the succeeding or later provisions of the Act supersede or control the provisions in the section or subsection concerned. See **Texaco Panama Incorporation V S. P. D. C (Nig) Ltd(2002) LPELR 3146 (SC)** Per Kalgo J. S. C.

In **Tukur V Government of Gongola State (1989) 4 NWLR (Pt. 117) 517 at 542**, the Supreme Court per Obaseki JSC (of blessed memory) defined the expression “subject to” as follows:

“The expression “subject to” subordinates the provisions of the subject section to the section referred to which is intended not to be affected by the provisions of the latter”.

And in **Labiya V Anretiola (1992) 8 NWLR (Pt. 258) 139 at 3 – 164**, the Supreme Court per Karibi Whyte JSC (of blessed memory) defined the phrase as follows:

“The phrase “subject to” in the section is significant. The expression is often used in statutes to introduce a condition, a proviso, a restriction and indeed a limitation. The effect is that the expression evinces an intention to subordinate the provisions of the subject to the section referred to which is intended not to be affected by the provisions of the latter. In other words, where the expression is used at the commencement of a statute, as in section 1 (2) of the Decree No 1 of 1984, it implies that what the subsection is “subject to” shall govern, control and prevail over what follows in that section or subsection of the enactment”

Following from the above pronouncements, the expression “subject to” in section 65 which situates the qualifying criteria, meant that what the section is “subject to”, here the provision of section 66 shall govern and control what follows in that section of the enactment. The important point in the context of this case is that the **disqualifying** factors that would serve as a bar to the qualification of 1st Respondent to contest the election must be that stipulated under **section 66**.

By the use of the phrase “**subject to**” in the provision of section 65, the framers of the Constitution intended that the provision cannot override, prevail or have dominance over the provision of section 66 which situates clearly and expressly the disqualifying factors.

From the forgoing analysis it is clear that the Petitioners' complaint is that the 1st Respondent clearly contravened section 66 (i) of the Constitution, having alleged presenting a Forged Certificate. Issue one is then answered in the affirmative. The Petition contains a cognizable ground within the purview of Section 134(1)(a) conferring the Tribunal with the requisite jurisdiction to determine the extant Petition.

The second issue is:

Whether having regard to Section 66(1)(i) of the Constitution the 1st Respondent was qualified to contest the Membership of the House of Representative of the Federal Constituency Aba North and Aba South 2023 General Election?

By paragraph 11(B)(i), the Petitioners aver that the 1st Respondent was not qualified to contest the election, in that, he is a registered member of two political parties, that is, All progressive Grand Alliance (APGA) and Labour Party (LP); contrary to the provisions of section 65(2)(b) of the 1999 Constitution (as amended).

As stated earlier, the provisions of both **sections 65 and 66** are clear and they must be given their plain, ordinary grammatical meanings without any qualification, embellishment or interpolations and the provisions cannot equally be construed to achieve a particular purpose to defeat the intention of the law makers.

We are therefore unable to agree, even at this early stage that membership of **two political parties simpliciter**, even where a case has been made on the issue, is a

cognizable ground for qualification or disqualification as streamlined under the provisions of sections 65 and 66 of the Constitution. Properly understood, within the proper construction of Sections 65 and 66, particularly section 65 (2)(b), bordering on qualification must be that a person who contested the election does not **belong to a party and was not also sponsored**. These two connecting conjunctive elements must be established. Indeed the Petition must disclose these elements. We shall shortly return to these elements again.

On the authorities of our superior courts, the question of whether or not a person is qualified to contest an election within the meaning of section 134 (1) (a) of the Electoral Act is to be determined exclusively by reference to the constitutional requirements for qualification to contest. In other words, the petitioners herein can only succeed in an election petition grounded on section 134 (1)(a) of the Electoral Act where he alleges facts which amount to a Constitutional Bar. **See APC V INEC & ORS (2019) LPELR – 48909 (CA)**.

We cannot see on the basis of the clear constitutional provisions where membership of two political parties constitutes constitutional ground (s) for qualification or disqualification under the said sections 65 and 66.

We now return again to the provision of **Section 65 (2)(b)** which provides that a person shall be qualified for election under subsection (1) of this section if “he is a member of a political party **and** is sponsored by that party.

Here too, the use of the word “and” in the above section must also be properly appreciated to fully understand the provision. In law the word “and” is construed as conjunctive; see **BGL Plc & ors V FBN (2021) LPELR – 54655 (CA)**, **Ndoma Egba V Chukwuogor (2004) 6 NWLR (Pt 869) 382**, **Luna V COP (2018) 11 NWLR (Pt 1630) 269**.

Again the Black's Law Dictionary, 6th edition, described the word “and” as “A conjunction connecting words or phrase expressing the idea that the latter is to be added to or taken along with the first, added to; together with, joined with as well as including”. See **Rubicon Properties & Developers Ltd & Anr V NACRDB LTD (2021) LPELR – 54820 (CA); Dasuki V Director General State Security & ors (2019) LPELR – 48113 (CA).**

The word “and” used in section 65 (2)(b) is construed as conjunctive meaning that for purpose of qualification to contest the House of Representatives election, you must be a **member of a political party and must be sponsored by that party.**

As a logical corollary and as stated earlier, any complaint on qualification within the confines of section 65 (2)(b) must be that the person who contested the election **does not belong to a party and was not sponsored by that party.**

These two conjunctive criteria or elements must be established.

In this case, the Petitioners in paragraph 11(B)(i) of the petition, pleaded as follows:

"The 1st Respondent was not qualified to contest the election in that he is a registered member of two political parties, All Progressives Grand Alliance (APGA) and Labour Party (LP) contrary to the provisions of Section 65(2)(b) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). The 1st Respondent contested for the office of the House of Representatives of Aba North/Aba South Federal Constituency under the All Progressives Grand Alliance (APGA) as well as the Labour Party (LP), while he is still a member of the All Progressives Grand Alliance (APGA). Though a purported candidate of the Labour Party (LP), the 1st Respondent has not resigned his membership of the All Progressives Grand Alliance (APGA), he is not qualified to be voted for into the

said office in the said election. The APGA register of the 1st Respondent's Ward (Eziama Ward 1) as well as the result Sheet of the 2nd Petitioner's Primary Election showing that the 1st Respondent participated in its said Primary Election are hereby pleaded. Also pleaded are the reports for the Primary Election of both APGA and LP showing that the 1st Respondent participated therein are hereby pleaded".

The Petitioners, in their Petition and the Replies thereof constitute the pleadings in this case. The Petitioners, however, in their paragraphs 6 and 7 concede and agree that the 1st Respondent contested the said election under the platform of the 2nd Respondent. The Petitioners therefore admitted the fact that the 1st Respondent was a candidate sponsored by the 2nd Respondent.

