IN THE NATIONAL AND STATE HOUSE OF ASSEMBLY

ELECTION PETITION TRIBUNAL (PANEL 3)

HOLDEN AT UMUAHIA, ABIA STATE

THIS THURSDAY THE 7TH DAY OF SEPTEMBER, 2023

BEFORE THEIR LORDSHIPS

HON. JUSTICE ABUBAKAR IDRIS KUTIGI - CHAIRMAN

HON. JUSTICE AHMAD MUHAMMAD GIDADO - MEMBER I

HON. JUSTICE MOMSISURI ODO BEMARE - MEMBER II

PETITION NO.:EPT/AB/HR/14/2023

BETWEEN:

1. RT. HON. CHINEDUM ORJI
2. PEOPLES DEMOCRATIC PARTY (PDP)

PETITIONERS

AND:

1. CHIEF OBINNA AGUOCHA
2. LABOUR PARTY (LP)
3. INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC)

RESPONDENTS

JUDGMENT

(DELIVERED BY HON. JUSTICE ABUBAKAR IDRIS KUTIGI)

The 1st Petitioner and 1st Respondent were candidates in the election to the Federal House of Representatives seat for Umuahia

North/UmuahiaSouth/Ikwuano Federal Constituency held on 25th February 2023. The 1st Petitioner contested the election on the ticket of the Peoples Democratic Party (P.D.P) while 1st Respondent contested on the platform of the 2nd Respondent, the Labour Party (LP) among other candidates fielded by the other Political Parties.

At the end of the exercise, the 3rd Respondent, Independent National Electoral Commission (INEC), the statutory body charged with responsibility of conducting the election declared and returned the **1stRespondent** as the winner of the UmuahiaNorth/Umuahia South/Ikwuano Federal Constituency with a score of **48, 191 votes** as against the 1st Petitioners score of **35, 196 votes**.

Dissatisfied with the conduct and indeed the outcome of the election, the petitioners filed this petition at this tribunal on 17th March 2023 to challenge the result of the election upon the grounds as specified in **paragraph 12 (i) – (iii)** of their Petition as follows:

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

The substance of the facts in support of the petition as averred by the Petitioners is that the 1st Respondent was a member of two political parties at all times leading to the election in question contrary to the provision of Section 65 (2) b of the 1999 constitution; that the 1st Respondent at the time of submitting his nomination form to the 2nd Respondent was a member of both the PDP and the Labour Party.

Further that the 1st Respondent contested the PDP primaries for the House of Assembly ticket in issue with 1st petitioner on 22/5/2022 and lost and that he remained a member of PDP and did not resign at any time. That as a member of two political parties, his nomination as 2nd Respondent's candidate for the 2023 elections is void.

The Petitioners also averred that it is the duty of the 3rd Respondent to direct and supervise the conduct of elections and the requirement that political parties shall submit register of their members 30 days to the holding of the party primary. That the PDP held its primary on 22/5/2022 while the 2nd Respondent held their primary on 8/6/2022 and that the name of 1st Respondent was not in the membership Register of 2nd Respondent at least 30 days before the primary elections of 2ndRespondent on 8/6/2022. Accordingly they aver that the 2nd Respondent was not qualified to be nominated and sponsored by 2nd Respondent to contest the election in issue in this petition. See paragraphs3 (1.0 – 1.33) of the petition.

The Petitioners then made varied allegations that the election was invalid by reason of corrupt practices or non – compliance with the provisions of

the Electoral Act in various wards and units of the constituency as highlighted in paragraphs 2.0 – 2.49 of the petition.

In paragraphs 3.1 – 3.22 of the petition, the Petitioners averred that the 1st Respondent was not duly elected by the majority of lawful votes and that the name of Labour Party or its acronym did not appear on the ballot paper contrary to the electoral guidelines and therefore that the name "forward ever" used on the ballot paper is not a registered political party and that any votes allotted to the said name are invalid votes. That if the invalid votes for "forward ever"ascribed to 1st and 2nd Respondents are discounted with, it will show that 1st Respondent did not score the majority of the valid votes cast at the election.

The Petitioners then in paragraphs 3.22 – 3.39 streamlined wards and units in which they highlighted anomalies relating to alteration and manipulation of votes in the constituency in question and that if the votes are properly computed, the 1st Petitioner scored the greater number of votes and should be declared the winner of the election.

The Petitioners then prayed the tribunal for the Reliefs as set out in **paragraph 14 (1) – (12)** of the Petition which read as follows:

> **"1. That it may be determined that the 1st Respondent was at the time of the election not qualified to contest the election for the reasons that he was a member of two political parties at the same time and his name was not in the register of membership of the 2nd Respondent at least 30 days**

to the time of the 2nd Respondent's primary elections, which held on the 8th of June, 2022.

2. **That it may be determined that if the 1st Respondent is found not to be qualified ab initio to contest the election and thus declared not qualified, the 1st Petitioner won the election being the qualified candidate who won the majority of lawful votes cast at the election for Ikwuano/Umuahia Federal Constituency election, which held on the 25th February 2023, and who ought to be returned as the winner of the said election.**
3. **That it be declared that the non-insertion of the name of the 2nd Respondent in the ballot paper is a fundamental non-compliance with the Electoral Act, 2022 and contrary to the Manual for the Election and Regulations and Guidelines for the Conduct of Elections, 2022 and therefore vitiated and nullified the invalid votes of "FORWARD EVER" ascribed and allocated to the 1st& 2nd Respondents.**
4. **That it be declared that the name of the Labour Party did not appear on the ballot paper and by reason of which the 1st and 2nd Respondents were not voted for and did not secure any lawful or valid votes at the election pursuant to the Manual for the Election, Regulations and Guidelines for the**

Conduct of Elections, 2022 and the Electoral Act, 2022.

5. **That it be declared that the total scores of 48,191 votes ascribed to and allocated to the 1st and 2nd Respondents were invalid votes to the name of "FORWARD EVER" which did not participate in the Election as a registered political party by the 3rd Respondent.**
6. **That this Honourable Court do determine that the 1st Respondent (AguochaObinna) did not score the majority of lawful votes cast at the election for the member representing Umuahia North/Umuahia South/ Ikwuano Federal Constituency of Abia State held on the 25th Day of February, 2023.**
7. **That this Honourable Tribunal do determine that the1st Petitioner Scored the majority of lawful votescastat the election and ought to Have beendeclared thewinner of the election and accordinglybe Returnedas the winner of the election for theUmuahiaNorth/UmuahiaSouth/IkwuanoFederalconstituency of Abia State Held on the 25th day ofFebruary, 2023.**
8. **An Order directing the 3rd Respondent to issue a Certificate of Return to the 1st Petitioner forthwith**

asthe lawful winner of the Election forIkwuano/UmuahiaFederal Constituency election, which Held on the 25th February, 2023.

IN THE ALTERNATIVE TO THE AFORESAID RELIEFS

9. **That it may be determined, and thus declared, that the declaration and return of the 1st Respondent by the 3rd Respondent as the Winner of the election held on 25th February, 2023, for Ikwuano/Umuahia Federal Constituency, is null and void having been marred by substantial non-compliance with both the Electoral Act, 2022 and the INEC approved Guidelines and Regulations for the Conduct of the 2023 general elections.**
10. **That it may be determined, and thus declared, that the result of the Purported elections of 25th February, 2023, and on the basis of Which the 1st Respondent was declared and returned as the winner Of the Ikwuano/Umuahia Federal Constituency, is unlawful, null and Void same having been marred by corrupt practices or substantial Irregularities.**
11. **An Order nullifying the election of the 1st Respondent and Withdrawing the Certificate of Return issued to the 1st Respondent by the 3rd**

Respondent for being wrongfully returned as the winner of the said election.

12. **And for such further order or orders as the Honourable Tribunal May deem fit and proper to make in the circumstances."**

In response to the Petition, all the Respondents categorically and precisely joined issues with the Petitioners by filing their respective replies. The 1st Respondent filed his reply on the 13th April 2023 incorporating a Notice of Preliminary objection. The 2nd Respondent filed its Reply to the Petition on 17th April 2023 and also incorporating a Notice preliminary objection. The 3rd Respondent filed its Reply to the Petition on 10th April 2023.

Basically, they denied all the allegations contained in the petition and put the petitioners to the strictest proof.

In further Response to the replies filed by the respective respondents, the Petitioners filed replies pursuant to paragraph 16 (1) of the 1st schedule of the Electoral Act (as amended). The Petitioners Reply to the 1stRespondents reply was filed on 21st April 2023; Petitioners reply to the 2nd Respondents Reply was equally filed on 21st April 2023; whilst the Petitioners Reply to the reply of 3rd Respondent was also filed on 21st April 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 at which all parties as represented by their counsel fully participated.

It is important to state that two (2) interlocutory applications filed by 3rd Respondent were withdrawn and struck out at the Pre hearing session.

We indicated in compliance with the law, that submissions on the preliminary objections raised in the replies of 1st and 2nd Respondents be incorporated along with final addresses and that Rulings will be **delivered** along with the substantive judgment. Pursuant thereto, the tribunal issued a pre hearing and scheduling report on 19/6/2023 which encompassed all matters agreed by all parties with respect to the trial of the petition.

Ordinarily, we ought to now proceed to first deliver our Rulings on the two objections which are similar in terms and substance. 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 oralluded 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.

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 grounds and the Reliefs have been set out at the beginning of this judgment.

In the course of trial and in proof of their case, the Petitioners called a total of **18 witnesses.**

The 1st Petitioner,**Rt. Hon ChinedumOrji** testified as **PW1**. He adopted his statement on oath filed along with the petition which contained essentially a rehash or repetition of the facts streamlinedin the petition which we have already produced.

PW2 is Nwabuko Emmanuel Akwali. He is a registered voter and adopted his deposition dated 17/3/2023 and his evidence is essentially to the effect that Labor Party was not written on the ballot paper but "forward ever" was inserted in the place of the registered name of Labour Party and that nobody voted for Labour Party since the name was not on the ballot paper. He stated that at the end of the voting, that the ballot papers in

which voters thumb printed for "forward ever"were counted in favour of Labour Party.

Oriaku Innocent testified as **PW3** and adopted his deposition filed on17/3/2023. His evidence in tenor and character is the same with that of PW2.

Mr.Ndumele Vincent Nwazuo testified as **PW4** and adopted his deposition dated 17/3/2023. His evidence is equally the same as that of PW2 and PW3.

The next set of witnesses called by Petitioners to wit: **PW5 – PW11** were presiding electoral unit officers who were subpoenaed and pursuant to the subpoenas, they made witness depositions which they adopted and stated the roles they played on election day and they also identified the unit results of their units.

The Petitioners equally subpoenaed **PW12**, **ChiefChijiokeAkanwa**, state administrative secretary of PDP who similarly made a witness deposition on been served the subpoena which he adopted at the hearing. His evidence is to the effect that the 2nd Respondent remained a member of PDP at all times and participated in their primaries together with the 1st Petitioners.He tendered in evidence **Exhibits P13a & b, P14a & b, P15, P16, P17 and P18.**

Ikechukwu Kelvin Okorie, a journalist testified as **PW13**. He was also on subpoena. He prepared a witness deposition which he adopted at the trial and tendered a D. V. D, Disk Plate which was admitted as **Exhibit P19.** His evidence is to the effect that he videotaped the primary elections

of PDP for the House of Representative nomination in which 1st Petitioner and 1st Respondent were contestants.

Christian Ugorji then testified as **PW14.** He adopted his witness deposition dated 17/3/2023. His evidence is that he was a registered voter and acted as a party agent for PDP in unit 004.

PW15, Igwilo Patrick adopted his deposition dated 17/3/2023 at the trial. He was also a registered voter and acted as party agent for PDP in his unit 001.

PW16, EzebinoChukwuka, PW17, OnyekweAmarachi and PW18, Casmir Odemenamall adopted their written depositions which are all similar to that of PW14 and 15. They all voted and acted as polling unit agents for their parties in their respective units on the day of the election.

