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

THIS FRIDAY THE 29TH 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/SHA/8/2023

BETWEEN:

1. **URUAKPA, INNOCENT CHIEDOZIE**
2. **LABOUR PARTY (LP)** — **PETITIONERS**

AND:

1. **IHEONUNEKWU, UGOCHUKWU COLLINS**
2. **PEOPLES DEMOCRATIC PARTY (PDP)**
3. **INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC)** — **RESPONDENTS**

JUDGMENT

(DELIVERED BY HON. JUSTICE AHMAD MUHAMMAD GIDADO)

The 1st Petitioner and 1st Respondent were candidates at the election to the office of Member of Abia State House of Assembly for the **Isiala Ngwa North State Constituency** held on 8th March, 2023 under the platforms of Labour Party (2nd Petitioner) and Peoples' Democratic Party (2nd Respondent). The Independent National Electoral Commission (the 3rd Respondent) which conducted the election

declared the 1st Respondent the winner of the election and was returned elected; being the candidate scoring a **total of 20,40**2 votes which is the majority of lawful votes cast at the election. The 1st petitioner came second with a **total of 8,750** votes. The petitioners, in paragraph 26, however, contended that if the invalid and unlawful votes scored in the 35 disputed polling units were deducted, the 1st respondent would have scored a total of **10,070** votes; whilst the 1st petitioner would have scored the total of **7,922** votes.

The 3rd Respondent announced and declared the following scores of the candidates as follows:

S/N	**NAME OF CANDIDATES**	**GENDER**	**POLITICAL PARTY**	**TOTAL VOTES RECEIVED BY CANDIDATES/POLITICAL PARTY**	
				IN FIGURES	**IN WORDS**
1	ONWUNYIRIUWA IKECHUKWU EDWARD	M	A	202	TWO HUNDRED

					AND TWO
2	OSUJI BASIL EKENEDKICHOKWA	M	AA	05	FIVE
3	ONYEKWERE CHUKWUMA	M	ADC	146	ONE HUNDRED AND SIX
4	UHURU MONDAY	M	ADP	21	TWENTY-ONE
5	CHIBUIKEM ALEX CHIDIEBERE	M	APC	1811	ONE THOUSAND, EIGHT HUNDRED AND ELEVEN
6	ENWEREMADU MIGHTY IYIERI	M	APGA	200	TWO HUNDRED
7	NWAOGWUGWU IKENWOKO CHINEDOZI	M	APP	33	THIRTY-THREE

8	URUAKPA INNOCENT CHIEDOZIE	M	LP	8750	EIGHT THOUSAND SEVEN HUNDRED AND FIFTY
9	EGWU GLORY	M	NNPP	47	FORTY-SEVEN
10	IHUEZE FELIX ONYEKACHI	M	NRM	30	THIRTY
11	IHEONUNEKWU UGOCHUKWU COLLINS	M	PDP	20,402	TWENTY THOUSAND, FOUR HUNDRED AND TWO
12	NWAZUO CHIUKWUDI HYACINTH OGBONNA	M	PRP	34	THIRTY-FOUR
13	FRIDAY NWAZUO	M	SDP	34	THIRTY-FOUR

14	NWOSU EZENWA MICHAEL	M	YPP	894	EIGHT HUNDRED, NINETY-FOUR

The Petitioners being dissatisfied with the said election and return of the 1st Respondent filed this Petition on 7th April, 2023 challenging the result of the election.

The ground upon which the Petition was brought is as contained in paragraph 11 of the Petition are as follows:

> **The Election of the 1st Respondent is invalid by Reason of Non-compliance with the Provisions of the Electoral Act, 2022, (as amended).**

The Petitioners prayed for the following reliefs:

(a) **"THAT it may be determined** that the elections in the **thirty-five (35)** Polling Units set out at Paragraphs 19, 20, 21, 22, 23 and 24 of this Petition, with more specific particulars set out in tables A, B, C, D, E, and F in the schedule to this Petition, are invalid, unlawful, null and void by reason of substantial non-

compliance with the provisions of the Electoral Act, 2022 which substantially affected the results of the election.

(b) **AN ORDER Nullifying the results** of the elections in the **thirty-five (35)** Polling Units set out at Paragraphs 19, 20, 21, 22, 23 and 24 of this Petition for being invalid by reason of being conducted in substantial non-compliance with the provisions of the Electoral Act, 2022 which substantially affected the results of the election.

(c) **THAT it may be determined** that the number of registered voters in the **thirty-five (35)** Polling Units set out at Paragraphs 19, 20, 21, 22, 23 and 24 of this Petition where elections have been invalidated and voided, having been conducted in substantial non-compliance with the provisions of the Electoral Act 2022, which substantially affected the results of the election, are more than the difference in votes between the Petitioners and the 1st and 2nd Respondents.

(d) **AN ORDER nullifying the Declaration and Return** of the 1st Respondent as the winner of the Elections to the office of Member of the Abia State House of Assembly for the IsialaNgwa North State Constituency held on the 18th day of March 2023.

