IN THE NATIONAL AND STATE HOUSE OF ASSEMBLY

ELECTION PETITION TRIBUNAL (PANEL 3)

HOLDEN AT UMUAHIA, ABIA STATE

THIS THURSDAY THE 28TH DAY OF SEPTEMBER, 2023

BEFORE THEIR LORDSHIPS

HON. JUSTICE ABUBAKAR IDRIS KUTIGI - CHAIRMAN

HON. JUSTICE AHMAD MUHAMMAD GIDADO - MEMBER I

HON. JUSTICE MOMSISURI ODO BEMARE - MEMBER II

PETITTION NO:EPT/AB/SHA/11/2023

BETWEEN:

1. MRS. VICTORIA DIBUMMA ONWUBIKO
   PETITIONERS
2. LABOUR PARTY (LP)

AND:

1. INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC)
   RESPONDENTS
2. PEOPLES DEMOCRATIC PARTY (PDP)
3. ERONDU UCHENNA ERONDU

JUDGMENT

(DELIVERED BY HON. JUSTICE ABUBAKAR IDRIS KUTIGI)

The 1st Petitioner and 3rd Respondent were candidates in the election to the House of Assembly for**Obingwa West Constituency** in Abia State, held on 18th March 2023. The 1st Petitioner contested the election on the ticket of Labour Party (L.P), the 2nd Petitioner, while the 3rd Respondent contested the election under the platform of the 2nd Respondent, Peoples Democratic Party (P.D.P), among other candidates fielded by other Political Parties.

At the end of the exercise, the 1st Respondent, Independent National Electoral Commission (INEC) declared and returned the 3rd Respondent as the winner of Obingwa West Constituency with a score of **13, 769** (Thirteen Thousand, Seven Hundred and Sixty Nine). 1st Petitioner came second with a score of **3, 028** (Three thousand and Twenty Eight).

The 1st Respondent is the statutory body charged with the responsibility of conducting the election.

Being dissatisfied with the conduct and outcome of the election, the Petitioners filed this petition at the tribunal on the 7th April 2023 to challenge the results of the election upon the grounds as stated in **paragraph 21** of the petition as follows:

i) **The 3rd Respondent was not duly elected by majority of lawful votes cast at the election.**
ii) **The election which returned the 3rd Respondent as winner is invalid by reason of substantial non-compliance with the provisions of the Electoral Act, 2022 (as amended).**

The substance of the facts in support of the petition as averred by the Petitioners vide paragraphs 10, 17, 24 – 81 of the petition is that the

elections in 82 polling units spread across the six (6) wards of Obingwa West streamlined in paragraph 29 of the petition, were characterized by widespread irregularities and non compliance with the provisions of the Electoral Act and the Manual and Guidelines issued by the 1st Respondent for the conduct of the 2023 election such that no valid return ought to have been made in favour of the 3rd Respondent.

The petitioners further averred that if the results in the 82 polling units complained of across the 6 wards are cancelled due to the alleged irregularities, that the 1st Respondent ought not to have returned the 3rd Respondent as duly elected as the total number of PVCs collected in the affected polling units would outstrip the margin by which the 1st Petitioner would have been leading the 3rd Respondent on a proper accounting of the total valid votes cast at the election. The petitioners further averred that the total number of registered voters in the 82 polling units complained of is **58, 115** whilst the total number of **PVCs** collected is **55, 975** and that based on the margin of lead principle, the 1st Respondent ought not to have returned the 1st Respondent as the winner of the election as the total number of registered voters in the affected polling units, 9, 700 exceed the margin between the 1st Petitioner and 3rd Respondent which is 9, 666 based on the results announced by the 1st Respondent.

The petitioners then prayed the tribunal for the Reliefs set out in **paragraph 82** of the petition as follows:

i. **That it may be determined and declared that the 3rd Respondent, ERONDU UCHENNA ERONDU having regard to**

valid votes cast, was not duly elected and returned and could not be elected or returned by the majority of lawful votes cast at the election to the Member House of Assembly, OBINGWA WEST Constituency in the House of Assembly of Abia State held on 18th March 2023.

ii. That it may be determined that the 1st Petitioner was duly elected by the majority of lawful votes cast in the election held on 18th March 2023 for the Office of Member representing Obingwa West in the Abia State House of Assembly.

iii. AN ORDER nullifying or setting aside the Certificate of Return issued by the 1st Respondent to the 3rdRespondent as the winner of the election to the office of Member House of Assembly, Obingwa West held on 18th March 2023.

iv. AN ORDER directing the 1st Respondent to issue a Certificate of Return to the 1st Petitioner as the duly elected Member of the House of Assembly representing Obingwa West Constituency.

v. AN ORDER directing the Speaker of the House of Assembly to swear-in the 1st Petitioner as office (sic)**of Member House of Assembly Representing Obingwa West Constituency.**

vi. AN ORDER that it may be determined that all remunerations, allowances, and entitlements attached to the office of member Representing Obingwa West Constituency that may have been paid to the 3rd respondent on the basis of undue return made in this election be refunded into the coffers of the House of Assembly to the intent that same be applied to indemnify the 1st Petitioner herein.

ALTERNATIVELY:

vii. A DECLARATION that the returns made by the 1st Respondent which declared the 2nd and 3rd Respondents as winners of the election conducted on the 18th of March 2023 for the Office of Member House of Assembly, Obingwa West ought not to have been made as the margin of lead is far below the number of disenfranchised voters in areas where the elections did not hold in line with the Sections 47(2) and 52(2) of the Electoral Act.

viii. AN ORDER setting aside and/or voiding the elections and returns made in favour of the 2nd and 3rd Respondents in its entirety which elections was conducted on the 18th of March 2023 for the contested position of Member, House of Assembly Obingwa West Constituency.

ix. **AN ORDER nullifying or setting aside the Certificate of Return issued by the 1st Respondent to the 3rd Respondent as the winner of the election to the office of Member House of Assembly, Obingwa West Constituency held on 18th March, 2023.**

x. **AN ORDER directing the 1st Respondent to conduct a supplementary election in the 82 polling units where election did not hold in substantial compliance with the provisions of the Electoral Act and the Manual and Guidelines issued by the 1st Respondent.**

xi. **Costs of this Petition.**

xii. **AND for such Orders and further Orders as this Honourable Tribunal may deem fit to make in the circumstances.**

In response to the petition, all the Respondents filed replies categorically and precisely joining issues with the Petitioners and putting them to strict proof of the allegations made in the petition. The 1st Respondent filed its Reply dated 22/4/2023 and filed on 27/4/2023 incorporating a **preliminary objection.** The 2nd Respondent filed its Reply dated 27/4/2023 and filed same date also **incorporating a preliminary objection**. The Reply of 3rd Respondent is dated 28/4/2023 and filed on 30/4/2023. They equally also incorporated a **preliminary objection** in there Reply.

The **Petitioners** in response filed the following processes:

1) Petitioners Reply to the 1st Respondent's Reply and Preliminary objection dated 1/5/2023 and filed same date.

2) Petitioners Reply to the 2nd Respondents Reply and preliminary objection dated 4/5/2023 and filed same date; and

3) Petitioners Reply to the 3rd Respondents Reply and Preliminary objection.

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 hearing sessions 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 1st, 2nd and 3rdRespondents 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 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 1st, 2ndand 3rdRespondents.

Now at the **pre-hearing sessions,**the applications taken on which Rulings were reserved are as follows:

The **2nd Respondent** filed one application:

1) Application dated 12/5/2023 and filed on 15/5/2023 praying for an order striking out the petition.

The **3rd Respondent** equally filed one application:

1) Application dated 11/5/2023 praying that the petition be struck out or dismissed.

We shall take the applications seriatim.

The application by **2nd Respondent** is dated 12/5/2023 and filed on 15/5/2023. The relief sought is for:

1) An order of this Honourable Tribunal striking out and/or dismissing this petition wholly or in parts thereof for being incompetent.

The grounds of the objection as contained in the application are as follows:

1. **The petition as presently constituted is incompetent and the Honourable Tribunal has no jurisdiction to entertain same.**

2. **The 1st Petitioner lacks the capacity and locus standi to file this petition not having demonstrated her membership of the 2nd Petitioner to be sponsored as candidate of the 2nd Petitioner for Obingwa West State Constituency in the election that was conducted on the 18th March, 2023.**

3. **Section 4 (1) (c) (7) of the Electoral Act, 2022 stipulates that an Election Petition under this Act shall: state the holding of the election, the scores of the candidates and the person returned as the winner of the said election, and that an election petition which does not comply with subparagraph (1) or any provision of that Subparagraph is defective and may be struck out by the Tribunal or Court.**

4. **In view of paragraph 3 above, the Petitioners pleading of incorrect scores of candidates in the holding of the election, scores of candidates and person returned in paragraph 10 of the petition, which is different from the original scores recorded by 1st Respondent in Form EC8A (1), wherein the petitioners wrongly and incorrectly awarded 135 votes by themselves to the ADC candidate CHIJIOKE CHINEDU JOSEPH, different from the 1st Respondent's correct score of 07 votes as correctly contained in the 1st Respondent's FORM EC8A (1), makes this petition incompetent and defective and liable to be struck out by the Honourable Tribunal.**

5. **Also the Petitioners inclusion of ADC as a party that contested the said election and excluding ADP as a party that contested the said election as contained in the 1 Respondent's Form EC8E (1) makes this petition incompetent, incurable and defective in**

nature and therefore liable to be dismissed by the Honourable Tribunal.

6. **The Petitioner** (sic) **is baseless self-contradictory, nebulous and incompetent, in that many of the polling units in the six (6) wards of Obingwa West State Constituency where the petitioners allegedthat over voting occurred had results entered into form EC8A (1) in compliance with the Electoral Act.**

7. **Many of the poling units results in form EC8A(1) alleged by the Petitioners in the affected 82 polling units in paragraphs 29, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 43, 44, 45, 46, 47, 48 and 49 of the petition indicates that elections held in the 82 polling units and the results declared, which shows no over voting occurred in the alleged 82 polling units and the offending paragraphs of the petition ought to be struck out.**

8. **The Petitioners table as contained in paragraphs 74 and 75 of the petition showing graphically the alleged various incidence of non-compliance as well as the affected and non-affected votes for the petitioners and the 2nd and 3rd Respondents are fabricated, concocted, false and baseless, which said tables were invented for the purpose of this petition and liable to be struck out by the Honourable Tribunal.**

9. The petitioners incredulously want the results of 82 polling units discounted on spurious ground of over voting petition incompetent, (sic) **defective and ought to be struck out and/or dismissed by the Honourable Tribunal.**

10. The results reflected on the Petitioners Table as generated from the BVAS are inaccurate and incompetent. The Petitioners complaint are baseless and liable to be struck out and the petition dismissed by the Honourable Tribunal.

11. The petitioners reliefs contradicts the petitioners pleadings. The Reliefs sought by the petitioners in paragraph 82 (iv, v, vi & x) is not supported by the Grounds of the petition. Facts must be Pleaded to support the ground of the Petitioners petitions, as same is speculative and ought to be dismissed.

12. No cause of action has been disclosed in the petition as Fundamental requirements to support the complaint of the petitioners and or relief sought are completely lacking or absent in this petition.

13. The Honourable Court lacks jurisdiction to entertain this petition and is empowered to strike out and/or dismiss same for being incompetent.

14. Bringing of this Application and the grant of same accord with the interest of justice.

In support of the Application is a **five (5) paragraphs affidavit** and a written address in which (4) issues were raised as arising for determination:

1) Whether the petition discloses a reasonable cause of action.
2) Whether the failure to plead facts supporting the ground of the petition does not render same incompetent.
3) Whether the 1st Petitioner has the competence to bring this petition and;
4) Whether the Honourable tribunal has the jurisdiction to entertain this petition.