On the **record**, the Petitioners tendered in all **Exhibits P1 – P28** comprising exhibits tendered from the Bar and exhibits tendered through the witnesses. The **exhibits tendered from the Bar** included INEC regulations and guidelines for the conduct of elections; INEC manual for election officials; Copy of 1st Respondent's PDP Expression of interest form for House of Representative primary election with attachments; 1st Respondents affidavit in support of personal particulars deposed to on 14/6/2022; ballot paper used in the election; Certified True Copy(C.T.C) of INEC letter dated 5/4/2023; sample of logo Labour Party; carbon copies of unit results forms EC8A; PVC issuance status for 2023 general election for Umuahia North, Umuahia South and Ikwuano Local Government Area, copy of the constitution of Labour Party and C. T. C. of summary of results from

polling units, forms EC8B (II) for Umuahia North (12 wards) Umuahia South (10 wards) and Ikwuano (10 wards) and INEC Receipt of Payment for Certification of Electoral Materials.

The exhibits tendered by witnesses consisted of PDP membership cards, voters cards, party agent tags and a D.V.D. disc or plate.

On the part of the **1st Respondent**, he called a total of **Four (4) witnesses.**

LeornardIfenachoOgbonnatestified is **DW1.** He adopted his witness deposition dated 13/4/2023. He is a registered voter and member of 2nd Respondent. His evidence is that the 1st Respondent is a member of 2nd Respondent who joined them after leaving 2nd Petitioner and that he won the primary election of the 2nd Respondent and was sponsored by 2nd Respondent as their candidate in the election. That no other party apart from 2nd Respondent nominated 2nd Respondent for the election.

DW1 further stated that the symbol of 2nd Respondent was on the ballot paper and that it was recognizable to all voters. That the inscription "forward ever" is part of the symbol of 2nd Respondent registered with INEC and known to all its supporters and used exclusively by them.

CeekayIgaratestified as **DW2**. He is the Abia State Chairman of Labour Party and adopted his deposition dated 13/4/2023. He is also a registered voter and member of 2nd Respondent. His evidence in tenor and character is the same with that of **DW1.**

The final set of witnesses called by the 1st Respondent were all on subpoena.

NwokojiChisomUdochukwu testified as **DW3.** He is a registered voter and ward chairman, P.D.P of Nkwoegwu ward. He was served a subpoena and pursuant to the subpoena, he made a witness deposition dated 20/7/2023 which he adopted at the hearing. His evidence is that 1st Respondent was a member of PDP up till 26/5/2022 when he submitted through him the resignation of his membership of the PDP which he acknowledged receipt of and sent the original to the Local Government chapter and that since he submitted his letter of withdrawal, he has stopped participating in the activities of the party. He tendered a copy of the letter of resignation of 1st Respondent from PDP dated 21/5/2022 which was admitted as Exhibit D37.

OnughaAnochie Victor also on subpoena was the last witness of 1st Respondent and he testified as **DW4.** He adopted his witness deposition dated 20/7/2023. He is a registered voter, member of the PDP and the current youth leader of the party in Nkwoegwu ward. On been served the subpoena, he made a witness deposition which in substance is the same with that of DW3 to the effect that the 1st Respondent resigned from PDP and that since he resigned he has stopped participating in activities of P.D.P.

On the record, the 1st Respondent tendered in evidence Exhibits**D1 – D38** comprising exhibits tendered from the Bar and exhibits tendered through the witnesses. **The Exhibits tendered from the Bar** included certified true copies of polling units results (forms EC8A (1)), from wards in Umuahia South, Ikwuano and Umuahia North Local Government Areas and BVAS report for the three local governments.

The **Exhibits tendered by the witnesses** consisted of voters cards, Labour Party membership cards, PDP membership card and a copy of 1st Respondents letter of Resignation from P.D.P.

The **2nd Respondent** on its part called only one witness.

UkpoUzodinma testified as **DW5.** He is a registered voter and member of 2nd Respondent. He adopted his deposition dated 17/4/2023. His evidence in tenor and character is the same with that of the evidence of DW1 and DW2 for the 1st Respondent. The 2nd Respondent tendered only the **voter'scard** of DW5 which was admitted as **Exhibit D39.**

The **3rd Respondent** on its part also called only one witness.

Kelvin Morris, a staff of **INEC** from Abuja was subpoenaed and he testified as **DW6.** He stated that he was subpoenaed to produce polling units results which he has brought to the tribunal, to wit:

Forms EC8A (2) uploaded into INEC IREV for Umuahia North, Umuahia South, Ikwuano federal constituency; the receipt of payment for certification and certificate of compliance which were admitted as **Exhibits D40 – D69 (1 – 14)**.

At the conclusion of trial, parties filed and exchanged their final written addresses and commendably too, within time.

In **the final address of 3rd Respondent** dated 27/7/2023 and filed on 30/7/2023, two issues were raised as arising for determination as follows:

a. **Whether the 1st Respondent did not win the election to the office of the member representing the**

Ikwuano/Umuahia North/Umuahia South Federal Constituency of Abia State held on the 25th day of February, 2023 by reason of substantial compliance with the novel and mandatory provisions of the Electoral Act, 2022 on electronic transmission of results for collation and verification.

b. Whether the Petitioners petition is not bound to fail to have (sic) regard to the credible evidence led by the Respondents.

Submissions were then made in the address on the above issues which formspart of the record of the tribunal which we have carefully considered.The thrust and summary of the submissions is that the contested election was conducted in substantial compliance with the provisions of the Electoral Act and that the petitioners have not established by credible and convincing evidence any of the grounds of the petition to entitle them to any of the reliefs sought.

On the part of the **2nd Respondent, the final address** is dated 28/7/2023 and filed on 31/7/2023.In the address, one issue was raised as arising for determination to wit:

"Whether the Petitioners have proved their case and are entitled to the Reliefs sought".

Submissions were equally made on the above issue which forms part of the record of the tribunal which we have also carefully considered. Here too,

the substance and summary of the submissions made 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.

The **final address of 1st Respondent,** is dated 30/7/2023 and filed on 31/7/2023. In the address, three (3) issues were raised as arising for determination as follows:

a) **Whether the 1st Respondent was at the time of the election not qualified to contest the election.**
b) **Whether the election was invalid by reason of corrupt practices or non – compliance with the provisions of the Electoral Act.**
c) **Whether the 1st Respondent was not duly elected by majority of lawful votes cast at the election.**

Submissions were equally made on the above issues which form part of the Record of the tribunal and which we have carefully considered. The summary and or substance of the case made out by the 1st Respondent is that on all the grounds which the petitioners have predicated the extant petition, they were not able to establish creditably any of the grounds of the petition.That the 1stRespondent was constitutionally qualified to contest the election and that grounds for disqualification which is also constitutionally situated has not been established.

Further, thatthe petitioners have not established that the election was invalid by reason of corrupt practices and or that the election was not

conducted in substantial compliance with the Electoral Act. It was finally submitted that the 1st Respondent was duly elected with majority of lawful votes cast at the election.

The Petitioners in response to these addresses filed **their final address** dated 7/8/2023 and filed same date at the registry of the tribunal. In the address, four (4) issues were raised as arising for determination as follows:

1. **Whether By virtue of the provision of Section 65 (2) (B) of the 1999 Constitution as amended, the 1st Respondent was not qualified by reason of the double or dual membership of two political parties to contest Election for the membership of the House of Representative for the Umuahia North/Umuahia South federal Constituency and whether the 1st Respondent was not validly sponsored by the 2nd Respondent which still Registered a member of the 2nd Petitioner having regard to Section 83 (1) Of the Electoral act 2022.**
2. **Whether the 1st Respondent was not qualified to contest the Election for The House of Representative for the Umuahia North/Umuahia South/ Ikwuano Federal Constituency held on the 25th day of February 2023 having regard to the combined effect of the Provisions of the Section 65 (2) (B) of the 1999 Constitution of Nigeria as amended and Section 77 (2) (3) of the Electoral Act 2022.**

3. **Whether there was substantial non-compliance with the mandatory Provisions of the Electoral Act 2022, the Regulations and Guidelines for the Conduct of the General Election 2022 and the Manual for Election Officials 2023 in the conduct of Election to invalidate and nullify the Election of the 1st Respondent as the winner of the challenged or questioned Election.**
4. **Whether having regards to the documentary evidence, the Election results in Forms EC8A(II) and EC8B(II) used in the conduct of the questioned Election before the Honorable tribunal, the 1st Respondent scored the Majority of lawful votes cast at the Election to entitled the Honorable Tribunal to nullify the return of the 1st Respondent as the winner of the Election and to declare and return the 1st Petitioner as the actual winner of the Election for the House of Representative for Umuahia North/ Umuahia South /Ikwuano Federal Constituency held on the 25th day of February 2023.**

Submissions were equally made on the above issues which forms part of the Record of the tribunal which we have also carefully considered. The thrust and summary of the submissions made on the above issues followed the trajectory of the case the petitioners have made in the petition. On issue 1 and 2 which were argued together, the petitioners contend that the

1st Respondent was not qualified to contest the election by reason of being a member of two political parties in contesting for the House of Representative seat for the constituency in question and accordingly that his sponsorship by 2nd Respondent was invalid since he was still a member of 2nd Petitioner (P.D.P).

On issue 3, the case made out is that the election of 1st Respondent was invalid because of substantial non-compliance with provisions of the Electoral Act and extant laws and guidelines on the conduct of the election. Finally, on issue 4 it was contended that having regard to the documentary evidence tendered, that the 1st Respondent did not score the majority of lawful votes in the election and that it was 1st Petitioner who scored the majority of lawful votes and ought to be declared the winner of the election.

The 1st and 2nd Respondents then filed replies on points of law respectively on 12/8/2023 and 10/8/2023 to the address of the Petitioners. The replies essentially accentuated some of the points already made.

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

Nevertheless, upon a careful and thorough perusal and consideration of the entirety of the pleadings, the reliefs claimed and the grounds thereof, the totality of the evidence led on record by parties and the final addresses, it seems to us that the issues raised by the 2ndRespondent has captured the essence and crux of this dispute and it is on the basis of these three issues

which fully subsumes all the issues raised by parties that we shall proceed to resolved the present electoral dispute.

In proceeding to determine the issues, 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 two preliminary points or issues to wit:

1) **Admissibility of certain documents to wit: Exhibits P3A, P7, P8 (1-53), P12, P13A, P14A, P15, P17, P18 and P19 raised by 2nd Respondent.**
2) **The admissibility of the evidence of subpoenaed witnesses of Petitioners whose evidence were not frontloaded raised by 1st Respondent**

Now on (1) above, we note that it was only the 2nd Respondent in their final address vide pages 6 – 8 that raised objections and proffered submissions on the admissibility of the documents streamlined above; although it must also be stated that at the time they were tendered, all the Respondents objected and indicated that they will proffer submissions on the admissibility or otherwise of these documents in the final address. They did not do so which projects to us again, that the objections by them on the admissibility of documents objected to by them at the trial is abandoned.

We however must now resolve the objections taken by 2nd Respondent in their address and the issue raised by 1st Respondent on the admissibility of witness statements of subpoenaed witnesses that were not frontloaded.

We shall take the objections on admissibility of certain documents as streamlined in the address of 2nd Respondent:

1)**Exhibit P3A** is a copy of Peoples Democratic Party (P. D. P) expression of interest for House of Representative nomination of 1st Respondent. The 2nd Respondent contends that it is a photocopy with no foundation laid.

We note immediately that the **secretary of the tribunal** who certified the P.D.P expression of interest form of 1st Respondent cannot properly do so within the purview of section 104 of the Evidence Act. He is not a member or official of the P.D.P and as such cannot be said to be in custody of the document. The document also is not ordinarily a public document within the meaning of section 102 of the Evidence Act. Because he cannot rightly be in custody of the original document and to properly certify same, the document cannot therefore enjoy the presumption that would have enured to it under sections 105 and 146 of the Evidence Act.

We note further that in paragraph 13 (1.5 – 1.7) of the petition, the petitioners alluded or pleaded this document to show that 1st Respondent participated in the PDP primaries for the House of Representative seat for the constituency. It is logical to hold that if he participated in the primaries and bought, filled and submitted the nomination forms, which allowed him to participate in the primaries, the **original o**f the nomination form cannot

be with the tribunal but the party (PDP) who should ordinarily have custody of the document.