(e) **AN ORDER mandating the 3rd Respondent**, the Independent National Electoral Commission (INEC) to **immediately and forthwith withdraw the Certificate of Return** issued to the 1st Respondent as winner of the Elections to the office of Member of the Abia State House of Assembly for the IsialaNgwa North State Constituency held on the 18th day of March 2023.

(f) **AN ORDER for fresh and/or Supplementary elections** to be held in the totality of the affected **thirty-five (35)** Polling Units set out at Paragraphs 19, 20, 21, 22, 23 and 24 of this Petition, with the votes scored by the candidates to be added to the remaining valid votes scored by them at the Elections of the 18th day of March 2023, for the IsialaNgwa North State Constituency, **in order to determine the winner of the election".**

The substance of the facts supporting the petition as averred by the petitioners, in paragraph 12 of the petition, that there were 10 wards in **the Isiala Ngwa North State Constituency** comprising of 185 polling units where the election was invalid for non compliance with the provisions of the Electoral Act, 2022 and the INEC guidelines. The petitioners averred that in these wards and the units the elections were invalidated by acts of substantial non-compliance with the provisions of the Electoral Act 2022. That there were 6 wards which consisted of 35 polling units were substantially affected by the result of the election. They pleaded that the 6 wards, are: Umunna Nsulu Ward 2 having 6 Polling Units, Isiala Nsulu Ward 3 with 1 Polling Unit, Ngwaukwu I, Ward 4 having 1 Polling Unit, Ngwaukwu II, Ward 5 having 15 Polling Units and AmasaaNtigha Ward 7 with 3 Polling Units and finally Nbawsi/Umuomainta Ward 10- having 9 polling units.

The petitioners, in paragraph 13 of the petition pleaded that in the 6 wards mentioned there were 35 polling units where failure to comply with the express extant provisions of Section 148 of the Electoral Act 2022 affecting the issue of regulations and guidelines for the conduct of the 2023 General Elections. This provision mandated the process of accreditation of voters with a Smart Card Reader. They also pleaded that the substantial non-compliance has substantially affected the results of the said election.

The Petitioners claimed that the manifest substantial non-compliance affecting substantially the results in those polling units are, that:

(1) voters were allowed to vote without accreditation with the Bimodal Voter Accreditation System (BVAS) Smart Card Reader and/or

(2) there was over-voting as more voters than were accredited using the BVAS Smart Card Reader were allowed to vote.

In Paragraphs 14 -28 of the petition the petitioners claimed and averred that in the 35 polling units identified therein there was a failure to use the BVAS Smart Card Reader which resulted to the acts of over voting. The petitioners then provided the particulars on non compliance with the Act and its regulations/guidelines in the polling units. The petitioners contended that if the votes scored by all the political parties are nullified and the scores were deducted the difference in votes between the highest party, that is the 2nd respondent is only 2,148 votes.

The respondents, on the receipt of the Petition; filed their respective replies. The 1st and 2nd respondent filed their joint reply incorporating a Notice of Preliminary Objection on 27th April, 2023. The 3rd Respondent filed a reply to the petition on 1st May, 2023. Consequently, the Petitioners filed a reply to the 1st and 2nd respondents' Reply on 2nd May, 2023. The Petitioners also filed a reply to INEC (the 3rd respondent's Reply) to the petition on the 5th May, 2023.

In paragraph 2 (i –viii), the 1st and 2nd respondents specifically denied paragraph 7 of the petition challenging the legal right of the 1st petitioner to present the extant petition. This is because according to them the 1st petitioner contested the election held on 18th March, 2023 for Isiala Ngwa North State Constituency under the platform of the 2nd petitioner when he was still a member of the 2nd respondent (PDP). Thus, the 1st petitioner contested the election with dual membership, as he did not resign from the membership of the 2nd respondent at the time he purportedly contested the election under the platform of the 2nd petitioner (LP).

The respondents also averred that by paragraph 2 (i-vi), the 1st petitioner was not qualified to contest the election under sections 106 and 107 of the Constitution. Consequently, the 1st petitioner has no requisite *locus standi* to present this petition challenging the election and return of the 1st respondent as winner of the State House of Assembly election for Isiala Ngwa North Constituency.

The respondents also stated that, the results of the election in the questioned 35 polling units of the 6 wards are valid and lawfully obtained in substantial compliance with the provisions of the Electoral Act, 2022. That means the 1st and 2nd respondents votes recorded from the said polling units are not liable to be nullified or invalidated on the ground of any alleged failure of accreditation with BVAS or as a result of over voting.

The 3rd respondent's case made specific pleadings denying the content of the petition in that the scores pleaded by the petitioners do not represent the scores of the candidates for the election in question. The 3rd respondent stated that the votes scored by every political party that contested the election are as contained in the INEC form EC8E(1) used for the election. Thus, the scores pleaded by the petitioners do not relate to the election under review and the result were not that declared by the 3rd respondent.

The Petitioners, therefore, applied for the issuance of the pre-hearing forms TF007 and TF008 on 25th April, 2023 while answers to the pre-hearing questions were filed on 10th May, 2023 by the Petitioners. The 1st and 2nd Respondents filed their answers on 15th May, 2023, whereas the 3rd Respondents filed his answers on 16th May, 2023. The answer sheets were adopted by learned Counsel for respective parties alongside issues raised. However, the 3rd Respondent did not file any issue but indicated doing so at the Final Address Stage.

