IN THE NATIONAL AND STATE HOUSE OF ASSEMBLY

ELECTION PETITION TRIBUNAL

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

EPT/AB/SHA/04/2023

BETWEEN:

1. OJI OTUWE KALU
2. ALL PROGRESSIVES CONGRESS (APC) } PETITIONERS

AND:

1. MANDELA EGWURUONU OBASI
2. PEOPLES DEMOGRATIC PARTY (PDP) } RESPONDENTS
3. INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC)

JUDGMENT

(DELIVERED BY HON. JUSTICE ABUBAKAR IDRIS KUTIGI)

The 1st Petitioner and 2nd Respondent were candidates in the election to the House of Assembly for **Ohafia North State constituency** of Abia State held on 18th March 2023. The 1st Petitioner contested the election on

the ticket of All Progressive Congress (APC), the 2nd Petitioner while the 1stRespondent contested the election under the platform of the 2nd Respondent, People's Democratic Party (PDP) among other candidates fielded by other political parties.

At the end of the exercise, the 3rdRespondent, Independent National Electoral Communication (INEC) declared and returned the 1stRespondent as the winner of the Ohafia North State Constituency seat with a score of **2, 313votes**. The 1st Petitioner was second and scored**1, 837 votes**.

The 3rd Respondent is the statutory body charged with the responsibility of conducting the election.

The Petitioners being dissatisfied with the conduct and outcome of the election filed this petition at the tribunal on 7/4/2023 to challenge the results of the election upon the sole ground as stated in **paragraph 15 (a)** of the petition as follows:

"The 1st Respondent did not score the majority of the lawful votes cast at the election and was unduly returned and declared the winner of the election"

From the petition, there is clearly only one defined ground as stated above. The petitioners however then streamlined facts (vide paragraphs 16 – 31 of the petition) of particulars of non compliance with the provisions of the Electoral Act which is not a defined ground in this petition and then the petitioners repeated, substantially the same facts (vide paragraphs 32 – 38 of the petition) to support the sole ground that the 1st Respondent was not

duly elected by majority of lawful votes. The petitioners also alluded to corrupt practices in paragraph 31 (v) of the petition, but there was no ground of corrupt practices in the petition or clear identified streamlined facts of particulars in support. We shall return to these points again. However, the summary of the facts in support of the petition as averred by the petitioners vide paragraphs 16 – 38 is that they alleged inter alia that there was non compliance with the provisions of the Electoral Act, the regulations and guidelines for the conduct of the election 2022 and manual for election officials 2022.

The petitioners further alleged that there was non usage of the Bimodal Voter Accreditation System (BVAS) for accreditation of voters, non accreditation of voters, improper accreditation of voters and discrepancies in the votes recorded for parties in forms EC8E (II) vis-à-vis the ballot papers used in the election.

The non-usage of the BVAS allegedly covered **24 units** out of 25 units in **Ameke registration ward**while in **Amogudu registration Area,** BVAS was said to have been used in only**units 4 and 10** respectively. The petitioners further averred that despite these anomalies, the 3rd Respondent went ahead to unlawfully collate results from polling units from these units and that if a proper re-computation of the scores of candidates after the counting of ballot papers used for the election is done will show that the 1st Petitioner had the majority of lawful votes.

The Petitioners then prayed the tribunal for the Reliefs set out in paragraph **39 (a) – (e)** of the petition as follows:

(a) That the return of the 1st respondent - MANDELA EGWURUONU OBASI of the PDP, the 2nd respondent as winner of Ohafia North State Constituency of Abia State was invalid by reason of non-compliance with the provisions of the Electoral Act, 2022 and the Guidelines and Regulations issued there under by the 3rd respondent for the conduct of the Election.

(b) That the return of the 1stRespondent- MANDELA EGWURUONU OBASI of PDP, the 2nd respondent as winner of Ohafia North State Constituency of Abia State was invalid by reason of corrupt practices which occurred in Ameke and Amogudu registrations areas.

(c) AN ORDER that upon a proper recount of the ballot papers used and valid votes cast for the said election, the 1st Petitioner and not the 1st respondent scored the majority of lawful votes cast at the election and ought to be declared the winner thereof.

(d) AN ORDER Voiding or annulling the certificate of return issued by the 3rd respondent to the 1st respondent -MANDELA EGWURUONU OBASI as the winner of the Ohafia North State

Constituency of Abia State in the election held on the 18th day of March, 2023.

(e) AN ORDER that the 1st Petitioner be declared as having been duly elected having scored majority of the lawful votes cast at the election for the member representing Ohafia North State Constituency in the Abia State House of Assembly.

In Response to the petition, all the Respondents categorically joined issues with Petitioners by filing their Respondent's Replies.

The 1st Respondent filed his Reply on 29/4/2023 incorporating a preliminary objection.The 2nd Respondent filed its reply on 29/4/2023. The 3rd Respondent on its part also filed its reply on 29/4/2023 and incorporating a preliminary objection.

In further response to the replies of Respondents, the Petitioners filed replies pursuant to paragraph 16 (1) of the 1st schedule of the Electoral Act. The Petitioners Replies to the 1st, 2nd and 3rd Respondents Replies were all filed on 15/5/ 2023.

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

It is important to state that at the pre-hearing session, **one interlocutory application** by the 1st Respondent was heard and we indicated that Ruling on same shall be delivered along with the final judgment. We equally also indicated that the addresses/submissions on the preliminary objections incorporated in the Replies of both 1stand 3rd Respondents be made in the final addresses and a Ruling shall equally be delivered along with the final judgment.

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

We shall accordingly deliver the Rulingson the interlocutory application and the two (2) preliminary objections which in substance appear to be the same before we pronounce on the **final judgment.**

We start with the sole interlocutory application taken at the pre-hearing session.

The **1stRespondent**, in his application dated 16/6/2023 and filed on 17/6/2023 prayed for:

"An order striking out the Petitioners Replies to the 1st, 2nd and 3rd Respondent Replies to the petition for being incompetent"

The **grounds**of the application as contained on the motion are:

1. **The Petitioners' Replies to the 1st, 2nd and 3rd Respondents' Replies to the Petition offends**

Paragraph 16 (1) (a) of the First Schedule to the Electoral Act 2022.

2. **The Petitioners' Replies to the 1st, 2nd and 3rd Respondents' Replies to the Petition contains new facts/Pleadings.**
3. **The Petitioners are by their Replies to the 1st, 2nd and 3rd Respondents Replies to the Petition seeking to amend and or add to their Petition which the law does not allow.**
4. **The said Petitioners' Replies to the 1st. 2nd and 3rd Respondents' Replies to the Petition are incompetent and liable to be struck out.**
5. **It will be in the interest of justice to grant the application of the Applicant.**

The application is supported by a five (5) paragraphs affidavit with a brief written address in support in which one issue was raised as arising for determination:

"Whether this application is meritorious"

Submissions were then made in the address on the above issue which forms part of the Record of the tribunal.The essence of the submissions made is that the entirety of the Replies filed by the Petitioners to the replies of the Respondents violates the provision of paragraph 16 (1) (a) of the 1st schedule to the Electoral Act as the Replies contains or raises new issues or facts. That the Petitioners by their Replies seek to amend or add

to their Petition through the Reply which the law does not allow. The case of **Awamaridi & Anor. V INEC & Ors (2019) LPELR – 49397 (CA)** was referred to among other cases.

At the hearing, counsel to the 1st Respondent relied on the paragraphs of the supporting affidavit and adopted the submissions in the written address in urging the court to grant the application.

Counsels to the 2nd and 3rd Respondents agreed with the submissions of counsel to the 1st Respondent in urging that the Replies be struck out as incompetent.

In opposition, the Petitioners filed a five(5) paragraphs counter – affidavit with equally a brief written address wherein they adopted the sole issue raised by the 1st Respondent and made submissions which equally forms part of the Record of the tribunal.

The Petitioners first contended as a preliminary point that counsel for 1st Respondent can only file the application on behalf of the 1st Respondent because on the record, he only represents the 1st Respondent.

On the substance of the application, it was submitted that the Replies did not introduce or raise new issues of facts and more importantly that Applicant has not placed sufficient facts and materials to enable the court grant the application.

It was contended that apart from stating the position of the law with respect to the filing of a reply, the Applicant has failed to show or demonstrate how the replies added to, amended or in any way introduced

new facts or issues to the existing petition in violation of the Electoral Act. That in the circumstances, the failure to demonstrate how the replies offends the provision of the Electoral Actmeant that the alleged incompetence of the Replies has not been established. The case of **F. O. Akpoku V A. C. Ilombu & Ors (1998) 8 NWLR (pt. 561) 281** was cited.