Submissions were then made on the above issues which forms part of the record of the tribunal which we have carefully considered.

The summary of the submissions on issue 1 is that the petition failed to disclose a cause of action against 2nd Respondent and that a community reading of sections 57 and 62 of the Regulations and Guidelines for conduct of Elections made pursuant to the Electoral Act will show that a petition of this nature which challenges outcome of an election on the ground that election in 82 units of the constituency did not hold in compliance with the Electoral Act and asking for deductions of votes of candidates on allegations of over voting and the petitioners alternative relief for supplementary election ought to be based on number of registered voters with PVCs collected. That in this case, the petitioners

predicated their petition on the total number of registered voters in the alleged area including those that did not collect their PVCs as the outstanding number of voters. It was contended that because of this misconception, the action of petitioners is incompetent and should be struck out for failure to disclose sufficient cause of action against 2nd Respondent.

On issue 2, it was submitted that the petitioners failed to plead sufficient particulars of facts to support ground 1 of the petition and that in the absence of these facts, the tribunal will not be in a firm position to determine the dispute and accordingly that the petition is incompetent on this ground and should be struck out.

On issue 3, the case made out by 2nd Respondent is that the 1st petitioner failed to disclose her membership of the 2nd Petitioner as required by law allowing her to be sponsored as a candidate by the 2nd Petitioner for the Obingwa West State Constituency election. That her failure to fulfill these requirements meant that the jurisdiction of the tribunal has not been properly activated.

Finally on issue 4, it was contended that since the action is incompetent, the tribunal will have no jurisdiction to entertain the case. The 2nd Respondent also submit that elections properly held in all the units complained of; that there was no over voting and that the various alleged infractions complained of are fabricated, false and without any basis.

At the hearing, counsel to the 2nd Respondent relied on the paragraphs of the supporting affidavit and adopted the submissions in his written address in urging the tribunal to grant the application.

The **Petitioners** in response filed a seven (7) paragraphs counter – Affidavit in opposition with a written address in support in which the issues formulated by 2nd Respondent was adopted and submissions made therein which also forms part of the record of the tribunal which we have considered.

On issue 1, the case made by Petitioners is that on the basis of the facts in the petition,they have made out a reasonable cause of action against the Respondents.

On issue 2, the Petitioners submit that again on the petition, they have copiously pleaded facts to support ground 1 of the petition. That at this point they are not expected to plead evidence but material facts to support or sustain the ground.

On issue 3, it was again submitted that the 2nd Respondent who is not a member of 2nd Petitioner has no business requesting for 1st Petitioners membership of 2nd Petitioner and further that in the petition, the 1st Petitioner has stated clearly in the petition that she is a member of 2nd Petitioner and contested the election on the party platform.

Finally on issue 4, it was contended that the petition in this case sufficiently complies with the provision of paragraph 4 (1) (c) of the Electoral Act in that the scores of parties who contested the election were substantially supplied particularly the two main contestants in this case, the 3rd

Respondent and 1st Petitioner who 1st Respondent stated came 1st and 2ndrespectively.

At the hearing, counsel to the Petitioner relied on their Counter – Affidavit and adopted the submissions in their written address in urging the tribunal to dismiss the application.

We have carefully considered the submissions on both sides and in determining the application, we shall adopt the issues raised by the 2nd Respondent.

The first issue dealt with the issue of failure to disclose a cause of action.

Now it is correct that a dispute must signify a cause of action for a court to have jurisdiction to adjudicate over a matter. The Supreme Court in **Savage V Uwaechia (1972) 3 SC 214 at 221** defined a cause of action thus:

"Cause of action is defined in the strouds Judicial Dictionary as the set of circumstances giving rise to an enforceable claim. To our mind it is in effect the fact or combination of facts which give rise to a right to sue and it consist of two elements – the wrongful act of the defendant which gives the plaintiff his cause of complaint and consequent damage"

An action must showcase cause of action otherwise a court handling it, will be derobed of the jurisdiction to determine it.In determining whether a claim discloses a cause of action, the court must have regard to the statement of claim or in the present case, the petition. See **Ogbimi V Ololo (1993) 7 NWLR (Pt 302) 128 at 134 – 135 F.**

In this case, we have earlier situated the facts of this case at the beginning of this judgment. As far as can be evinced from the paragraphs of the petition, the petitioners have situated facts which give them the right to sue.They have averred that they were contestants in the election and further averred the alleged wrongful acts of the Respondents and the resultant damage in terms of the unjustified loss they suffered at the election. Indeed section 133 (1) (a) and (b) of the Electoral Act situates clearly that a petition may be presented by a candidate of a political party and the political party which participated in the election. By section 133 (2), a person whose election is complained of is the Respondent.

It is therefore not a matter in doubt that candidates who participated at the election and their political parties are thus the only persons vested with the requisite locus standi, to present an election petition. The concept of locus standi is an aspect of jurisdiction. That being the case, the only petition which a tribunal can take are those presented by either a candidate at the election or the political party which participated in the elections.

There are numerous decided authorities of our superior courts that once a petitioner has expressly stated that he was a candidate in the election, as in the present situation, that is enough that he has established his right to present the petition. See **Kamil V INEC (2010) 1 NWLR (Pt 1174) 125 at 142; Okonkwo V Ngige (2006) 8 NWLR (Pt 981) 119.**

As stated earlier and as far as can be evinced from the paragraphs of the petition and supported by the above provisions of the Electoral Act, a

reasonable cause of action has been disclosed. The alleged unclear misconception in the formulation of the petition as contended by 2nd Respondent, a point which we must confess we don't even understand, has nothing to do with cause of action.

It is sufficient for a court to hold that a cause of action is reasonable once the statement of claim in this case the**petition** discloses some cause of action or some question(s) fit to be decided by a judge, notwithstanding that the case is weak or not likely to succeed. The fact that a cause of action is weak or unlikely to succeed is no ground to strike it out. See **Thomas V Olufosoye(1986) 1 NWLR (Pt 18) 669 at 682 G – H.**

Issue one is resolved against 2nd Respondent.

On **issue 2**on failure to plead particulars of the ground, we really cannot situate the basis of this complaint. It appears to be a complaint completely disconnected from the petition which streamlines or defines the issues in dispute in this case.

The petition in paragraph 21 has situated the **2 grounds** of the petition. In paragraphs 21 – 54, facts in support of the ground 1 were streamlined.In paragraphs 55 – 81, facts in support of ground 2 were similarly provided.

A pleading in law must be sufficient, comprehensive and accurate defining with clarity and precision the real matters in controversy between the parties upon which they can prepare and present their respective cases. See **Kyari V Alkali (2001) 11 NWLR (Pt 724) 412 at 433 – 434 H – A.**

The pleadings in this case served this clear purpose and substantially complied with the provisions of paragraph 4 (1) (d) & (2) of the 1st schedule of the Electoral Act which stipulates for clear presentation of facts, grounds on which the petition is based and the reliefs sought. The petition was equally divided into paragraphs each dealing with a distinct issue and the paragraphs were consecutively numbered too.

The issue of leading evidence cannot be an issue now or arise at this stage. That is a matter for the substantive trial, where the petitioners will now be expected to lead evidence in support of the pleaded facts. It is valid reasoning in law that facts only are to be pleaded and not the evidence by which they are to be proved. It is trite principle that evidence sustaining allegations need not be pleaded. See **Shell Petroleum Dev. Co. V Graham Oloko (1990) 6 NWLR (Pt 159) 693 at 71 SC.**

Issue two is also resolved against the 2nd Respondent.

Issue 3 on whether the 1st Petitioner has competence to bring this action we had earlier addressed under issue 1. The provision of section **133 (1)** of the Electoral Act provides the requisite locus standi to 1stPetitioner to present this petition. The provision of section 133 is clear and must be given its literal meaning.There is nothing in it saying that for a person to be able to present a **Petition,** such a person must disclose his membership of a party. This is therefore a clear attempt by 2nd Respondent to make additions or interpolations to the clear provision to suit a particular purpose. See section 128 of the Evidence Act. The remit of the provision cannot thus be expanded by 2nd Respondent.

The averments in the petition situate clearly that she was a candidate for Labour Party and contested the election on that basis. She also equally provided or averred facts specifying her right to present the petition. **Issue three**also fails.

The final issue on whether the court has jurisdiction to entertain this case the 2nd Respondent itself supplied the **answer** in their submissions on issue 3 at **paragraph 3.17** of the address thus:

"There is no doubt that the subject matter of this petition is within the jurisdiction of this Honourable Tribunal…"

Their complaint however is that to activate the jurisdiction, the Petitioners must demonstrate the competence to do so which the 1st Petitioner according to them has failed to do.

We have found in our consideration of all the issues presented by this motion that their conclusion is flawed and has no basis, factual or legal.The 2nd Respondent has clearly not established before us any feature that derogates from the tribunals requisite competence to determine this petition.

The submissions made on **issue 4** by 2nd Respondent on failure of proof of the Petitioners various allegations appear to us overtly premature. The tribunal cannot at the interlocutory stage be determining whether the allegations in the petition has been established or proved. That is a matter, God willing, to be determined at the substantive stage. Not now.

On the whole, the application by 2nd Respondent completely **lacks merit and is dismissed.**

The Application by the **3rd Respondent is dated 11/5/2023** and filed same date and prays for:

"An order dismissing or striking out the petition for lack of merit"

The grounds of the petition are:

i) **The Petitioners by their pleadings admitted the third Respondent scored highest number of lawful votes cast.**

ii) **The Petitioners deliberately try to deceive the Honourable court by presenting a figure she did not score at the election in her pleadings.**

The application is supported by a sixteen (16) paragraphs affidavit with a very brief half a page written address which relying on the grounds of the application prayed that the motion be granted and the petition dismissed.

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

The petitioners in opposition filed a sixteen (16) paragraphs counter affidavit and a written address in which it was contended that the application is abinitio incompetent as the issues raised by the motion are matters for the substantive hearing. That the issue of alleged admission and the computation of votes as done in the petition are all matters in which parties have joined issues on.

At the hearing, the counsel to the petitioners relied on the contents of the counter – affidavit and adopted the submissions in his written address in urging the court to dismiss the application.

We have carefully considered the submissions on both sides of the aisle and we really don't seem to understand or appreciate **the legal basis** of this motion.

If the petition as alleged admitted that third respondent scored the highest votes, how is that a ground to dismiss the petition. It is clear to us that the 3rd Respondent appear not to understand the case of the petitioners. Yes they may have alluded to the scores of parties, but they are challenging the entire foundation or basis of the said score as fraudulent and in violation of the Electoral Act and extant Electoral Regulations.

It is therefore curious that in determining the cause of action presented by petitioners, the 3rd Respondent has limited himself to a particular paragraph out of the nearly 82 paragraphs contained in the petition and that perhaps explains the erroneous conception of the case and or grievances presented for ventilation. The 3rd Respondent must look to the entire petition to situate the case presented. In determining whether an issue has been made out on a point, it is not proper to consider a particular paragraph of the statement of claim or petition in isolation. This is because other paragraphs may contain averments which broadens or sheds more light to that particular paragraph or puts up a case different from that projected by that particular paragraph without mentioning the paragraph. It is therefore important to read the entire pleadings to properly ascertain

the case made out by a party. A severely restrictive reading of the petition by 3rd Respondent has led to the equally restrictive understanding of the grievances of petitioners which then led to the filing of this misconceived application.

Finally on the issue of the alleged wrong figures presented in the petition, this clearly is a matter for trial. It will be remiss on the part of the tribunal to make any comments at this stage on figures as that will be overtly prejudicial. We have no such jurisdiction to do that.

On the whole, the **application is completely misconceived and is dismissed**.