It is settled principle of general application that one of the functions of pleadings is to enable parties in the case give a fair notice of the nature of their respective cases to the other, thereby circumscribing and fixing issues in respect of which they are in agreement and those in respect of which they are not in agreement. See **UBA Plc V Godin Shoes Ind. (Nig) Plc (2011) 8 (Pt. 1250) 590 at 614 – 615.**

In this case on the pleadings and even evidence led, there is absolutely no **dispute or argument** with respect to the fact that 1st Respondent was a candidate and sponsored by the 2nd Respondent in the election.

There is nowhere in the Petition where the Petitioners indicated or pleaded that the 1st Respondent was a candidate and sponsored by any other party beside 2nd Respondent. They did not also state that the 2nd Petitioner nominated or sponsored him for the election.

It is clear and we hold that when the provision of section 65 (2)(b) is properly read conjunctively, the argument of Petitioners will also not fly to the clear extent that

they have agreed that there was no violation of the second critical element of the provision, which is, that he was **sponsored by a party for the election**.

It is difficult to see how his participation in the primaries affects or derogates from his membership of 2nd Respondent as evidenced by his membership card and the subsequent expression of interest forms he filled vide Exhibit P8 at the trial.

On the unchallenged evidence before the Tribunal, there is really nothing to situate that 1st Respondent was not a member of Labour Party and that he was also not sponsored by that party, during the election in satisfaction of the requirements of section 65 (2) (b) of the Constitution.

We have not been persuaded that the participation of 1st Respondent in the APGA primaries, without more, detracts in any manner with the fulfillment of the requirements that at the material time of the election, he was a member of Labour Party which sponsored him.

There is absolutely no evidence before us that the 2nd Petitioner **nominated** the 1st Respondent simultaneously with 2nd Respondent (L.P.) for the same election. No such nomination by 2nd Petitioner was tendered. The Petitioners, with respect, appear to fall into an error of appreciation in acknowledging that there is difference between participation at the primaries and being actually nominated and that perhaps explains the position they have advanced.

In **Jime V Hembe & Ors (2023) LPELR – 60334 (SC)**, the Supreme Court stated thus:

“My Lords, there is a vast difference between participation at the primaries and being actually nominated by the party. The processes are quite different. With participation the aspirant collects the Expression of Interest Form which he may submit.

After submission and screening, the aspirant is allowed by the party to participate in the primary election. If he wins the primary organized by the National Working Committee of his party or the Body entitled by the Guidelines of the party to organize the election, he would, thereafter be given the Nomination Forms EC-09 to fill and the party would thereafter submit same to INEC. As I said earlier, there is absolutely no evidence that APC nominated the 1st Respondent to the 3rd Respondent to stand for Governor. There is no argument about the nomination by the 2nd Respondent. The Appellant did not dispute the fact that the 1st Respondent had become a member of the 2nd Respondent and was validly nominated by the 2nd Respondent. The Appellant's quarrel is that the 1st Respondent had not resigned From APC before he stood for primary election in LP. I have looked at the Labour Party's Constitution and there is no indication of how long a person must be a member of the Party before he can stand for an elective position. See Article 10 of the Labour Party Constitution. As stated earlier, the two lower Courts accepted the 1st Respondent's Evidence that he had resigned from APC on 26/5/22 well before the 2nd Respondent's Primary on 9/6/22.

In KUBOR V DICKSON (2013) ALL FWLR Pt. 676 Pg. 392 at 426 E-F, Onnoghen JSC (later CJN) held as follows:

“Evidence of nomination and sponsorship of a candidate by a political party lies in the Declaration of the winner of the party's primary election conducted to elect the party's candidate for the

general election in question coupled with the political party forwarding the names of the said elected candidate to the 3rd Respondent as its nominated candidate for the election”

See also NWOSU V APP (2019) LPELR- 49206.”

I agree with the Court below when it held on pages 754-755 of the Record as follows:

“In the instant case, while the facts clearly show that the 1st Defendant has been elected and his name has been forwarded by the 2nd Defendant to the 3rd Defendant (INEC) as its (2nd Defendant) candidate for the Governorship Election in Benue State in 2023, same cannot be said in respect of the All Progressives Congress (APC). What the Plaintiff did is to simply put before the Court facts and documents which suggest that the 1st Defendant Participated in the primary election conducted by the APC to elect its Governorship Candidate in Benue State for the same election. From the documents exhibited before the Court by the Plaintiff, the 1st Defendant was not the winner of the APC primary election. There is also no proof that his name has been forwarded by the APC to the 3rd Defendant as its (APC) candidate for the same position in the same election. Therefore, it cannot be said that the APC also nominated the 1 Defendant as its Governorship candidate in Benue State in the 2023 general election” See Article 9(ii) of Labour Party Constitution (2019).”

The above scenario largely played out in this case.

The Tribunal under section 146 (1) & (2) of the Evidence Act 2011 is enjoined to presume the genuineness of every document purporting to be a document directed by any law to be kept by any person, if such document is kept substantially in the form required by law and produced from proper custody. See **Okonji V Njonkanma & ors (1999) 12 SC Pt 11 150 at 158.**

There is no counter evidence by the Petitioners which projects a contrary narrative to the contents of Certified True Copies (CTC) which were obtained from INEC.

We must therefore make the point that any finding of fact, as in this case, which is made having regard to the existence of documentary evidence cannot be seen to fly in the face of the accepted relevant document or documents. If it is, it will be contradictory and perverse.

At the risk of prolixity, the documentary evidence before the court does not show that the 1st Respondent is not a member of a political party (Labour Party in this case) and was not sponsored by the same Labour Party. These are not matters for speculation or guess work or a matter for address.

However well articulated, a tribunal, such as ours and parties too, will not be entitled to assume that it is within their exclusive province to make findings of fact when such findings must depend entirely on the evidence and in this case documentary evidence. Such findings must reasonably reflect the contents of the document or documents in question. It cannot be done any other way.

From the foregoing, it is logically follows that the 1st Respondent was qualified to contest the election having been sponsored by a political party. By paragraph 6.2 of the 1st and 2nd Respondents' reply which was not challenged by the Petitioners, the 1st Respondent duly submitted qualifying documents which were duly and

procedurally published by INEC and nobody including the Petitioners challenged the Respondent's qualification at all material times.

My lords, the law is settled that, where the INEC decides that a candidate is validly nominated; its decision as far as it affects the validity of the nomination cannot be challenged by way of election petition; claiming that the candidate was not validly nominated.

Hence, the 1st Respondent under Section 84(1)(2) of the Electoral Act, 2022 upon satisfying the requirements stipulated by the 3rd Respondent to contest the election has a legal interest to protect. This is because the presumption is that where a candidate contested an election, all formal pre-requisites for the contest and declaration as winner were satisfied. Thus in the case of **Chime v Onyia**, the Court of Appeal held:

It must be observed that it was admitted that the 1st respondent was declared the winner of the election by the 4th respondent; accordingly there is presumption that all formal pre-requisites for the declaration of the 1st respondent as the winner of the election including his due nomination of a running mate were also satisfied.