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

We have carefully considered the processes filed on both sides of the aisle, and the narrow legal issue is with respect to the competence of the replies filed by the Petitioners to the 1st, 2nd and 3rd Respondents Replies. It is a matter to be resolved on settled legal principles.

Before dealing with the substance of the application, it appears to us germane to treat the threshold issue with respect to whether 1st Respondent's counsel can file the extant application for the three(3) Respondents when he is only counsel to the 1st Respondent.

On the record, all the Respondents engaged different counsel to represent them in this petition. Indeed on the record, each counsel filed processes for each of the parties and in the proceedings each party had independent counsel who conducted the briefs independently.

In the circumstances, the validity of counsel for the 1st Respondent filing the application for all Respondents is clearly open to question and an action

of doubtful validity.To the clear extent that **Chidozie Ogunji**, Esq. of counsel represents only the **1st Respondent** in the petition, he can only legally filethe application on behalf of the party he represents. There is equally nothing in the affidavit in support to situate that he has the consent and approval of the 2nd and 3rd Respondents to file the application.

Indeed in the affidavit in support of the application in paragraph 2, the deponent to the affidavit, stated thus:

"That I make this affidavit with the consent and approval of the 1st Respondent/Applicant and my employers".

The above is self inculpatory and situates clearly that the approval and consent of the 2nd and 3rd Respondents was not sought or obtained.

We therefore agree that the **application** can only be brought forand on behalf of **the 1st Respondent.** We so hold.We shall thus limit our consideration of the Application to the validity of the Petitioners Reply to the 1st Respondents Reply only.

Now to the substance. The narrow issue as indicated earlier is whether the complaint that the Petitioners reply to the 1st Respondents Reply contains new facts or issues in **violation**of the relevant provision of the 1st schedule of the Electoral Act is valid and thus liable to be struck out.

It is not in dispute that the jurisprudence on filing a Petitioners Reply is now fairly well settled. By the provision of paragraph 16 (1) of the 1st schedule of the Electoral Act, where a person in reply to an election petition raises new issues of fact in defence of his case, which the Petition

has not dealt with, the Petitioner is entitled to file a reply in answer to the new issues. He is however by paragraph 16 (1) (a) not allowed to bring in new facts, grounds or prayers tending to amend or add to the contents of the petition filed by him. See **Ogboru V Okowa (2020) 11 NWLR (pt. 1522) 84 at 113 – 114.**

By the foregoing, the Petitioners are not entitled to set in their Reply to the 1st Respondents Reply to their petition either a **new course of action, ground or new facts** outside or inconsistent with their petition; thus their reply must not depart or contradict their petition and where it does, the tribunal will be justified and on solid legal ground to strike out the paragraphs of the reply where the defect(s) has occurred. See **Ogboru V Okowa (supra).**

Now in this case, the Petitioners filed a 12 paragraphs Reply to the 1st Respondents Reply.

We have carefully read the grounds to situate the application and the affidavit in support and it is true as contended by the petitioners that the Application did not**indicate** or **streamline** the "new facts" or "amendment" or "addition" made in the reply to put the tribunal in a commanding position to determine the validity of the complaints, but we are not sure that such argument has much legal traction because the relief sought on the motion paper which defines the crux of what is to be determined did not limit the complaint to any paragraph or paragraphs of the Reply. The prayer before us is for striking out of the entire "replies". The present challenge is therefore not circumscribed in any manner.The

legal validity of the **entire Reply** has been questioned. There are no two ways about it.

The challenge must therefore be considered in the light of the provision of paragraph 16 (a) of the Act which states that **"the Petitioner shall not at thisstage be entitled to bring in new facts, grounds or prayers tending to amend or add to the contents of the petition..."**The word used here is **"shall"** which is a word of command, with no discretion available to be exercised.

We however agree that if the challenge was to perhaps some few paragraphs of the reply, the Applicant in such circumstances has the duty to clearly situate, show or demonstrate the paragraphs in the Reply constituting the new facts, grounds or prayers tending to amend or add to the contents of the petition. Put another way, the Applicant must in that specific scenario point out the paragraphs of the Reply which fall foul of the provision of the Electoral Act to enable the court judicially and judiciously determine the merit of the complaint. As stated earlier, this is not the situation here.

The Electoral Act vide the 1st schedule has provided strict legal parameters for the filing of a petitioners reply to a Respondents reply. Parties are bound by the provisions. We must therefore take our bearing from the mandatory stipulation of paragraph 16 (1) a of the 1st schedule which provides that where a person raises **new issues** of **facts** in defence of his

case, which the Petitioner has not dealt with, the petitioner shall be entitled to file **a reply**.

Therefore, in an election petition, which is sui generis and unique in its own right, a reply to a petition cannot be filed as a matter of course as paragraph 16 (1) (a) of the 1st schedule to the Electoral Act has stipulated. **New facts**in an election petition can only be allowed by an application for amendment of the petition within the statutory time allowed and not in a reply filed by the Petitioner. A Petitioner cannot introduce new facts not contained in the petition where, at the time of filing his petition, those facts were within his knowledge. If he did not adequately include them in his petition, the proper thing to do will be to amend the petition and this must be done within 21 days allowed for the filing of the petition.

Thus a reply to a Respondents Reply is restricted to only answering new facts in Respondents Reply and not to bring up fresh facts. The essence of a **reply** is limited, only to new points which are raised in the Respondents Reply. See **APC V PDP (2015) LPELR – 24587 (SC).**

Now in this case, we have perused the 12 paragraphs Reply in response to the 1st Respondent Reply and we are in no doubt that the Petitioners in **paragraphs 2 (a – c), 3, 4, 8and 9,** in total contravention of the **provision of paragraph 16** of the First schedule did introduce massive new facts in their Reply which were not at all mentioned in the petition and which exceeded the boundaries of the contents of the Reply of the 1st Respondent. The other paragraphs of the Reply appear to be merely repetitive of facts in the petition, but we will allow them in the overall

interest of justice.In passing, we observed that this flawed approach was equally repeated in the replies filed by the petitioners to the other respondents replies.

Let us perhaps be more detailed. In **paragraph 2**, the petitioners introducedthe element of connivance of Respondents with officials of 3rd Respondent wherein they manipulated and altered votes cast in different polling units of certain wards.Most if not all of the **units itemized** are not in the **original petition** and most importantly, the alleged additions or alteration or inflation to the votes cast which were then extensively streamlined are clearly all new additions to the case made out by the Petitioners.

Paragraph 3 makes allusions to alteration and manipulation of results and that they were carried out by officials of 3rd Respondent at the affected polling units mentioned in the Reply at the instance of 1st Respondent.

Paragraph 4 then seeks to project alleged unlawful votes added to the score of 1st Respondent and that when they are removed or the result properly audited, the aggregate scores of 1stRespondent will now be 1, 770 votes while that of 1st Petitioners will be 1, 848 thereby making the 1st Petitioner to score the majority of lawful votes cast at the petition.

Paragraph 8 then seeks to introduce the element that the respondents did not file any incident form to explain their anomalies found in some form EC8A (1).

These paragraphs are clearly new facts in the context of the existing processes and cannot be matters for reply.The offending paragraphs of the reply as stated earlier are self inculpatory as the reply itself interestingly recognises that it contains new facts by the clear reference and reliance on these **new facts** as a basis for the petition. The computation of votes, on the basis of deduction of alleged unlawful votes from **new units added** in the reply and the auditing of results of this same new facts are not matters for reply. A reply cannot be used as a spring board to spring surprises or to recalibrate and formulate a new case or cause of action. At the risk of prolixity, a reply is purely to answer to any new issues of facts raised. No more.

For the sake of emphasis, a Petitioners Reply only becomes necessary and relevant when the Respondents Reply raises fresh or new points of facts. It cannot be used to strengthen the Petitioners case by way of reformulating the facts made in the petition. A reply is not a conduit or an opportunity to provide additional facts as these paragraphs seek to do here but to answer, reply or respond to any fresh or new issue of facts raised in Respondents Reply. That being so, where no such new facts are raised, a reply is unnecessary.

The effect of non – compliance with the express and mandatory provision of Paragraph 16 (1) of the 1st schedule to the Electoral act is that such flawed paragraphs are liable to be struck out. We so hold. On the whole, the application partially succeeds.**Paragraphs 2 (a – c), 3, 4, 8and 9 of the Petitioners Reply to the 1st Respondents Reply are accordingly**

herebystruck out. See **Awamaridi & Anor V INEC & Ors (supra); Emertor V Okowa (2016) 11 NWLR (pt. 1522) 1 at 32-22;** and **OgboraV Okowa (supra).**

Having dealt with this sole pending application, we now proceed to deal with the preliminary objections raised by 1st and 3rd Respondent.