Having delivered the **Rulings on the interlocutory applications**, the next stage is to determine **the three preliminary objections raised by the 1st – 3rd Respondents**. We however note that it was only the 3rdRespondent that made submissions on their preliminary objection in the final address. However in the final addresses of both 1st and 2nd Respondents, submissions were not made on the objections contained in the replies of 1st and 2nd Respondents as agreed at the pre-hearing and nothing was urged on the tribunal with respect to the objections.

Indeed during the adoption of final addresses, neither counsel for the 1st or 2nd Respondentsmoved their objections or alluded to their objections which projects a clear indication that they are no more interested in the objections. The tenor and character of the issues raised in the final addresses and the submissions made by the 1st and 2nd Respondents on all

aspects of the petition shows clearly that the objections have essentially been abandoned.

The tribunal cannot be expected to rule on a motion or an objection in this case that was not moved. It is safe in law to assume that since the objections were not moved or addresses furnished on them, counsels who filed same had abandoned the objections. See **Savannah Bank of Nigeria Plc V JatauKyentu (1998) 2 NWLR (Pt. 536) 41 at 0 55 D – E**.

In the absence of the objections been moved and or submissions made on them, we shall accordingly hereby strike out the objections.

We are thus left with the **preliminary objection of the 3rd Respondent**. The submissions made cover **pages 2 – 15** of the address and they were made under defined headings. We shall treat the defined headings seriatim and because some of the issues, we had dealt with in the application by 2nd Respondent, we will simply adopt the decision reached with respect to those issues.

The first point of objection **3rd Respondent** addressed on is that the 1st Petitioner is not a member of 2nd Petitioner and cannot be validly sponsored by same. We don't think this is a matter we should waste time on in line with the settled jurisprudence on the matter.

As a prefatory remark, we don't really seem to appreciate the **legal basis** of this objection, ab initio. The **1stPetitioner** on the pleadings was said not to have won the election in **question** and therefore we cannot situate

the legal validity of the **objection** raised by the 3rd Respondent, particularly on qualification and her membership of the 2nd Petitioner.

The **1st Petitioner**and **2nd Petitioner** have challenged the **election** won by the **3rd Respondent** and they can only do so on well defined grounds as provided under section 134 (1) of the Electoral Act.

These they have done and it is expected of the Respondents to respond to the allegations made in the petition. No more. **Sections 133 (1)**and (2) on persons entitled to present a petition provide thus:

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

(a) A candidate in an election or
(b) A political party which participated in the election.

(2) A person whose **election is complained of** is, in this Act; referred to as **Respondent.**

The above is clear. We had earlier explained the import of section 133 (1). The person whose election is complained of here is the 3rd Respondent, so he can only be a respondent in the circumstances.

Now on grounds for presentation of a petition, particularly with respect to the question of qualification, section 134 (1) (a) of the Electoral Act stipulates clearly 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 again is clear. Where the words of a statute are clear, the court shall give effect to its literal meaning. See **Adewunmi V A. G. Ekiti State (2022) 2 NWLR (Pt 751) 474 at 511.** It is thus the person whose **election is questioned** that the issue of qualification can really be levelled against. It must be underscored that Election matters are sui generis and in a class of its own. To the clear extent that the objection cannot be situated within the strict purview of sections 133 and 134 of the electoral Act, this ground is incompetent. The 3rd Respondent has no cross-petition, that is were it to be even legally availing under the Electoral Act. The present course of action taken by 3rd Respondent is one of doubtful legal validity.

The ground of qualification as we understand is essentially constitutional. The 1999 constitution vide sections**106** and **107** has provided the qualifying and disqualifying elements for membership of House of Assembly.

If a person has not won an **election** as the 1st Petitioner in this case, we don't really see the basis of making any inquiry of whether she is qualified or disqualified which is a constitutional issue.To make such inquiry will be entirely an **academic exercise** which the court has no luxury of indulging in particularly in the context of the grievance submitted for resolution which is streamlined and defined in the pleadings.

It must be underscored that the extant **petition** contains no ground challenging the election of **3rd Respondent** on ground of qualification.The issues that we must address or resolve must be issues upon facts which

are relevant for pleadings purposes, in the sense that they go to the **substance of the matters calling for a decision.**

The 1st Petitioner has fully met the legal criteria within the confines of section 133 (1) & (2) to file the extant petition. Whether it will succeed is a different matter altogether which has absolutely nothing to do with her membership of 2nd Petitioner. The allegations she raised must be established within acceptable **legal threshold**and or parameters**.**

The first ground of objection is incompetent and struck out.

The **second ground on submission of membership register 30 days before** the 2nd Petitioners primary elections for reasons advanced under ground 1 is equally incompetent. Again, what has submission of register of membership of 2nd Petitioner 30 days before the primary election got to do with the **extant petition.**

The 3rd Respondent appears to have proceeded on the rather **erroneous**conception or fallacy that he is the petitioner and instead of acting as the respondent he truly is who is said to have won the election that is now being challenged, he has sought to expand the remit of the grievance situated in the **2grounds** of the petition.

We really cannot situate where and how the presentation of register of membership under section 77 (3) of the Electoral Act features in the entire trajectory of this case. There is **no where it features under section 133 (1) & (2)** of the Electoral Act as a**condition precedent** before**a petition can be filed**.

As an aside, if **sections 106 and 107** of the constitution on qualification and disqualification is read and understood, we don't even see where the provision of section 77 (3) of the Electoral Act features in sections 106 and 107 of the 1999 constitution and the constitution is supreme over all other legislations including the Electoral Act.The attempt to seek to import the provision of section 77 (3) to the clear constitutional provisions of sections 106 and 107 of the constitution will not fly. We say no more.

The issue of submission of membership register is equally incompetent and struck out and has absolutely nothing to do with the right of the petitioners to present the petition.

The **final three grounds** of the objection pertaining to:

(i) Contradiction between ground (ii) and Reliefs (ii) – (vi)

(ii) Failure to state accurately the holding, declaration of scores of the candidates; and

(iii) Failure to comply with paragraph 4 (1) (a) of the 1st schedule of the Electoral Act.

are all matters or issues which can be dealt with in the substantive action and no party will suffer any prejudice by the course of action we have adopted.

We agree as alluded to earlier, that election proceedings are sui generis and in a class of its own, but the principles behind the filing of pleadings equally applies to it. It is settled that one of the functions of pleadings is to enable parties in a case give a fair notice of their respective cases to each 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.) Ltd Plc (2011) 8 NWLR (Pt 1250) 590.**

The petition as found earlier when we dealt with the application of 2nd Respondent is sufficient, comprehensive and presented without any ambiguity incompliance with extant provisions of the 1st schedule of the Electoral Act allowing the Respondents to know precisely the issues they will be facing.

On the whole, except for our observations with respect to grounds 3 – 5 of the objection which we shall consider in the substantive judgment, the objection is largely incompetent and struck out.

Having dealt with the interlocutory applications and the preliminary objection of 3rd Respondent, the coast is now clear to resolve and determine the substantive action.

JUDGMENT

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

In the course of trial in proof of their case, the Petitioners called**Eight (8) witnesses**.

The 1st witness for the petitioners was **Vincent ChimezieOchieze**who testified as **PW1.** He adopted his witness deposition on pages 167 – 168 of

the Petition. He is a registered voter and acted as a polling unit Agent for LP in unit 009. His evidence is that as a unit agent, he was to observe and ensure that elections in his unit was in compliance with the Electoral Act and other laws. That the election in his unit was characterized by widespread non compliance and irregularities and that there was incident of mutilation and cancellation of votes as well as allocation of votes not based on the actual vote in the BVAS machine to confer advantage on 3rd Respondent and cancellation of result sheets. That he raised his concerns to the 1st Respondent but they did not attend to his needs. He then tendered the result sheet, form EC8A (1) for the polling unit Umugba – UmugbaCivil Hall.

PW1 was then cross-examined by Respondents.

Mr. **Bright Michael** testified as **PW2.** He adopted his deposition on pages 171 – 172 of the petition. He is a registered voter and acted as polling unit Agent for LP in unit **022 MgbokoUmuanunu ward 3.** His evidence in tenor and character is the same with that of PW1. He tendered the result sheet form EC8A (1) for Umulogu – Umologu Village Square.

He was cross – examined by Respondents.

Chimezie Aloha testified as PW3. He adopted his witness deposition on pages 163 – 164 of the petition.He is a registered voter and polling unit Agent for LP in **unit 016 MgbokoUmuanunu ward 3.**His evidence in character and substance is also the same with that of PW1 and PW2. He tendered the form EC8A (1) for Umugweze/Umuokpani – Nenu C.P.S Campus 1.

He was then cross – examined by Respondents.

The **1st Petitioner,** Mrs. Victoria DibunmaOnwubiko testified as **PW4.** She adopted her witness deposition on pages 42 – 70 of the petition which is essentially a rehash or repetition of the contents of the petition which we had earlier reproduced.

She was equally cross – examined by Respondents.

UcheNwerejitestified as **PW5.** He adopted his witness statement on pages 71 – 72 of the petition. He is a registered voter and acted as a polling unit Agent at **unit 003**Abayi ward 1. His evidence is that election in the unit was marred by sundry irregularities and non – compliance with the provisions of the Electoral Act. That there was over voting in that the total number of votes recorded in the EC8A (1) exceeded the total number of accredited voters in the BVAS machine and that the result was not cancelled. That the total number of accredited voters in the BVAS machine is **98** but the total number of votes recorded in EC8A (1) is **204**. He identified Exhibit P8 (3) as the result of his polling unit.

EricGwuibetestified as **PW6.** He adopted his witness statement on pages 187 – 188 of the petition. He is a registered voter and the **ward collation Agent for ward 3.** His evidence is that election across the polling units in the ward particularly units 001 – 024 and 029 was marred by widespread irregularities stemming from over voting, mutilation of result sheets, wrongful allocation and or inflation of results of the 2nd and 3rd Respondents in the form EC8B (1) series. That there are also cases of misallocation of votes scored by the parties as well as difference in the pink

copy of the EC8A (1) issued to the polling units agents and those in the CTC's as well as those posted on the IREV Portal.

He identified the units results Exhibits P10 (1 – 26) as the units results he is complaining about and Exhibit P24a, the BVAS report.

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

Onwunah Jap Nnamdi testified as **PW7.** He adopted his witness statement on pages 189 – 190. He is a registered voter and acted as ward collation Agent for ward 4. His evidence is in substance the same with that of PW7 but the units complained of in ward 4 are units 016, 017, 019, 020, 024, 030, 032 and 034.

He referred to results sheets forms EC8A (1), Exhibits P11(1 – 34); the BVAS report vide Exhibit P24a and the ward result for ward 4, vide Exhibit P16.

He was also cross-examined by Respondents.

IhedinduEmetestified as **PW8** and the last witness for the Petitioners. He adopted his deposition on pages **192 – 193** of the petition. He is a registered voter and acted as a ward collation Agent **for ward 6** and in that capacity, he visited various units in the ward and that there were widespread irregularities across polling units in the ward stemming from over voting, mutilation of result sheets, wrongful allocation and inflation of result. That in polling unit 6, the total votes of 2nd and 3rd Respondents was **31** but it was inflated **to 73**. Further that in polling unit 012, the 2nd and 3rdRespondents scored**25 votes** in EC8A (1) but it was inflated **to 53** in EC8B (1) series.

He referred to Exhibits P13 (6) and P13 (12) as the results for units 6 and12 where he complained of over voting and inflation of votes in favour of the 2nd and 3rd Respondents.With the evidence of **PW8, the petitioners closed their case**.