Interlocutory Applications and Preliminary of Objections

Upon this premise the Petitioners' and Respondents' Counsels filed their respective applications. The 1st and 2nd Respondents, however, incorporated their Preliminary Objection to the Petition filed on 27th April, 2023 challenging the jurisdiction of tribunal to entertain the petition because the 1st petitioner has no *locus standi* to

present the petition. In reply the Petitioners filed a 6 paragraph Counter Affidavit to the application of the 1st and 2nd Respondents dated and filed 22nd May, 2022.

The Respondents by Motion on Notice dated and filed 14th May, 2023 sought for an order dismissing or striking out the Petition. The Petitioners also filed a reply on point of law to the 1st and 2nd Respondents on 26th May, 2023.

All Interlocutory Applications and Preliminary Objections were heard alongside with the Petition but the rulings in respect of the Applications and Preliminary Objections were incorporated in the final judgment of the tribunal. The pre-hearing was closed on 16th June, 2023.

As mentioned above, it is important to note that the Respondents filed two applications, as follows

The First Application:

The First application was by motion on notice filed by the 1st and 2nd Respondents dated and filed 14th May, 2023, praying for the following orders:

(1) An Order of the Hon. Tribunal striking out the Petitioners' Reply to 1st and 2nd respondents' reply in this petition in that same contains new facts, issues and arguments contrary to paragraphs 14(2)(a)(i) – (iii) and 16 (1)(a) & (b) of the 1st Schedule to the Electoral Act, 2022.

And for such Further Order(s) as this Hon. Tribunal may deem fit to make in the circumstances of this case. On the following grounds:

(1) The 1st and 2nd respondents (now applicants in this motion) filed their reply to the petition.

(2) The petitioners (respondents in this motion) in their petitioners' reply to respondents' reply, in paragraphs 2 (i)-(v) and 3(i) -(vi), 4,5, and 6 that they raised new facts, issues which ought to have formed the basis of the petition from the very beginning.

(3) Besides the petition in their said reply in paragraphs 2(i)-(vi) and 3(i)-(vi) embarked on legal arguments/submissions in their pleading contrary to the Rules of pleading

(4) A petitioners' reply in an election petition is not a repair kit for an otherwise deficient petition or meant to afford a petitioner another opportunity for additional/new facts in support of the Petition.

(5) By paragraphs 14(2)(a)(i)-(iii) and 16(i)(a) and 16(i)(a) and (b) of the 1st Schedule to Electoral Act, 2022, new issue (s), facts or grounds introduced by way of a Petitioners Reply after expiration of the 21 days for filing a Petition is incompetent and liable to be struck out/dismissed.

The application was supported by a 8 paragraph Affidavit, and a written address raising a single issue for determination as contained in the address is as follows:

Having regard to the new facts, issues/grounds contained in the petitioners reply whether the said reply should not be struck –out for being contrary to paragraphs 14(2) of the 1st schedule to the Electoral Act, 2022.

The Petitioners filed a 6 paragraph counter affidavit to the application of the 1st and 2nd Respondents to strike out the Petitioners reply. They raised a single issue for determination, as follows:

Whether the Application to strike out the Petitioners' reply to the reply of the 1st Respondent to the Petition has any merit.

Arguments were canvassed by parties and authorities equally cited by both sides of the aisle. The crux of the matter is that petitioners did not plead the date of declaration of result.

The Second Application:

The second application was filed by the 2nd and 3rd Respondent dated 14th May, 2023; praying for the following orders:

(1) An Order dismissing or striking out this petition No. EPT/AB/SHA/8/2023, Uruakpa Innocent Chiedozie vs. Iheonunekwu Ugochukwu Collins and 2

Ors for being incurably defective, incompetent and thereby rob the Tribunal of the requisite jurisdiction to entertain the Petition.

On the following grounds:

(1) The Petition is grossly and irremediably incompetent in that the Petitioners did not state date the result of the election was declared and the 1st Respondent returned as winner of the election in accordance with Section 285(5) of the 1999 constitution and robbed the Hon. Tribunal to entertain the Petition.

(2) The Hon. Tribunal has no jurisdiction to entertain the Petition of the Petitioners in that:

(i) The Petitioners have no *locus standi* to present this petition being that the 1st Petitioner was not being a member of the 2nd Petitioner and thus was not legitimately or at all validly sponsored by the combined provisions of section 106(d) of the 1999 constitution (as emended) and section 77(2) and (3) of the Electoral Act, 2022.

(ii) No cause of action has been disclosed in the petition as fundamental requirements to support the complaint of the Petitioners and or relief sought are completely lacking or absent in this case.