The objections in substance appear to us the same. We shall therefore treat that of 1st Respondent and the Ruling will Mutadis Mutandis applyto the objection of the 3rd Respondent.

Now the objection in the 1st Respondents Reply prays for the striking out/ dismissal of the petition on the following or any of these grounds:

1. **THE GROUND OF THE PETITION IS INCOMPETENT AND ROBS THE HONOURABLE TRIBUNAL OF THE JURISDICTION TO ENTERTAIN SAME.**

PARTICULARS

i. **The sole Ground which alleges that "the 1st Respondent did not score the majority of the lawful votes cast at election and was unduly returned and declared the winner of the election" is unknown and strange to Section 134 (1) of the Electoral Act 2022 and as such this Honourable Tribunal has no jurisdiction to countenance it.**
ii. **The said Ground of the Petition is incompetent, nebulous, imprecise and speculative and contrary to the Electoral Act 2022.**

iii. **The said Ground if read together with the facts purportedly supporting the ground and the reliefs sought, becomes otiose and academic and thus vests no jurisdiction on the Honourable tribunal to entertain it.**

2. **THE RELIEFS SOUGHT BY THE PETITIONERS ARE INCOMPETENT, STATUTORILY INCOMPATIBLE AND MUTUALLY EXCLUSIVE OF THE GROUND FOR THE PETITION.**

PARTICULARS

a. **The cardinal reliefs are reliefs A and B in the Petition.**
b. **The Relief A deals with the alleged invalidity by reason of non-compliance with the provisions of the Electoral Act 2022 and the guidelines and regulations issued hereunder by the 3rd Respondent for the conduct of the election.**
c. **Further Relief B deals with the alleged invalidity by reason of corrupt practices which allegedly occurred in the election.**
d. **None of the main Reliefs inure to the Petitioners by virtue of their Ground which is incompetent.**

3. **THE FACTS IN SUPPORT OF THE PETITION BY THE PETITIONERS ARE FACTUALLY INCOMPATIBLE AND MUTUALLY EXCLUSIVE OF THE GROUND FOR THE PETITION.**

PARTICULARS

a. **The Petitioners flowing from Paragraph 15 and contrary to their Ground for the Petition denoted their complaint as "non-compliance with the provisions of the Electoral Act 2022".**
b. **By Paragraphs 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31 of the Petition which is the main body of the complaint, the issue deals with non-compliance and corrupt practices which is not the Ground for the Petition.**
c. **The said Paragraphs 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31 of the Petition are liable to be struck out leaving the Petition as bare and unsustainable.**

Submissions were then made in the final address on the above grounds filed on 2/9/2023 which we have carefully considered.

On ground 1, the 1st Respondent contends that the sole ground on which the petition is based on is unknown to law and thus incompetent since it is not in accordance with the provision of section 134 (1) of Electoral Act which has provided clearly the grounds on which a petition must be based on. The case of **Salis V INEC (2022) 10 NWLR (Pt 1839) 467** was cited.

On ground 2, it was submitted that the ground of the petition which is on non-scoring of majority of lawful votes was lumped together with that of undue return. It was submitted that in paragraph 15 of the petition, the petitioners situated their complaint "on non-compliance with the provisions of the Electoral Act" which is not a ground of the petition. That accordingly

all the paragraphs 16 – 31 of the petition dealing with non-compliance and corrupt practices, which is not a ground of the petition are liable to be struck out for being incompetent for being outside the scope of the ground of the petition. The case of **Golu & Anor V Gagdi (2019) LEPELR – 55251 (CA)** was cited.

Finally on ground 3, it was contended that the petition containsfive (5) Reliefs. That Relief A deals with alleged invalidity by reason of non compliance with the provisions of the Electoral Act 2022 and the guidelines and regulations issued by the 3rd Respondent for the conduct of the election which is not part of the sole ground of the petition. Furthermore that Relief B deals with alleged invalidity by reasons of corrupt practices which is also not part of the ground activating the petition under section 134 of the Electoral Act. Further that none of the remaining grounds inure to the petitioners by virtue of the sole ground. That all the reliefs sought do not align with the petition and are thus liable to be struck out.The case of **Akpehi V Sinebe & Ors (2019) LPELR – 48934 (CA)** was cited.

The petitioners in their final address filed on 12/9/2023 responded to the submissions on the three grounds as streamlined in the Preliminary objection of 1st Respondent.

On ground 1, the Petitioners submitted that section 134 of the Electoral Act situates the grounds that a petition must be based on but that there is no provision in that section that provides to the effect that the exact wordings of any of the grounds must be used rather that the grounds must be couched in such a manner that does not convey a different meaning to the

provision of section 134. That the sole Ground in this petition is competent as it conveyed the intended meaning of the provision of section 134 (c) of the Electoral Act and that the 1st Respondent has not shownhow it deviated from the provision of section 134. The cases of **Anigala V Abeh & Ors (1999) NWLR (Pt 611) 454 at 469 C – D; Ojukwu V Yar'adua (2009) 12 NWLR (Pt 1154) 121** were cited.

On the second, ground, it was contended that paragraphs 16 – 31 of the petition are competent as they contain facts in support of the sole ground. Similar submissions were equally made for the third ground of the objection to the effect that the averments complained of are all in support of the petitioners sole ground.

The 1st Respondent in his reply on points of law filed on **15/9/2023** made further submissions on the issue which essentially accentuated the points earlier made.

We have carefully considered the submissions made on both sides of the aisle. In resolving the objections, we shall take and treat each ground seriatim as done by the parties.

The first ground deals with the competence of the **sole ground** of the petition which vide paragraph 15 of the petition states thus:

"The 1st Respondent did not score the majority of lawful votes cast at the election and was unduly returned and declared as the winner"

Now, it is now a principle of general and wide application that before a petitioner can question an election,the **petition** must fall under the grounds specified by the Electoral Act.

Section 134 (1) (a) – (c) of the Electoral Act provides that:

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

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

(b) That the election was invalid by reason of corrupt practices or non – compliance with the provisions of the Act.

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

The narrow issue is whether the sole ground falls within the sphere of section 134 (c), (supra).

Now as a starting point, we on point of principle, agree that a petitioner in compliance with the clear mandate or remit of section 134 of the Electoral Act has an obligation to restrict his grounds to the limit prescribed by law. An election petition which strays outside the circumscribed precinct of section 134 will be justifiably struck out as being incompetent.

In this case, we have carefully read the Electoral Act and there is indeed no provision where the Act situates or provides that the exact wordings of any

ground must be in consonance with that as provided under section 134 and while the jurisprudence on the point suggest that the safe and indeed ideal approach is to simply copy the **grounds,** we incline to the view that in doing otherwise and we must concede it is calculated gamble or risk, then the ground or grounds must be couched in such a clear manner that it does not convey a different meaning to the provision of section 134 (c) or sends out a meaning or message which conflicts with the remit of the clear provision of section 134 (c).

In this case, the **sole ground 1** sufficiently captures the essence of section 134 (c) when it stated that the "1st Respondent did not score a majority of lawful votes cast at the election…"; the additional reference to undue return and declaration in our considered opinion, while unnecessary and superfluous did not detract in any way from the exact meaning and import of the section. The couching of the ground by petitioners appears to us to lack finesse but that failing did not dilute the essence of the complaint.

It is true that election cases are sui generis and in a class of their own but it is a process now anchored on ensuring that substantial justice is done to parties and allowing them, within acceptable limits of the law, to ventilate their grievances without undue reliance on technicalities. See **Egolum V Obasanjo (1999) 5 SCNJ 94 at 145.**

It is the progressive mantra of courts, more especially in election matters, to ensure that cases of parties are heard on the merits before arriving at a decision in order to do substantial justice between the parties as each party

has the right to have his dispute tried on the merits and the court should do everything it properly can do to favour the trial of the questions between the parties. See **Wakwah V Ossai (2002) 2 NWLR (Pt 752) 548 at 562 F – G.**

In **Ikpeazu V Otti (2016) 8 NWLR (Pt 1513) 38 at 97,** the Supreme Court per Galadima JSC stated instructively as follows:

"No where else is the need to do substantial justice greater that in election petition, for the court is not only concerned with the rights of the parties inter se but the wider interest and rights of the constituents who have exercised their franchise at the polls." See also **Omisore V Aregbesola (2015) NWLR (Pt 1482) at 280 per Nweze J.S.C (of blessed memory).**

The above pronouncement is clear. We prefer to err on the side of caution and will allow the petitioners ventilate their grievances on the basis of the sole ground as formulated.

Now on ground 2 of the objection, the case made out is that **paragraphs 16 – 31** on particulars of non-compliance with the provision of the Electoral Act should be struck out as they do not fall within the purview of the sole ground of the petition.