Consequently, it goes without saying that, where a candidate is cleared by INEC to contest an election, there was presumption, that he possesses the required qualification. In **Kamal v INEC** (2010)1 NWLR (pt. 1174) 125, 142, the court stated as follows:

... The appellate courts have maintained that the issue of qualification is to be used as a weapon of offence and not as a shield of defence. It is not in dispute that once the

Independence National Electoral Commission has cleared a candidate in the election the tribunal or the court, as the case may be, can lawfully presume that the candidate had lawfully passed the test of qualification.

In this case, the Petitioners who relied on section 65(2)(b) admitted that the 1st Respondent was a member of Labour Party and that he is sponsored by that party. However, as to whether actually the 1st Respondent was a member of Labour Party, it is the duty of the Petitioners to prove the negative on sufficient evidence.

We therefore agree with the senior counsel to the 1st and 2nd Respondent that the 1st Respondent has the requisite qualification to contest the election under review.

Our position, clearly here, is on the basis of authorities of our superior courts is that once a candidate is sponsored by a political party as in this case and has satisfied the stipulations set out in section 65 (2) (b) and is not disqualified under section 66 thereof, he is qualified to stand election for any political seat, including that of the House of Representatives.

Another point is that Section 77 (3) of the Electoral Act does not create a new set of criteria for qualification in addition to those set out in section 65 of the Constitution nor does it stipulate that a violation of same amounts to a **disqualifying factor** in addition to the disqualifying factors already streamlined under section 66 of the 1999 constitution.

The qualifying and disqualifying factors for a person seeking to occupy a seat in the House of Representatives at the risk of sounding prolix, under section 65 and 66 of the constitution are clear. It is too late in the day to seek to expand the remit of these provisions.

Therefore, where the complaint is on the **nomination** of such candidate, it is left for an **aspirant** who contested the party primaries to contend with a pre-election dispute at the Federal High Court and that he must do within the strict time frame under section 285 (9) of the constitution.

This position regarding an aspirant who contested the primary election in the same party, may bring a suit against his opponent in pre-election matters, was clearly provided under section 29(5) of the Electoral Act. That is to say, issues of pre-election matters are nonjustiable in the post election matters which are litigated in a tribunal such as ours; under Section 134 of the Electoral Act, 2022 (as amended).

Thus, a person who is not an aspirant in such a primary election cannot validly bring the issue into contention in an election petition, as done here. Where it is done, they will be adjudged as meddlesome interloper and being strangers to the other party's primary election. See **Shinkafi v.Yari (2016) LPELR – 26050 (SC); APC V INEC & ORS (2019) LPELR – 48969 (CA).**

On the whole, we note that the qualifying element of membership and sponsorship by a political party has been used here, under the guise of challenge to qualification to import into the **Election Petition**, matters which are clearly **internal** affairs to the **Labour Party**. The correct approach, as we hope, we have demonstrated from the authorities, however ought to be that where a political party is resolute as to who the party sponsored as in this case, matters relating to that resolution being internal to the party ought not to be a basis for challenge by a member of another party in an election petition. As stated earlier, this position can be situated within the confines of section 285 (14) (c) which defines pre-election matter to include issues of challenging the nomination process.

Similarly, it is also very clear that, having regards to paragraph 11(B) (ii). The Petitioners aver that the 1st Respondent was not qualified to contest the election because he was disqualified to contest the election by the Election Petition Tribunal for presentation of false/forged certificate to INEC for the 2015 Aba North State Constituency Election held on 19th October, 2015 in Petition No. AB/EPT/HA/20/2015: Hon. Dame Blessing Okwuchi Nwagba (Ph.D) &Anor vs Emeka Sunny Nnamani & 4 Ors; contrary to the provisions of section 66 of the 1999 Constitution (as amended).

Since Section 66(1)(i), *inter alia*, specifically provides:

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

At this juncture based on the forgoing analysis, the allegation of presentation a forged certificate to the Independent National Electoral Commission (INEC) must be addressed. The allegation of presentation of a forged certificate to INEC is actually both criminal and constitutional, which can be litigated in post-election matters. This is a weighty allegation that the 1st Respondent must have an interest to protect. Since the basis of the Petition was that the 1st Respondent presented a forged certificate to INEC (3rd Respondent). The Petitioners, consistently in their pleadings, stated that the 1st Respondent was not qualified to contest the election, at the time he did, because he had breached the provisions of Section 66(1)(i) of the Constitution.

We, therefore of the humble view that since the dispute is basically on the question whether the 1st Respondent is qualified or not qualified to contest the said 2023 General Election, the Petitioners must then present credible evidence to support their grievances.

Accordingly, the hearing commenced on the 5th July, 2023, the Petitioners called 3 witnesses, they are: Mr. Edmon Nwokedi (PW1) spoken Igbo and Madam Doris, Court's Administrator, High Court Abia State sworn interpreted the evidence of PW1 from Igbo to English and vice versa. He said that his full name is Mr. Edmon Nwokedi, living at Eziama Ward 1 Aba North Local Government Area, Abia State of Nigeria. PW1 adopted his statement on oath and stated that he is a member of the 2nd Petitioner in this Petition. He also stated that he is the current Secretary of the 2nd Petitioner of the Eziama Ward 1 in the Aba North Local Government Area of Abia State. PW1 in his depositions stated that the 1st Respondent unsuccessful attempt to pass the primary election sometimes in May, 2022 made him to switch to the 2nd Respondent party, a body which sponsored the 1st Respondent to contest the 2023 General Election. PW1 in paragraphs 6 and 7 of his depositions stated that he perused the records kept in Eziama Award 1 and he did not find the resignation letter of the 1st Respondent and concluded in paragraph 7 that the 1st Respondent maintained double membership of both the 2nd Petitioner and 2nd Respondent.

PW1 therefore tendered his membership card and the result sheet of the primary election which was marked as exhibits P1A and P1B in support of his evidence. While the membership register of the 2nd Petitioner was also tendered in evidence and marked exhibit P2. While the counsel to the 2nd Respondent did not object to admissibility of these documents, the 1st and 3rd Respondent reserved their objections to final addresses stage.

PW1 under cross examination by the counsel to the 1st Respondent confirmed that he was the Secretary of the 2nd Petitioner since June, 2022. But there was no record as to when one joins or leaves the membership of the 2nd Petitioner; hence exhibit P2 was shown to PW1 and confirms that there was no record as to when the 1st

Petitioner left the platform of the 2nd Petitioner and joined the 2nd Respondent as a member. The counsel therefore submitted that the reference to paragraphs of statement on oath as deposed to by PW1 has no legal consequence, since that paragraphs have not been supported by evidence.