The **petitioners** tendered in **all Exhibits P1 (a – c) – P58 (a – c)**. The Exhibits comprised documents tendered from the Bar by counsel to the petitioners and Exhibits tendered by witnesses. The exhibits tendered from the Bar comprise forms EC8A (1), polling units results for 6 wards in the constituency, forms EC8B (1) summary of results for 5 wards; form EC8C (1), summary of result from registration Area; form EC8E (1) – state constituency declaration result sheet; PVC issuance status; list of House of Assembly candidates; form EC9, affidavit of personal particulars of 1st Petitioner; BVAS accreditation report; CTC of Irev result for Obingwa State Constituency; voters registers for wards and units of the constituency and **INEC** receiptfor issuance of certified true copies of Electoral materials.

The exhibits tendered by witnesses comprises voters card, Labour Party membership card, Labour Party agent tags and forms EC8A (1) of some units in the constituency.

The **1st Respondent** chose or elected not to call any witness and closed its case.

The **2nd Respondent** then opened its case and called only **one witness**. **Chinemerem Peter** testified as **DW1.** He adopted his witness statement on pages 1 – 19 of the 2nd Respondents Reply. He is a registered voter and acted as a collation Agent for P.D.P on the date of the election. His

evidence is essentially a repetition of the defence of 2nd Respondent in which they denied all the allegations made by the petitioners in the petition. That the election was free and fair and conducted in line with the provisions of the Electoral Act and the Manual and Guidelines issued by the 1st Respondent for the conduct of the 2023 General Election. He tendered in evidence copies of his voters card, P.D.P membership card and letter appointing him as collation Agent which were admitted as **Exhibits D1(a – c)**.

He was cross-examined by other respondents and the petitioners and with his evidence, the 2nd Respondent **closed their case**.

The **3rd Respondent** on his own part called **six (6) witnesses**.

Monday Onyeulo testified as **DW2.** He adopted his witness deposition on pages 49 – 50 of the 3rd Respondents Reply. He is a registered voter and acted as a polling unit Agent at polling unit 003 Abayi ward 1. His evidence is simply that the election in his unit was free and fair in compliance with the Electoral Act and Manual and Guidelines of the 1st Respondent and that there was no over voting as the number of accredited voters synchronized with the number of votes cast after it was counted by the presiding officer with the use of BVAS machine.That polling unit Agent of petitioners signed the unit result on the day of election and did not make any complaint.

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

Friday Nwosutestified as **DW3**. He adopted his witness deposition on pages 141 – 142 of the 3rd Respondents Reply. He is a registered voter in

unit 022 MgbokoUmuanunu ward 3. The tenor and character of his evidence is the same with that of DW2 to the effect that elections in his unit was free and fair and conducted in line with the provisions of the Electoral Act and the Electoral guidelines with no complaints by petitioners Agent on the day of the election at the unit.

He was cross-examined by counsel to the other Respondents and the Petitioners.

Ukpom Prince Ezenwoko testified as **DW4**. He deposed to a witness statement on pages 149 – 150 which he adopted at the hearing. He is a registered voter and acted as ward collation Agent for MgbokoUmuanunu ward 3. His evidence also took the same tenor and character as that of DW2 and DW3 to the effect the elections were free and fair in his ward as he personally went round the units and there were no cases of over voting as the number of accredited voters synchronized with the number of votes cast after it was counted by the presiding officer with the use of BVAS machine in all the polling units.That there were no irregularities in units 001 – 024 and 029 of the ward and that the agent of petitioners never made any complaint at any time on the day of the election.

DW4 was then cross-examined by 1st and 2nd Respondents and also the Petitioners.

ObiomaNwamgburuka testified as **DW5**. He deposed to a witness deposition on pages 151 – 152 of the 3rd Respondents Reply which he adopted at the hearing. He is a registered voter and acted as ward collation Agent for MgbokoItungwa ward 4. His evidence is the same with that of

DW2 – DW4 and that the elections in units –2, 003, 005 – 008, 010, 012, 013, 016, 017, 019, 020, 024, 024, 030, 032 and 034 all have no irregularities in them and that the elections were free and fair with no complaints by petitioners agents on the day of the election.

Further that the pink copies of the results issued to him are not different from votes recorded in the C.T.C and the votes recorded in IREV. That there was no inflation of votes.

He was cross-examined by the other Respondents and the Petitioners.

Gospel Ugoala testified as **DW6.** He adopted his witness deposition on pages 137 – 138. His evidence is the same with that of DW2 – DW4 to the effect that elections on the day in question was free and fair and in compliance with the provisions of the Electoral Act with no over voting or inflation of votes.

He was equally cross-examined by the other Respondents and Petitioners.

The final witness for the 3rd Respondent was the 3rd Respondent **EronduUchennaErondu**who testified as **DW7.**His deposition is on pages 30 –48 of the 3rd Respondents Reply which he adopted at the hearing. His deposition is equally a rehash or simply a repetition of the contents of the entire 3rd Respondents Reply. He identified the results vide Exhibits D2 – D16 already admitted in evidence as the results used in declaring him as the winner of the election.

DW7 was then cross-examined by counsel to 1st and 2nd Respondents and counsel to the Petitioners and with his evidence, the **3rd Respondent** closed his case.

The 3rd Respondent on the record tendered in all Exhibits D2 (1 – 15) to D22 (a & b). The exhibits comprises exhibits tendered from the Bar by counsel to the 3rd Respondent and exhibits tendered by the witnesses.The exhibits tendered from the Bar comprises Certified True Copies of forms EC8A (1) statement of results from polling units in 6 wards of the constituency; forms EC8B (1), summary of results from polling units for 6 wards; form EC8C (1) – summary of result; form EC8E (1) declaration of result and the INEC receipt of payment for electoral materials.The exhibits tendered by witnesses comprise of voters cards, polling unit agent tags, letter of appointment as unit agents and or collation agents, collation agent tags and P.D.P membership I.D cards.

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

In the final address of 3rd Respondent dated 30/8/2023 and filed on the 31/8/2023, three issues were distilled as arising for determination as follows:

a) **Whether the election was not conducted substantially in accordance with the provisions of Electoral Act, 2022.**
b) **Whether the petitioners were able to prove the various allegations in the petition as to be entitled to the grant of the reliefs sought; and**
c) **Whether the petition as constituted and in the circumstances is competent.**

Submissions were made on the above issues which forms part of the Record of the tribunal which we have carefully considered. The thrust and summary of the submissions on issue (1) is that the contested election was conducted in substantial compliance with the provisions of the Electoral Act and that the petitioners would even appear to have abandoned this ground as no credible and convincing evidence was proffered in support of this ground and accordingly that the issue be resolved in favour of the 3rd Respondent.

On issue 2, here again the substance and summary of the case made out is that the petitioners have not discharged the burden placed on them in law to creditably prove the allegations made in the petition and accordingly that the petition must fail.

On the last issue, the 3rd Respondent contends that the petition as constituted is incompetent on the ground that even if it is accepted, but without conceding that 1st Petitioner was sponsored by the 2nd Petitioner, that her constituency was not Obingwa West Constituency but ObingwaUhie East and accordingly that she will lack the locus standi to present the extant petition challenging the declaration of result for Obingwa West Constituency.

On the part of the 2nd Respondent, the final address is dated 29/8/2023 and filed on 1/9/2023. In the address, four (4) issues were raised as arising for determination:

1. **Whether from the pleadings of parties, the evidence adduced by parties in this petition and the applicable law, have the**

petitioners been able to prove substantial non-compliance with the provisions of the electoral act 2022 (as amended) alleged by the petitioners in this petition?

2. **Whether the 3rd respondent was duly elected by majority of lawful votes cast at the election?**

3. **Considering the constitution of the petition and the terse evidence adduced, whether this honourable court can accede to any of the reliefs being claimed by the petitioners?**

4. **Whether this petition ought to be dismissed as one lacking in merit?**

Submissions were equally made on the above issues which also forms part of the record of the tribunal which we have carefully considered.

On issue 1, the summary or thrust of the submissions made is that the petitioners by the evidence they led have not been able to creditably prove any of the allegations they made in the petition and accordingly that they were not able to show or prove that the election of 3rd Respondent was marred by corrupt practices and or that the election was situated by substantial non compliance with the provisions of the Electoral Act.

Flowing from issue 1, the 2nd Respondent contends on issues 2, 3 and 4 which were argued together that on the basis of the evidence before the tribunal, the 3rd Respondent validly scored the majority of lawful votes cast at the election in that out of the **175** units of the constituency, the

petitioners are only challenging **82 units** and in those challenged units, they were not able to prove the allegations they made situating how the declared results was negatively impacted in any way. They then finally contend that all the reliefs sought having not been proven or established must fail and the petition dismissed.

The final address of 1st Respondent is dated 31/8/2023 and filed on 2/9/2023. In the address, two issues were raised as arising for determination:

1) **Whether the petitioners by nature of the evidence given by their witnesses before this tribunal proved their petition in the manner required by law so as to be entitled to the reliefs sought in the petition.**
2) **Whether this Honourable court will attach any evidential value to the documentary evidence tendered by the petitioners.**

Submissions were equally made on the above issues which forms part of the record of the tribunal. The summary and or substanceof the of the case made out on issue (1) is that petitioners who have the burden in law to proof the contents of their allegations in the petition did not proffer and demonstrate by credible and cogent evidence the allegations made in the petition and accordingly have failed to prove and or show entitlement to any of the reliefs claimed.

On the issue 2, it was contended that the petitioners simply tendered in evidence documents without linking the documents with oral evidence by

demonstration in court. That a court is not permitted to in chambers interrogate the documents, which was not done in open court. That the failure of the petitioners to relate the documents to specific areas of their case on the petition is fatal as the dumping of the documents meant they are not worthy of being attached any evidential value.

The petitioners in response to all these addresses filed their final address dated 8/9/2023 and filed on 9/9/2023. In the address, the petitioners raised three issues as arising for determination as follows:

i. **Whether the respondents have proved that the 1st Petitioner is not a member of the 2nd Petitioner and was duly nominated by the 2nd Petitioner and whether the issue of qualification/nomination/sponsorship of the 1stPetitioner by the 2nd Petitioner is not a pre-election issue and thus statutute**(sic) **barred.**

ii. **Whether the 1st Respondent ought to have madea declaration and return for the election without conduct of supplementary election in the polling units where results were cancelled and/or ought to have been cancelled having regard to the margin of lead principle enshirned**(sic) **in the manual and guidelines of the 1st Respondent.**

iii. **Whether the petitioners are entitled to the reliefs sought in the petition.**

Submissions were equally made on the above issues which also forms part of the record of the tribunal which we have also carefully considered.

On issue 1, it was contended that Respondents appear to have abandoned the issue of whether 1st Petitioner is a member of 2nd Petitioner but that even if they have not abandoned same, that on the basis of the evidence before the tribunal, they have not been able to establish that the 1st Petitioner is not a member of 2nd Petitioner and duly nominated by 2nd Petitioner. It was also submitted that the issue of membership been agitated is even apre-election matter over which this tribunal have no jurisdiction to inquire into or ventilate.

On issue 2 which is anchored on ground 1 of the petition and the alternative reliefs sought, the petitioners contend that on the evidence proffered by them, they have been able to establish cases of over voting meaning that when total votes cast exceed total accredited voters and the application of margin of lead principle.

The petitioners contend that the actual margin of lead between Petitioners and 3rd Respondent established by them is **6, 750** votes.That based on Exhibits P21, P24 and various polling units results of affected polling units in Exhibits P8, P10 and P11 series, that the total number of PVCs issued in the indicated polling units, the over-voting indicated, the total number of votes ascribed to the Petitioners and Respondents are as demonstrated by Petitioners in paragraph 4.13 of the address.That from the demonstration in the address, the actual margin of lead between petitioners and 3rd

Respondent is **6, 750** which is less than the total number of PVCs issued in the affected polling units.

That having proved over voting in these units, that the elections ought to have been cancelled. That on the evidence, they have shown that the total votes cast exceeds the total accredited voters.