Now in law by virtue of the provisions of sections 85 and 88 of the Evidence Act, documents shall be proved by primary evidence except in cases mentioned in the Act under sections 89 and 90 (1) of the Evidence Act.

In this case, the circumstances that would allow for reception of a copy or secondary evidence of the P.D.P nomination form of 1st Respondent was not established or demonstrated by petitioners. If the original was lost, for example, then proper foundation must be laid within the purview of section 89 (c) of the Evidence Act to allow for the secondary evidence to be tendered and admitted.

In the absence of such proper foundationlaid to explain what happened to the original, the document is inadmissible and is to be marked tendered and rejected. See **Isitor V Fakorede (2008) 1 NWLR (Pt. 1069) 602.**

2)**Exhibit P7**was listed as **Number 41** on the list of documents to be relied on by the petitioners and described as a "Sample of logo/Symbol of Labour Party from the **website** of the Labour Party".

We have quoted verbatim how this document was pleaded in the petition. If it was produced by petitioners from the **"website"** of Labour Party, then it is a document produced from or by a computer within the purview of the meaning of a computer under Section **258** of the Evidence Act, 2011.

For a document produced by a computer to be admissible, it must satisfy the conditions streamlined under **section 84 (1), (2) (a) – (d) and (4)**

of the Evidence Act. This document was simply tendered from the Bar by counsel without satisfying any of the **requirements** of **section 84** and this appears to us fatal.

The requirements under section 84 (2) (a) – (d) were not complied with in this case as regards the operational workings of the computer and the integrity of the computer and who made or authorized the making of the document and the process. There was equally no certificate of compliance under section 84 (4) situating the particulars of the device used in producing the document or stating the conditions under section 84 (2).

On the whole, this objection too has merit and **Exhibit P7** shall be marked tendered and rejected.

3)**Exhibits P8 (1 - 53)** are **carbon copies** of statements of results from polling units from the federal constituency. In law, a duplicate or carbon copy of a document is as good as the original copy within the contemplation of section 86 (4) of the Evidence Act and constitute primary evidence. They are therefore admissible in evidence as original documents. See **Aja V Odin (2011) 5 NWLR (Pt 1241) 509 at 531 Paras C – G** PerOseji, JCA.

The law is settled by sections 85 and 88 of the Evidence Act that contents of documents may be proved either by primary or secondary evidence.

The point to underscore is that the documents or results were pleaded and relevant to the issue in contest. Every fact which is pleaded and which is relevant to the case of either of the parties ought to be admitted in evidence.

A trial judge who considers the weight to be attached to a document instead of its relevance at the admission stage is in error. See **Fadallah V Arewa Textiles Ltd (1997) 8 NWLR (Pt 518) 546 at 562 Paras C – E** PerOgwuegbu JSC.

Indeed in law, there is a clear distinction between admissibility and the question of probative value to be attached to a document. The fact that evidence, oral or documentary is admissible does not mean it has weight. This will be dependent on other variables to be considered at the appropriate time. See **Gbafe V Gbafe (1996) 6 NWLR (Pt 455) 417 at 4283; Dalek Nig. Ltd V OMPADEC (2007) 7 NWLR (Pt 1033) 402 at 441 D – F.**

The question of maker or whether **PW14 – PW18** properly identified the documents and the question of proper custody has nothing to do with admissibility; as we hope, we have demonstrated.

In **Omega Bank (Nig.) Plc V O. B. C. Ltd (2005) 8 NWLR (Pt 928) 547 at 582 E – F,** the Supreme Court, Per Musdapher JSC (as he then was and of blessed memory) held that as a matter of law, documentary evidence can be admitted in the absence of the maker. That relevance is the key to admissibility. In the hierarchy of our adjectival law, probative value comes after admissibility. A document could be admitted without the court attaching probative value to it.

The objection to the admissibility of the result sheets lacks merit.

Exhibits P8 (1 – 53) are thus not inadmissible.

4. **Exhibit P12**, is a photocopy of Labour Party constitution.

Again, the law is clear that the contents of documents may be proved either by primary or by secondary evidence. See sections 85 and 88 of the Evidence Act. By section 86 (1), primary evidence means the document itself and where it is not available, secondary evidence may be tendered however within the confines of section 89 and 90 (1) of the Evidence Act.

In this case, counsel who tendered this document from the Bar did not lay any foundation or explain whether the document comes within the exceptions allowing for reception of secondary evidence. In the absence of proper foundation, the photocopy of the Labour Party constitution is inadmissible and is to be marked tendered and rejected.

5.**Exhibits P13a** (CTC of P. D. P expression of interest form for House of Representatives of 1st Respondent); **P14a** (CTC of Nomination for House of representatives of 1st Respondent), **Exhibit P15** (CTC of P. D. P membership card of 1st Respondent),**Exhibit P17** (CTC of PDP register of members) and **Exhibit P18** (PDP result for House of Representative primary election) were all tendered by **PW12,** the PDP administrative Secretary who was subpoenaed. All these documents were made or certified by PW12 on **18/7/2023** clearly when this case was pending.

The provision of section 83 (3) of the Evidence Act provides thus:

"Nothing in this section shall render admissible as evidence any statement made by a **person interested** at a time when proceedings were **pending** or anticipated involving a dispute as to any fact which the statement might tend to establish."

The Evidence Act by **section 258** defines a person interested as "any person likely to be personally affected by the outcome of proceeding"

In this case as stated earlier, all the documents streamlined above were certified or made by **PW12** when this case was pending. This is a case clearly on the pleadings involving an electoral dispute directly involving PDP(the party **PW12** serves as the Administrative Secretary) and the **2nd Petitioner** in this case. The personal interest of **PW12** in the outcome of this case is therefore apparent and to us not a matter of argument. It is clear to us that he essentially was brought to "fight" the cause of the Petitioners; unfortunately for him, he is caught by the provision of section 83 (3) of the Evidence Act.

It is contrary to **section 83 (3) of the Evidence Act** to prepare documents when the proceedings are before the trial court or the tribunal as in this case. See **Owie V Ighiwi (2005) 5 NWLR (Pt 917) 184 at 219 – 220 G – A.**

On the whole **Exhibits P13A, P14A, P15, P17, and P18** are inadmissible and are to be marked tendered and rejected.

6) **Exhibit P19** is a DVD, Disc or plate tendered by **PW13.**We adopt our reasoning relating to the symbol of Labour Party downloaded from the website. We only need to add that the **DVD plate** containing the video recording was made from the phone of PW13. The recording was copied to the DVD plate by means of a recording device or process called "burning". The device used to copy the video recording from the phone to the DVD

was not brought before the court and the process of the "burning" was equally not explained or demonstrated in court.

No certificate to explain the workings of the device and its integrity that was used in "burning" the video of the recording from the phone of **PW13** to make the DVD was tendered. There is therefore a lacuna here which detracts in a significant manner from compliance with the requirements of section 84 (1), (2) and (4) of the Evidence Act.

Exhibit P19 is accordingly inadmissible and we so hold.

7) The final documents objected to are **Exhibits D42 – D69**which are certified true copies of units results for various wards in the constituency. These documents were tendered by **DW6,** a staff of INEC who was subpoenaed to produce the INEC unit results.

Yes, he may not have been the maker and or that he did not certify the documents but these are certified true copies of results produced by **INEC,** the institution charged with the conduct of the election.

It is not a matter for argument that the documents are copies of **public documents** within the meaning of section 102 of the Evidence Act.

By the provisions of sections 89 (e) and 90 (1) (c) of the Evidence Act, certified true copies of copies of public documents are admissible. By section 105 of the Evidence Act, copies of documents certified in accordance with section 104 may be produced in proof of the contents of public documents or parts of the public documents which they purport to be copies. Section 146 of the Evidence Act provides or allows the tribunal to presume every such certified document which is by law declared to be

admissible as evidence of any particular fact and which purports to be duly certified by any officer in Nigeria who is duly authorized in that behalf to be genuine, provided that such document is substantially in the form and purports to be executed in the manner directed by law in that behalf.

In the circumstances, we don't see the relevance of **sections37 and 38** of the Evidence Act dealing with hearsay evidence to the question of admissibility of certified true copies of public documents. At best, the issue of hearsay may go to weight but it has nothing to do with admissibility.

The objection is **discountenanced.**Exhibits D42 – D69 are admissible documents.

This then leads us to **the question of admissibility of evidence of subpoenaed witnesses of Petitioners which were not frontloaded.**

We note that the objection was only raised by 1st Respondent with respect to the **subpoenaed witness of Petitioners, PW5 – PW13**. What is however interesting in this case is that the 1st Respondent, who raised the extant objection also **subpoenaed two witnesses DW3 and DW4** without their evidence being frontloaded.

We are therefore of the opinion that whatever is the fate of the extant objection will also affect the evidence of **DW3 and DW4**.

Here, because of the fluid nature of the position in law of the evidence of subpoenaed witness(es) whose evidence is not frontloaded from the decision of our **Superior Court of Appeal,** where there is no clear consensus of opinion on the issue, we will in deciding the issue **refer** to the latest decision of the Court of Appeal which we have on the issue. We

were furnished with the certified true copy of the decision of the Court of Appeal in **CA/A/EPT/406/2020: Advance Nigeria Democratic Party (ANDP) V INEC & 2 Ors** delivered on **17th July 2020**, where the **Court**,coram Peter OlabisiIge JCA, Emmanuel AkomayeAgim JCA (now JSC) and Yargata B. Nimpar JCA held clearly that the provision of paragraph 4 (5) of the 1st schedule to the Electoral Act 2010 which is in parimateria with the provision of paragraph 4 (5) of the 1st schedule of the Electoral Act 2022 on the contents of what shall accompany a petition as enumerated therein uses the word "shall" meaning that a violation of the provision will render incompetent any witness statement on oath not frontloaded along with the petition as was **"unlawfully and wrongly done by the Appellant in this petition"**. The court stated further that there is no dichotomy between the witnesses mentioned in paragraph 4 (5) of the 1st schedule to the Electoral Act in respect of the **witness statement on oath of witnesses** and**witness statement of a subpoenaed witness**. That there is no distinction between ordinary witnesses and a subpoenaed witness under paragraph 4 (5) of the 1st schedule to the Electoral Act. That in essence, paragraph 4 (5) covers witnesses statement on oath of all categories of witnesses the petitioner intends to call. The court held that where a witness statement on oath is not filed along with the originating process or leave subsequently sought to file same, that such witness deposition is incompetent.

The above decision is clear and being the latest on the issue we have, we are bound by the said decision.

In the circumstances, the evidence or depositions of **PW5 – PW13** and **DW3 and DW4** shall be discountenanced as incompetent since they were not frontloaded when the petition and the Respondents Reply were filed.

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

Now in determining these issues which we shall treat seriatim, 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. We shall start with issue (1) flowing from **ground 1** of the petition that:

"The 1st Respondent was at the time of the election not qualified to contest the election"

We had earlier in this judgment situated the facts presented by petitioners to support this complaint as streamlined under paragraphs 1.1 to 1.33 (pages 5 – 11) of the petition. We need not repeat ourselves but the thrust of these grievances is based on two grounds to wit:

> **1) That at all times leading to the election, the 1st Respondent was a member of two political parties (the 2nd Petitioner(P. D. P.) and 2nd Respondent Labour Party) contrary to the provision of Section 65 (2) b of the 1999 constitution.**
>
> **2) That the name of 1st Respondent was not contained in the register of the 2nd Respondent members which were submitted to the 3rd Respondent, 30 days before the conduct of the primary election of the 2nd Respondent, where the 1st Respondent was nominated contrary to the provisions of section 77 (2) and (3) of the Electoral Act.**

These reasons finds expression in **relief 1** of the **petition** where the petitioners prayed as follows:

"That it may be determined that the 1st Petitioner was at the time of the election not qualified to contest the election for reasons that he was a member of two political parties at the same time and his name was not on the register of membership of the 2nd Respondent at least 30 days to the time of the 2nd Respondents primary elections which held on the 8th June, 2022."

Now as stated earlier, the burden was on the petitioners to creditably establish the contents of their petition on the issue of the alleged disqualification of the 1st Respondent to contest the election.