The motion was supported by a 7 paragraph Affidavit dated 14th May, 2023 with accompanying written Address. The applicants/respondents, formulated two Issues for determination:

Issue 1

> **Having regard to failure of the petitioners to state the date of the declaration of the result of the election, whether this petition discloses a cause of action and thereby validly activated the jurisdiction of the Court to entertain the petition.**

Issue 2

> **Having regard to the provisions of Section 106(d) of the 1999 Constitution and section 77(2) and (3) of the Electoral Act 2022, whether the 1st Petitioner who was all times material a member of the People Democratic Party is qualified to contest the election of 18/3/2023 and thus invested with the *locus standi* to present this petition.**

The petitioners filed 8 paragraph a counter affidavit dated 22nd May 2023, with a written address raising two issues for determination, as follows:

(1) **Whether the Electoral Act which regulates contents of election petition requires pleading of the date of declaration result as a mandatory requirement for the presenting election petition.**

(2) **Whether an objection to lucos standi of a petitioner in an election petition on the basis of qualification, nomination and sponsorship is competent and if so whether the 1st and 2nd Respondents duly discharged the onus or burden on them to prove their allegation**

The arguments of lead counsel for the parties are equally canvassed and relevant authorities cited for their respective issues raised.

A close community examination and scrutiny of the above Interlocutory Applications and the Preliminary Objections incorporated in the respective respondent replies; revealed that these applications are intertwined and interwoven which substantially affect the substance of the petition. This is because this petition is based on constitutional and statutory provisions. The parties in these applications relied on various constitutional and statutory provisions, including sections 106, 107 and 285 of the 1999 Constitution (as amended); as well as section 77(2)(3) of the Electoral Act, 2022.

It is very clear from above, that the petition and the applications against the petition are based on purely issues of law directly affecting the substance of the petition under the Constitution and extant laws, particularly as to the evidence adduced in proof of the substantial non compliance with the Act which, according to the petitioners, substantially affects the outcome of the election.

Consequent upon the above expositions, we shall deliver rulings on these applications and preliminary objection as we consider the substance in the petition for the interest of justice.

JUDGMENT ON THE MERIT

In proof of this case the petitioners called a sole witness.

The 1st petitioner, Uruakpa Innocent Chidozie (PW1) testified and adopted his statement on oath filed along with the petition. The testimony of PW1 was fundamentally a rehash and repetition of the petition which we have earlier reproduced. PW1 relied on his voter's card as contained in paragraph 10(viii) of his deposition and tendered documents in support of his petition. PW1 stated in paragraph 12 of his deposition that, there are 10 Registration Areas and Wards containing 35 polling units in his Constituency where the election was invalidated by acts of substantial non-compliance with the provisions of the Electoral Act 2022. The 1st Petitioner therefore relied on set of documents pursuant to paragraph

10 of the 1st petitioner's deposition. The documents are the 1st petitioner's Permanent Voters Card 2, applications for CTC of Election Results and payment receipt, form EC8E(I) being the Declaration of Result of the Election, Form EC8C(I) being the Summary of Results from Registration Areas, form EC 8B(I) being the Summary of Results of Polling Units (10 wards, 14 pages) in 10 Wards, form EC 8A (I) being the Statement of Result of poll from Polling Units in the 10 Wards, CTC of Bimodal Voters Accreditation System (BVAS) report, INEC Regulations and Guidelines for the Conduct of Elections, 2023, application and payment receipt for CTC of the Voters' Registration, voters Register for 35 Polling Units relevant to this Petition.

All voters Registers for these wards were tendered in evidence. The respondents' counsel objected to the admissibility of these documents but reserved their objection to final address stage. These documents were admitted and marked as exhibits p.25, p26, p27, and p28.

Counsel to 1st and 2nd Respondent cross-examined PW1 who was the star witness of the Petitioners. He stated that he still maintained his paragraph 13 of written deposition, that in the 35 Polling Units identified hereinabove, there was failure to comply with the express, extant and mandatory provisions of the Electoral Act, 2022 and the regulations and guidelines for the conduct of the Election which mandated for accreditation of votes with a Smart Card Reader in the aforesaid 35

Units, two acts of substantial non-compliance which substantially affected the results of the election, that is, voting without accreditation with BVAS that resulted to over voting.

PW1 under cross-examination said he was not at any time at the polling units. PW1 said he was from Polling Unit 9 where no complaint was recorded because he voted on the day of election without any problem. He explained that because of the restriction on the day of the election he voted and went back home. He categorically under cross-examination said that since there was restriction; he did not witness any of the complaints he stated in paragraph 13 of his depositions. PW1 also admitted that there was no complaint about over voting from voters in all the 35 Polling Units he was complaining of. PW1 when asked whether all the party agents are alive, he answered in the affirmative. PW1 said going by his paragraph 7 of his deposition INEC (the 3rd Respondent) conducted the election and that 3rd Respondent's officials were the ones who carried out all the election processes. He also admitted that to the best of his knowledge those INEC officials are still alive. PW1 has no any training on how the BVAS machine operates. Also PW1 admitted that the BVAS report he tendered was not directly from 3rd Respondent. The BVAS was generated from back INEC server. PW1 also said he did not apply for the inspection of BVAS machine and he has no physical inspection of BVAS report too.