We had earlier situated the cognizable grounds of a petition under section 134 (1) (a) – (c) of the Electoral Act.

Now we have also equally situated the sole ground of the petition which is that the **1st Respondentdid not score the majority of lawful votes**

cast at the election and was unduly returned and declared the winner of the election.

The sole ground on which the petition is **based**is clear and unambiguous and falling within the circumscribed precinct or ambit of **section 134 (c) of the Act.**

If there is no **identified or clearly streamlined ground** of the petition bordering on section 134 (b) on **non compliance with the provisions of the Act,**then it is difficult to situate the **ground** on which the facts highlighted in paragraph 16 – titled**"particulars of non – compliance with the provisions of the Electoral Act 2022"** is hinged or based on.

A ground of **non-compliance within the circumscribed precinct of section 134 (1) (b)** of the Electoral Act is **distinct and different from a ground of failure to be elected by majority of lawful votes** cast at the election. The grounds of non-compliance stands on its own and traverses the procedure laid down for the election and relatesto whether the electoral body complied with same in the process of election.

The glaring error here by the petitioners is not one of form but clearly fundamental as it goes to the root or foundation of a proper cognizable legal ground.

In **Yusuf V INEC (2021) 3 NWLR (Pt 1764) 551, 563 D – D; 561 G – H,** the Court dealing with a similar scenario where the ground was that the person returned did not score a majority of lawful votes cast and the

pleadings pertained to non-compliance, the Court affirmed the decision of the tribunal striking out the offending paragraphs as follows:

> **"Looking closely at the record of appeal, it is clear that the Appellants/petitioners' petition filed at the tribunal was based on a sole Ground predicated on myriad of complaints and allegations that the 2nd and 3rd respondents did not score majority of lawful votes cast at the election. Similarly, the pleadings contained in the petition basically pertain to non-Compliance with the electoral law and guidelines.**
>
> **In the course of the proceedings, the trial tribunal struck out the pleadings which were not founded on or related to the lone ground of the appellants' petition as filed at the tribunal. Consequently, the tribunal, rightly in my view, struck out paragraphs 20 to 118 of the petition. The lower court also correctly affirmed the cancellation of those offending paragraphs."**

Also in **Eloho V INEC (2019). LEPELR – 48806 (CA) 36 – 47 pars E – E,** the Court of Appeal stated thus:

> **"Now, here are Petitioners who took the decision to challenge the questioned election on grounds they perceive and believe that constituted valid grounds to challenge it. They also had the liberty and volition to aver to the facts in support of the ground they**

choose to rely on. That was indeed within their prerogative as to what ground to rely upon as well as what to plead as the facts in support thereof.

However, once they give effect to these things by filing their Petition, at once they had subjected it to the scrutiny of both the adverse parties as well as the Lower Tribunal or when called upon by any of the parties to so do…… In law a ground alleging that that the declared winner of an election conducted by the 1st Respondent did not score majority of the lawful votes is one which is quite different from a ground alleging non-compliance."

In this case and at the risk of prolixity, the sole ground of this petition is that the 1st Respondent did not score the majority of lawful votes cast at the election; however the pleadings from paragraphs 16 – 31 basically pertain to noncompliance with the electoral law and guidelines. These paragraphs are clearly not founded on or related to the lone ground of the petition and liable **to be struck out**. **Paragraphs 16 – 31** are thus struck out as incompetent. see **Deen V INEC (Supra); Ogboru V Uduaghan (2012) All FWLR (Pt 651) 1475.**

The final ground has to do with the contention that the **Reliefs** sought do not align with the ground and are disconnected from the pleadings.

We think and incline to the view that the legal validity of the **Reliefs** can be taken at the end of the judgment after hearing the merits of the case.

On the whole, as we have demonstrated, we hold that ground 1 of the objection has failed but ground 2 succeeds. Finally, ground 3 we intend to determine in the substantive action.

Now on the preliminary objection raised by 3rd Respondent, even though it is similar in terms with that of 1st Respondent, we note that counsel to the 3rd Respondent did not make any submissions on it in the final address as agreed and ordered at the pre hearing session

Indeed during the adoption of final addresses, counsel did not equally allude to it which projects to us that 3rd Respondent is no more interested in the objection. The character and tenor of the final address of 3rd Respondent covering the entirety of the petition situates to us that the objection has 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 objectionwas not moved or addresses furnished on same, counsel who filed same had abandoned the objection. See **Savannah Bank of Nigeria Plc V Jatau Kyentu (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 objection of 3rd Respondent.

Having disposed of the objections, the coast is now clear to determine the substantive action.

JUDGMENT ON THE PETITION

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 and in proof of the case, the petitioners called a total of **9 witnesses.**

Ojisi Iro Ogbaja testified as **PW1**. He deposed to two (2) witness depositions. The 1st deposition dated 7/4/2023 is essentially a repetition or rehash of the contents of the petition which we have already highlighted. The 2nd deposition was made on 15/5/2023 contained in Petitioners Reply in response to the reply of 1st Respondent. He adopted the two depositions at the hearing. He is a voter and acted as Local Government agent for his party. The summary and substance of his evidence is that the petition is competent and that the 1st Respondent did not score the majority of lawful votes. The PW1 then stated that the Respondents connived with officials of the 3rd Respondent and manipulated and altered votes and results in different wards and units of the constituency to the detriment of 1stPetitioner. That if the unlawful votes added to the 1st Respondent are removed, the 1st Petitioner would have scored the majority of lawful votes cast at the election.

He then identified the certified true copies of form EC8E (1), declaration of result for Ohafia North State Constituency, forms EC8A (1), polling unit results for Ohafia North State Constituency and the BVAS report already admitted as Exhibits P1, P2 (1 – 131) and P3 respectively.

He was then cross examined by the respondents.

PW2 is Ukpai Kalu. He is deposed to a witness statement on oath filed along with the Petitioner Reply to the 1st Respondents Reply on pages 28 – 29. He adopted the deposition at trial. His evidence is that he is a voter in Ameke ward of Ohafia Local Government and his polling unit is unit 9. He then stated that at the end of the election, the scores entered in form EC8A (1) for 1st Respondent was 8 scores but that it was later altered or increased by officials of 3rd Respondent at the collation center to 108 votes.He then tendered in evidence the statement of result (Pink Copy form EC8A (1) for unit 009).

He was cross-examined by the Respondents.

PW3 is Uwua Arua Agwu. He deposed to a witness statement on oath on pages 20 to 21 of the Petitioners Reply to the 1st Respondents Reply which he adopted at the hearing. He is a registered voter in Ameke ward of Ohafia Local Government and his polling unit is unit 04. His evidence is similar with that of PW2. He then identified Exhibit P2 (75) as the mutilated result he referred to in his deposition. He was then cross-examined by respondents.

PW4 is **Iroegbu John.** He deposed to a witness statement contained on pages 18 – 19 of the Petitioners Reply to the 1st Respondents Reply which he adopted at the hearing. He is also a registered voter at Ameke ward Unit 13. His evidence is similar to that of PW2 and PW3. He tendered the unit result for unit **13** and identified Exhibit P2 (84) as the copy of the mutilated result he referred to in his deposition.

Pius Ude Arua testified as **PW5.** His deposition is contained on pages 22 – 23 of the Petitioners Reply to 1st Respondents Reply which he adopted at the hearing. It is the same in tenor and character as that of PW2 – PW4. He howevervoted at polling unit 11.He tendered his unit result in evidence and identified Exhibit P2 (82) as the mutilated copy of the result he referred to in his deposition.

He was then cross-examined by the Respondents.

PW6 is Kalu Agbo. His deposition is on pages 24 – 25 of the Petitioners Reply to the 1st Respondents Reply which he adopted at the hearing. The deposition is the same as that of PW2 – PW5 but he voted at unit 008, **Ameke ward**. He tendered in evidence the Pink Copy result of his unit.

He was cross-examined by Respondents.

PW7 is **Jolly Agbu.** His deposition is on pages 26 – 27 of the Petitioners Reply to 1st Respondents Reply which he adopted at the hearing. He is a registered voter at Ameke ward unit 10. His evidence is equally on the same terms as that of PW1 – PW6. He tendered in evidence the unit result (Pink Copy) of unit 010 in evidence.

He was also duly cross-examined by respondents.

Mr Ude Agbai Agwu testified as **PW8.** His evidence which he adopted is on pages 16 – 17 of the Petitioners Reply to the 1st Respondent Reply which he adopted at the hearing. He is a registered voter at Ndi Elu ward at polling unit 22. His evidence is the same in substance with that of PW2 –

PW7. He equally tendered the form EC8A (1) pink copy result sheet of unit 022.

He was then cross-examined by respondents.