A convenient starting point for us on the issue is to state clearly that a petitioner in an election petition has a duty; indeed an obligation to restrict his grounds within the sphere or limit as prescribed by the law. An election petition which strays outside this defined sphere or circumscribed precinct will lack legal validity. The grounds for questioning an election are thus sacrosanct and admits of no interpolations or additions. See**Nyesom V Peterside (2016) 17 NWLR (Pt. 1512) 452 at 528.**

On the 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, this is to say:

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

The above provision is clear. The ground on **qualification** as we understand it is essentially constitutional. It is the constitution that prescribes qualifying and disqualifying factors. Where the **constitution** has provided the qualifying or disqualifying elements, and has covered the field as it were, no other statute ought to add or subtract from that limit set by the **constitution.** It is an immutable principle under Nigerian jurisprudence that the constitution is superior and prevails over a statute. The provisions of a statute, including the Electoral Act are subject to and cannot render nugatory the provisions of the constitution. See **Gov. of Oyo state V Oba OloladeAfolayan (1995) 8 NWLR (Pt. 413) 292 at 329 D – E**. We shall return to this point later on.

Now the provisions of **Sections 65 and 66** of the **1999 constitution** outline the factors for qualification and disqualification of candidates for election to the National Assembly.**Section 65** provides as follows:

"65. Qualifications for election:

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

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

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

(a) He has been educated up to at least School certificate level or its equivalent; and

(b) **He is a member of a political party and is sponsored by that party**. ”

The basis of the complaint here on the petition will appear to be hinged on **65 (2) (b)** supra.We will shortly deal with it.

Section 66 then situates the disqualifying elements as follows:

66. Disqualification

(1) No person shall be qualified for election to the Senate or the House of Representative if:-

(a) subject to the provisions of section 28 of this Constitution, he has voluntarily acquired the citizenship of a country other than Nigeria or, except in such cases as may be prescribed by the National Assembly, has made a declaration of allegiance to such a country;

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

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

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

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

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

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

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

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

a) adjudge to be a lunatic

b) declared to be of unsound mind

(c) sentenced to death or imprisonment; or

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

(3) for the purposes of subsection (2) of this section "appeal" includes any application for an injunction or an order certiorari, mandamus, prohibition or habeas corpus, or any appeal from any such application.

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

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

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

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

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

Happily, the phrase has been interpreted by the Supreme Court in many cases to mean an expression of limitation which is "subject to", and shall govern, control and prevail over what follows in the section or subsection of the enactment. It simply means that the succeeding or later provisions of the Act supercedes or controls the provisions in the section or subsection

concerned. See **Texaco Panama Incorporation V S. P. D. C (Nig) Ltd(2002) LPELR 3146 (SC)** Per KalgoJ. S. C.

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

> **"The expression "subject to" subordinates the provisions of the subject section to the section referred to which is intended not to be affected by the provisions of the latter".**

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

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

and prevail over what follows in that section or subsection of the enactment"

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

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

Now we have carefully read the entire text of section **66 (1) (a) – (g)**; and **(i), (2) and (3)**of the constitution which situates the disqualifying elements and nowhere did the petitioners clearly state these **disqualifying factors** in the **entire petition** as stipulated under **section 66**as the **foundation of the grievance** relating to the disqualification of 1st Respondent. There is nothing in section 66 which provides for **disqualification** on the basis of **membership of two political**parties provided that he is a member of a political party and sponsored by the party within the purview of section 65 (2) (b) of the 1999 constitution.

As stated earlier, the provisions of both **sections 65 and 66** are clear and they must be given their plain, ordinary grammatical meanings without any

qualification, embellishment or interpolations and the provisions cannot equally be construed to achieve a particular purpose to defeat the intention of the law maker.

We are therefore unable to agree, even at this early stage that membership of **two political partiessimpliciter,**even where a case has been made on the issue,is a cognizable ground for qualification or disqualification as streamlined under the provisions of sections 65 and 66 of the constitution. Properly understood, within the proper construct of Sections 65 and 66, particularly section 65 (2) b, the sting of any complaint on qualification must be that a person who contested the election does not **belong to a party and was not also sponsored**. These two connecting conjunctive elements must be established. Indeed the petition must disclose these elements. We shall shortly return to these elements again.

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

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

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

Here too, the use of the word "and" in the above section must also be properly appreciated to fully understand the provision.

On the authorities, in law the word "and" is construed as conjunctive. See **BGL Plc&ors V FBN (2021) LPELR – 54655 (CA), NdomaEgba V Chukwuogor (2004) 6 NWLR (Pt 869) 382, Luna V COP (2018) 11 NWLR (Pt 1630) 269.** The Blacks law dictionary, 6th edition, described the word "and" as "A conjunction connecting words or phrase expressing the idea that the latter is to be added to or taken along with the first.Added to; together with, joined with as well as including". See **Rubicon Properties & Developers Ltd &Anr V NACRDB LTD (2021) LPELR – 54820 (CA); Dasuki V Director General State Security &ors (2019) LPELR – 48113 (CA).**

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

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

These two conjunctive criteria or elements must be established.

In this case, the petitioners in paragraph 3 and 4 ofthe petition pleaded as follows:

> **"3. The 1st Respondent, AguochaObinna, of Umuafiaka, UmuohuruOkauga, Nkwoegwu in UmuahiaNorth Local Government was the candidate of and sponsored by the 2nd Respondent, the Labour Party (LP) at the election to the Federal House of Representatives for Umuahia North/Umuahia South/Ikwuano Federal Constitution conducted by the 3rd Respondent on the 25/2/2023.**
>
> **4. The 2nd Respondent, the Labour Party is a registered political party and it sponsored the 1st Respondent as its candidate at the election to the Federal House of Representatives for Umuahia North/Umuahia South/Ikwuano Federal Constituency conducted by the 3rd Respondent on the 25/2/2023"**

The **response of 1st and 2nd Respondents to** the above is in substance the same, but since it's the action (s) of the **2nd Respondent** that is been challenged, we prefer to quote their response to the above paragraphs of the petition as follows:

"4. The 2nd Respondent admits paragraph 7 of the petition that the 1st Respondent was sponsored by the 2nd Respondent as the candidate of the 2nd Respondent of the election.

5. The 2nd Respondent states that the 1st Respondent is a member of the 2nd Respondent who won the primary election of the 2nd Respondent and was sponsored by the 2nd Respondent at the election.

10. The 2nd Respondent states that only the 2nd Respondent nominated the 1st Respondent as a candidate."

The **3rd Respondent (INEC)** on its part in its Respondents Reply stated as follows:

"2. The 3rd Respondent states that the 1st Respondent was sponsored by the 2nd Respondent as the candidate of the 2nd Respondent at the election.

4. The 3rd Respondent sates that only the 2nd Respondent sponsored the 1st Respondent as candidate of the election and there was no double nomination of the 1st Respondent."

The above **petition and Replies** which constitute the pleadings in this case are clear. The petitioners in their paragraphs 4 and 5 concede or agree that the 1st Respondent was the **"candidate of and sponsored by the 2nd Respondent, the Labour Party (LP)"**. The Respondents essentially admitted these facts.

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

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

There is no where in the petition where the petitioners indicated or pleaded that the 1st Respondent was a candidate and sponsored by any other party beside 2nd Respondent. They did not also state that the 2nd Petitioner nominated or sponsored him for the election.

It is clear and we hold that when the provision of section 65 (2) b is properly read conjunctively, the argument of petitioners will also not fly to the clear extent that they have agreed that there was no violation of the second critical element of the provision which is that he was **sponsored by a party for the election**.

Now even on the **disputed or contested assertion of membership of 2nd Respondent**, the petitioners in evidence may have tendered Exhibits P3a and P3b as evidence that 1st Respondent participated in the PDP primaries for the House of Representative seat which document (P3a) we earlier held is inadmissible. Even if we are wrong in our decision, we fail to

see how this participation amounts to a violation of section 65 (2) b of the constitution.

He may have participated in the primaries of PDP for the right to represent the party in the House of Representative elections but on the pleadings and evidence, he lost and then he moved to the 2nd Respondent.

It is difficult to see how his participation in the primaries affects or derogate from his membership of 2ndRespondent as evidenced by his membership card and the subsequent expression of interest forms he filled vide Exhibits P4a and P4b.

Still on the issue of whether the 1st Respondent is a member of a political party and sponsored by a political party, the petitioners in evidence as already alluded to tendered the following documents which appear to us self **inculpatory**.

Exhibit P3a, the PDP expression of interest for House of Representative dated 11/4/2022 and **Exhibit 3b**, the Nomination for PDP House of Representative primary election dated 31/3/2022 all of 1st Respondent only shows that he may have participated in the PDP primaries but this does not disclose by any stretch of the imagination that he was sponsored by PDP for the contested election of **18/3/2023.** Indeed the petitioners never made a case out in their petition that they sponsored 1st Respondent for the election. It is logical to hold that since he lost the primaries of PDP ab-initio, to 1stPetitioner, the 1st Respondent could not have been sponsored by PDP for the disputed election.

On the other hand **Exhibit P4a**or**form EC9**, the certified true copies of affidavit in support of personal particulars of 1st Respondent with INEC and **Exhibit P4b,** his party membership card of Labour Party also with INEC show unequivocally evidence that the 1st Respondent is a member of Labour Party and sponsored by the party to contest for the House of Representative for the Umuahia North/Umuahia South/Ikwuano Federal Constituency.

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

We have not been persuaded that the participation of 1st Respondent in the PDP primaries of 1st Respondent, without more, detracts in any manner with the fulfilment of the requirements that at the material time of the election, he was a member of Labour Party which sponsored him. **Exhibits P4a & b,** the CTC of form EC9, the Affidavit in Support of Personal Particulars of 1st Respondent obtained from INECand the C.T.C of his Labour Party identification card also from INEC provides clear support for this position and speaks for itself. At all material times, there was only one nomination by 2nd Respondent in this case.

There is absolutely no evidence before us that the 2nd Petitioner (PDP) **nominated** the 1st Respondent simultaneously with 2nd Respondent (L.P) for the same election. No such nomination by 2ndPetitionerwas tendered. The Petitioners, with respect, appear to fall into an error of appreciation in

acknowledging that there is difference between participation at the primaries and being actually nominated and that perhaps explains the position they have advanced.

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

> **"My Lords, there is a vast difference between participation at the primaries and being actually nominated by the party. The processes are quite different.With participation, the aspirant collects the Expression of Interest Form which he may submit. After submission and screening, the aspirant is allowed by the party to participate in the primary election. If he wins the primary organized by the National Working Committee of his party or the Body entitled by the Guidelines of the party to organize the election, he would, thereafter be given the Nomination Forms EC-09 to fill and the party would thereafter submit same to INEC. As I said earlier, there is absolutely no evidence that APC nominated the 1st Respondent to the 3rd Respondent to stand for Governor. There is no argument about the nomination by the 2nd Respondent. The Appellant did not dispute the fact that the 1st Respondent had become a member of the 2nd Respondent and was validly nominated by the 2nd Respondent. The Appellant's quarrel is that the 1st**

Respondent had not resigned From APC before he stood for primary election in LP. I have looked at the Labour Party's Constitution and there is no indication of how long a person must be a member of the Party before he can stand for an elective position. See Article 10 of the Labour Party Constitution. As stated earlier, the two lower Courts accepted the 1st Respondent's Evidence that he had resigned from APC on 26/5/22 well before the 2nd Respondent's Primary on 9/6/22.

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

"Evidence of nomination and sponsorship of a candidate by a political party lies in the Declaration of the winner of the party's primary election conducted to elect the party's candidate for the general election in question coupled with the political party forwarding the names of the said elected candidate to the 3rd Respondent as its nominated candidate for the election"

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

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

"In the instant case, while the facts clearly show that the 1st Defendant has been elected and his name has

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

The above scenario largely played out in this case.

The tribunal under section 146 (1) & (1) of the Evidence Act 2011 is enjoined to presume the genuineness of every document purporting to be a document directed by any law to be kept by any person, if such document is kept substantially in the form required by law and produced

from proper custody. See **Okonji V Njonkanma&ors (1999) 12 SC Pt 11 150 at 158.**

There is no counter evidence by the petitioners which projects a contrary narrative to the contents of certified true copies Exhibits **P4a & b** which petitioners obtained from INEC.