PW1 under cross-examination commented on his paragraphs 19-28 particulars of acts of substantial non-compliance with the electoral Act, 2022 and regulations/guidelines which substantially affected the results of the election. The witness tabled ward by ward of the areas affected from pages 24 -28 of the petition. PW1 further stated that the particulars of non-compliance were at paragraph 19 of schedule to the petition; signed by Nnamani U. Nwokocha Ahaaiwe, Esq (the petitioners' counsel).

PW1 further stated that, it is correct that, even if the invalidated votes will be deducted from total votes cast; still the 1st Respondent would have been ahead of him and that the 1st Respondent would have been the winner of the election.

The 3rd Respondent's Counsel tendered two letters written by PW1 to 3rd Respondent which he identified and confirmed that he wrote those letters; which were admitted in evidence without objection. The copies of two letters are marked as exhibits p2A and p2B respectively.

PW1 also stated that there were INEC accredited agents in all the Polling units at the time of the election. On the BVAS machine, PW1 confirmed that he was not the one who inspected the BVAS report which is contained in exhibit p14 (1and2); that the documents were signed by one Anthonia Makwe and certified by a different person; but P14 (2) which was the INEC certification was signed by Mrs.

Nnema A. Esseien, while certification was made by one Anthonie. He stated that in his unit he does not know whether accredited votes exceed the unaccredited votes. He also stated that in his polling Unit 9 the BAVS machine worked perfectly. PW1 also stated under cross-examination that no voter was allowed to vote in his polling unit without accreditation. PW1 also confirmed that he does not know what happened in other polling units, because he was not there. He explained that all party agents, the collation officers and polling agents were present at the different polling units on the day of the election. PW1 did not make any written complaint before lodging his petition to the Election Tribunal. He again confirmed that the 1st respondent was ahead of him in that election.

The witness was discharged without Re-examination.

On the other hand, the Respondents opened theirs defence on 21st July, 2023. The 1st and 2nd Respondents called a total of 3 witnesses.

DW1 (the 1st respondent) made a written deposition on 27th April, 2023. The witness identified his statement and adopted same as evidence in this matter. DW1 referred to 5 documents which the other Respondents' Counsel did not object to while the Counsel to the Petitioners objected to their admissibility and reserved his objection to the final address stage.

DW1 relying on paragraphs 14 -17 and 24-28; tendered the following exhibits: exhibit D1 which is his witness statement on oath contained in the reply of the 1st and 2nd Respondents' to the Petition, exhibit D2 (PDP primaries Result for **Isiala Ngwa North State Constituency** dated 22nd May, 2022), exhibit D3 (Application for the CTC of the Register of Members LP, Abia State as submitted to INEC 30 days before the party's Primaries) and exhibit D4 (The INEC Manual for Election Officials).

The 3rd Respondent's Counsel cross-examining the DW1 said that he voted on the day of the election. He stated that there was no complaint of accreditation and the election was free and fair. He also said there was no report of over-voting; that there were polling unit agents at the collation centers. Likewise there was no report of irregularity in any of the polling units and there was no report of BVAS machine failure. He also confirmed that BVAS machine were in the custody of INEC officials till date. DW1 said he scored **20,402** votes to emerged as a winner as against **8,750** votes scored by the 1st Petitioner. DW1 also stated that no voter was allowed to vote without accreditation. He said he knows as a fact that BVAS stored information without network but it could not upload information without network in which case the information will remain in the BVAS machine.

The Counsel to the Petitioners also cross-examined DW1 and he confirmed the fact that he did not file a counter-petition regarding non qualification of the 1st

Petitioner to contest the election. DW1 said he did not visit the 35 polling units which the petitioners have complaint; because he voted and went home. DW1 said he only relied on the BVAS report tendered before the tribunal that is exhibit p14 (1-14), exhibit D2 which is PDP primaries result and the scanned copy of exhibit D3.

N.B. Ugo (DW2) was a subpoenaed witness as on exhibit D5 (Subpoena Duces Tecum/ad Testficandum). DW2 also tendered exhibit D6 (a) CTC of the Register of Members of LP, submitted to INEC 30 days before the party's Primaries, Congress or Convention, D6 (b) evidence of payment for INEC LP membership register and D6(c) Issuance of CTC INEC letter dated 5th April, 2023. The evidence of DW2 was entirely concerning the issue of qualification and disqualification of the 1st petitioner to present the petition.

Finally Nwala Emmanuel (DW3) also a subpoenaed witness. Adopted his deposition on 11th October, 2023 and tendered Exhibits. That is exhibit 7 (Subpoena Duces Tecum/ad Testficandum). He also tendered exhibit D8(a) (PDP Membership Card), D8(b) (PDP Card Ward Chairman) and exhibit D9 (PDP Result of State House of Assembly Primary Election).

The 3rd Respondent did not call any witness but tendered 2 exhibits through PW1 on 20th July, 2023 under cross examination. That is, exhibit P29 (a) (Letter of Resignation) and P29 (b) (Letter of withdrawal From PDP Primaries) . The 3rd Respondent also relied on evidence called by the 1st and 2nd Respondents as well as the evidence obtained from the cross examination of PW1, DW1 and DW3.

At the close of the parties' respective cases, commendably within time, all the parties filed and exchanged their final addresses and the replies on point of law; in compliance with the provisions of the Electoral Act.