The last witness for the Petitioners is the **1st Petitioner** himself who testified as **PW9**. He adopted his deposition contained on pages **24 – 39** of the petition which contains the same averments as made in the main petition which we have earlier highlighted. He identified Exhibits P2 (1 – 130) as the unit results of the constituency. He equally identified Exhibit P1, the form EC8E (1), the declaration of result sheet and Exhibit P3, the BVAS report.

He was then cross-examined and with his evidence, the Petitioners closed **their case.** The petitioners on record tendered in all **Exhibits P1 – P17** comprising exhibits tendered from the Bar and Exhibits tendered through witnesses. The Exhibits tendered from the Bar by counsel to the Petitioners included certified true copies of form EC8E (1), declaration of result sheet; forms EC8A (1) polling units results from 131 units of Ohafia North State Constituency and a BVAS report.

The Exhibits tendered by the witnesses included, voters card, letter of appointment as APC Agents and Form EC8A (1) (Pink Copy of result sheets).

The 1st Respondent on his part called six (6) witness.

Frank Oja testified as **DW1** and adopted his deposition on page 44 of 1st Respondents Reply. He is a registered voter. His evidence is that he was

assigned to work as polling unit agent for PDP in polling unit 004 at Ameke Abiriba ward 5. That on the day of election, he arrived at the polling unit at 7.30 am and INEC officials came with complete Electoral materials. That after the setting up of the electoral booth, accreditation and voting commenced and was successfully conducted. That votes were counted and scores of parties entered in the result sheet and duplicate copies and a copy was given to his as an agent. He tendered the Pink Copy of the unit result, form EC8A (1) in evidence.

He was then cross examined by counsel to the 2nd Respondent and his PDP Agent tag was tendered and admitted. He was then cross-examined by counsel to the 3rd Respondent and Petitioners.

Ejibe Ogbuwa Kalu testified as **DW2**. He deposed to a written deposition on page 49 of 1st Respondent Reply which he adopted. He acted as party agent for unit 008 in Ameke ward 5 and his evidence in tenor and character is the same with that of **DW1** with respect to the peaceful conduct of the elections. He tendered his voters card and the unit result, pink copy of unit 008 in evidence.

He was cross examined by Respondents and Petitioners. His party agent tag was admitted during the cross – examination by 2nd Respondent.

Onoh Egbe Osiri testified as **DW3.** His deposition is on page 52 of the 1st Respondents Reply which he adopted at the hearing. He is a registered voter and acted as polling unit agent for unit **013** of Ameke Abiriba ward 5. His evidence in substance is like that of DW1 and DW2. He tendered in evidence form EC8A (1) result sheet for unit 013. He was then cross

examined by 2nd Respondent and his PDP agent tag was admitted in evidence. He was then cross-examined by both 3rd Respondent and the Petitioners.

Paul Iroegbu testified as **DW4**. His evidence is on page 51 of 1st Respondents Reply which he adopted. He voted and acted as a unit agent in unit 011 of Ameke Abiriba ward. His evidence in tenor and character is the same with that of DW1 – DW3. He tendered his voters card and form EC8A (1), pink copy result sheet of unit 011 in evidence. He was then crossed – examined by counsel to the 2nd Respondent and his party agent tag was admitted in evidence and he was also cross – examined by counsel to the 3rd Respondent and the petitioners.

Obasi Daniel Ochuru testified as **DW5.** His deposition is on pages 20 – 25 of the 1st Respondents Reply which he adopted and his evidence in line with the Respondents Reply essentially denied all the allegations made by the petitioners in the petition. He stated that the entire election was conducted in line with the provisions of the Electoral Act and extant guidelines for the conduct of elections and that there were no irregularities of any kind, inflation and deflation of votes and that the petitioners did not score the majority of lawful votes cast at the election, rather that it was 1st Respondent that scored the majority of lawful votes cast at the election and was duly elected and declared as the winner of Ohafia North State Constituency. He tendered in evidence, forms EC8A (duplicate copies) for wards 3, 4, 5, 6, 7 and 11 in evidence.

He also identified units results vide Exhibits D1, D4, D6 and D9 tendered earlier by 1st Respondents witnesses. DW5 also tendered in evidence forms EC8B for 6 wards in evidence. He equally tendered in evidence Duplicate copies of Summary of results from polling units, forms EC8B (1) for ward 5 and 7; 2 copies of summary of results from registration Area, forms EC8C (1); form EC8E (1) declaration of result and INEC receipt of payment for certified true copies of Electoral materials.

DW5 was then cross-examined by 2nd Respondent and his PDP agent tag was admitted in evidence. He was also cross examined by 3rd Respondent and the petitioners.

The **1st Respondent** testified as **DW6**and the last witness for the 1st Respondent. He adopted his deposition dated 29/4/2023 on pages 13 – 19 of the 1st Respondents Reply and like the evidence of DW5, his evidence in substance denied all the assertions made by Petitioners with respect to the conduct of the election which he states was peaceful and conducted in line with the provisions of the Electoral Act and guidelines and that he won the majority of lawful votes and was declared the winner of the election for Ohafia North State Constituency. He identified Exhibits D1 – D25 as the documents he referred to in his deposition.

He was then cross-examined by counsel to the 3rd Respondent and the petitioners and with his evidence, **the 1st Respondent closed his case**.

The 1st Respondent tendered in evidence Exhibits D1 – D26 comprising, copies of forms EC8A (1) pink copy of unit results, voters cards, PDP agent

tags, forms EC8A, forms EC8B (1); forms EC8C (1), forms EC8E (1) and INEC receipt of payment for certified true copies of Electoral materials.

The 2ndRespondenton its part called **only two** witnesses.

Abraham Urum testified as **DW7.** He was a collation agent for 2nd Respondent at Ameke ward. He adopted his witness deposition with the acronym PDD1 on pages 16 – 21 of the 2nd Respondents Reply. His evidence is essentially a rehash of the Reply in which he denied the allegations made by the petitioners and he stated that the election in Ameke ward was free and fair and conducted in substantial compliance with the provisions of the Electoral Act.

He was cross-examined by Respondents and Petitioners and his ward Agent Tag was admitted in evidence.

Obasi Agoh testified as **DW8.** He made a written statement on 29/4/2023 on pages 21 – 25 of the 2nd Respondents Reply which he adopted. His deposition in substance is similar to that of DW7. He was then cross-examined by other Respondents and Petitioners and his party agent tag was admitted in evidence and with his evidence, the 2nd Respondent **closed** their case. The 2nd Respondent tendered in evidence Exhibits D26 and D27 (PDP Party Agent Tags).

The 3rd Respondent called only one witness, **Mrs.Ngozi Nwafor** who testified as **DW9.** She is a staff of INEC and deposed to a witness statement on pages 17 – 26 of the 3rdRespondents Reply. Her evidence was essentially a rehash of the contents of the 3rd Respondents Reply in

which the allegations of petitioners were denied and she stated that the elections were conducted peacefully and fairly in compliance with the provisions of the Electoral Act and Electoral guidelines and that 1st Respondent won the majority of lawful votes and was declared the winner of the Ohafia North State Constituency.

DW9 was only cross-examined by Petitioners and with her evidence **the 3rd Respondent closed its case**.

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

In the final address of 3rd Respondent dated 1/9/2023 and filed on 2/9/2023, one issue was raised as arising for determination:

Having regard to the clear provisions of the law and the unconvincing, unreliable, contradictory and self defeating evidence adduced by the Petitioners and their witnesses, whether the petitioners are entitled to the reliefs sought.

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

In the final address of 2nd Respondent dated 1/9/2023, one issue was equally raised as arising for determination:

Whether the Petitioners proved their case to entitle them to judgment.

Submissions where equally made on the above issue which forms part of the Record of the tribunal and the thrust of the submissions is simply that the petitioners did not adduce any credible evidence to support or prove their case and that the petitioners are not entitled to the reliefs sought.

In the final address of 1st Respondent dated 1/9/2023 and filed on 2/9/2023, one issue was raised as arising for determination:

Whether the Petitioners proved their case to entitle them judgment.

Submissions were also made on the above issue which forms part of the record of the tribunal to the effect that the Petitioners did not lead credible and cogent evidence in support of the sole ground of petition and accordingly that the petition is bound to fail.

On the part of the Petitioners, their final address is dated 11/9/2023. The Petitioners equally raised one issue as arising for determination.

Whether the petitioners proved that the 1st Respondent did not score the majority of lawful votes cast at the election.

Submissions were similarly made on the above issue which forms part of the record of the tribunal and the thrust of the submissions is to the effect that the petitioners have led credible evidence to establish their case and to entitle them to the reliefs sought.

The 1st Respondent then filed a reply on points of law dated 14/9/2023 and filed on 15/9/2023.