The petitioners then concluded on this point that having proved that the margin of lead between the Petitioners and 3rd Respondent is **6, 750** or the alternative of **6, 013** which is far less than the total number of PVCs issued in the affected polling units which is **8,587**, the 1st Respondent ought not to have made a return for the questioned election.

Finally on issue 3, it was submitted that having established their case on issue 2, that the tribunal should proceed to grant the alternative reliefs claimed in the petition.

The 1st to 3rd Respondents all filed Replies on points of law on 13/9/2023, 12/9/2023 and 12/9/2023 respectively. The replies essentially accentuated some of the points earlier made.

We have set out above the issues as distilled by parties. On the state of the pleadings and evidence led which has precisely streamlined or defined the issues in dispute, the fundamental question is simply **whether the petitioners established the sole ground upon which the petition isanchored to entitle them to all or any of the alternative Reliefs sought?**

It must be **noted or underscored** immediately that the petitioners in their **final address** abandoned **ground 1** of the petition and the reliefs

predicated on it which has now significantly narrowed the remit of the dispute and or grievance which the tribunal will shortly resolve.

In **paragraph 1.10** of the final address on **page 3**, the petitioners stated thus:

> **"On a related role, it is to be stated that the main reliefs sought by the petitioners relate to ground (ii) of the petition, whilst the alternative relief relate to Ground (i) which grounds are mutually exclusive. The petitioners in other to narrow the issues hereby abandons the second limb of the petition contained in paragraph 21 (ii) of the petition"**

The **above is clear and unambiguous**. Let us quickly make the point that we don't agree with the contention of the counsel for the 1st Respondent that the withdrawal of the main reliefs anchored on the **withdrawn ground (ii)** of the petition has any deleterious legal effect on the vires of the tribunal to consider the alternative reliefs.

We have not been referred to any authority that a party cannot choose or elect to abandon a relief if he so desires. The simple implication is that having abandoned the principal claim, it no longer defines the dispute and the reliefs sought before the tribunal. The point to underscore is that in law once a court has granted the main claim of an action, it cannot proceed to grant an alternative. See **Olorunfemi V Saka (1994) 2 NWLR (Pt 324) 23 at 39.** Indeed the law is settled that where a claim is in the alternative, the trial court will first of all consider whether the principal or main claim

ought to have succeeded. It is only after the court has found that it could not for any reason grant the principal claim that it would consider the alternative claim. See **NewbreedOrganisation Ltd V Erhomosele (2006) 5 NWLR (Pt 974) 499 at 544 D – C.**

In this case, strictly speaking, we are no longer even dealing with a situation of alternative claim(s) in relation to a principal claim since the principal reliefs having been withdrawn. We now really only have one set of relief(s) which is the alternative reliefs and no more. The **main reliefs** predicated **on ground (ii)** having been withdrawn must be struck out and will no longer be a feature of this judgment.

We equally wish to briefly address the contention of learned senior advocate for the petitioners when adopting the final address that they may have withdrawn ground (ii) but not the reliefs predicated on the ground (ii).

The ambivalent submission appears to us a contradiction in terms with the position clearly taken in paragraph 1.10 of the address above. The position of the petitioners from that paragraph of the address commenced as follows: "… it is to be stated that the **main reliefs** sought by the petitioner relate to ground (ii) of the petition…" They then concluded thus "… the petitioners in other to narrow the issues **abandons** the second limb of the petition contained in paragraph 21 (ii)". The only logical explanation to the above position taken by petitioners and by the use of the all embracing word "abandon" is that they have completely given up on ground (ii) and the main reliefs which they said are based on it.

The position taken by the petitioners for us is clear and unambiguous. If the **"main reliefs"** is predicated on paragraph 21 (ii) of the petition, it is difficult to accept, with respect, that the reliefs based on the same ground remains and defines the cause of action despite the clear abandonment of the ground (ii). The principle as we understand it is once the principal is taken away, the adjunct also necessarily must go away. You cannot put something on nothing and expect it to stand is awell known legal truism.

In the circumstances, what we are left with is **Ground 1 and the alternative reliefs based on it**. This ground then defines the dispute in this case.

In the circumstances **Issue 3** raised by 3rdRespondenton whether the petition as constituted is competent on the basis that the 1st Petitioner contested on the basis of a different constituency is not germane or relevant and has no foundation on the basis of the pleadings which has streamlined the facts and or issues in dispute.

Similarly the issue of 1st petitioner's membership of 2nd Petitioner and whether she was nominated by 2nd Petitioner again is not germane or a material issue in the context of the facts which defined the issues in dispute and we had earlier dealt with it when dealing with the interlocutory applications. We only need add that the primary function of pleadings is to define and delimit with clarity and precision the real matters in controversy between the parties upon which they can prepare and present their respective cases. It is designed to bring the parties to an issue on which alone the court will adjudicate between them. See **Kyari V Alkali (2001)**

11 NWLR (Pt 724) 412 at 433 – 434 H – A. Parties are thus bound by the pleadings.

In this case, 1st Respondent, INEC which has statutory responsibility to conduct the election in there pleadings vide **paragraph 2** averred that 1st Petitioner was the candidate of the 2nd Petitioner and in **paragraph 6** they presented the scores scored by all parties including the scores of 1st Petitioner and 3rd Respondent. The entire defence of 1st Respondent situates clearly that 1st Petitioner contested the disputed election in Obingwa West Constituency under the platform of Labour Party. The question to ask here is this: What then is the business of 3rd Respondent in the circumstances if we may ask? We really cannot situate the basis of the attempt to meddle into a matter that is entirely an internal affair of Labour Party. The jurisprudence on that is settled by our superior courts that the issue of nomination of candidates to represent a political party in an election is strictly an internal affair of the political party and that outsiders, other political parties and who did not participate in the primaries being complained of are precluded from challenging same. See **APM V INEC (2023) 9 NWLR (Pt 1890) 419 at 496 – 497.** The tribunal equally has no business with it and we won't allow ourselves to be detained by it. We also refer to the recent decision of the Supreme Court in **P.D.P V Hon Ladun Nelson Mgbor (2023) LPELR – 59930 (SC)**on the same principle.

We perhaps need to underscore the often unappreciated but important point that it is now a principle of wide application, that whatever coursethe pleadings take, an examination of them at the close of pleadings and

trialshould show precisely what are the issues between the parties upon which they must prepare and present their cases and which remain to be resolved by the court or tribunal. Any issue outside the critical and material issues streamlined on the template of the pleadings can only but have peripheral significance, if any.In **Overseas Construction Ltd V Greek Enterprises Ltd &Anor (1985) 3 NWLR (Pt 13) 407 at 418**, the Supreme Court instructively stated as follows:

"By and large, every disputed question of fact is an issue. But in every case, there is always the crucial and central issue which if decided in favour of the plaintiff will itself give him the right to the relief he claims subject of course to some other considerations arising from other subsidiary issues. If however, the main issue is decided in favour of the defendant, then the plaintiffs case collapse and the defendant wins".

It is therefore guided by this wise exhortation above that we would now proceed to determine the petition based on the **sole issue** we have formulated which fully takes care of all issues raised by parties and also to consider the evidence and submissions of counsel on both sides. The issue is whether the petitioners have established the sole ground (1) of the petition to entitle them to all or any of the alternative reliefs sought?

In proceeding to determine the issue, we have carefully read and considered the detailed and impressive written and oral submissions of respective counsel on both sides of the aisle, and we shall endeavor to

refer to their submissions as we consider needful in the course of the judgment.

Before we however deal with the **substance of the dispute**, it appears to us necessary to deal with **four preliminary points or issues** raised by 1st Respondent in its final address, to wit:

1. The **1st Respondent** challenged the admissibility of the agent tags tendered by PW1, PW2 and PW3 on the ground that it does not conform with the requirements of section 43 (1) of the Electoral Act. Again, wedon't really see why energy should be dissipated on this issue of trifle significance. The three critical questions governing admissibility on the basis of the Evidence Act are as follows:

1) Is the document pleaded
2) Is it relevant
3) Is it admissible in law

In this case each of the witnesses said they performed their duties as agents based on the tags given to them by the party. The tags were pleaded and relevant to the question of whether they were indeed appointed agents by their parties to carry out certain defined roles on the day of election. We have not been referred to any section of the **Evidence Act** which makes the original tags inadmissible. Section 43 (1) of the Electoral Act we are afraid has nothing to do with admissibility. The critical word in section 43 (1) is "may" which in the context of the provision is not a word of command. The provision says that "each political party in consultation with its candidate, **may** by notice in writing addressed to the

Resident Electoral Commissioner of the state appoint a polling agent for each polling unit."

There is therefore no mandatory requirement that the appointment of an agent has to be only through the **remit** of section 43 (1) and we won't accept such onerous interpretation. The provision of section 43 (1) is clear and unambiguous and must be given its ordinary meaning. The objection is discountenanced.

2. The second point raised is that **Exhibits P8 (1 – 14)** are photocopies of certified true copies (CTC) of Public documents and thus inadmissible.

Now in this case, it is not in dispute that **Exhibits P8 (1 – 14)**,the form **EC8A (1)** for Abayi ward 1 are photocopies of certified true copies of public documents.

We are on firm ground here to say that the law is settled under sections 89 (e) and 90 (1) (c) of the Evidence Act, that the only **secondary evidence** admissible in respect of a public document within the purview of section 102 of the Evidence Act is a certified true copy of the document and no other kind of secondary evidence. See **Ogboru V Uduaghan (2011) 2 NWLR (Pt 1232_ 608 at 578 A – B; Goodwill & Trust Investment Ltd V Umeh (2011) 8 NWLR.**

Now where the jurisprudence is not settled is where a photocopy of a certified true copy of a public document is been tendered. In the Court of Appeal decision of **Iheonu V Obiukwu (1994) 1 NWLR (Pt 322) 594 at 603 – 604,** the Court of Appeal held that ***Afortiori***a photocopy of a

certified true copy of a public document needs no further certification. See also **I. M. B. V. V Dabiri (1998) 1 NWLR (Pt 533) 284 at 297 G – H.**

We however have later cases of the Appeal Court which make the point that a photocopy of certified true copy of a public document must be recertified as a condition for its admissibility. In**Ogboru V Uduaghan (2011) 2 NWLR (Pt 1231) 608 at 574 – 575 H – C,** the Court of Appeal per Dongban-Mensem J.C.A (As he then was) posed and answered the question as to why a photocopy of a certified true copy of a public document need to be recertified? The answer according to the court is that in this age of sophisticated technology, photo tricks are the order of the day and secondary evidence produced in the context of section 97 (2) (a) of the Evidence Act could be applied in the process of copying the original document with the result that the copy, which is secondary evidence does not completely and totally reflect the original and therefore not a carbon copy of the original. The court has not the eyes of an eagle to detect such tricks.

We agree that there is no clear judicial consensus on the issue but on the basis of **Ogboru V Uduaghan (supra)** which is the latest decision we have on the point, the said **Exhibits P8 (1 – 14)** which are clearly photocopies of certified true copies are inadmissible and are to be marked tendered and rejected.

3. It was contended that **Exhibit P19** is a photocopy of summary of result and clearly a public document within the meaning or purview of section

102 of the Evidence Act and inadmissible in the absence of due certification.

This point presents no difficulty in law.By sections 89 (e) and 90 (1) (c) of the Evidence Act, the only admissible secondary evidence of a public document is a certified and no any other kind of secondary evidence.

Exhibit P19 is no doubt a public document by INEC within the purview of section 102 of the Evidence Actand having not been certified in accordance with the provisions of sections 104 (1) and (2) of the Evidence Act is inadmissible and it is to be marked tendered and rejected.