The 3rd respondent filed his final written address on 22nd August, 2023 and reply on point law was filed on 10th September, 2023 thereby raising one issue for determination as follows:

> **Whether from the state of the Pleadings, the Evidence adduced, the Documentary Evidence and the state of our law in Election Petition, the Petitioners have adduced concrete and sufficient Evidence to be entitled to the reliefs sought before the Tribunal?**

Submissions were made in the address on the above issue which forms of the record of the tribunal which we have carefully considered. The summary and recap of the submission was that the contested election was conducted in substantial

compliance with provisions of the Electoral Act and that the petitioners have not established by credible and convincing evidence the ground upon which the petition was brought to entitle them to any of the reliefs sought. This is because from the evidence and the particulars of non- compliance that the petitioners are challenging the election in only 35 polling units out of the total of 185 polling units in the constituency. The petitioners, therefore, concede to the result of 150 polling units.

Equally the 1st and 2nd respondents filed a joint final written address and the reply on points of law. The final written address was filed on 29th August, 2023 while the reply on points of law was filed on 11/9/2023. The 1st and 2nd respondents raised two issues for determination, viz.:

> **(1) Having regard to the provisions of Section 106(d) of the 1999 Constitution as amended, whether the 1st Petitioner has the necessary *locus standi* to present this Petition in the light of his admitted membership of the Peoples Democratic Party (PDP) at all times material to his sponsorship by 2nd Petitioner for the election of 18/3/2023.**

(2) Having regard to the state of pleadings of the parties and the evidence before the Honourable Tribunal, whether the Petitioners proved their allegation of non-compliance with provisions of Electoral Act 2022 by reason of alleged over-voting and/or non-accreditation with the BVAS machine during the election of 18/3/2023, to entitle them to the reliefs sought.

Submissions were equally made on the above issues; which form part of the record of this Hon. Tribunal. We have carefully considered same. Here again, the substance of the submissions made is that the petitioners have not established the procedural burden placed on them by law to credibly prove their allegations made in the petition. The petitioners are required to prove their case on the preponderance of evidence, a burden which they failed to discharge in the instant petition.

The gist of the submission made is that, the petitioners tabulated the alleged cases of non compliance for each of the questioned polling units and numbered A-H. The said tabulation was authored by the counsel to the petition, which was attached to the petition but same was not attached to the depositions of PW1; so it was not adopted alongside the deposition. That means this tabulation is not part of the

evidence of PW1. The counsel making tabulation was not a witness who could testify and be cross examined.

The 1st and 2nd respondents further pleaded in paragraph 27 that the computation and particulars of non-compliance by the petitioners in their schedule and table in paragraphs 19-28 of the petition are wrong and was made for the purposes of this petition. Furthermore, contrary to the allegation of the Petition in ward 4 polling unit 3 and ward 10 polling unit 5, accredited votes in the BVAS report corresponds with the total accredited votes in Form EC8A(i).The results of the said two polling units, were therefore, wrongly added to the petitioners computation in affected questioned 35 polling units. They also submitted that even on the alleged affected questioned polling units, there was no proof of the over voting or failure of BVAS machine. The 1st and 2nd respondents stated that even if those votes were deducted, the 2nd respondent would still have defeated the 1st petitioner by a wide margin gap of **2,148;** that these facts were admitted by the petitioners.

The respondents in whole submitted that the petitioners have not established that the election was not conducted in substantial compliance with the Electoral Act. It was therefore, finally submitted that the 1st respondent was duly elected with majority lawful votes cast at the election.

The petitioners in response to these addresses filed two final addresses. The first was the petitioners' final written address in response to 3rd respondent's final written address which was filed on 27th August, 2023; whilst the other was the petitioners' final written address to the 1st and 2nd respondents' address filed on 8the September, 2023. The petitioners in these addresses raised a single issue for determination:

> **Whether the Petitioners have proved their sole Ground of Non-compliance with the Provisions of the Electoral Act, 2022 based on acts of over-voting and/or non-accreditation in the questioned Polling Units and are therefore entitled to their Petition being upheld**

Here again submissions were equally made on this issue which forms part of the record of the tribunal. We have also carefully considered same. The summary of the submission was that the standards of proof of the extant Petition is very simple being purely documentary. The documentary evidence based on two distinct but interlinked facts with respect to the questioned 35 polling units in the Constituency was fully established.

The petitioners stated that these two distinct but interlinked facts are as follows:

(i) Voters were allowed to Vote without Accreditation with the BVAS Smart Card Reader and/or

(ii) There was **over-voting** as more voters than accredited using the BVAS Smart Card Reader were allowed to vote.

Accordingly, they established their petition on the basis of evidence they led at the hearing.

We have set out the above issues distilled by parties as arising for determination. The issues formulated by parties appear to be substantially the same, although they were differently couched. Nonetheless, upon a careful and through perusal of the entire pleadings, 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 1st and 2nd Respondents have captured the essence and crux of this disputed election. On the basis of these two issues which fully subsumed all the issues raised by parties that we shall proceed to resolve 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.