The 2nd Respondent's counsel while cross examining PW1 confirmed to him that primary election of the 2nd Respondent was conducted in June 2022; while the primary election of the 2nd Petitioner was conducted in May, 2022. The 3rd Respondent's counsel also while cross examining PW1 agreed with him that some members of the 2nd Petitioner signed the membership register and some did not sign it. PW1 also was in agreement with the 3rd Respondent's Counsel that the primary election of the 2nd Petitioner and 2nd Respondent was between May 2022 and June 2022. PW1 confirmed that within that period of time the 1st and 2nd Petitioner did not institute any action challenging the act of the 1st Respondent for joining the 2nd Respondent which subsequently granted the 1st Respondent the candidature under its platform. There was no re-examination of the PW1.

The 2nd witness was Mr. Chihom Ama (PW2) also spoken Igbo and Madam Doris, mentioned above sworn to interpret the testimony of PW2 who was also sworn to speak the truth to this Hon. Tribunal. The testimony of PW2 was in pages 96-97 of the Petition. His full name is Mr. Chihom Ama, living at Eziamia Ward 1 Aba North Local Government Area, Abia State of Nigeria. PW2 made a statement on oath and stated that he is a member and the chairman of the 2nd Petitioner in this Petition living at the Eziamia Ward 1 in the Aba North Local Government Area of Abia State. PW2 adopted his depositions on 5th July, 2023; PW2 whose deposition is substantially the same with that of PW1.

The 1st and 2nd Respondents' Counsel cross examined PW2. PW2 responding to questions put to him by the 1st Respondent's Counsel confirmed that the 1st

Respondent abandoned the candidature of the 2nd Petitioner and joined the 2nd Respondent. PW2 however, said that he did not know whether by joining the 2nd Respondent he ceased to be a member of the 2nd Petitioner. But in answering further questions PW2 admitted the fact that when he convened a meeting in Ezianya Ward 1, as a member and chairman of the 2nd Petitioner sometimes in June, 2022; the 1st Respondent did not attend that party meeting. The PW2 stated that he became the Chairman of Ezianya Ward 1 after the 2nd Petitioner has already conducted primary election.

On 8th July, 2023 the 1st Petitioner, Hon. Ikwechegh Alexander Ifeanyi (PW3) testified in English language. Consequently, PW3 adopted his deposition in evidence. The deposition was dated 29th April, 2023 and filed 1st May, 2023. The second deposition was dated 20th April, 2023 at pages 10-17 of the Petitioner's reply to the 2nd Respondent's reply to the Petition. PW3 made the third deposition dated 20th April, 2023 and filed the same date. PW3 therefore tendered these documents in evidence and were marked as exhibits P3A - P3C respectively. The documents were admitted subject to the objections of Respondents' counsel that would be incorporated in their respective final addresses. PW3 also tendered exhibits P4 – P9 which were also admitted in evidence subject to respective objections of the Respondents' counsel which would be incorporated in their final addresses. Exhibit P3A was APGA Result, exhibit P3B was INEC receipt while exhibit P3C was LP report.

Exhibit, P4 is a Certified True Copy (CTC) of judgment in Petition No. EPT/HA/HA/20/2015, Hon. Dame Blessing Okwuchi Nwagba (Ph.D) & Anor. V Emeka Nnamani & 3 Ors delivered by the National and State House of Assembly Election Tribunal on the 19th October, 2015. The second exhibit tendered in this respect is exhibit, P5 which was a Certified True Copy (CTC) of Judgment of

Court of Appeal sitting at Owerri Judicial Division. Exhibit P6 is a Public Notice dated 7th February, 2023. While exhibit P7 is the Certified True Copy (CTC) of the 1st Respondent's form CF001 submitted to INEC, with a supporting affidavit of particulars. Exhibit P8 is a Certified True Copy (CTC) of INEC Form EC9 of the 1st Respondent submitted to the 2023 General Election. Exhibit P9 is a Certified True Copy (CTC) of letter dated 24th February, 2015 from Port Harcourt University, (UNIPOINT) which was entitled "Verification of Success" Letter 1998/1999 Session addressed to Nnamani Emeka S. Finally exhibit P10 is a Certified True Copy (CTC) of a document dated 5th September, 2015, titled: "Emeka Nnamani Confirmation of NYSC Mobilization"; by UNIPOINT, Student Affairs Department. PW3 was fully cross-examined by the Respondents' Counsel.

Accordingly, the 1st Respondent's Counsel cross examined PW3 and he confirmed that he was aware of judgment of the Tribunal. PW3 said that he was not aware of any criminal charges against him. PW3 also stated under cross examination that neither he nor 2nd Petitioner filed any criminal action against the 1st Respondent.

The 2nd Respondent's counsel also cross examined the 1st Petitioner where he said that he was challenging the candidature of the 1st Respondent under the sponsorship of 2nd Respondent, although the PW3 is not a member of the 2nd Respondent. He also said he raised the issue of presenting Forged Document to INEC (the 3rd Respondent) by the 1st Respondent. There was also a similar allegation made against the 1st Respondent in 2015 General Election. Upon this premise an investigation was directed to be conducted by the police against the 1st Respondent. But I am not aware whether the investigation was conducted or not. He also said that he was aware of the judgment of the Abia State High Court, but he did not read the content of the judgment. The 1st Petitioner also said he wanted

the election re-run in all 24 wards of his constituency where he said the election did not hold which include at least 100 polling units. Under further cross examination the 1st Petitioner said that the main ground of his Petition is that, the 1st Respondent was incompetent to contest the 2023 General Election. He then urged the Tribunal to declare him the winner.

The 3rd Respondent while cross examining PW3 (the 1st petitioner) asked him about the minimum requirement for contesting election under Nigerian Democracy. PW3 answered that the minimum requirement to contest election is a Secondary School Leaving Certificate. He also answered in the affirmative that he believed that the 1st Respondent presented the minimum requirement to the 3rd Respondent to contest the election. He said that he was unaware whether PDP also challenged the contest of this election. He confirmed that the 1st Respondent has never been convicted for the offence of forgery or taken to prison at the time of filing this Petition. PW3 again said that exhibits P9 and P10 did not disclosed a conviction. PW3 under the fire of cross examination stated that there was restriction of movement on the Election Day and that is why, after he voted at his polling unit he went back home and continued to get report from his party agents of what was happening at all the polling units. According to him all the chats from pages 15-21 of the petition was the product of reports he received and that the result in question did not emanates from the 3rd Respondent that is INEC. He said the result was a handiwork of PW3 (the 1st petitioner). The Petitioners then closed their case

The Respondents then opened their defence, as follows:

The Counsel to the 1st Respondents, called 4 witnesses; while Counsels to the 2nd and 3rd Respondents' Counsel did not call any witness. They only rely on the evidence, adduced by the 1st Respondent's Counsel. The 1st Respondent in defence of the

Petitioner denied being simultaneously a member of the 2nd Petitioner and the 2nd Respondent. This is because the 1st Respondent resigned his membership of the 2nd Petitioner on 2nd June, 2022 and that fact was communicated to the 2nd Petitioner as well as notifying the 3rd Respondent of the resignation before the conduct of the primaries of the 2nd Petitioner on 4th June, 2022. He concluded by saying, at the time of the General Election, the 1st Respondent was only a member of the 2nd Respondent. He also said he was qualified to contest the 2023 General Election.