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

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

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

This now leads us to the **contention that the name of 1st Respondent was not on the register of members of 2nd Respondent which was submitted 30 days before the primary election of 2nd Respondent.**

Again, we have carefully read **sections 65 and 66** of the constitution and we fail to see how or where the provision of **section 77 (3) of the**

Electoral Act features either as a qualifying and or disqualifying element within the purview of **sections 65 and 66** of the constitution. Section 77 (1), (2) and (3) of the Electoral Act provides as follows:

(1) A political party registered under this Act shall be a body corporate with perpetual succession and a common seal and may sue and be sued in its corporate name.

(2) Every registered political party shall maintain a register of its members in both hard and soft copy.

(3) Each political party shall make such register available to the commission not later that than 30 days before the date fixed for the party primaries, congress or convention.

The above provisions in the **Electoral Act** are clear and**self explanatory.** As much as we have sought to be persuaded, we are not persuaded that it has any nexus with the constitutional provisions of **sections 65 and 66**.

Again, the provision of section 77 (3) must be given its literal interpretation since they are clear and unambiguous. See **Ifekwe V Madu (2000) 14 NWLR (Pt. 686) 459 at 479.** The courts and this tribunal have no jurisdiction to interprete the clear and unambiguous words of section 77 (3) beyond their clear and unambiguous meaning or place onerous weight or burden on the otherwise clear and unambiguous provision more so when doing so will not lead to any absurdity. See **A. G. Lagos V A. G Federation (2003) 14 NWLR (Pt 833) 1 at 186 – 187 H – B.**

It is particularly instructive to note that the heading of section 77 reads thus, **"Political Parties to be bodies corporate"** in contradistinction to

the clear headings of sections 65 and 66 of the constitution which provides the headings of **"Qualifications for election"** and **"Disqualifications"** respectively.

It is thus clear beyond any doubt that**section 77 (3)** of the Electoral Act do not deal with the qualification or disqualification of a candidate for election. The provisions dealing with qualification and disqualification of a candidate for the seat of House of Representative are as provided for under sections 65 (1) b and (2) and 66 of the constitution.

The petitioners here seek to import and read into the constitutional requirements what is not provided therein by seeking to import from section 77 (3) of the Electoral Act, 2022 a qualification requirement that is not in the constitution. The qualification requirement as it relates to **membership of a political party**is in section 65 (2) (b) of the constitution which provides that a person shall be qualified for a seat in the House of Representatives if **he is a member of a political party and sponsored by that party.** The quest to expand that provision to include "that the person's name must be on the Register of members of the political party and must have been there not later than 30 days fixed for the party primaries" has no support in law and will not fly. The principle is settled that you cannot read into a statute what is not contained therein. See **A. G. Abia State V A. G. Fedration (2005) 12 NWLR (Pt. 940) 452 at 503.**

In the circumstances, we do not consider the letter of **INEC, vide Exhibit P6a** that the register of members of Labour Party for Abia State was not

submitted as fatal to the case of 1st Respondent to the clear extent, as we have demonstrated above, that it is not a constitutional qualifying element or factor within the clear purview of sections 65 and 66 of the 1999 constitution.

On this letter, we note that the 1st Respondent contended that the maker was not produced so it is inadmissible. We are clear that this objection will not fly. It is not in doubt that the letter is a public document from **INEC** within the purview of section 102 of the Evidence Act. Being a public document and a copy, it was properly certified within the confines of sections 90 (1) (c), 104 (1), (2) & (3) of the Evidence Act.

By section 105 of the Evidence Act, copies of documents certified in accordance with section 104 may be produced in proof of the contents of the public documents or parts of the public documents of which they purport to be copies. See also section 146 (1) & (2) of the Evidence Act which allows for the presumption as to genuineness of certified copies. A certified copy such as **Exhibit P6a** can be tendered without the maker. The objection is accordingly discountenanced without much ado.

As stated earlier, however, the said Exhibit P6a does not have any impact as it relates to the constitutional provisions of sections 65 & 66 (Supra).

As we alluded to already, the question whether or not a person is qualified to contest an election within the meaning of section 134 (1) (a) of the Electoral Act are matters that must be decided solely by reference to extant **constitutional provisions** on qualification and or disqualification. Put another way, the petitioners can only succeed in an election petition

grounded on section 134 (1) (a) of the Electoral Act, where they alleged facts which amount to a constitutional bar.

It is difficult to see how the provision of the Electoral Act under **section 77 (3)** on submission of party register with name of contestant at least 30 days before primaries constitute such constitutional Bar. To accept such proposition as adduced by petitioners is to cause immeasurable damage to clear provisions of sections 65 and 66 of the constitution. There should also not be any temptation to either seek to equate the Electoral Act with the provisions of the 1999 constitution or to import its terms into the constitution.

The supremacy of the constitution in our jurisprudence is settled. The constitution is the grund norm; it is supreme and ranks over and above all laws including the **Electoral Act.** The constitution has made specific provisions in sections 65 (1) and (2) and 66 for the qualification and disqualification of a person for a seat in the House of Representatives. The constitutional provisions having comprehensively covered the field in this regard cannot permit the import of **section 77 (3)** of the Electoral Act and seek to add same to the qualification provision stated in the constitution. It is not permissible.

In the instant case, the words used in section 65 (1) b and (2) of the constitution being clear and unambiguous, there was absolutely no need to resort to the section 77 (3) of the Electoral Act to interprete the clear, plain and unequivocal stipulations of section 65 (1) (b) and (2) of the constitution. We find support for this position in the recent decision of the

superior court of Appeal in **APM V INEC (2023) 9 NWLR (Pt. 1890) 419 at 514 – 515 G – G** where the court dealing with a similar situation stated thus:

> **"The words employed in section 29 (1) and 77 (2) and (3) of the Electoral Act, 2022, which I have reproduced above are clear, plain and unambiguous. Effect is therefore to be given to the literal, ordinary and plain meaning of the words used, more so, when doing so would not lead to any absurdity. It is instructive that the said provisions do not deal with the qualification or disqualification of a candidate for election. The provisions dealing with the qualification or disqualification of a candidate for the presidential election are sections 131 and 137 of the 1999 Constitution, as amended, the text of which I have already set out in this judgment. The appellant seeks to import and read into the said constitutional requirements what is not provided therein by harvesting from section 77(3) of the Electoral Act, 2022 a qualification requirement that is not in the Constitution. The qualification requirement as it relates to membership of a political party is in section 131(c) which provides that a person shall be qualified for election to the office of President if he is a member of a political party and is sponsored by**

that part. The quest by the appellant to read into this clear and unambiguous provision what is not there with the integral interpretation that "the person's name must be on the Register of Members of the political party and must have been so for at least 30 days before the party primaries" has no support in law. It is hornbook law that you cannot read into a statute what is not contained therein A.-G., Abia State v A.-G., Federation (2005) 12 NWLR (P. 940) 452 at 503, Buhari V INEC (2008) 19 NWLR (PL 1120) 246 at 344 and A.-G., Cross River State v. FRN (supra) at 445, Equally, trite is that the words used in section 131 (c) of the 1999 Constitution, as amended, being clear and unambiguous; there is no need to resort to the external aid of section 77 (3) of the Electoral Act in order to interpret the clear, plain and unequivocal stipulation of section 131 (c) of the Constitution, as amended. See Okotie-Eboh v Manager (supra) at 30 and INEC v PDP (supra) at 50 and INEC v PDP (supra) at 48-49.

The Constitution is the grundnorm, it is supreme and ranks over and above all other laws. It has made specific provisions in sections 131 and 137 for the qualification and disqualification of a person for the office of President of Nigeria. The constitutional

provisions having covered the field in this regard, the appellant cannot import section 77(3) of the Electoral Act, 2022 and seek to add the same to the qualification provision elaborately stated in the Constitution. It is not permissible. See A.-G., Abia State v. A.-G., Federation (2002) 6 NWLR (Pt. 763) 264, Abubakar v INEC (supra) at 113, and A.N.P.P v Usman (supra) at 53."

The above pronouncement is clear.

On the basis of the **evidence before us,** the petitioners have really not made out a case for the disqualification of the 1st Respondent on the basis of section 65 (2) b of the 199 constitution. The 1st Respondent is a member of Labour Party and was sponsored by the party. There is here no proven violation of the provision of section 65 (2) (b) of the 1999 constitution.

This then leads us to the **question of whether the question of party membership and nomination of candidates for election which this issue also deals with are justiciable in an election petition.** The Respondents contend that these are strictly matters pertaining to the internal affairs of the 2nd Respondent over which outsiders like the petitioners have no *locus standi* to complain about. The petitioners contend otherwise.

Now from the text of section 65 (2) (b) earlier reproduced, it is not in dispute that membership and sponsorship by a political party are no doubt qualifying factors.

Again, for ease of understanding, the case of petitioners who clearly belong to a different political party, is **one seeking the disqualification of another party's candidate for the House of Representative seat**based on section 65 (2) b of the 1999 constitution and section 77 (3) of the Electoral Act.

The jurisprudence 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. Our superior courts have made the point abundantly clear that outsiders, other political parties and persons who did not participate in the primaries being complained of are precluded from instituting an action challenging same. By the clear provisions of section 285 (14) (a), (b) and c of the 1999 constitution, the petitioners would lack the *locus standi* and or legal right to present a challenge on the basis of sections 65 (2) b of the constitution and 77 (3) of the Electoral Act. Without *locus standi*, this tribunal will not have jurisdiction to, ab-initio, even look to into the complaint. See **APM V INEC (Supra) 419.** Indeed in this case, the Court of Appeal instructively heldand we shall quote them in extenso. In the lead judgment of **Senchi JCA** at pages 496 – 497 E – E, His Lordship held thus:

> **"The right to complain under section 285(14) (c) is given to a political party who complains that the provisions of the laws applicable to elections "has not been complied with by the 1st respondent, INEC. It does not extend to the complaint of the appellant/cross respondent in this action that a rival**

political party and its candidate "breached and violated the provision of section 77(2) and (3) [of] the Electoral Act"

At the pre-election stage, the manner in which a political party nominates its candidate for election cannot occasion an actionable wrong which a rival political party can litigate on. In A.P.C. V P.D.P. (2021) LPELR (55858) 1 at 21, this court per Ekanem, JCA, dealing with whether section 285 of the 1999 Constitution, as amended, grants a political party the right to complain about the conduct of the primaries of another political party held thus:

"……. (they) do not set out to clothe a political party with the standing to dabble into or peep at the internal affairs of another political party. To advocate a contrary position is nothing but a postulation for political voyeurism".

In Appeal No. CA/PH/481/2022: P.D.P V INEC &Ors (unreported) delivered on 29th November 2022, this court per Kolawole JCA held as follows:

"Let me state further that the new provision in section 285 (14) (a) (b) and in particular (c) was not intended by the legislature to create a new cause of action in favour of the political parties to embark as it were on

poaching into the outcome of other parties primaries so as to raise perceived issues of non compliance with the provisions of the Electoral Act (Supra) or the applicable provisions of the constitution, 1999 as amended and use it to drag INEC into the fray of partisan politics by seeking orders to compel INEC to disqualify the nominated candidates of an adverse party"

This court then proceeded to conclusively hold that:

"... the appellant (P.D.P).... is in no way entitled to complain about the conduct of the primaries of 2nd respondent (APC), and to request the court to make orders against 1st respondent (INEC) to compel it to disqualify the 3rd to 13th respondents (APC candidates) , I so hold".

In his contribution, Ogakwu JCA at pages 521 B – H added as follows:

"..... the appellant does not have the standing to maintain this cause of action as it does not fall within the orbital orb in which a political party has been vested with *locus standi* to pursue a pre – election matter by section 285 (14) (c) of the 1999 constitution as amended. The said provision reads:

"285 (14) For the purpose of this section, pre – election matter means any suit by:

(c) a political party challenging the actions, decisions or activities of the Independent National Electoral Commission, disqualifying its candidate from participating in an election or a complaint that the provisions of the Electoral Act or any other applicable law has not been complied with by the Independent National Electoral Commission in respect of the nomination of candidates of political parties for an election, time table for an election, registration of voters and other activities of the Commission in respect of preparation for an election."