The issues as raised by the 1st and 2nd Respondents are, with slight alteration, reproduced hereunder:

> **(1) Having regard to the provisions of Section 106(d) of the 1999 Constitution as amended, whether the 1st Petitioner has the necessary *locus standi* to present this Petition in the light of his admitted membership of the 2nd Respondent (PDP) at all times material for the election of 18/3/2023.**
>
> **(2) Having regard to the state of pleadings of the parties and the evidence before the Honourable Tribunal, whether the Petitioners proved their allegation of non-compliance with provisions of Electoral Act 2022 by reason of alleged over-voting and/or non-accreditation with the BVAS machine during the election of 18/3/2023, to entitle them to the reliefs sought.**

Paragraph11of the petition categorically stated the ground upon which the election is questioned. The petitioners questioned the petition under the second leg of Section 134(1)(b) of the Electoral Act, 2022, as follows:

The Election of the 1st Respondent is invalid by Reason of Non-compliance with the Provisions of the Electoral Act, 2022.

Consequent upon these facts, it appears to us that the issues before this Hon. Tribunal are both constitutional and statutory. Thus, all the issues raised at pre hearing session of this Petition on the Interlocutory Applications and the Preliminary Objections would be immediately dealt with in the substance of this electoral dispute. Upon this bedrock, the applications and their replies filed by parties in form of Motions on Notice and Notice of Preliminary of Objections, being substantially the same and interwoven shall be taken together along our substantive judgment.

This is because the respondents decided to raise again the issue of qualification of the 1st petitioner to contest the questioned election earlier canvassed in the application at pre hearing session. For example the 1st and 2nd respondent in paragraph 2.03 of their final address to the petition challenged the *locus standi* of the petitioners to present the petition an issue which they have already challenged in their reply to the petition. Likewise the 3rd respondent in paragraph 3.48 of his final address raised that issue again, that the 1st petitioner was not validly sponsored by the 2nd petitioner and that the petition brought is therefore incompetent.

This Petition will be determined on the basis of Sections 285, 106 and 107 of the altered Constitution vis-a-vis sections 77(2)(3), 134 and 137 of the Electoral Act, 2022 (as amended).

Thus, by answering this issue, the aforementioned interlocutory applications and preliminary objections will now taken together and resolved seriatim as a foundation for determining the extent petition.

Issue 1

Having regard to the new facts, issues/grounds contained in the petitioners reply whether the said reply should not be struck out for being contrary to paragraphs 14(2)(a)(i)-(iii) and 16(i)(a) and (b) of the 1st schedule to the Electoral Act, 2022.

Interlocutory Applications

The First Application:

The First application was by motion on notice filed by the 1st and 2nd Respondents dated and filed 14th May, 2023, praying for the following orders:

(1) An Order of the Hon. Tribunal striking out the Petitioners' Reply to 1st and 2nd respondents' reply in this petition in that same contains new facts, issues

and arguments contrary to paragraphs 14(2)(a)(i) – (iii) and 16 (1)(a) & (b) of the 1st Schedule to the Electoral Act, 2022.

And for such Further Order(s) as this Hon. Tribunal may deem fit to make in the circumstances of this case. The grounds are as follows:

(i) The 1st and 2nd respondents (now applicants in this motion) filed their reply to the petition.

(ii) The petitioners (respondents in this motion) in their petitioners' reply to respondents' reply, in paragraphs 2 (i)-(v) and 3(i) -(vi), 4,5, and 6 that they raised new facts, issues which ought to have formed the basis of the petition from the very beginning.

(iii) Besides the petition in their said reply in paragraphs 2(i)-(vi) and 3(i)-(vi) embarked on legal arguments/submissions in their pleading contrary to the Rules of pleading.

(iv) A petitioners' reply in an election petition is not a repair kit for an otherwise deficient petition or meant to afford a petitioner another opportunity for additional/new facts in support of the Petition.

(v) By paragraphs 14(2)(a)(i)-(iii) and 16(i)(a) and 16(i)(a) and (b) of the 1st Schedule to Electoral Act, 2022, new issue (s), facts or grounds introduced by way of a Petitioners Reply after expiration of the 21

days for filing a Petition is incompetent and liable to be struck out/dismissed.

The application was supported by a 8 paragraph Affidavit, and a written address raising a single issue for determination as contained in the address is as follows:

> **Having regard to the new facts, issues/grounds contained in the petitioners reply whether the said reply should not be struck –out for being contrary to paragraphs 14(2) of the 1st schedule to the Electoral Act, 2022.**

Submissions were made in the address which forms part of the record this tribunal. The submissions in the written address were adopted and the tribunal was urged to grant the application.

The petitioners filed a 12 paragraph counter affidavit dated 29th April, 2023 and filed 2nd May, 2023 in opposition to the application. A written address was also filed and submissions therein were taken on the issue and adopted which also form part of our record. The petitioners urged the tribunal to dismiss the application.

The petitioners raised an issue for determination, as follows:

Whether the application to strike out the petitioners' reply to the reply of the 1st and 2nd to petition has any merit.