Hence, on the 13th July, 2023 the 1st Respondent called two witnesses, Messrs Christian Chijioke (DW1) and Dr. Godwin Chinedu Duru (DW2). They tendered two documents, exhibits D1 and D2 which are the INEC Agent Tags for the said election. DW1 and DW2 were fully cross-examined. On 24th July, 2023 the 1st Respondent also called Dr. Christian Nwachukwu Okoli (DW3) who tendered two documents which are exhibits D3A and D3B respectively who was also fully cross examined. Emeka Sunday Nnamani (the 1st Respondent) DW4 was also fully cross-examined.

The evidence of DW1 was on pages 78-79 of the 1st Respondent's Reply to the Petition. He testified in English language. DW1 made his deposition on 20th April, 2023 and adopted same as his evidence in this matter. He stated that he was the Collation Agent of the 1st and 2nd Respondents during the 25th February 2023, General Election and his INEC Collation Tag was marked as exhibit D1. Counsel to the Petitioners objected to the admissibility of the exhibit but reserved reason to final address.

On the cross examination by the 3rd Respondent's Counsel he stated that he was with the 1st Respondent in his election campaign, he was not aware of the Public Notice (exhibit p6). He also stated that he was not aware of the allegation that the

3rd Respondent declared the election of the 1st Respondent into the office of House of Representative of Aba North and Aba South Federal Constituency as inclusive. DW1 explained in cross-examination that as a Collation Agent, he has the privilege of moving from one place to another, but he did not hear or witness anything concerning electoral malpractices, or violation of any electoral rule and he said DW1 signed the result.

The Counsel to the Petitioners while cross-examining DW1 he said that there was restriction on the election day; but since he was a Collation Agent of the Aba North Local Government Area he moves around and had the opportunity to visit all the 503 polling units on the of election. At the end of the cross examination DW1 admitted that he stands by his paragraph 6 of his deposition; where he stated that while managing and monitoring the election, he observed that some units' results were not collated at the ward levels, because of the heavy rain and logistic problems. He, however, said these situations did affect the overall result of the election. The cross-examination of DW1 ended and he was discharged without re-examination.

The next witness is Dr. Godwin Chinedu Duru (DW2) whose evidence was on pages 82-85 of the said reply and who made an undated written deposition which he was however recognized and adopted as his evidence in this matter. DW2 was Labour Party (2nd Respondent) Agent for Aba North and Aba South Federal Constituency relied on his a Local Government Tag issued to him by the 3rd Respondent to his duties as an Agent on the day of the election; which was tendered while the objection for the admissibility of same was reserved to the final address stage. The Tag was therefore admitted into evidence and marked as exhibit D2.

DW2 in his deposition and under cross examination stated that he actively participated in the House of Representative campaigns of the 1st and 2nd Respondents in the Aba North and Aba South Local Government Federal Constituency 2023 General Election. He also stated that as Collation Agent he witnessed proper distribution of electoral materials in all the polling units. As regards the issue of disqualification, DW2 denied having any knowledge of the 1st Respondent's disqualification to contest the 2023 General Election. He concluded by stating that he knows nothing about exhibit 6. He stated that he signed the result at the end of the election.

The 3rd Respondent's Counsel summarily cross examined DW2 on the issue of electoral materials distribution and the inclusiveness of the election. DW2 stated that he had no idea on inconclusive declaration of election, concerning the Aba North and Aba South Local Government Federal House Representative General Election was successfully held on 25th February, 2023.

The Petitioners' Counsel while cross-examining DW2 admitted that he cannot visit all the Polling Units which the Petitioners' Counsel said they are about 518 Polling Units in the Aba North and Aba South, Local Government Federal House of Representative General Election held on 25th February, 2023. DW2 also admitted that he only relied on the tag which has no INEC inscription on it and that he was unaware of exhibit 6 and that he did not follow the 1st Petitioner's campaign and he did not tender the INEC result before this Hon. Tribunal. The witness was discharged without any re-examination.

Dr. N.C. Okoli, (DW3) testified before the Tribunal on 24th July, 2023. His testimony was on pages 80-81 of the 1st Respondent's Reply. He stated on the 20th April, 2023 made a written deposition which he adopted as his evidence in this matter. Going by his paragraph 2 stated that he was the Chief Political Consultant

and also a Collation Agent of Aba North and Aba South Local Government Federal House of Representative General Election held on 25th February, 2023. DW3 relied on his voter's card and the tag issued to him by INEC as a party collation Agent. No objection as to the admissibility of these two documents, the copies of voter's card and the Agent tag were, therefore, admitted in evidence and marked as exhibit D3A and D3B respectively.

DW3 under cross-examination he denied the facts pertaining to unavailability of election materials, result sheets and none function of BVAS. DW3 also answered in the negative the issue of disqualification of the 1st Respondent candidature to contest the election and inconclusiveness of the election under review. DW3 said he personally signed the result and concluded by saying that the election was successful, free, fair and credible. DW3 stated that he stands by his paragraph 10 of his depositions, that the results were formally and duly computed, entered, signed, and countersigned at the present of the local Government Party Polling Agent.

Omotiba, senior Counsel, while cross-examining DW3 dwelled so much on the participation of the witness in the campaign of the 1st Respondent, Exhibit 6, and disqualification of the 1st Respondent. The witness adequately responded to these questions, and added that, he was at Local Government Collation Center all through, not slept on the day and night of election until the result was announced at his Collation Center. He stated that the 3rd Respondent did not make any announcement as to the re-scheduling of the election in Aba North and Aba South Federal Constituency.

The learned silk, K.C. Nwifo for the Petitioners finally, cross-examined DW3 where the DW3 admitted he was a staff of the 3rd Respondent, he was also a polling Agent and that he stands by paragraph 4 of his written depositions; stating that he participated in the campaigns, organization and execution of the 1st and 2nd

Respondents electoral programs. DW3 also admitted the fact that he initially participated in the Petitioners' campaigns program but he later joined the 1st Respondent party that is why, he does not know when the Petitioners' campaigns commenced. He also admitted his paragraph 7 of his written deposition, that at the conclusion of the voting which extensively affected by heavy down-falls which resulted to inability of the INEC and party polling agents to move quickly and that situation affected the general management of the election results from the polling units level. Still under this cross examination DW3 explained that afterward the rain allowed people to freely move and vote. He said that he also personally supervised all units throughout Aba Federal Constituency. However, said that he never saw exhibit p6 before. The witness was discharged without further examination.