4. Finallyon Exhibits P24a and P24b, it was contended that they are computer generated and that in the absence of compliance with the provision of section 84 of the Evidence Act, that they are inadmissible. Now **Exhibits P24a (BVAS report) and P24b (certificate of compliance)**are documents of INEC duly certified by INEC. Indeed Exhibit **P24b** is the certificate in compliance with section 84 of the Evidence Act prepared by INEC to situate the making of **Exhibit P24 (a). ExhibitP24 (c)** is the Receipt to show evidence of payment for certification made by the Petitioners for the issuance of certified true copies of electoral materials including the BVAS report.

We are not too sure that in the circumstances, the arguments concerning the application of section 84 of the Evidence Act on electronically generated documents will fly here. That will be stretching the limits of the law beyond acceptable limits.

The statutory body charged with preparation of the Report (INEC),prepared and issued same on due payment.They issued a receipt for the payment;they certified the report and also issued a certificate of compliance with section 84 of the Evidence Act.

What more can the petitioners do here? The onerous interpretation of section 84 by 1st Respondent in the context of the defined steps taken by **INEC**to issue their BVAS report will serve to defeat the object of section 84. That cannot, in our considered opinion, be the*raison d' etre* behind the provision. The principle is settled that where the interpretation of a statute will defeat the object, the court is not to lend its weight to such interpretation. The language of a statute is not to be stretched beyond acceptable limits to defeat its aim. See **AnsaldoNig Ltd V National Provident Fund Management Board (1991) 2 NWLR (Pt 174) 392 at 405 E – F.**

Section 84 must be given a purposefuland beneficial interpretation that will be for public good especially on election matters to allow **INEC** own up to documents prepared by them, which they have properly certified within the purview of section 104 of the Evidence Act. The objection for us is misconceived and is discountenanced.

Having dealt with **these preliminary issues**, we now deal with the substance of the petition. We had earlier distilled **one** issue that will define our consideration of the extant dispute.

Now 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 PerAgim 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 Par E.

Being properly guided by these authorities, we shall now proceed to examine the allegations as streamlined in the petition.

The issue we formulated flows from the only live **existing ground (1)** of the petition **vide paragraph 21 (i)**as follows:

"The 3rd Respondent was not duly elected by majority of lawful votes cast at the election."

As a prefatory point, let us make an important observation even though no issue was really raised about it that having withdrawn **ground II on invalidation of the election on grounds of non-compliance with the provisions of the Electoral Act**, then the case that should be

projected would not any longer pertain to non-compliance with the electoral law and guidelines as done here and as incorporated in the relief (x) sought in the **alternative Reliefs**. The law is settled that where an election is contested on the ground that the Respondent was not duly elected by a majority of lawful votes cast at the election, allegation of corrupt practices and non-compliance with the provisions of the Electoral Act are excluded. This is so because the issues deal with different grounds upon which an election can be questioned by an aggrieved party.

The **ground II**on non-compliance with the provisions of the Electoral Act **withdrawn by petitioners** it must be made clear is not a ground of corrupt practices nor is it a ground of failure to be elected by majority of lawful votes cast at the election. It stands on its own and traverses the procedure laid down for the election and relates to whether the Electoral body complied with same in the process of election. Pleadings not founded on or related to the lone existing ground in law ought to struck out. See **Yusuf V INEC (2021) 3 NWLR (Pt 1764) 551, 563 D – D; Deen V INEC (2019) LPELR – 49041 (CA).**

In the petition before us, the facts to situate the two grounds here were not separated; in fact they overlap. The **sole ground (I)** on which the petition is now situated essentially has to do with errors of collation, miscalculation or exclusion of lawful votes to the disadvantage of the petitioners without allegations of non-compliance with the provision of the Electoral Act or corrupt practices. See **Deen V INEC (supra).**

Now, out of abundance of caution, and in the overall interest of justice, we shall resolve the dispute on the basis of the case as made out on the pleadings.

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

The issue to address here is whether the petitioners have on the pleadings and evidence met this threshold? It is trite law that averments in pleadings or the petition here are not evidence and proves nothing unless admitted. It is settled principle of wide and general application 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 points which are in dispute with the other. Evidence must be led to prove the facts relied on by the party to sustain allegations raised in the pleadings. See **Union Bank Plc V Astra Builders (W/A) ltd (2010) 5 NWLR (Pt 1186) 1 at 27 F – G.**

Now in this case from the petition, it is common ground by **paragraph 23** that there are **6** Electoral wards in the **Obingwa West Constituency**with **175** polling units. The polling units in which the complaints and or

challenge was made in this case is limited only to **82** units and in paragraphs 22 to 31 and in particular paragraphs 32 – 54 of the petition, the facts to situate the sole ground and the questioned units were presented.

Let us now situate the evidence led in the context of the questioned **82units.** As stated earlier, the petitioners only called 8 witnesses to situate their grievances. **PW1** was a polling unit Agent at **unit 019** MgbokoUmuanunu ward 3.His evidence was about wide spread non-compliance with the provisions of the Electoral Act, mutilation, cancellation of votes not based on actual data in the BVAS machine. He tendered the form EC8A (1) result for the unit he served as Agent as **Exhibit P2.**

Now under **cross examination**, he was not even on the basis of **Exhibit P2** he tendered ableto support the allegations of allocation of votes and or inflation or deflation of votes. Under cross examination, he was referred to the entries in Exhibit P2 which did not situate any inflation of votes. The number of voters on the register on Exhibit P2 was **615**; the number of accredited voters were **553**;the ballot papers issued was **600**, while the total valid votes cast **was 550** which is clearly not more than the accredited votes or ballot papers issued.

What is interesting about **PW1** is that he stated that the accredited number of voters on Exhibit P2 is not correct but he does not know the actual number accredited. He also stated under cross examination that at the end of the election, the presiding officer sorted and counted the votes of parties and he signed the result sheet but that he signed under duress

which to us is an after thought as he did not say so in his deposition. The evidence of **PW1** was completely discredited under cross examination. He talked about the pink copy result he was issued as different from the votes recorded in CTCs and uploaded in IREV portal without demonstrating how; his evidence clearly lacks probative value as it did not establish anything.

PW2 was a polling unit agent at **unit 022,**MgbokoUmuanunu**ward 3**. He also made the same allegations as **PW1** as they are both in the same ward but different units. He tendered the form EC8A (1) result for the unit he served as polling agent as **Exhibit P5**.

Under cross-examination, **PW2 effectively discredited himself and destroyed any basis to accord value to his evidence**.Contrary to his deposition, he said there was no cancellation or mutilation on the result sheet **Exhibit P5**; that it was an immaculate document and that in his unit, there was accreditation by INEC, BVAS machine worked and that people voted and the votes were counted. He also like PW1 did not demonstrate how the pink copy result given to him was different from the votes recorded in the CTCs and uploaded to the IREV portal. PW2 clearly too was of no help to the petitioners.

PW3 was also a party unit agent at **unit 016** MgbokoUmuanunu**ward 3**, the same ward as PW1 and PW2. He also made similar allegations in his deposition. He tendered the result of his unit as **Exhibit P7**. Now under cross-examination, he conceded that he voted on the day of election after he was accredited. He also stated that **BVAS** machine for accreditation functioned very well until the battery went low and then voters register

was used. He equally stated that people came out to vote; they voted and at the end, the votes were sorted out and counted and that at the end, he signed the result sheet along with other party agents. He did not demonstrate any cancellation, inflation or deflation of votes on the basis of **Exhibit P7** he tendered. He did not equally demonstrate how the pink copy result was different from that recorded in the CTCs and result uploaded on the IREC portal.

Again we really cannot situate what his evidence has really established in the context of the contested assertions.

The evidence of **PW1 – PW3** from the same **ward 3MgbokoUmuanunu**, even if from different units clearly in our opinion did not further the case of petitioners as we have demonstrated.

PW4 is the 1st Petitioner. In her unit, she said she voted and INEC conducted accreditation using BVAS machines and voters register. She also stated that after she voted, she went home and all the complaints and irregularities which traversed her evidence she was told by her agents which is entirely **hearsay evidence and inadmissible** in law. See sections 37, 38 and 126 of the Evidence Act. In law, hearsay evidence, oral or documentary is inadmissible and lacks probative value. See **Okereke V Umahi (2016) 11 NWLR (Pt 1524) 488.** Indeed the law is alo settled that once a witness deposition is laced with hearsay, the court cannot ascribe probative value to such a document. See **Kakih V P.D.P (2019) 15 NWLR (Pt 1430) 418.**

She may have referred to results sheets, voters register, BVAS report of the constituency but she is not the maker of any of these documents and is clearly in no position to speak to the contents of the documents and to be cross-examined on same.

PW5 was polling unit agent for unit 003 for **Abayi ward 1.** In his evidence, he complained about over-voting, in that the total number of votes recorded in form EC8A (1) exceeded the number of accredited voters in the BVAS machine. Indeed he asserted that the number of accredited voters in the BVAS machine is **98** but that the total number of votes recorded in the EC8A (1) is **204**. He identified**Exhibit P8 (3)** as the polling unit result of his ward.

Under cross examination, PW5 using the same document or result of his unit, **Exhibit P8 (3)** completely discredited his own evidence. The entries in the exhibit did not conform with his assertions in paragraph 5 of his deposition. He agreed with the contents of Exhibits P8 (3) that the total number of voters in his unit were **686**; Accredited votes – **184**; Ballot papers issued to the polling unit – **686** and total number of valid votes – **181**. There is no where in Exhibit P8 (3) where number of votes recorded in form EC8A (1), Exhibit P8 (3) reads as **204** and accredited votes reading **98** as he stated in his deposition.Still under cross-examination, he also agreed that voters were accredited and they voted.

PW5 was clearly not able to prove any over voting or inflation of votes in his unit and indeed the result he relied on, Exhibit P8 (3) effectively contradicted his entire deposition making it completely unreliable.

PW6 acted as ward collation Agent for **ward 3**. He may in his evidence have referred to mutilations, over voting, misallocation of votes scored by parties and difference in the pink copy of forms EC8A (1) in units 001 – 017, 022, 024 and 029 but apart from identifying **Exhibits P10 (1 – 26)**, the unit results, **theward collation result Exhibit P15** and **the BVAS report**, absolutely nothing was demonstrated in his deposition before us on the basis of these documents showing the mutilations, irregularities, miscalculation of votes and also inflation of votes as claimed by him in the constituency. He obviously did not **make any of these documents** and so cannot conceivably speak to the contents.

PW6 is also obviously not the **unit agent**s of any of the units he mentioned and the results were given to them, not him. He himself admitted that there are **29** units in his ward and he could not visit all, but picked a few without telling the court which few units he visited, when and what he observed.

Indeed, he admitted under cross examination that the allegations he made of misallocation and inflation of votes his agents told him which in law is hearsay and inadmissible. We must therefore reiterate the principle that hearsay evidence, oral or documentary is inadmissible and lacks probative value. Indeed once it is found that a witness deposition is laced with hearsay, the court cannot ascribe probative value to it. See **Kakih V P.D.P (supra); Okereke V Umahi (supra)**.PW6 also stated under cross-examination that he does not have the pink copy of the results he alluded

to in his evidence and that he had never operated a BVAS machine or an IREV portal.

PW7 also acted as ward collation agent for **ward 4** and like **PW6,** he may have referred to over-voting, mutilation of result sheets, wrongful allocation of votes, misallocation of votes and differences in pink copy of form EC8A (1) issued to polling unit agents and those in the CTCs as well as those posted in the IREV portal in units 002 – 008, 010, 012, 013, 016, 017, 019, 020, 024, 030, 032 and 034 but apart from referring to the unit results, Exhibits P11 (1 – 34), BVAS report, Exhibit P24a, absolutely nothing was demonstrated in his deposition and evidence about the varied complaints on the basis of these Exhibits and how it impacted the election to the detriment of the petitioners.