By the above stipulation, political party can present a pre-election matter in two instances, *videlicet* – where INEC the 1st Respondent herein, disqualifies its candidate from participating in the election; and secondly, where INEC has not complied with the relevant laws in respect of preparation for an election. As already stated, the appellant's complaint is that the 2nd and 3rd Respondents did not comply with sections 29 (1) and 77 (3) of Electoral Act,

2022; the non-compliance for which the Constitution has imbued the appellant with *locus standi* is where the complaint of non-compliance is against INEC, which is not the appellant's grouch in this matter".

Here too, the complaint of petitioners is with respect to section 77 (3) of the Electoral Act 2022. The non-compliancefor which the constitution has imbued the petitioners with *locus standi* is where the complaint of non-compliance is against INEC which is not the complaint of petitioners here. The complaint is on the alleged failure of 2nd Respondent to forward its register of members to INEC 30 days before the primaries.

We note that the petitioners in the final address have relied on the Supreme Court cases of **Dangana V Usman (2013) 6 NWLR (Pt 1349) 50** and**Wambai V Donatus (2014) 14 NWLR (Pt 1427) 223** to project the point that the issue of qualification or non qualification to contest an election is both a pre and post election matter which can be instituted in the High Court (as a pre-election matter) or in the tribunal (as a post election suit)

It is however beyond any argument that after the above decisions, the Supreme Court has in several of its decisions made the point abundantly clear that issues of qualification or disqualification are pre-election matters not justiciable and not matters for the election tribunal. See **Akinlade V INEC (20220) 17 NWLR (Pt 1754) 439 SC; Abubakar V INEC (2020) ALL FWLR (Pt 1052) 898 SC; APM V INEC (2023) 9 NWLR (Pt 1890) 419**among others.Letus perhaps refer to a recent

pronouncement by the **Supreme Cour**t on the issue in **Peoples Democratic Party V Hon. Ladun Nelson Mgbor(2023) LPELR – 59930 (S.C)** where the law lords stated instructively as follows:

> **"For a Plaintiff to have locus standi to sue, such Plaintiff must have sufficient interest in the subject matter of the litigation, and one of the factors for determining sufficiency of interest is whether the party seeking redress would suffer injury or detriment from the litigation. See INAKOJU v. ADELEKE (2007) 4 NWLR (PT1025) 423, ADESANYA v. PRESIDENT (1981) 5 SC 112, ITEOGU v. ILPDC (2009) 17 NWLR (PI171) 614 and IJELU V LAGOS STATE DEVELOPMENT AND PROPERTY CORPORATION (1992) LPELR. The outcome of a political party's primary election can only be challenged in the context of the provisions of Section 84(14) (2) and (b) of the Electoral Act 2022 by an aggrieved "aspirant" who participated in the primary election and no other person. Therefore it is only the aggrieved "aspirant" as defined by statute who has the locus standi to institute pre-election actions and no other person.**
>
> **By the golden rule of interpretation, the whole section of the law must be considered in the circumstances. Obviously the intention of the legislature as gleaned from Section 84(14) of the Electoral Act, 2022 is to**

circumscribe the litigants who can file pre-election suits and the Courts have consistently maintained that it must be an aspirant challenging his own party's violation of the Electoral Act or Party's Act, Constitution and guidelines.

My Lords, I agree with the Appellant that while it is settled that by Section 285(14) (a) and (b) as enunciated above, only an aspirant can challenge the outcome of a primary he participated in, Section 285(14) (c) is not so cut and died. The point being made here by the Appellant is that the second portion enables a political party to challenge the actions of INEC which are illegal or ultra vires the Electoral Act of the 1999 Constitution.

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

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

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

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

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

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

Section 285(14) (c) cannot extend to challenge INEC's conduct in relation to another political party irrespective of whether such conduct by the other party is wrongful or unlawful. Section 285(14) (c) cannot cloth a party with the locus to dabble into INEC's treatment or conduct in respect of another political party. No matter how manifestly unlawful an action is, it is the person with the locus standi to sue who can challenge it in a Court of law. See Suit SC/CV/1 628/2022 APC & ANOR v. INEC & ORS delivered on 3/2/23.

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

Section 285(14)(c) cannot be a license for another political party to challenge not to talk of successfully challenging such a wrong doing by INEC. In the circumstances, this issue is resolved against the Appellant."

The above is clear. The law and jurisprudence is clear that where there appears to be conflicting judgments of the Supreme Court; the later or latest will be applied and followed in the circumstances. See **Osakwe V Federal College of Education (2010) 5 scm 185.**

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

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

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

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

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

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

Issue 1 is thus resolved against the petitioners.

ISSUE 2

Whether the election was invalid by reason of corrupt practices or non-compliance with the provisions of the Electoral Act 2022.

This issues flows from **ground II** of the grounds of the petition to wit:

That the election was invalid by the reason of corrupt practices or non compliance with the provisions of Electoral Act 2022.

Now although, no issue was made of the joinder of these two grounds as constituting a valid ground, we however are duty bound to say some few words on the formulation of this ground.

Section 134(1) (b)of the Electoral Actprovides that an election may be questioned on any of the following grounds:

"(b) the election was invalid by reasons of corrupt practices or non compliance with the provisions of this act, or……"

The disjunctive participle **'or'** appears in this ground of the Act creating two distinct but alternative grounds to wit:

1) Corrupt practices

   or

2) Non – compliance with the provisions of the Act.

The petitioners must take a pick of one out of this alternative grounds and project his case.

It does not appear to us legally proper to combine and join the grounds as done here. Where a party anchors his case on **corrupt practices** which are criminal in nature, the particulars of the crime must be copiously and

distinctly pleaded with due particulars supplied. The standard of proof is beyond reasonable doubt.

On the other hand, a **ground of non – compliance** is not a ground of corrupt practice nor is it a ground of failure to be elected by a 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.

The standard of proof for non compliance with the provisions of the Electoral Act 2022 is on a preponderance of evidence. See **Ucha V Elechi (2012) LPELR – 7823 (sc); Omisore V Aregbesosla (2015) LPELR – 24803 (sc).**

The burden to prove non-compliance is three fold. First, the petitioner shall plead the acts which amount to the alleged non-compliance and adduce credible evidence sufficient to prove their occurrence. In **Waziri&Anor V Geidam&ors (1999) 7 NWLR (Pt 630) 227,** it was held that for the petitioners to succeed in their allegation of non – compliance, they must first plead in their petition the heads of non-compliance alleged and then clear and precise pleading necessary to sustain the evidence in proof of such allegation. Secondly, they must tender cogent and compelling evidence to prove that such non-compliance took place in the election and finally, that the non-compliance substantially affected the result of the election, to the detriment of the petitioner. See **Omisore V Aregbesola (2015) 15 NWLR (Pt. 1482) 205.**

The way and manner **ground 2** of the petition was formulated and the facts presented on pages 10 – 23 (paragraphs 2.0 – 2.49) appears to us largely flawed as the facts to situate these two distinct different alternative grounds have been joined in the pleadings with no clarity as to what facts situate or support any particular ground. These grounds and paragraphs on the authorities are liable to be struck out. See **Yusuf V INEC (2021) 3 NWLR (Pt 1764) 551, 563 D – D; 561 G –H;Elohor V INEC (2019) LPELR – 48806 (CA) 36 – 47 E – E; Deen V INEC (2019) LPELR – 49041 (CA).**

It is not the duty or responsibility of the tribunal to determine or decipher in chambers what particulars of the petition relates to what ground.

Now out of abundance of caution, this being an electoral dispute, we shall instead of discountenancing this ground proceed to consider the case made out and situate whether it meets the required legal threshold.

The petitioners alleged in paragraph 13 sub paragraphs 2.1 – 2.49 (pages 10 – 23) that the election and return of 1st Respondent was invalid by **corrupt practices**or **non compliance with the provisions of the Electoral Act.**

These allegations with respect to **corrupt practices**in the petition were hinged on two grounds to wit:

1) in paragraphs 13 sub paragraphs 2.6 – 2.9 (pages 11 – 14) of the petition, the petitioners contend that the corrupt practices complained of consisted of "mutilation, cancellations and alterations" of figures and is centered on **6 polling units identified**as follows:

i) ObuohiaOkike Community School, Obuohia II (001)

ii) Amuzu – Amuzu Hall (004)

iii) Nkata II Nkata Primary School (002)

iv) Umuana – Amaudara Village Square (006)

v) World Bank Primary School II (085)

vi) Iyienyi I – Iyienyi Village Square (003).

In the same sub-paragraph 2.6, the petitioners streamlined the register of voters in the units as follows:

1. Oloko II ward – ObuahiaOkikeCommunity School – 413 registered voters.
2. Ahiakwu 1 ward – Amuzu – Amuzu Hall – 655 registered voters
3. Ibeku East 1 – Nkata II Nkala Primary School – 1803 registered voters
4. Ndume – Umuana – Amaudara Village Square – 1505 registered voters
5. Umuahia Urban 1 ward – World Bank Primary School III – 571 registered voters and
6. Ibeku west ward – Iyienyi I Iyienyi village square – 676 registered voters.

2) The **second ground** on which the allegation of corrupt practices is hinged, is as contained in paragraphs 13 sub paragraphs 210 – 249 (page 14 – 23) of the petition where it was contended that the 3rd Respondent did not adhere to the margin of lead principle before making a declaration and returning the 1st Respondent as the winner

of the election. The paragraphs equally contain allegations of malfunction of BVAS,non-accreditation of voters and disenfranchisement of voters among other complaints.

There is no doubt as rightly pointed out by the Respondents and which we have alluded, that acts or complaints bordering on corrupt practices are criminal in nature. The standard of proof for corrupt practices in an election petition is beyond reasonable doubt.**Section 135 (1)** of the Evidence Act 2011 is explicit on this point as it states that "if the commission of a crime by a party is directly in issue in any proceeding, civil or criminal, it must be proved beyond reasonable doubt". See **Buhari V Obasanjo (2005) 13 NWRL (Pt 941) 1 at 209'; Ucta V Elechi (2012) LPELR – 7823 (SC).**

Indeed on the authorities, a petitioner who based his case on fraudulent cancellations, mutilations or alterations as the petitioners have elaborately done in this case must establish two ingredients i.e:

1) That there were cancellations, alterations or mutilations in the electoral documents and
2) That the cancellations, alterations or mutilations were dishonestly made with a view to falsifying the result of the election.

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

The question here is to what extent have the petitioners been able to establish these allegations within the threshold as allowed by law?

In proof of these allegations, the petitioners as stated earlier called 18 witnesses. The 1st petitioner himself testified as PW1and stated that he voted in **Ugba Community ward Umuahia North.** This ward does not form part of the wards in which complaints on corrupt practices were made. Under cross-examination, he stated that after he voted in his unit, he went home and whatever he then stated in his **deposition** was what was reported to him by his **agents** which obviously is hearsay and inadmissible. See sections 37, 38 and 126 of the Evidence Act.

PW2, Hon NwabukuboEmannuelAkwala voted in Umuafal village square in **Ndume ward Umuahia North**, after he was duly accredited with a BVAS machine. His ward is not part of the ward in which complaints were made in paragraph 2.6 and he did not allude to any corrupt practices.

Oriaku Innocent Nwakwe testified as PW3. He voted after he was duly accredited at his polling unit at Mgboko village Square, Umuana in **Ndumeward** at Umuahia North. There is equally no complaint about corrupt practices in this ward in the petition.

PW4. Ndumele Vincent Nwazuovoted at unit 17, Umafa village in **Ndume ward.** His unit is equally not one of the units in which corrupt practices allegations were made against.

As stated earlier **PW5 – PW11** were electoral officers who were subpoenaed. As decided earlier in this judgment, the evidence of all these subpoenaed witnesses PW5 – PW13 having not been frontloaded will be discountenanced. However in the event that we may be wrong because of

the fluid nature of the law on the issue, we have out of abundance of caution decided to even scrutinize their evidence.