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

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

In proceeding to determine the issue, we have carefully read and considered the addresses filed by parties and the oral submissions made in addition. We shall endeavor to refer to these submissions as we consider necessary in the course of this judgment.

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

1) That the depositions of **PW2 – PW8** whose evidence were added to the Petitioners Reply to the 1st Respondents Reply are incompetent as their

depositions were not frontloaded and their names or acronyms does not form part of the list of witnesses in the petition.

2) That the evidence of **PW4, PW5, PW6 and PW7** who spoke Igbo during the trial are also incompetent because during cross-examination, they admitted that they do not understand English language. It was contended that a witness who cannot speak English language cannot adopt a written statement made in English without the said versions. i.e. the one in his native language and its translation brought forward to court and that by adopting only the English version, it becomes hearsay.

Now on the **1st preliminary issue**, the petitioners contend that by paragraph 16 (1) of the 1st schedule of the Electoral Act, a petitioner is entitled to file a reply to the reply of respondents and that what the law prohibits is filing a reply to introduce new facts or new grounds or prayers. That where respondents introduces facts in his reply which the petitioners did not include in his petition, that the petitioner is entitled to respond to such facts and lead evidence on them through witnesses not necessarily contained in the main petition.

We have carefully considered the submissions on the both sides. Now it is not in dispute that Election petition is sui generis or in a class of its own with defined modalities of presentation of the petition and operational remit.

By the provision of **paragraph 4 (5)** of the 1st schedule of the Electoral Act;

"the election petition shall be accompanied by

(a) A list of witnesses that the petitioner intends to call

(b) Written statements on oath of the witnesses; and

(c) Copies of list of every document to be relied on at the hearing"

The provision uses the word **"shall"** which is a word of command. The jurisprudence in terms of the remit its application is clear. There is no discretion to exercise on the frontloading of these delineated processes. Any of the above processes if filed in contravention of the above provision will be incompetent. See the decision of the Court of Appeal in CA/A/EPT/406/2020: **Advance Nigeria Democratic Party (ANDP) V INEC & Ors delivered on 17/7/2020.**

In passing, we need add that by the provision of paragraph 2 of the practice direction 2023 made by the Hon President of the Court of Appeal, the above provision applies mutadi mutandis with respect to filing of Respondents Reply meaning that the respondent in filing his response must comply with the provision of paragraph 4 (5) (supra) in terms of frontloading of these processes.

Now in this case, out of the **9 witnesses** called by the petitioners, the evidence of **PW2 – PW8** were clearly not frontloaded. A careful perusal of the list of witnesses contained in the petition on pages 20 – 22 does not contain the acronyms AGU9, AUN 04, AUN 13, AUN 11, AUN 008, AUN 10, and ND 22 being the depositions with those written depositions adopted by PW2 – PW8 which were made and attached to the Petitioners Reply to the 1st Respondents Reply.

The narrow question here is whether these processes filed along with the Petitioners Reply are not in violation of the provision of paragraph 4 (5) of the 1st schedule?

Now we have carefully gone through the 1st schedule and there is no direct provision on this particular scenario on filing of further deposition(s) along with a Petitioners Reply in response to a respondents reply and therefore in resolving the issue, we must take our bearing from the true meaning, essence or purport of filing a reply in an Electoral dispute. At the risk of prolixity, we must underscore the point that the jurisprudence on filing a reply is now fairly well settled. By the provision of paragraph 16 (1) of the 1st schedule of the Electoral Act, where a person in reply to an election petition raises new issues of fact in defence of his case, which the Petitioner has not dealt with, the Petitioner is entitled to file a reply in answer to new issues. He is however by paragraph 16 (1) (a) not allowed to bring in new facts, grounds or prayers tending to amend or add to the contents of the petition filed by him. See **Ogboru V Okowa (2020) 11 NWLR (pt. 1522) 84 at 113 0 114.**

By the foregoing, the Petitioners are not entitled to set in their Reply to the 1stRespondents Reply to their petition either a **new course of action, ground or new facts** outside or inconsistent with their petition; thus their reply must not depart or contradict their petition and where it does, the tribunal will be justified and on solid legal ground to strike out the paragraphs of the reply where the defect(s) has occurred. See **Ogboru V Okowa (supra).**

The law obviously as we have demonstrated allows a petitioner to file a reply to the Reply of the respondent within 5 days of service of respondents Reply. This will not, however, entitle the petitioner to introduce new facts in defence of his case, or matters which the petition had already dealt with or new issues or cause of action which may tend to amend the petition.

It is therefore obvious to us, within the application of the principles on filing a reply, which does not allow for bringing of new facts, grounds or prayers tending to amend or add to the contents of the petition, that there will then be no room to bring in **new witnesses** whose names were not listed and or their evidence frontloaded to bring in or depose to these new facts. It is logical to hold that if new **facts** were raised in the respondents Reply, then the **existing witnesses listed** and whose deposition were frontloaded with the petition should be able to file a further response within the time sensitive criteria allowed for the filing of a reply.It will amount to a contradiction in terms for the law having provided clear parameters for filing of a reply to then allow a deposition to be filed to contain new facts in violation of the law.

We also incline to the view that taking support from the decision of the Court of Appeal in**ANDP V INEC (Supra),**that where new facts are indeed raised in the Respondents Reply which may require a **new witness** not listed earlier in the petition, then an application for leave must be made to the tribunal to allow for the use of the evidence of that particular witness. The exercise of the powers to grant the application must then be judicially

and judiciously exercised within the clear parameters as allowed by the Electoral Act. The dictates of justice will also determine to a large extent whether the application will be granted or not.

The Petitioners did not seek for leave here and we cannot see or situateany legal basis to justify the fresh or new depositions attached to the Petitioners Reply to the 1st Respondents reply. It is also obvious from the contents of the depositions, that they were filed not really as a response to the Reply of 1st Respondent, but to present evidence for **the new facts/issues raised** in respect of the flawed paragraphs of the petitioners reply.What we see here is simply an attempt by petitioners to add to the **contents** of the petition through the conduit of a reply and using witnesses not listed and or their evidence frontloaded in violation of the provision of paragraph 4 (5) of the Electoral Act.

On the whole, we are more persuaded by the submissions of 1st Respondent that paragraphs 16 of the 1st schedule to the Electoral Act is not an avenue to introduce more witnesses and through them amend or change the character of the case made in the **petition.** Anybody that **must testify** must be within the confines of paragraph 4 (5) of the schedule and where for **whatever** reason, it is difficult to comply with the provision, then leave of court must be sought.

We therefore hold that the depositions of **PW2 – PW8** whose names or acronyms do not appear on the list of witnesses and their depositions were also not frontloaded with the petition but filed along with the Petitioners

Reply to the 1st Respondent Reply are all incompetent and shall be discountenanced.

On the second preliminary issue relating to whether the evidence of **PW4 – PW7** are incompetent because they gave evidence in Igbo and that under cross-examination, they said that they cannot speak English language. That their deposition in their native language and the translation must both be brought to court and since they were not brought, that their evidence is inadmissible.

In view of our finding on the first preliminary issue, this issue has now largely become academic but we will still say some few words.

Now on the record, there is no evidence before us that **PW4 – PW7** made their depositions in any other **Language** other than English. We are not sure that this is an issue that can be subject of guess work or a matter of conjecture.From the record, most of the witnesses stated that they don't understand English language very well or they cannot write in English but that is not conclusive or gives an indication that they made their depositions in **Igbo** as contended by learned counsel to the 1st Respondent. Incidentally no question was posed by 1st Respondents counsel to the witnesses as to whether they made their depositions in any language other than English. The contention therefore that there was a deposition in a native language appears to us to be speculative posturing not rooted in any clear evidence. The fact that the witnesses elected to give evidence in Igbo is a matter of choice and sometimes convenience which the tribunal allows. The case of **Gundiri & Anor V Nyako & Ors**

(2014) 2 NWLR (Pt 1391) 211 at 224 has no application as the witness in that case made his deposition in Hausa which was not presented to the court.

The second preliminary issue is resolved against 1st Respondent.

Having dealt with the above preliminary issues, we now deal with the substance or merits of the petition. We had earlier indicated that **the sole issue identified by the 1st Respondent** will be the issue that will define our consideration and determination of the extant dispute.

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

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

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

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

"The appellants in their petition desired the tribunal to give judgment to them the reliefs they claimed on the basis that the facts they assert in their petition exist. Therefore, they had the primary legal burden to prove the existence of those facts by virtue of section 131 (1) of the Evidence Act 2011 which provides that "whoever desires any court to give judgment as to any legal right or liability dependent on the existence of those facts which he asserts must prove those facts exist". Because the evidential burden to disprove the petitioners case would shift and rest on the respondents only if the evidence produced by the petitioners establish the facts alleged in the petition by virtue of section 133 (1) and (2) of the Evidence Act, the tribunal was bound to first consider if the evidence produced 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. We must again underscore the point, that the petition is predicated on a single ground situated within the purview of section 134 (1) (b) of the Electoral Act as follows:

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

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

The question here is simply whether the petitioners have made out a case on the pleadings and then evidence to sustain the allegations as made out.