PW7 is obviously not the unit agent of these units and the results as he himself stated in paragraph 6 of his deposition were given to the unit agents not him. These are the people, if any that are equipped to give direct evidence of what transpired in their units.

Indeed at the risk of sounding prolix,if there were any irregularities of over voting, inflation or misallocation of votes, who is in the best position to give direct evidence of what happened than the unit agents? PW7 did not tender the pink copies to situate the differences in result he alluded to in his paragraph 6. He equally did not **make** any of the documents he identified so he cannot speak to the contents. PW7 said there are **35 units** in his ward and that he visited all of the units. He agreed that voting in the units commenced at different times in the ward and stopped at different

times and it is difficult to accept his narrative that he knew all that transpired in all the **35 units of his ward**. It is also relevant to note that he said he only witnessed the announcement of results for some units, while his agents told him about other units.

The final witness for the petitioners was **PW8** who was a ward collation agent for ward **6.** His deposition is similar to that of PW6 and PW7 with respect to over voting and inflation of results. He specifically mentioned **unit 6** where the votes of 2nd and 3rd Respondents were increased from **31 to 73** and thatin **unit 012**, the votes in form EC8A (1) **was 25** and increased **to 53 in form EC8B (1)**. He identified **Exhibits P13 (6) and P13 (12)** as the unit results he is complaining about. He also referred to the summary of result in his ward, Exhibit P18.

Now the **PW8 may** have referred to **Exhibits P13 (6) and P13 (12)** but again nothing was demonstrated in evidence showing the alleged**inflation**. Exhibit P13 (6) does not show any **inflation from 23 to 73 votes for 3rd Respondent.** The result also shows **73 votes** for APGA; no more. Exhibit P13 (12) does not equally show 2nd and 3rd Respondents scored **23 votes** which was inflated to **53 in form EC8B (1)**.What Exhibit P13 (12) discloses is that APGA scored **53 votes.** If that is what is in form EC8B (1) as stated by PW8 in paragraph 7, then there cannot be any inflation of votes as alleged. These documents or results speak for itself and it cannot be added to or varied to suit a particular purpose.

Exhibits P13 (6) and P13 (12), then effectively contradicts the assertions of any inflation of votes that PW8 stated in paragraphs 6 and 7

of his deposition. These exhibits tendered by petitioners pointedly shows PW8 as not a witness of truth.

We have at length above evaluated the depositions of the witnesses to situate credible evidence to support the elaborate and varied complaints in **86**units in **175** units of the **6 wards** itemised in the petition. Unfortunately no such credible evidence can be situated.

Credible evidence in this connection means evidence worthy of belief and for evidence to be worthy of belief or credit, it must not only proceed from a credible source, it must be credible in itself in the sense that it should be reasonable and probable in view of the entire circumstances. See **Agbi V AuduOgbeh (2006) 11 NWLR (Pt 990) 65 at 116** Par E.

Where the evidence of a witness is exaggerated and flirts with recklessness or appear as an affront to reason and intelligence, no credibility ought to be accorded it. See **Fatunbi V Olanloye (2004) 12 NWLR (Pt 887) 229 at 247.**

Unfortunately for the witnesses for the petitioners, their depositions which were challenged and discredited under cross – examination and in certain instances using documents they tendered or identified destroyed any rational basis for accepting their evidence. See **Oguntayo V Adebutu (1997) 12 NWLR (Pt 531) 81 at 94.**

The point to underscore particularly on the question of burden of proof is that our duty is to first consider if the evidence 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 **Oyetola V INEC (supra).**That Threshold was not met.

At the risk of cluttering our judgment, let us perhaps go a little bit further in the overall interest of justice and situate the evidence led in respect of the specific **82 units** where complaints of over voting and non compliance were made vide paragraph 29 of the petition.

1) In **Abayi ward (I)** with **8 units**, only one **polling unit agent**was called, PW5. No other agent was called to speak to what happened in the other **7 units.** The evidence of PW5 as we found already was discredited and lacks probative value.

2) In **Abayi ward (II)** with **12 units**, not one single witness, unit agent or collation agent was brought to speak to what happened in those units.

3) In **MgbokoUmuanunu, ward 3**, out of the **23 units**, unit agents for units 019, 022 and 016 gave evidence as **PW1 – PW3**. Their evidence which we had earlier evaluated was full of contradictions and lacking probative value. In any event as unit agents, they are therefore not in position to directly give evidence on what happened in the other **20 units** of the ward. The ward collation Agent of **ward 3 testified as PW6,** but he is also not in a position to give credible evidence of what transpired in those units particularly since the petitioners stated that they have agents in those units.

4) **MgbokoNgwa ward IV** has **29 units**. Not a single witness or unit agent of any of the units was produced. The petitioners may have called PW7, the ward collation agent but he is not a unit agent and cannot credibly give any evidence of what transpired in the entire 29 units. The limitation in giving evidence of what happened in **29 units** is almost palpable.

5) **Ahiaba Ward (V)** has **7 units** but nobody was produced to give evidence of what happened in any of the units.

6) **MgbokoAmairi ward VI** has 3 units but here too, nobody or unit agent was brought to testify as to what happened to situate the allegations made. The **ward collation agent, PW8** may have been produced but he is not a unit Agent of any of the units. Hearsay evidence we must underscore at the risk of prolixity, cannot be used to establish the challenged allegations made by the petitioners.

The bottom line, as we have again demonstrated is that in the entire **82** challenged units, the petitioners only produced **3 unit agents and collation agent for (ward 3)**, **collation Agents for ward 1, ward 4 and ward 6 with no direct witnesses or unit agents of what happened at the units**.

It is obvious that the complaints **covering 20 units** in Abayi ward 1, **12 units** in Abayi ward II, **20 units in Mgboko**Umuanunu ward 3, **29 units** in MgbokoNgwa ward IV; **7units in Ahiaba** ward (V) and **3 units in Mgboko**Amairi ward VI were not effectively backed up by a demonstration

of **Direct** evidence in court before us in proof of the challenged and contested assertions in the petition.

The point to reiterate is that pleadings or petitions are no evidence which a party can rely on without more to prove his case. In the absence of evidence to support the complaints in these identified units, they are taken as abandoned. See **Aregbesola V Oyintola (2011) 9 NWLR (Pt 1253) 458 at 594**.

Again, even on the specific **particulars** in support of **ground 1**, in paragraphs 32 – 34 dealing with **Abayi ward 1**,three **units 003, 009 and 019** were identified but no witness was brought forward to speak to the allegations in unit **009** and **019.** The only witness brought was PW5 for unit 013 and as already found, he could not prove the allegation of over voting and the result he identified, Exhibit P8 (3)debunked his assertions. Exhibit P8 (3) effectively found him out as not telling the truth.

For **Mgboko ward 4** vide paragraphs 36 and 37 of the petition, two units where identified, **units 019 and 033** but nobody or unit agent was brought to speak to what happened in these units. The ward collation agent, PW7 who is no unit agent is in no position to provide credible evidence of what happened in these units.

For **MgbokoUmuanunu ward 3**, for the 12 units identified in paragraphs 38 – 49 of the petition, only 3 unit agents for unit **019, 022,** and **016** gave evidence which were largely discredited as already demonstrated. For the other 9 units identified here, no evidence was led in support. The

evidence of the ward collation Agent PW7 as stated earlier cannot take the place of evidence of persons who directly saw what happened.

The bottom line here is that what we have before us is an elaborate pleading but without evidence to support the serious allegations made. We have at **different levels**considered the case of petitioners in the overall interest of justice and it is difficult to situate the credible evidence led to support the allegations thus made.

Now it is true that **counsel to the petitioners** may have tendered from the Bar forms EC8A (1) unit results; forms EC8B (1); form EC8E (1);voters registersfor some certain wards and units; BVAS report among a host of other documents but it is obvious to us that he is also not the maker of any of these documents and cannot testify to the contents and he cannot also be cross examined on them. It is also the law that the documents so tendered must be subjected to the test of veracity and credibility and where it involves calculations, how the figures were arrived at must be demonstrated in open court and the correctness of the figures must also be shown in all the documents tendered in open court. See **Oyetola V INEC (supra).**

The documents tendered from the Bar by petitioners counsel do not on their own disclose any infractions.The petitioners have in the circumstances a duty to call witnesses who witnessed the alleged acts or infractions to testify. What the petitioners did here was to simply dump the documents and then use few witnesses to identify the documents without explaining in their depositions the import of the documents, the defined complaints and

or speak to the infractions and generally the objective the documents is targeted at achieving.

It cannot be right that documents are simply identified with nothing in the **deposition** to prop up such dormant documents or to speak to them.The salutary mechanism of filing witness depositions provides ready template to give the necessary critical evidence to prop up these documents tendered from the Bar.The document(s) cannot speak for itself. The jurisprudence is settled that these explanations or giving of evidence to situate documents tendered is not a matter of **final address of counsel** as done here. The calculations done in the petition and the final address and the chart made therein and the figures were not presented or demonstrated before the tribunal. No witness gave direct evidence on these documents in proof of the allegations. We cannot situate how simply identifying one or two documents at the hearing, without more, tantamounts to the required demonstration demanded by law.

It cannot therefore be the duty of the court to in chambers begin the arduous task of sorting out the exhibits, the figures, the charts and calculations to arrive at a figure to be given in judgment particularly in an election petition which is **challenging the number of valid votes scored by a candidate declared and returned as a winner**.

As the Superior Courts have held, the frontloading of documents and tendering of documents from the Bar has not altered the fundamental elements of proof of the contested assertions. See **Andrew V INEC (2018) 9 NWLR (Pt 1625) 587 at 558.**

It is true that **section 137** of the Electoral Act 2022 may have stipulated that a party alleging non-compliance with the provisions of the Electoral Act during the conduct of an election does not need call oral evidence to prove the allegations if the originals or certified true copies of the documents manifestly disclose the non-compliance alleged. The caveat here is that the documents must **manifestly disclose the non-compliance alleged.** Where there is no such manifest of non-compliance, section 137 will not be availing.

Secondly, the question then even arises as to whether section 137 even has application to this case?**Section 137** of the Act must therefore be properly appreciated and discerned and not extended to cover its true remit.

Section 137 provides as follows:

"It shall not be necessary for a party who **alleges noncompliance with the provisions of the Electoral Act** for the conduct of elections to call oral evidence if the originals or certified copies manifestly discloses the non-compliance alleged" (underlining supplied).

The above provision is clear and unambiguous and it must be given its literal meaning. Counsel may not be familiar with the nuances of this novel provision but properly appreciated, section 137 will only apply where the ground of the petition is predicated on**non compliance with the provisions of the Electoral Act** and where the documents relied on disclose manifest non-compliance within the purview of **section 134 (1) (b)** of the Act.

As stated earlier, a ground of**non-compliance** with the provisions of the Act is not a **ground of corrupt practices** nor is it a **ground of failure to be elected by majority of lawful votes cast** at the election. See **Yusuf V INEC (Supra).**

The application of the provision of **section 137** cannot therefore be extended to cover all grounds of the petition including the specific grounds under **section 134 (1) (a) & (c)**.

Section 137 is therefore of limited application. If the **makers** of the law wanted section 137 to apply to **all situations** or **grounds** under section 134 of the Act, they would have said so. Again, no interpolations or additions can be made to the express provision of section 137.

In the present case, the sole surviving **ground** of the **petition** is that the 3rd Respondent was not elected with **majority of lawful votes** which in our considered opinion is not covered by **section 137**. Even if we are wrong and section 137 has application to this case, the Supreme Court in **Oyetola V INEC (2023) 11 NWLR (Pt 1894) 125 at 194 C – W** explained the import of the provision thus:

"It is indubitable that section 137 of the Electoral Act only applies where the non-compliance is manifest from the originals or certified true copies of documents relied on. In the instant case,neither Exhibit BVR nor any other document relied on by the Appellants remotely disclosednon compliance with the provisions of the Electoral Act. Hence the section cannot be of any assistance

to them. In the circumstances, they still had a duty to call witnesses who witnessed the allegations of non-compliance".