Now out of the PW5 – PW11, only PW5, Chukwu Patience and PW7 Agbo Isaac were called with respect to unit 002 (Nkata II Nkata Primary school) and unit 085 (World Bank Primary School III) where complaints of corrupt practices were made.In their evidence, these witnesses said election was peaceful as they presided over the conduct of the election in their polling units. There is absolutely nothing in their evidence to give credence to the allegation of vote swapping, inflation or deflation of votes of the 1st Petitioner or any electoral malpractice that substantially affected the outcome of the election. PW12, the Administrative Secretary of P. D. P and PW13, the Journalist both did not allude to any acts of corrupt practices in their evidence at all.

PW14 – P18 gave evidence which as stated earlier was the same in tenor and character. PW14 voted and acted as polling unit agent at **Umuika – Umuika Hall 004** which is not part of the units, complaints of corrupt practices was made. He also never made any such complaints in his evidence. The same position applies to the evidence of PW15 who voted and acted as unit agent in unit 016 at IsingwuIfeme – Ekersingwu Primary School;

PW16 who voted and acted as agent in unit 005, UmuajataEverifeze – Umuajata Community Hall; PW17, who voted and acted as polling agent for unit 025 low cost Housing Estate and finally PW18 who voted and acted as polling unit agent for unit 013 at Abam – Community School, Abam. They

did not make any allusions to proven acts of corrupt practices in their polling units.

In real terms, as we have demonstrated above, no scintilla of **evidence** was produced to support the various allegations of corrupt practices which was said to revolve around 6 polling units streamlined under paragraph **2.6** of the petition and this is fatal. None of the evidence of petitioners witnesses as we have demonstrated above absolutely bears any relevance to any complaints of corrupt practices in any of the units mentioned in the petition. There was thus no credible evidence before us by the witnesses of petitioners to support the complaints of cancellations, alterations or mutilations in the electoral documents and that they were dishonestly made with a view to falsifying the result of the election. See **Tunji V Bamidele (supra).**

The effect of this is that the evidence of the petitioner's witnesses goes to no issue. The petitioners therefore failed to show with any shred of evidence how the allegations of corrupt practices in the 6 polling units complained of substantially affected the outcome of the election. In view of the fact as stated in paragraph 6 of the petition that the constituency has 32 wards and 700 polling units, we really wonder how complaints in 6 units out of 700, which was not even established or proven will be sufficient to negatively impact the election of 1st Respondent. See **Omisore V Aregbesola (Supra)**. The paucity of evidence in this case, a reflection of the few witnesses called to prove critical elements of the petition is almost palpable and underwhelming. The total number of registered voters in these six units as pleaded by petitioners in paragraph 13 – 2.6 of the

petition is **5, 509** voters, yet hardly any **witnesses** were presented in any meaningful number(s) to situate these allegations of corrupt practices in these six units and how it negatively impacted the final results to the disadvantage of the 1st Petitioners.

The law is sacrosanct that averments in pleadings not supported by evidence are deemed abandoned. It is the law that mere averments in pleadings without proof of facts pleaded cannot constitute proof of facts if not admitted. See **Adegbite V Ogunfolu (1990) 4 NWLR (Pt 146) 518.**

The petitioners may have tendered from the Bar through counsel Forms EC8A (II) for **53 polling units** vide Exhibits P8 (1-53) in the federal constituency and the CTC of PVC issuance status vide Exhibit P9 - P11 but we fail to see how the tendering of these documents will translate to proof of mutilation, cancellation and alteration of figures in the result sheets.

As alluded to earlier,and we must again underscore this point at the risk of sounding prolix, that the petitioners in **paragraph 6** of the petition aver that Umuahia North/Umauhia South/Ikwuano Federal Constituency consist of 32 wards and 700 polling units. In paragraph 13 – 2.6, the complaint of corrupt practices was narrowed to 6 units. In those units as stated earlier, nobody was presented to situate the complaints made and how it affected substantially the elections.

In **Andrew V INEC (2018) 9 NWLR (Pt 1625) 587 at 558,** the Supreme Court inter-ala held that documents tendered must be subjected to the test of veracity and credibility. Where it involves mathematical

conclusions, how the figures were arrived at must be demonstrated in open court. It is the duty of the party tendering the documents to ensure that such documents and exhibits are linked to the relevant aspect of the case which they relate. This was not done in this case at all. The attempt to provide these critical pieces of evidence or explanation in the **address**of counsel will not fly.

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.

In the petition, the petitioners highlighted in the same paragraph 13 – 2.6 a – f incidents of mutilations, cancellations, alterations and over voting but there was absolutely no demonstration of these complaints. Tendering of the forms EC8A (II) results, Exhibit P8 (1-53) and Exhibit P9 – P11, the status reports of issuance of PVC for the constituency from the **Bar**,simpliciter, cannot be a basis to hold there was non–accreditation or over voting, cancellations and mutilations of electoral documents.

The provisions of sections 47 and 60 of the Electoral Actprovides for procedure for accreditation of voters, voting and counting of votes. The Supreme Court in **Oyetola V INEC (2023) 11 NWLR (Pt 1894) 125 at**

187-188 G – C; 192 A – D; 197 C – H made the point abundantly clear that wherever it is alleged that there was over voting in an election, the documents needed to prove over voting are 1) the voters register to show the number of registered voters, 2) the BVAS to show the number of accredited voters and 3) the forms EC8As to show the number of votes cast at the polling units.

These three documents will show exactly what transpired at the polling units and failure to tender these documents would be fatal to any effort to prove over voting. The petitioners in this case clearly failed to prove these essential requirements on the allegation of over voting. There was really absolutely no evidence demonstrated before us situating clear evidence of "heavy mutilation, cancellation and alteration of figures of petitioner as well as those of other parties as orchestrated by 3rd Respondent" pleaded in the petition.

The petitioners therefore only dumped on the court **Exhibits P8 (1 – 53)**, the pink copies of unit results which on its own cannot provide the answers to the question of non-accreditation of voters or over voting. In **Andrew V INEC (Supra)**, the Supreme Court stated as follows:

> **"On the issue of dumping documents on the Tribunal, both the Tribunal and the Court below are in concurrence that the appellants dumped their documents (Exhibits) on the tribunal. The Court below said this much on page 13018 of the record of appeal (vol. 14) as follows: "What the law requires is that first**

of all, the maker of the document must tender it and testify to its contents. Then, the documents must be subjected to the test of veracity and credibility and where it involves mathematical calculations, how the figures were 'arrived at must be demonstrated in the open Court and finally, the correctness of the final figure must also be shown in open court. What the appellants did here was to dump the documents on the court by tendering it from the Bar, got a few witnesses to identify or recognize some of the documents and left the Tribunal to figure out the rest in its chambers"..... it is not the duty of the Court to sort out the various exhibits, the figures and do calculations in chambers 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 the winner of the election "...let me lend my voice to the trite position of the law which has been expounded in this Court severally that tendering documents in bulk in election petitions is to ensure speedy trial and hearing of election petitions within the time limited by statute. But that does not exclude or stop proper evidence to prop such dormant documents.....it is not the duty of a Court or tribunal to embark on cloistered justice by making enquiry into the case outside the

open Court, not even by examination of documents which were in evidence but not examined in the open Court. A judge is an adjudicator not an investigator. I need to state clearly that demonstration in open Court is not achieved where a witness simply touches a bundle of numerous documents with numerous pages. The Front – loading of evidence and tendering documents in bulk from the bar do not alter the requirement which is an element of proof... From the record of appeal, almost all the documents tendered by the appellants were tendered by their counsel from the Bar. Hence the decision of the Tribunal as upheld by the Court below in this regard cannot be faulted."

Again, the scenario graphically captured by the Supreme Court played out in this case. The final address of counsel, however well written is no substitute for the pleadings and evidence to prove the contested averments

A court of law qua Justice can only pronounce on the basis of evidence presented and established before it in court. A court cannot go outside the evidence presented and established in court in deciding any contested issue.

In relation to the **second leg of the complaint**, the petitioners alleged in paragraph 13 sub paragraph 2.11 – 2.49 (pages 14 - 23) that **17, 620** registered voters were disenfranchised and the 3rd Respondent did not

adhere to the margin of lead principle before making a declaration and returning the 1st Respondent as the winner of the election.

Equally, the said paragraphs contain allegations of malfunction of BVAS machines and non-accreditation of voters, over voting amongst other complaints which we have already treated.

Here again, we are confronted with a situation where we have before us elaborate pleadings but without evidence to support the allegations. If there was disenfranchisement of voters, malfunction of BVAS machines and non-accreditation of voters, where is the evidence to support these averments? Absolutely nothing was proffered. Indeed not **one single voter** who was allegedly disenfranchised out of the 17, 620 registered voterswas produced from the entire constituency. If any BVAS malfunctioned, no such BVAS machine or report of any such machine was tendered. The law is clear and settled that pleadings is not synonymous with evidence and so cannot be construed as such in the determination of the merit or otherwise of a case. A party who seeks judgment in his favour is required by law to produce adequate credible evidence in support of his pleadings and where there is none, the averments on the pleadings are deemed abandoned. See **Arabambi V Adavamce Beverages Ind. Ltd (2005) 19 NWLR (Pt 959) 1 at 25.**

The entire allegations of alterations, mutilations, over voting and corrupt practices made by the petitioners suffer from complete absence of credible evidence, oral or documentary. In the absence of evidence to put the tribunal in a clear position to determine the veracity and credibility of the

allegations made, the allegations will remain in the realm of conjectures and speculations. We hold as a consequence that the allegations of corrupt practice remain unproven and unsubstantiated and are deemed abandoned.

In an election petition were a petition as in this case 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 on that point is effectively determined against the petitioner. See **Doma V INEC (2012) 13 NWLR (Pt 1317) 297 at 319 – 320.**

As we round up, we must underscore the point that it is correct that the law requires all the provisions of the Electoral Act should 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.**

On the whole, we have out of abundance of caution determined issue II flowing from ground II of the petition, but it is clear without any doubt that the petitioners have not established first substantial non-compliance and secondly that it did or could have affected the result of the election.

They did not cross this threshold and so the onus did not shift to respondents to establish that the results is not affected.

Issue 2 is also resolved against the **Petitioners**.

ISSUE THREE

Whether the 1st Respondent was not duly elected by majority of lawful votes cast at the election.

This issue flows from **ground III** of the petition.

Now on the pleadings as earlier alluded to, the declared winner of the election by INEC is the 1st Respondent. In paragraph 11 (ii) of the petition, the petitioners stated the score of the candidates in the election. The 1st Respondent scored **48, 191** votes while the 1st Petitioner scored **35, 196.** The contention of the Petitioners here is that the votes credited to the 1st Respondent are void votes as the name Labour Party was not on the ballot paper rather what was on the ballot paper was "FORWARD EVER" which they contend is not a political party in Nigeria and to that extent and effect, the votes cast for "forward ever" and ascribed to the Labour Party should be discountenanced and the 1st Petitioner declared the winner of the election as the person who scored the majority of lawful votes. See generally paragraphs 13: 3.1 – 3.17 of the petition. In paragraph 13.3.1 (a) on page 23 of the petition,the petitioners averred that the "name of the Labour Party or its acronym did not appear on the ballot paper as prescribed in the regulations and guidelines for the conduct of elections and the manual for election".

We think it is important we make the point again that where an election is contested on the ground that the **respondent was not duly elected by majority of lawful votes cast at the election**, allegations of corrupt practices and **non-compliance with the Electoral Act** as done here **in paragraphs 13: 3.1 – 3.17 are excluded.** This is so, because the issues deal with different grounds upon which an election can be questioned by an aggrieved party. Section 134 (1) (c) predicated on unlawful votes has nothing to do with allegation of non-compliance with the provisions of the Act or corrupt practices.For the Petitioners in the extant case to succeed, they must plead the necessary facts to show there was wrong computation of votes in favour of the candidate declared as the winner as against the petitioners. There is really nothing in paragraphs **13: 3.1 – 3.17** that evinces wrong computation of votes in favour of the 1st Respondent against 1st Petitioner. The law is trite that every ground of an election petition must be supported by the relevant facts and particulars duly pleaded. See paragraph 4 (1) (d) of the 1st schedule to the Electoral Act 2022.