Let us perhaps remind ourselves again that while, the sole ground of the petition is **clear** and unambiguous, the petitioners then went ahead tostreamline facts vide **paragraphs 16 – 31** of the petition on ground of non-compliance with the **provisions of the Electoral Act and**

allegation of corrupt practices. We had ruled earlier that those facts are incompetent and thus struck out because as stated earlier, where an election is contested on the ground that the Respondent was not duly elected by majority of lawful votes at the election, allegations of corrupt practices and non-compliance with the provisions of the Electoral Act are excluded. See **Deen V INEC (supra); Ogburu V Uduaghan (2012) ALL FWLR (Pt 651) 1475.**

Now from the pleadings and evidence of Petitioners, it is not in dispute that there are **130 units** in the entire **Ohafia North State Constituency**, but the complaint is said to be limited to only a few **units**in the constituency which were not mentioned or delineated with clear sufficient particularity.

We have gone through the available paragraphs of the petition in support of the sole ground of the petition vide **paragraphs 32 – 39** and we cannot situate the necessary facts in clear defined **units** of the constituency to show wrong computation of votes in favour of 1st Respondent declared as the winner against the Petitioner.**Paragraphs 32 (i) and (ii)** in general terms stated that 3rd Respondent incorrectly collated polling unit results from various polling units in Ameke and Amogudu wards without identifying any **particular unit** where the infractions occurred. There was also allusion to the infusion of unlawfully collated votes **in paragraph 32 (iii)**without again situating or mentioning any unit(s).

Then in **paragraphs 32 (iv) – 36** the petitioners prepared a chart and referred to what they said are the lawful votes cast in the election and that

when the unlawful votes collated from Ameke and Amaogudu wards are removed, the petitioners would have scored the majority of lawful votes.

The petitioners clearly here did not plead or prove the votes cast at the various polling units; the votes credited to the winner, the votes which ought to be credited to him and the votes that should have been deducted from the supposed winner in order to see if it will affect the result of the election.

If this is not done, as stated earlier, it will really be difficult to address the ground of the extant petition effectively. See **Nadabo V Dabai (supra).**Indeed even at this early stage, it will be difficult to carry out any meaningfully inquiry into this dispute in the state of contrived vagueness created by the petitioners in the petition.

The pleadings here in respect of the sole ground of the petition is neither sufficiently accurate or comprehensive. The aim of the pleadings is to allow the case of each party to be stated clearly without ambiguity so that the opponent will know precisely the issues he is facing. See **Balogun V Adejobi (1995) 2 NWLR (Pt 376) 131 at 158.**Indeed we must underscore the point that the function of pleadings is to define and delimit with clarity and precision the real matters in controversy between parties upon which they can prepare and present their respective cases. It is designed to bring the parties to an issue on which alone the court will adjudicate between them. See **Kyari V Alkali (2001) 11 NWLR (Pt 724) 412 at 433 – 434.**The determination by the court is also limited to

and or on the facts and issues clearly defined and streamlined on the pleadings.

The petition in these paragraphs 32 – 39 did not mention any of the challenged units and this is fatal. It appears to us, as alluded to earlier, that the petition here appears deliberately vague, uncertain and imprecise.

There is nothing in the entire paragraphs 32 – 39 situatingsufficient facts in support of the sole ground defining with clarity and exactitude the areas or units in issue or dispute in the 130 units of the constituency and the court cannot speculate.

The Petitioners having realized the **grave error** in the formulation of their petition sought to now supply these critical missing facts or elements in **paragraphs 2, 3, 4 and 9**of the Petitioners Reply to the 1st Respondents Reply and all these were repeated in the replies filed by the petitioners to the responses of the other respondents.Interestingly, **learned senior counsel to the Petitioners in**the final address vide **paragraphs 9.01 and 9.02** made the following tacit concessions:

> **"9.01 The petitioner pleaded the facts of his contention that 1st Respondent did not score the majority of lawful votes cast at the election in paragraphs 32 – 37 of the petition and paragraph 2 of the Petitioners Reply to the Reply of the 1st Respondent, the PW1 and PW9 gave evidence in support.**

9.02 In this petition, the Petitioners,the petitioners (sic) **have not complained against the votes cast in their entire constituency but on specified polling units enumerated in paragraph 2 of the Petitioners Reply to the Reply of the 1st Respondent"**

We have brought out this **apparent concession** to show that the petitioners clearly seek to project there case on a faulty premise. Facts of a petition cannot conceivably be hinged on facts in **Petitioners Reply to 1st Respondents Reply**or in a reply to other respondents replies. The remit of a petition cannot be extended or expanded through a reply. The purport of a reply we have explained already at length. The provision of paragraph 16 (1) (a) & (b) of the 1st schedule to the Electoral Act is clear. The petitioners cannot therefore introduce new facts not contained in the petition in their reply as done here and then seek to use it as a basis to legally situate the case of the petitioners. These facts was within their knowledge at all time and they ought to have put same in the petition and if the petition did not adequately meet the factual complaints, then the proper thing to do was to amend the petition within the time sensitive criteria of the Act and this the petitioners did not do, which will ultimately turn out to be at great or huge cost to them.

We**have** already held that the conduit of a reply cannot be used to amend the **petition** or to supply those missing foundational blocks of the ground of the petition. We had already earlier struck out the said offending paragraphs.

The law is trite that every ground of an election petition must be supported by relevant facts and appropriate particulars duly pleaded. See paragraphs 4 (1) (d) of the 1st schedule of the Electoral Act.At the risk of sounding prolix, on the **sole ground** of the petition, we cannot situate in the petition clear pleadings **indefined units** of the constituency situating for example errors of collation, miscalculation or exclusion of lawful votes to the disadvantage of the petitioners which as we have repeatedly stated are distinct from allegation of non compliance with provisions of the Electoral Act or corrupt practices.

Now, even if we are wrong and we accept that there was even proper pleadings of the ground that the 1st Respondent was not duly elected by majority of lawful votes vide paragraphs 32 – 37 of the petition, the **next critical question** is where is the evidence to support the allegations made which would negatively impact the election of the 1stRespondent?

It is trite law that facts deposed to in pleadings must be substantiated and proved by evidence, in the absence of which the averments are deemed abandoned. See **Aregbesola V Oyintola (2011) 9 NWLR (Pt 1253) 458 at 594.**Pleadings, however strong and convincing the averments may be, without evidence in proof thereof go to no issue. Through pleadings and the petition in this case, parties know exactly the points which are in dispute with the other. Evidence must then be led to prove the facts relied on by the party to sustain the allegations raised in the pleadings. See **Union Bank Plc V Astra Builders (W/A) Ltd (2010) 5 NWLR (Pt 1186) 1 at 27.**

In this case, for a constituency with **130** units, the Petitioners effectively called only **two witnesses**, **PW1** and **PW9**. We had earlier discountenanced the evidence of **PW2 – PW8** as incompetent.

Now, **PW1** by his evidence only acted as a constituency collation Agent and he had specific or defined job description as admitted by him which is to collate the results at the collation center. He is therefore in no position to give credible evidence of what transpired at the various **130 polling** units of the constituency. Even if he had agents as claimed who informed him of what transpired at the units, their evidence is hearsay and inadmissible. See sections 36, 37 and 126 of the Evidence Act. In law, once it is found that a witness deposition is laced with hearsay, the court cannot ascribe probative value to it. See **Kakih V PDP (2019) 15 NWLR (Pt 1430) 418.**

The **1st Petitioner who is PW9** as admitted by him simply voted at his unit and went home. Whatever his agents may have informed him is equally hearsay and bereft of probative value. As already alluded to, hearsay evidence, oral or documentary is inadmissible and lacks probative value. See also **Okereke V Umahi (2016) 11 NWLR (Pt 1524) 438.** The bottom line is that these two witnesses cannot testify as to what happened in the entire **130** polling units of the constituency or indeed the undefined units they are complaining about. On the authorities, it is settledthat the only witness acceptable in election matters in proof of incidents at polling units are unit agents and no other. In the instant case, in other to prove allegations in respect of the units they challenged, the

petitioners had a duty to call the polling unit agents in respect of each of the 130 units or at the least the units complained of to speak to the documents in respect of their units. See **P. D. P & Anor V INEC (2022) 18 NWLR (Pt 1863) 653 at 692 F – G; 693 B – C.**

The conundrum for the petitioners is that even if they had brought witnesses for the challenged units, to the **clear extent that the challenged units were not mentioned any where in paragraphs 32 – 39 of the petition**, meant that even if their evidence was available, it would lack probative value.