Emeka Sunday Nnamani (DW4) (the 1st Respondent) whose testimony was on pages 112-119 of the 1st Respondent's Reply, identified and adopted his written deposition made on 20th April, 2023. The written address was admitted without objection. DW4 started by stating that he stands by his paragraph 3.8 of the deposition. That, at all material times, he was qualified to contest the 2023 general election. And that the election and return of the 1st Respondent was valid and devoid of any corrupt practices or non-compliance with the provisions of the Electoral Act, 2022. DW4 relied on the pink copies of Aba North and South result sheets which were tendered without objection; which were therefore admitted in evidence and marked as exhibits D5 – D13 with their respective polling units' results. DW4 tendered his voter's card and his party membership card admitted without objection. DW4 also tendered his qualification document submitted to the 3rd Respondent for the contest of the 2023 General Election. The 1st Respondent's credentials were also admitted without objection. However, the Petitioners'

Counsel raised objection on the WEC result tendered but reserved the reasons for objection to the final address stage. The documents were admitted in evidence and marked as exhibits D14A, D14B and D14C respectively.

DW4 also tendered in evidence the following set of documents, viz. Certified True Copy (CTC) of suit No. HUM/26A/2022, Peter v Emeka Sunny Nnamani, Police Report, two Notifications of Resignation dated 22nd June, 2022. The documents were only objected to their admissibility by the Counsel to Petitioners reserving reasons to final address. The documents were therefore, admitted in evidence and marked as exhibits D15- 16, D17A and D17B respectively.

Senior Counsel to the 2nd Respondent O.O. Nkume, cross-examined DW4 on the forged certificate, police investigation on the alleged fake document, criminal prosecution of DW4 and judgment order of the Certified True Copy of judgment (exhibit D15) and the report of investigation (D16) dated 28th March, 2022 which exonerates the DW4 from liability.

Senior counsel, Omotiba essentially cross examined the witness on the APGA primaries result sheets which was conducted before the 2023 general. DW4 said that he did not participate in the APGA primary election and he was not physically present at the APGA primary election and that he did not sign document in respect of the election. DW4 Answers to issues pertaining to the inclusiveness of the election, electoral malpractices and non compliance with Electoral Act. DW4 conclusively stands by paragraph 3.10 of his deposition. That he duly submitted his qualifying documents which were published by the 3rd Respondent without of objection from the public.

The Petitioners' counsel, in his cross-examination made the DW4 to admit the fact that the 1st Petitioner came second in recent General Election. And that he was

removed from his Political Office in 2015 because of the Presentation of Forged Document to INEC when he contested the 2015 General Election. However, other questions are substantially the same with previous question which DW4 already answered in the negative. Lastly, DW4 was discharged without re-examination.

We have carefully considered the evidence led by both sides. The relevant issue as already alluded whether the case of disqualification has been made by the Petitioners. It is glaring that the Petition is predicated on Section 134(1)(a) of the Electoral Act, 2022.

Section 134(1)(a) Provides as follows: "**An election may be questioned on any of the following grounds:**

- (a) **a person whose election is questioned was, at the time of the election, not qualified to contest the election; ..."**

It is, therefore, instructive to note again that the Petitioners' Counsel, stated, on page 32 paragraph 3.51 of his Final Written Address in response to the 1st Respondent's Final Address as follows: "**it is obvious from the evidence put forward before this Honorable Tribunal by the Petitioners and from the testimony of PW3, that the Petitioners have abandoned Grounds 2 and 3 upon which the Petition is brought as well as the alternative relief (d) Sought in the Petition".**

From this statement it is very clear that the Petition was predicated on ground (a) only; dealing with issue of disqualification. Consequently, the Petition will be resolved on the provisions of the 1999 Constitution (as amended) and other extant laws, particularly, the Electoral Act, 2022. That means all facts and evidence concerning undue return by majority of lawful votes cast at the Election and issues bordering on the fact that election was invalid by reason of corrupt practices or

non-compliance with the provisions of the Act, 2022 which were abandoned will not be considered by us.

Accordingly, the Petitioners' allegation on over voting corrupt practices, falsification of results, massive violence, non distribution of electoral materials, non holding or conduct of election in some units are irrelevant in the Petition. Likewise all tendered documents, like voters register BVAS report, etc are equally abandoned and the evidence in support thereof. That is, the evidence supporting those facts, arguments and authorities cited in that respect go to no issue and, accordingly are hereby expunged from our record and struck out; and we so hold.

Having said so, it is relevant to scrutinize exhibits P4, P5, P7 and P8 affecting the disqualification of the 1st Respondent to contest the 2023 Election. The Petitioners tendered P4 which was admitted in evidence by this tribunal. A document which was tendered and admitted before the Election Tribunal in 2015 confirming that the 1st Respondent was found to have presented a forged certificate to INEC. The appeal on the decision of the Tribunal was dismissed by the Court Appeal. The judgment of the Court of Appeal sitting in Owerri Judicial Division was also tendered and admitted in evidence and marked as exhibit P5. The Petitioners also tendered exhibit P7 which was the Issuance of Certified True Copies (CTC) of Documents submitted to Independent National Electoral Commission (INEC) by the 1st Respondent for the contest of the 2015 General Election.

Part of the finding the Election Tribunal in Exhibit P4 was as follows:

"1. That the 1st Respondent is found to have presented a forged certificate of graduation from a university contrary to section 107(1)(h) of the constitution of the FRN 1999 (as amended) "

This decision was appealed against at the Court of Appeal as it was in exhibit P5. The Court of Appeal in dismissing the Appeal found at page 35 of the said judgment held as follows:

"I find this appeal to be devoid of any merit and same is hereby dismissed; judgment of the Election Petition Tribunal, in Petition No. AB/EPT/HA/20/2015, delivered on the 19th October, 2015 is hereby affirmed."

Again Exhibit P8 is a Certified True Copy (CTC) of INEC Form EC9 of the 1st Respondent submitted to the 2023 General Election which was also tendered and admitted, in evidence. This document is submitted to INEC by the 1st Respondent for the contest of the 2023 General Election. The 1st Respondent completed his INEC form EC9 for the 2023 General Election, which was an Affidavit in support of Personal Particulars of persons seeking election to the Office/Membership of Abia State National Assembly. In response to general questions section asked on qualification in item 6, that whether he had ever presented a forged Certificate to INEC, the 1st Respondent answered by ticking against the column "No". The 1st Respondent also omitted all information about the success letter (Certificate) in the section concerning his educational qualification; despite the fact that, there were two subsisting decisions on the presentation of forged Certificate to INEC by him.

Again on cross examination by the Petitioners' counsel, the 1st Respondent (DW4) admitted the fact that, the 1st Petitioner came second in recent General Election. And that the 1st Respondent was removed from his Political Office in 2015 because of the presentation of Forged Document to INEC when he contested the 2015 General Election. Despite the fact that in the examination in chief the 1st Respondent stated that he had never presented any forged document to INEC.