The facts thus pleaded by Petitioners in paragraph **13: 3.1 – 3.17**of the petition on non-compliance of the Electoral Act and its regulations clearly must be excluded since as already alluded to, where an election is contested on the ground that the respondent was not duly elected by majority of lawful votes cast at the election, allegations of corrupt practices and non-compliance with the provision of the Electoral Act are excluded. See **Deen V INEC (2019) LEPLR – 49041 (CA); Ogboru V Uduaghan (2012) All FWLR (Pt 651) 1475.**It is thus obvious that this ground and the issue flowing from it is incompetent and liable to be struck out.

Now in the event we are again wrong, we shall consider all aspects of the complaint relating to the name and logo of the 2nd Respondent which appeared on the ballot paper.

Now **section 41 (2)** of the Electoral Act provides that the forms to be used for the conduct of elections to the offices mentioned in the Act shall be determined by the commission.

Section 42 of the Electoral Act then provides for the format of ballot papers. **Section 42 (1)** provides that "the commission shall prescribe the format of the ballot paper which shall include the symbol adopted by the political party of the candidate and such other information as it may require". **Section 42(3)** then provides that the commission shall, not later **than 20 days** to an election invite in writing, a political party that nominated a candidate in the election to inspect its identity appearing in samples of relevant electoral materials proposed for the election and the political party may state in writing within two days of being so invited by the commission that it approves or disapproves of its identity as it appears on the samples".

By section 42 (5), a political party that fails to comply with an invitation by the commission under **subsection (3)** shall be deemed to have approved its identity on samples of electoral materials proposed to be used for an election.

The above provisions are clear and unambiguous. The provisions clearly situates that it is the commission that shall prescribe the format of the ballot papers and if there should be any **complaint** about format of ballot

paper to be used at the election, it is the **party** that should register any complaints if any.

It is true that by **section 79 (1)** of the Electoral Act, that the commission shall keep a register of symbols and name for use at the **election**but **before its use at the election proper,** a party in the election is invited by the commission at least 20 days to the election to inspect its identity or samples of relevant electoral materials and it is to register its approval of its identity as it appears on the samples within two days of the invitation.

There is nothing before the tribunal in evidence to show or suggest that the **2nd Respondent** objected to the use of the symbol "Forward Ever" on the ballot papers or that when the **2nd Petitioner** was invited, it raised any objections to the symbol of 2nd Respondent which it saw on the ballot paper.

Indeed by section 42 (5) of the Electoral Act, any political party that refuses to comply with the invitation by the commission is deemed to have **approved** its identity on samples of materials proposed to be used for the election.

The 1st Respondent both in its pleadings and evidence did not make any complaints with respect to the ballot papers used. Indeed in the Reply to the petition, the 1st Respondent in paragraphs 32 – 37 averred as follows:

> **"32 – The 1st Respondent states that the petitioners admitted that the symbol of the 2nd Respondent was on the election materials and that is conclusive proof that the 2nd Respondent participated in the election.**

33 – The 1st Respondent states that its symbol was on the ballot papers and its symbol is recognizable to all voters.

34 – The 1st Respondent states that the inscription "forward ever" is part of the symbol of the 2nd Respondent which is known to the voters nationwide and that forward ever is used exclusively by the 2nd Respondent.

35 – That the 1st Respondent states that its symbol with the inscription "forward ever" is registered with the 3rd Respondent and known to all voters since it was used exclusively during the political campaign nationwide.

36 – The 1st Respondent states that the Petitioners have no *locus standi*, to complain about inclusion or exclusion of the name of the 2nd Respondent when the 2nd Respondent did not file any such complaint".

The above is clear situating the clear acceptance of the electoral materials including the ballot paper to be used at the election. The registration of this symbol with **INEC** is supported by the provision of**Section 80** of the Electoral Act which provides that:

""Where a symbol is registered by a political party in accordance with this Act, the commission shall allot the symbol to any candidate sponsored by the political party at any election".

The 3rd Respondent, **INEC** lending further support to the position of 1st Respondent in there Reply to the petition in paragraphs 13 – 18 stated as follows:

> **"13. The 3rd Respondent states emphatically that it allotted the symbol of the 2nd Respondent to the 2nd Respondent on the ballot papers and there has been no complaint whatsoever from the 2nd Respondent**
>
> **15. The 3rd Respondent states that "Forward Ever" is part of the symbol of the 2nd Respondent which was registered with the 3rd Respondent and which was reflected on the ballot papers on the election day.**
>
> **16. The 3rd Respondent states that each political party is adjoined by law to inspect the ballot papers before the elections and to complain if it believed the format of the ballot papers did not reflect its symbol.**
>
> **17. the 3rd Respondent states that the 2nd Respondent was satisfied with the format of the ballot papers and did not forward any complaints to the 3rd Respondent and the 3rd Respondent is surprised that the petitioners are complaining on behalf of the 2nd Respondent in this petition.**
>
> **18. the 3rd Respondent states that the Electoral Act confers discretion on the 3rd Respondent to decide**

the format of the ballot paper in so as far as it includes the symbol of the Political Party and the petitioners have not complained about their symbol on the ballot paper"

In response to the above, the petitioners in their Petitioners Reply in paragraph 4f stated as follows:

"4f – The 2nd Petitioner inspected the ballot papers and became aware of the fundamental defect in the omission of the 2nd Respondent on the ballot paper but failed to take any steps to correct the fundamental defect or anomaly and therefore the 1st and 2nd Respondents should bear the consequences of nullification of the invalid votes reckoned in favour of the 1st Respondent"

We have highlighted the above portions of the pleadings to situate the fact that there was no complaint by **2nd Respondent** at all with respect to the symbol "Forward Ever" used on the ballot paper to represent 2nd Respondent on election day. **Indeed INEC, the body charged with conducting the elections categorically averred (in the paragraphs of there pleadings highlighted above) that "forward ever" is part of the symbol of 2nd Respondent registered with it and which reflected on the ballot papers used on election day.** There has not been any challenge by petitioners to this averment neither have they produced any counter – evidence to debunk these assertions by INEC. In

law these averments by INEC is deemed admitted by petitioners. If there should be any complaint at all, it is the 2nd Respondent and its members that should complain. The Electoral Act has made ample provisions, as demonstrated, for how and when the complaints are to be made and a within a defined time sensitive criteria. Interestingly, as alluded to earlier,the petitioners knew or saw the ballot papers containing the symbol "Forward Ever" and never complained at anytime.

It is therefore curious that having **accepted to contest** the election on the basis of the materials provided, they are now belatedly complaining. It is trite law that a party who participated in an election is stopped from approbating and reprobating against it. See **Agbaje V Fashola (2008) 6 NWLR (Pt 1082) 90 at 131 B – E.**

What is stranger in this case is **that** none of the 18 **witnesses** provided by the petitioners **complained about any confusion** with respect to the identity of parties and the names or slogan used on the ballot papers. All witnesses for the petitioners voted for the party of their choice, P.D.P using the same ballot papers. None of the **electoral officers** subpoenaed by Petitioners, **PW5 – PW11** alluded to any confusion by voters with respect to the ballot papers used on the day in question. There is therefore in our considered opinion, the absolute imperative to avoid the possible mischief of nullifying an otherwise validly conducted election and the peoples mandate on the altar projected by petitioners when they and everybody took part in the elections freely and fairly with absolutely no complaints. See **Agbaje V Fashola (Supra) 90 at 131 B – E.**

Indeed under Cross-examination the Abia State Party Chairman of 2nd Respondent confirmed that "forward ever" is the slogan of 2nd Respondent and that their officials who inspected the ballot papers prior to the elections had no complaints. Indeed **Exhibit P5**, the ballot Paper tendered by petitioners shows the logo "forward ever" among other parties logos and which on the evidence is the logo of 2nd Respondent registered with INEC.

It is very difficult to situate the legal validity of the extant complaint of petitioners after the 2nd Respondent has approved of the use of the ballot paper and which on the evidence did not cause any confusion on the mind of voters. The voters who appeared before us had no issues identifying the logo and slogan of the 2nd Respondent on the Ballot Paper to enable them cast their votes. Indeed in their depositions, the witnesses of Petitioners indicated contrary to the case made by Petitioners in the Petition that the ballot paper used in the election contained names of the various parties.

PW2 in paragraph 3 of his deposition on page 74 of the petition, PW3 in paragraph 4, of his deposition on page 76 of the petition and PW4 on paragraph 4 on page 78 of the petition all admitted that names of all political parties including that of 2nd Respondent were on the ballot paper and they all voted for P. D. P. or the 2nd Petitioner.

We therefore hold that since there was no doubt or confusion on the mind of voters that "Forward Ever" is part of the symbol of 2nd Respondent and that the name of 2nd Respondent was on the ballot papers, then the 48,

191 votes recorded in favour of 1st and 2nd Respondents were valid votes in theirfavour.

Now we note that in a rather disjointed manner, the Petitioners in paragraph 13 subparagraphs 3.22 – 26 on pages 27 – 33 of the petition then averred that votes cast in favour of the petitioners were wrongly collated and entered. The petitioners listed about **47** units were these occurred but strangely, they did not call **witnesses** from any or all of these polling units to give evidence of what happened.

On the authorities, it is settled that 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 47 units 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.**

In this case, out of **47 units,**only 5 out of the alleged polling unit agents of the Petitioners (PW14 – PW18) were called to testify and **identify only 5 units results** out of the 53 units results tendered vide**Exhibits P8 (1 – 53)** which as stated earlier were tendered from the Bar by learned counsel for the petitioners. These witnesses did not proffer any relevant evidence in their deposition on the alleged manipulation of votes. The petitioners also subpoenaed PW5 – PW11, who served as adhoc staff for INEC to again identify 7 out of these 53 results but again these witnesses did not proffer any relevant evidence relating to incorrect collation of results. The evidence

of this Electoral officers on the peaceful conduct of the Election only served to undermine the complaints of petitioners.

It is clear to us that the 5 witnesses called for 5units out of **47** units pleaded did not give any relevant admissible evidence on the question of alleged votes manipulation; their evidence accordingly lacks probative value.

With respect to the remaining 42 units, in the absence of any evidence from agents in those units, the claims made in those units are deemed abandoned.

Here too, as in most of the contentions of petitioners, the allegations made, suffer from complete absence of credible and cogent evidence. As already demonstrated, absolutely no attempt was made by petitioners to demonstrate in court through witnesses who made the documents to speak to these documents tendered from the Bar and link them to specific aspects of the petitioners case.

We therefore resolve **issue 3** in favour of the Respondents and hold that 1st Respondent was duly elected by majority of lawful votes cast at the election.

In conclusion, the petitioners have clearly failed to prove by relevant, credible and admissible evidence, the elaborate allegations made in the petition. This case at different levels proceeded from faulty premises, as we have demonstrated.

Facts may have been pleaded but they were challenged by the adversaries on the other side of the aisle. Witnesses with credible evidence were not

however made available to prove these contested assertions within the threshold allowed by law, and that failure is fatal.

Consequently, we hold that the petitioners have not been able to establish any of the **three grounds of the petition** upon which the petition was predicated. Cases are determined on the strength and quality of evidence adduced before the tribunal. Where the evidence led is palpably weak or tenuous, it means that the case has not been established. We accordingly hold that both the substantive **Reliefs** and the alternatives **Reliefs** are thus not availing.

The petition therefore fails and it is hereby dismissed. We award costs assessed in the sum of ₦150, 000 payable to the Respondents; (₦50, 000 naira to each Respondent).

HON. JUSTICE ABUBAKAR IDRIS KUTIGI
CHAIRMAN

Appearances:

1. **O. O. Nkume, Esq. with Isaac Anya, Esq., for the Petitioners.**

2. **AnagaKaluAnaga, Esq. with T. N. Nwosu, Esq., for the 1st Respondent.**

3. **Valentine Offia, Esq., with AdekunleKosoko, Esq., for the 2nd Respondent.**

4. **Patrick Enyeribe, Esq., with A. Y. Abubakar Esq., for the 3rd Respondent.**