The law is settled that evidence of any facts which are not pleaded in a given case is not admissible for it would have no foundation to support it. Put another way, evidence in support of facts not pleaded goes to no issue and will be discountenanced. See **Okoko V Dakolo (2006) 14 NWLR (Pt 1000) 401 at 422; Balogun V Adejobi (supra).**

On the whole, the evidence of **PW1 and PW9** unfortunately for the petitioners proves nothing of the contested assertions made on the pleadings. This petition at this point is **fatally undermined or compromised**.

Now **out of abundance of caution**, we have even looked at the flawed evidence of **PW2 – PW8** who gave evidence on alleged fraudulent cancellations, mutilations or alteration of election results; inflation and deflation of votes in about 6 units in Ameke Abiriba ward 5 to wit, polling units 009, 004, 013, 011, 088 and 010 vis-à-vis the results tendered at the trial.

The allegations of **fraudulentmutilations and alterations of electoral documents** are criminal in nature and the standard of proof by section 135 of the Evidence Act is beyond reasonable doubt. A petitioner who based his case on **fraudulent cancellations, mutilations or alterations**must establish two ingredients i.e.

i) **That there were cancelations, alterations or mutilations in the electoral documents**
ii) **That the cancellations, alterations or mutilations were dishonestly done with a view to falsifying the result of the election.**

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

On a calm view of the evidence of PW2 – PW8 which was similar in tenor and character, none of the above ingredients was established and or the standard of proof of the criminal allegations met or proven.

In evidence, the petitioners were not able to demonstrate or show how the statements of polling unit results, forms EC8A (1) vide **Exhibits P2 (1 – 130)** for Ohafia North State Constituency which was tendered by their counsel was **different**from the same forms EC8A (1) vide Exhibits D1 – D15 (1 – 23) tendered by the 1st Respondent or any alteration, mutilation or cancellations situated. It must be noted that these are the same unit results (Pink Copies) given to parties. There was equally nothing to show

that results tendered in the forms EC8A (1) was altered in the forms EC8B (1) **summary of results from polling units** which was tendered by 1st Respondent vide **ExhibitsD16 – D23.**

There was equally no demonstration of alterations or mutilations with respect to the overall summary of results from Local Government Area forms EC8C (1) tendered by 1st Respondent vide **Exhibits D24a and D24b** and then the overall entries in the state constituency declaration of result tendered by both parties as **Exhibits P1 and D25a.** Again, the final entries in **Exhibits P1 and D25 (a)** are the same. The petitioners have not shown where the figures they are complaining about was changed or altered all through the election.

We really cannot fathom how the petitioners intended to prove their **lone ground** of the petition without demonstrating on the basis of these **results** right before them and the tribunal the mutilations, alterations, cancellations alleged. The principle is settled that results of elections declared by **INEC** enjoy the presumption of regularity. The burden of proof is always on the party who challenges the regularity of the results to adduce cogent, credible and compelling evidence to rebut the presumption. See **Abubakar V INEC (2020) 12 NWLR (Pt 1737) 37 at 124 – 125 H – A.**

We have here as stated earlier out of caution even looked at the entire evidence of the witnesses brought by petitioners and we cannot situate any compelling credible evidence to support their case on the sole ground of the petition. The case of petitioners at different levels suffers from serious

debilitating defects. Apart from the failure to specify the units complained of in the petition, there was equally no evidence led in support of any of the allegations so elaborately made.

The court has no magical powers to determine in a complete vacuum the extant complaint that the 1st Respondent did not score the majority of lawful votes at the election. A court or tribunal cannot decide issues in a scenario like this where there is no delineation of units in dispute in the constituency and an abysmal failure to lead evidence to support allegations made in the petition. The extant petition is unfortunately anchored more on speculation than any real defined dispute and speculation has no place in the delicate task of adjudication. A court or tribunal 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 laid before the tribunal. 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 of law to fill any hiatus in the evidence before it. See **Overseas Construction Company Ltd V Greek Enterprises Ltd. (1985) 3 NWLR (Pt 13) 409; Dennis Ivienagbor V Henry Osato Bazuaye & Anor (1999) 6 S.C.N.J.**

A court of law or tribunal qua justice can only legitimately draw inference, not at large, but in relation to facts which justify such inference. And since an inference cannot be deduced or drawn in a vacuum, the facts upon which the inference is drawn must be in close proximity or intimacy with

the inference. See **Boniface Ezeadukwa V Peter Maduka & Anor (1997) * NWLR (Pt 518) 635 at 663**.

We cannot therefore situate the **basis** of the conclusions in the **final address** of the petitioners that this case has been established. Cases have never been decided on the basis of addresses of counsel, no matter how well articulated. No amount of brilliance in a final address or speech can make up for the lack of evidence to prove and establish or else disprove and demolish points in issue. See **Sanyaolu V INEC (1994) 7 NWLR (Pt 612) 600 at 611 C – D.**

In this case, the petitioners absolutely proffered nothing either in the pleadings or evidence to support their case that the 1st Respondent did not score the majority of lawful votes. This case apart from the unclear manner it was formulated suffers from a complete dearth of evidence to sustain the assertions made.

As we round up, and because of the unclear manner this petition was formulated, let us generally add that in an election petition, where the petitioner complains of non compliance with the Electoral Act based on Electoral malpractice and fraud, once the issue of proof is resolved against the petitioner, the petition is effectively determined against the petitioner. See **Doma V INEC (supra) 297 at 319 – 320.**

It may also not be out of place to add and underscore the point that while it is correct that the law requires that all the provisions of Electoral Actshould be complied with,however, it must be noted that by the provision

of section 135 (1) of the Electoral Act, 2022, it is not every non-compliance that will lead to invalidation of the election results.

Thus, where it appears to the election tribunal as in this case, that there is clear substantial compliance with the provisions of the Electoral Act such that the results are not affected substantially, the results will be upheld. See **Buhari & Anor V Obasanjo & ors (2005) All FWLR (Pt 273) 1 at 145.**

The bottom line simply is that the Petitioners were not able to establish their fluid, unclear and challenged allegations and they also palpably failed to demonstrate how the alleged complaints affected the result of the election.They therefore did not lead any credible and cogent evidence in support of their **sole** ground of the petition. Having not proven their case, no onus shifted to the respondents to establish that the results is not affected.**The sole issue raised is resolved against the Petitioners**.

On the whole and for the avoidance of any doubt, **the single** issue raised is resolved against the Petitioners. The **whole reliefs** sought are vague, contradictory and ungrantable. Reliefs (a) and (b) for example are hinged or predicated on reasons of non-compliance with the provisions of the Electoral Act and corrupt practices which are not **grounds** of the petition. As rightly submitted by the respondents, these are incompetent reliefs ab initio lacking foundation or basis. It is a well known legal truism that you cannot put something on nothing and expect it to stand. Relief (c) being the key relief on want of score of majority scores predicated on the sole ground was not made out properly on the pleadings and was not

established at all on the evidence. Reliefs (d) and (e) are ancillary reliefs predicated on the success of reliefs (a) – (c). With the failure of those reliefs, Reliefs (d) – (e) similarly will lack any basis and fail. The principle is where the principal is taken away, the adjunct has no foundation and must fail.

The **Petitioners have woefully failed** to prove by any relevant, credible and admissible evidence their unclear allegations which now turn to us, to lack factual and legal basis. Facts may have been pleaded, but witnesses were not produced to establish those facts. For the avoidance of doubt, all the reliefs/prayers contained in **paragraph 39 (a) – (e)**of the petition are wholly incongruous and fail.

This petition unfortunately is completely starved of evidence, in addition to the unclear manner it was drafted.Where evidence led to support a case is palpably weak, tenuous and feeble, that certainly amounts to a failure of proof. Whatever the imperfections there may be in the trial process, it is however completely evidence driven and that is the way it has always been.Judges cannot perform miracles in the handling of matters before them, neither can they manufacture evidence for the purpose of assisting a party to win his case. Cases are determined solely on the strength and quality of the evidence adduced before the Court in proof of the contested assertions.

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

HON. JUSTICE ABUBAKAR IDRIS KUTIGI
CHAIRMAN

Appearances:

1. **Anaga Kalu Anaga Esq., for the Petitioners.**

2. **Chidozie Ogunji, Esq., with O. I. Orakwe, Esq., for the 1st Respondent.**

3. **Daniel Anya, Esq., for the 2nd Respondent.**

4. **Dr. O. E. Enwere, Esq., for the 3rd Respondent.**