Be that as it may, let me restate the law under the 1999 Constitution (Forth Alteration 2017), which stipulates the qualification for election into the office of the Senate or the House of Representatives. Section 65(1)(2) Provides as follows:

(1) "Subject to the provisions of section 66 of this constitution, a person shall be qualified for election as a member of:

(a) The Senate, if he is a citizen of Nigeria and has attained the age of thirty-five years;

(b) the House of Representatives, if he is a citizen of Nigeria and has attained the age of thirty-five years;

(2) A person shall be qualified for election under subsection (1) of this section if:

(a) he has been educated up at least School Certificate level or its equivalent; and

(b) he is a member of a political party and is sponsored by that party.

However, section 65 above is subject to the provisions of Section 66 of the same Constitution dealing with disqualification of a candidate to contest an election. Section 66(1)(i), *in te alia*, specifically provides:

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

Based on these analysis, although the allegation of presentation a Forged Certificate to the Independent National Electoral Commission (INEC) appears to be criminal in nature, it is equally constitutional and it is too weighty to be over

looked, since the Constitution is too liberal in the qualification to contest an election. However, if a candidate to an election decides to exceed that liberal concession of the Constitution, he must present a genuine Certificate(s), but if he on his volition presented any forged document, be it certificate or otherwise, then the strict interpretation of the Constitution shall check the situation. Since, no reasonable tribunal can over look a constitutional issue like this.

The basis of the Petitioners, in their Petition, was that the 1st Respondent presented a forged certificate to INEC (3rd Respondent). Thus, going by the evidence as adduced by the parties in this Petition and the admission of the 1st Respondent under the fire of cross examination, it is not in dispute that the 1st Respondent presented a certificate known as "Success letter" to 3rd Respondent. The dispute is basically on the question whether the said "success letter" is a false or a forged document and whether it is qualified as certificate as provided under Section 66(1)(i) of the Constitution. Our answer here is in the affirmative, because there has been a pronouncement by a competent tribunal and a superior court of record that the document is a forged certificate. The two courts held that the 1st Respondent presented a Forged Certificate to INEC for the 2015 General Election. He is therefore automatically and perpetually disqualified to contest any election in Nigeria. And we so hold.

The Respondents' Counsels were consistent in attacking the document tendered at the Tribunal and cited many authorities. It is our humble view that Exhibit P4 and P5 are not only an evidence of presentation of Forged Certificate to INEC, but they were also subsisting concurrent judgments of court of competent jurisdiction, particularly with the Judgment of Court of Appeal. Thus, by the doctrine of *stare decisis*, we are bound by the decision of the Court of Appeal. The Decision of Court of Appeal is binding on this Tribunal and it must be upheld as an authority

and not as documentary evidence which may be subjected to relevant procedural technicality.

This is because in a recent decision in **Adeleke v. Oyetola** (2023)11 NWLR, p. 71 at page 91 the court held that where an authority is reported, it would be sufficient if the Certified True Copy (CTC) of the judgment is supplied to the Court. In the instant Petition the Petitioners brought the Certified True Copies (CTC) of judgments of the Tribunal and that of the Court of Appeal. The Court of Appeal in *Adeleke v Oyetola (supra)* stated thus:

...in the instant case, the documents tendered by the appellant exhibit 2R.RW4 (Judgment in CA/A/362/2019) were indeed certified... it behoved on the tribunal not to only take notice of the judgment but abide by the pronouncement contained therein. The issue transcended beyond the admissibility of the judgment but its binding force on the tribunal based on the principle of *stare decisis*.

In yet a another recent decision of the Supreme Court, sitting on appeal on the case *supra*; the Supreme Court reiterated this position in the case of **Oyetola v Adeleke INEC** (2023)NWLR p. 125 at page 156, state as follows:

By virtue of section 122(2)(m) of the Evidence Act, 2011, the Courts are enjoined to take judicial notice of the Judgments of superior Courts in the country. In this case, the issue transcended beyond the admissibility of the judgment of the Court of Appeal in exhibit 2.R.RW4m but its binding force on the tribunal on the basis of *stare decisis*. ... The attention of the tribunal, having been drawn

to the said judgments, their lordships were entitled to and in fact ought to have taken judicial notice of the judgment and not reject the exhibit and nothing more.

We are therefore bound by this decision on the pronouncement made in exhibit P5. Exhibits P4 and P5 therefore confirm the presentation of Forged Certificate to INEC for 2015 election by the 1st Respondent. And we so hold.

It is time now, to streamline this situation by considering the decision of the Supreme Court, in **SALEH v ABAH (2017) 12 NWLR (pt. 1587) p. 100**, on the issue of disqualification to contest an election, based on presentation of forged document relied by parties. The Counsel to the Respondents tried vehemently; albeit futile attempt, to distinguish the decision in the case (*supra*). For example, the 2nd Respondent's Counsel, at page 3, of his reply on point of law, filed on 4th August, 2023, quoted the submission of the Petitioners as follows:

We submit that having admitted as decided in Exhibits "P4" and "P5" that the 1st Respondent was disqualified for presentation of forged/false documents to INEC in 2015, it simply means that the 1st Respondent was not qualified to contest the said election at the time of the 2023 General Election. This is because his disqualification for the presentation of false/forged document to INEC in 2015 applies against him in perpetuity and not circumscribed to the 2015 General Election alone as was held by the Supreme Court in SALEH VS ABBAH (2017)12 NWLR PAGE 100 @ 154-155 PARAGRAPHS E-H per Peter-Odili JSC.

The Senior Counsel, submit that contrary to the submission of the Petitioners that the facts and issue in **Saleh** (*supra*) are clearly distinguishable from the facts and issue decided in Exhibit P4 and P5 as well as the fact and in issue in the Petition in which no allegation of presentation of forged Certificate to INEC for the 2023 Election is made, so the decision under review is inapplicable. He further submitted, with reference to Section 66(1)(i) that the particular document referred to in this provisions and **Saleh** (*supra*) is very specific on the document, that is, "**forged certificate**" which admits of no exception, does not permit going outside the words or traveling outside the specific words on a voyage of discovery and 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.

The Petitioners, on their part, submitted that since the said documents have been pronounced upon by the Election Tribunal in exhibit P4 "as certificate" and the Court of Appeal in Exhibit P5 affirmed that decision; so there was no room for this Tribunal to interfere with the concurrent findings of courts. We have any hesitation to agree with the submission of the Petitioners on this point. This is because it is very obvious that the decision of the Court of Appeal binds this Tribunal. This Tribunal lacks power and jurisdiction to touch the decision of the Court of Appeal. Consequently, our hands are tied to make any pronouncement on the already interpreted constitutional provisions, since the Court of Appeal affirmed the decision of the Tribunal.

Another point also raised by the Respondents on this issue is that contrary to the submission of the Petitioners; the facts and issue in **Saleh** (*supra*) are clearly distinguishable from the facts and issue decided in Exhibits P4 and P5; as well as the fact and in issue in the Petition, in which no allegation of presentation of forged

certificate to INEC for the 2023 Election is made, so the decision under review is inapplicable.