The above is clear.

Now it is true that **paragraph 46 (4)** of the 1st schedule of the Electoral Act allows for documentary evidence to be taken as read and parties can address on them and the court shall scrutinize or investigate the contents but this provision cannot alter the established provisions on standard of proof provided for under sections 131 (1), (2), 132 and 133 of the EvidenceAct. See **Oyetola V INEC (supra) 125 at 168.**

The provision of paragraph 46 (4) may have been inserted to broaden and ease the hitherto herculean task of presenting election petitions, but it has not altered or changed the dynamics provided by the substantive **Evidence Act** on matters of evidence and the variables on burden of proof.

The jurisprudence on electoral disputes therefore demands for contested assertions to be established and demonstrated in court for all to see, which then provides clear credible basis to fairly determine any matter based on issues ventilated in court. The documents tendered from the Bar by counsel to the petitioners did not disclose manifestly the infractions complained of. In the circumstances, they still had a duty to call witnesses who witnessed the infractions.They never called these critical witnesses who witnessed the alleged infractions. To therefore leave contested issues on documentary evidence involving sensitive political matters to subjective evaluation in chambers of matters not demonstrated in open court for all to

see cannot be the *raison d'etre* of paragraph 46 (4) of the 1st schedule to the Electoral Act.

It may have introduced some element of liberality in the process but cases must be proved in court by evidence and whatever decision is reached must be a product of what was demonstrated in open court.

The type of evidence a court or tribunal can act on is evidence which must be have been exposed and canvassed in court. A judge cannot be examining documents outside court and act on what he considers he has discovered on an issue when this was not supported by evidence or was brought to the notice of all parties to be agitated in the usual adversarial procedure. See **Onibudo&Ors V Akibu&Ors (1982) 7 SC 60 at 62.**

We must equally underscore that a court cannot decide issues on speculation no matter how close what it relies on may seem to be to the facts. Speculation is not an aspect of inference that may be drawn from facts that are laid before the court. Inference is a reasonable deduction from facts whereas speculation is a mere variant of imaginative guess which, even when it appears plausible should never be allowed by a court or tribunal to fill any hiatus in the evidence before it. See **Overseas Construction Company Ltd V Greek Enterprises Ltd (supra) 409.**

As we have demonstrated, the evidence of **PW1 – PW3** who served as unit agents in only 3 units out of 20 units in one ward 3 and the evidence of the collation officer did not credibly prove or establish the assertions and the myriad of electoral infractions complained of. The evidence of **PW5, PW7 and PW8** who are only collation Agents of ward 1, ward 4 and ward

6 clearly did not equally establish any of the infractions complained of. A cumulative overview of the evidence led in court (not final address) **in the few units out of the 82 units complained of did** not clearly situate the votes cast at the various polling units, the votes which ought to be credited to the petitioners 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 as in this case, it will be difficult for the tribunal to effectively address the issue. See **Nadabo V Dabai (supra).**

At the risk of prolixity, out of the **6 wards** of the constituency and the **175 units**; the infractions complained on in the petition relate to **82 units** which is not up to half of the total units in the 6 wards of the constituency. Out of these **82 units**,the direct evidence led effectively was for 3 units in **one ward (3) only.** No more. The other witnesses brought to wit:**PW5, PW7 & PW8** who served as collation agents for wards 1, 4 and 6 cannot really give direct evidence of what happened in the various units of the wards. **PW6**we must add was a collation Agent for **ward 3.** Their evidence of what they were told as stated earlier is hearsay evidence and inadmissible.

The final address of the petitioners have been used here largely as the basis to project the case of petitioners as established. We clearly do not share such enthusiasm in the light of the abysmal evidence led in proof of the case of petitioners which we have demonstrated at length. Final addresses of counsel, however well articulated, has never taken the place of pleadings or evidence to support facts pleaded. Addresses are designed to assist the court. Cases are normally decided not

on addresses but on credible evidence. No amount of brilliance in a final address can make up and establish or disprove and demolishpoints in issue. See **Sanyaolu V INEC (1994) 7 NWLR (Pt 612) 600 at 611 C – D.**

In the light of the dearth of evidence in this case, it is difficult to see how the evidence led which we have found to lack credibility for essentially 3 units in **one ward** out of the **82 units** complained of in a constituency with **175 unit and 6 wards** can be said to be sufficient to negatively affect the election and return of the 3rd 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 – 181 G – A.**

The case of petitioners and the allegations made clearly suffer from complete absence of credible and cogent evidence. As already demonstrated no attempt was made by petitioners to demonstrate in court through witnesses who made the documents to speak to the documents tendered from the Bar and link them to specific aspects of their case.

In the circumstances of absence of credible evidence, we clearly don't see how the **margin of lead principle** will apply. The principle cannot apply in a vacuum or in the absence of evidence providing clear empirical data or basis allowing for its application. The margin of lead principle is provided for **under Regulation 62** of the Regulations and Guidelines for the conduct of Election 2022 as follows:

"Where the margin of lead between two leading candidates in an election is not in excess of the total number of voters who collected their permanent voters card (PVC) in polling units where elections are postponed, voided or not held in line with section 24 (2) and (3), 47 (3) and 51 (2) of the Electoral Act, the returning officer shall decline to make a return. This is the margin of lead principle and shall apply where necessary in making returns for all elections in accordance with the regulations and Guidelines".

This case as stated earlier revolves around only **82 units** out of **175 units** in the 6 wards of the constituency. The contested units is not even up to half of the **175 units** of the constituency and there is therefore no clarity or clear figures demonstrated that is the alleged difference between the scores of 1st Petitioner and 3rd Respondent vis-à-vis the total number of voters who collected their PVCs.Is the alleged unproven computation made by petitioners based on the contested 82 units of the entire 175 units or the few units in which they led evidence that was effectively rebutted?

In the absence of evidence to situate the clear elements of the margin of lead principle within the remit of **Regulation 62 (supra),** any attempt to determine the margin of lead principle under the present unclear situation will simply be an exercise in speculative and shooting in the dark as is said in popular parlance. We have no such jurisdiction to speculate. A trial court cannot draw inference in a vacuum but in relation to facts which justify such inference. And since an inference is an act of deducing or drawing a conclusion from existing premises, the facts upon which the inference is deduced or drawn must be in proximity or intimacy with the inference. An

inference cannot therefore be at large. See **Boniface Ezeadukwu V Peter Maduka&Anor (1997) 8 NWLR (Pt 518) 635 at 663.** The principle of margin of lead on the unclear evidence presented has no application in this case.

Let us perhaps bring out one more poignant limitation in the approach adopted by petitioners in seeking to prove their case through the **final address**.

The substantive **declaratory relief (viii)** in the **alternative reliefs sought** for a declaration that the return of 2nd and 3rd Respondents ought not to have been made as the **"margin of lead is far below the number of disenfranchised voters in areas where the elections did not hold in line with sections 47 (2) and 52 (2) of the Electoral Act"**.What is however strange here is that **not** one single voter was brought in support of the allegation of **disenfranchisement.**

The allegations of disenfranchisement cannot be proved by way of a **final address.** On the authorities, a voter is disenfranchised when his right to vote is taken away; that is to say he claims to be registered but was not allowed to vote. The tribunal would be satisfied that voters were disenfranchised where the following is shown:

i) The disenfranchised voters must give evidence to establish the fact that they were registered but were not allowed to vote.

ii) The voters cards and the voters register for the polling unit must be tendered.

iii) All the disenfranchised voters must testify to show that if they were allowed to vote, their candidate would have won the election. See Omajali V David (2019) 17 NWLR (Pt 1702) 438 at 461 B – D.

The petitioners never produced a **single disenfranchised voter** in the entire constituency to give evidence or to establish some of the above critical elements and it is therefore easy to see that any claims of disenfranchisement **won't fly atall.**

As we round up, we note that the Petitioners contend that the 1st Respondent did not lead any evidence and that it amounts to admission of their claim.The enthusiasm for such proposition with respect is misplaced.**Firstly**, the key substantive relief (1) in the alternative claims of the Petitioners is a declaratory Relief and on which other reliefs are predicated.A **declaratory relief** is a specie of special claim that is not granted on admission bythe adversary or his refusal to take a particular line of action in defence. A declaratory Relief such as **Relief 1** must be established by positive and cogent evidence, irrespective of the position of the defendants. This is trite principle for which no authority need be supplied but see **Gundiri V Nyako (2014) 1 NWLR (Pt 1391) 211; C.P.C V INEC (2011) 13 NWLR (Pt 1317) 260; Adeleke V Oyetola (2023) 11 NWLR (Pt 1894) 71 at 116 – 117 H – B.**

Secondly, there is a misconception about choosing or electing not to call witnesses as distinct from electing not to lead evidence. In this case the 1st Respondent actively cross-examined the witnesses of Petitioners and elicited evidence from them which goes to support their case. If as done here, they did not call any witness but are relying as part of their case on the evidence elicited from the cross-examination of petitioners witnesses, one can then only say in law that they did not call witnesses in support of theirdefence but not evidence, as the evidence elicited from their opponent during cross-examination which are in support of their case or defence constitute their evidence in the case. See **Akomolafe V Guardian Press Ltd (Printer) (2010) ALL FWLR (PT 517) 773.**

Indeed the authorities are clear that evidence elicited by an adversary in the course of cross – examination of the witnesses of the other party which supports the case put forward by him in the pleadings is relevant evidence adduced by him in proof of the claim he made before the court, and that such evidence is of the same position as evidence given by the adversaries own witnesses in support of his claim. See **Okoroji V Onwenu (2017) ALL F.W.L.R (Pt 871) 1347 at 1369 B – D.**

There is therefore no succor of any kind, for the petitioners in the election by 1st Respondent not to call any witnesses.

The petitioners in this case as we have demonstrated did not credibly establish the elaborate infractions complained of in the petition that the 3rd Respondent did not score the majority of lawful votes cast at the election.

As we round up, it is also clear to us that even if the **main reliefs** predicated on ground (ii) have not been withdrawn, it is difficult to see how the reliefs would have succeeded or have been availing in the face of the complete dearth of evidence in support of the pleadings of petitioners and the contested assertions.

On the whole however, the **single issue** raised is resolved against the petitioners.

The whole **alternative reliefs** sought vide **paragraph 82 (vii) – (x) are not availing and fail**.In addition, **Relief 82 (x)** is clearly incongruous as it is not predicated on the sole ground (1) which defined the extant electoral contest.

The petitioners have completely failed to prove by relevant, credible and admissible evidence there elaborate allegations which turn to us, to lack factualand legal basis.The whole trial processes and whatever its imperfections derive true meaning and essence from the strength and quality of evidence led or adduced before the court or tribunal. Where the evidence led is palpably weak, tenuous or feeble as in this case, that will amount to a failure of proof.

The petition is wholly bereft of merit or substance.It is hereby dismissed with ₦150, 000 cost payable to Respondents; (₦50, 000 naira to each Respondent).

HON. JUSTICE ABUBAKAR IDRIS KUTIGI
CHAIRMAN

Appearances:

1. **Bertram Faotu, Esq. with Igho Tobi, Esq., for the Petitioners.**

2. **Ike Obeta, Esq. with C. I. Madukosiri, Esq., for the 1st Respondent.**

3. **Sir EmekaEze, Esq., for the 2nd Respondent.**

4. **Dr. HaglerOkorie, Esq., with IgweOguro, Esq., and Israel Maduka, Esq.,for the 3rd Respondent.**