We find it very difficult to agree with the submission of respected Respondents' Counsel in this regard. This is because in **Saleh** under discussion, the Supreme Court was very clear on the issue; the Supreme Court held on page 135 of the case under review that a party must not be allowed to profit from his or her fraud. The 1st Respondent, as in **Saleh** presented a Forged Certificate to the 3rd Respondent in the run up 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, as in the Petition at hand, is whether the 1st Respondent ever presented a forged certificate to INEC (3rd Respondent) at any (previous or current) election, and not whether or not it was listed or omitted from the declaration form completed for a particular election. The second leg is that there must have been judicial pronouncement, by a court or Tribunal, that the certificate in question is forged.

There is no gain saying that, it is clear from the fact of the instant Petition that, the Tribunal and the Court of Appeal, concurrently, adjudged and interpreted the said "success letter" to mean Certificate under Section 66(1)(i) of the Constitution. We have no option but to so hold. Adding some salt to wound the 1st Respondent was asked and replied, on oath, under general questions section as to whether he ever presented a forged Certificate to INEC? He replied with a capital "**NO**". In the case at hand, the Supreme Court while narrating the facts in **Saleh** stated:

In December 2014, the appellant and the 1st respondent again contested the 2nd respondent's primary election for 2015 general election into the House of Representatives. Yet again, the 1st respondent won the primary election, while the appellant was the runner-up. The 1st respondent

completed his INEC form CF001 for the 2015 general election. In response to a question in the form if he had ever presented a forged certificate to INEC, the 1st respondent answered "No". (Bolding mine).

The same Court per, PETER-ODILI, JSC, at pages 154-155, paras E-F, held as follows:

The law is very clear to warrant any form of coloured 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... More importantly, a court or tribunal had found the certificate in issue to be forged. The Nigerian Constitution is supreme. It desires that no one had ever presented forged certificate to INEC should contest election into Nigeria's National Assembly. This is clear and sacrosanct.

The court in the same pages paras E-F further, held that;

... I see that what is relevant is the presentation of a forged certificate and sworn affidavit made by the 1st respondent in 2011. That it was made at another time different from the present circumstances does not take away the relevance of the presentation and application of section 66(1)(i) of CFRN...

For that reason, we have no any difficulty with the submission of the learned silk that the 1st Respondent having found by the courts of competent jurisdiction that he

had presented a Forged Certificate in 2015; then the 1st Respondent has nothing to do with the 2023 General Election, apart from his right to vote, with or without the said Forged Certificate. We squarely agree with this submission and this is our take in this Petition. The 1st Respondent is, accordingly, hereby disqualified to contest any election under the 1999 Constitution (as amended).

Finally, Bage JSC (as then was) succinctly, referred to the decision in **Saleh v Abbah** in the recent case of **Mahaija v Gaidam** (2017) LPELR-42474(SC) held on Friday, June 02, 2017 at pages 30-31, stated as follows:

I recall the ugly days of the "Toronto saga" where a convicted but later pardoned former speaker of the House of Representatives was found to have forged his certificate to assume that prominent National Office. This court has since taken a stern position on the issue of falsification of document or forgery of certificate particularly to secure unmerited political advantages. Only recently in similar but different scenario involving political declaring that every forgery requires proof of requisite *mensrea*, i.e. knowledge that the document presented was going to be fraudulently or dishonestly as genuine, which onus must be discharged by the appellant. This becomes crucial in view of the far reaching implications of the provisions of section 182(1)(j) of the 1999 Constitution (as amended) which to the effect that,

Quote:

"182(1) No person shall be qualified for election to the office of Governor of a State if:

- (j) He has presented a forged certificate to Independent National Electoral Commission".

The Court further held:

The law is very clear to warrant any form of coloured interpretation. The question is whether the certificate that turned out to be forged has ever been presented, and not whether the forger has ever been charged, tried or convicted on this. I made abundantly clear in **Saleh v Abah** (*supra*), and our position in that case is instructive in these circumstances, (bolding and underlined mine).

The Court continued:

"The intention of the constitution is that anyone who had presented a forged certificate to INEC should stand automatically disqualified. No decent system or polity should condone, or through judicial policy and decisions, encourage the dangerous culture of forging certificate with impunity to seek electoral contest. This court must take the lead in righting 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".

It is our conviction that, the facts in the instant Petition are very consistent with the facts in **Saleh v Abah**(*supra*). It is our humble opinion that the case of **Saleh** which is supported by the case of **Maihaja** is said to be lock, stock and barrel in the issue of disqualification under section 66(1)(i) of the Constitution.

Accordingly, the sole ground of the Petition under Section 134(1)(a) which, *inter alia* provides that:: "**An election may be questioned on any of the following grounds:**

(a) a person whose election is questioned was, at the time of the election, not qualified to contest the election; ..." succeeds

This is consistent with the Constitutional Provisions on Presentation of Forged Documents to INEC which the superior court consistently and correctly upheld.

In any case, we are of the firm view that the Petitioners have proved this allegation as required by section 135 of the Evidence Act (as amended). This is because the Petitioners, consistently in their pleadings, stated that the 1st Respondent was not qualified to contest the election, at the time he did, because he had breached the provisions of Section 66(1)(i) of the Constitution, and we so hold.

On this concrete Constitutional basis, it is no longer in dispute, that this Petition falls within the purview of Section 134(1)(a) of the Electoral Act 2022 (as amended) upon which this Petition is brought. It is also beyond doubt that the 1st Petitioner came second only to the 1st Respondent in the 2023 General Election. Thus, the three prayers as formulated by the Petitioners are hereby granted, as follows:

(a) That the 1st Respondent was not qualified to contest the said Aba North/Aba South Federal Constituency Election held on Saturday 25th February, 2023.

(b) That the election and return of the 1st Respondent for the Aba North/Aba South Federal Constituency be nullified for not being qualified to contest the said election.

(c) That the 1st Petitioner be declared as elected and returned for the Aba North/Aba South Federal Constituency Election of 25th February, 2023.

Conclusively, in compliance with Section 136 (2) of the Electoral Act, 2022, we hereby nullify the election and returned of the 1st Respondent having found that he is not qualified to contest the said 2023 General Election into the Office of House of Representatives for the Aba North/Aba South Federal Constituency, held on Saturday 25th February, 2023. And we hereby declare the 1st Petitioner being the Candidate who came second, and who scored the highest number of valid votes cast at the election into the 2023 General Election into the Office of House of Representatives for the Aba North/Aba South Federal Constituency and

who satisfied the requirements of the Constitution and the Electoral Act, 2022 is duly declared as elected and winner of the election. The 3rd Respondent is hereby ordered to issue the 1st Petitioner with the Certificate of return.

No order as to cost.

HON. JUSTICE AHMAD MUHAMMAD GIDADO
MEMBER I

Appearances:

1. K.C. Nwifo, SAN with his team, for the Petitioners
2. John Okoli-Akirika, Esq., for the 1st Respondent
3. O.O. Nkume, Esq., for the 2nd Respondent
4. Emeka Duruaku, Esq. and J.O. Omotiba, Esq., for the 3rd Respondent.