Counsel to the petitioners relied on the paragraphs of the counter affidavit and their submissions in the written address in praying the tribunal to dismiss the application of the 1st and 2nd respondents.

We have carefully considered the processes filed on both sides of the aisle and the submissions made. The narrow issue here is to do with the competency of petitioners reply to the 1st and 2nd respondents' reply for being contrary to paragraphs and 14(2) and 16(i)(a)(b) of the first schedule to the Electoral Act, 2022.

The Second Application:

The second application was filed by the 2nd and 3rd Respondent dated 14th May, 2023; praying for the following orders:

(1) An Order dismissing or striking out this petition No. EPT/AB/SHA/8/2023, Uruakpa Innocent Chiedozie vs. Iheonunekwu Ugochukwu Collins and 2 Ors for being incurably defective, incompetent and thereby rob the Tribunal of the requisite jurisdiction to entertain the Petition.

On the following grounds:

(a) The Petition is grossly and irremediably incompetent in that the Petitioners did not state date the result of the election was declared and the 1st Respondent returned as winner of the election in accordance with Section 285(5) of the 1999 constitution and robbed the Hon. Tribunal to entertain the Petition.

(b) The Hon. Tribunal has no jurisdiction to entertain the Petition of the Petitioners in that:

(i) The Petitioners have no *locus standi* to present this petition being that the 1st Petitioner was not being a member of the 2nd Petitioner and thus was not legitimately or at all validly sponsored by the combined provisions of section 106(d) of the 1999 constitution (as emended) and section 77(2) and (3) of the Electoral Act, 2022.

(iii) No cause of action has been disclosed in the petition as fundamental requirements to support the complaint of the Petitioners and or relief sought are completely lacking or absent in this case.

The motion was supported by a 7 paragraph Affidavit dated 14th May, 2023 with accompanying written Address. The applicants/respondents, formulated two Issues for determination:

Issue 1

Having regard to the failure of the Petitioners to state the date of the declaration of the result of the election, whether this position disclosed a cause of action and thereby validly activates the jurisdiction of the Tribunal to entertain the Petition.

Issue 2

(a) Having regard to provisions of sections 106(d) of the 1999 constitution and section 77(2) and (3) of the Electoral Act, 2022, whether the 1st Petitioner who was at all times material a member of the PDP is qualified to contest the election of 18th March, 2023 and thus invested with the *locus standi* to present this Petition.

The petitioners, therefore, filed their counter affidavit dated 19thMay, 2023 and filed on 22nd May,2023. The petitioners raised in their written address two issues for determination, viz.

(1) Whether the Electoral Act which regulates contents of Election Petition requires pleading of the date of declaration of result as a mandatory requirement for present an election Petition.

(2) Whether an Objection to the *locus standi* of a petitioner is an Election Petition on the basis of qualifications, nomination and sponsorship is competent and if so whether the 1st and 2nd Respondent duly discharge the onus or burden on them to prove their allegation.

The petitioners' counsels adopted the contents in urging that the applications be dismissed.

Notice of Preliminary objection

Notice of Preliminary was also filed by the 1st and 2nd Respondents on 27th April 2023 against the petition filed on 7th April, 2023. The 1st and 2nd Respondents' reply prays, by way of preliminary objection, for the dismissal or striking out the petition wholly or in part on the following grounds, that:

(1) The Petition is grossly and irremediably incompetent in that the Petitioners did not state the date the result of the election was declared and that the 1st Respondent returned as winner of the election in accordance with section 285 (5) of the 1999 Constitution of the Federal Republic of Nigeria (as

amended). Thereby robbed the Hon. Tribunal jurisdiction to entertain this Petition.

(2) The Hon. Tribunal has no jurisdiction to entertain the Petition, in that:

(I) The Petitioners have no *locus standi* to present this petition, in that the 1st Petitioner was not qualified to contest the election being not a member of the 2nd Petitioner and thus was not legitimately or validly sponsored by the 2nd Petitioner as its member as required by the combined provisions of section 106 (d) of the Constitution (as amended) and section 77(2) and (3) of the Electoral Act 2022.

(II) No cause of action has been disclosed in the election petition as fundamental requirements to support the complaint of the Petitions and/or relief sought are completely lacking or absent in this case.

The respondents (at page 12) of the reply stated that the petitioners are not entitled to any of the reliefs claimed by them and shall urge the tribunal to dismiss the petition as lacking in merit.

The petitioners, in response, filed a reply to the 1st and 2nd respondent reply to the petition on 2nd May, 2023. The petitioners, in response to the grounds of the Preliminary Objections to the competence of the petition pleaded that the objection is misconceived, frivolous and totally lacking in merit on the followings grounds:

(1) That the first ground of the objection that the Petitioners failed to state the date of declaration of the result of the election for which reason, the petition is incompetent; the petitioners plead as follows:

(a) There is nothing in Section 285 (5) of the 1999 constitution which mandates a Petitioner to state the date of the declaration of results of Election in a petition. The provisions merely specifies the time within which election Petition must be filed. Nothing further can be read into clear, express an unambiguous provision of a statute.

(b) The Respondents have not claimed that the Petition was filed outside the twenty-one days from the date of declaration of results specified by law. The jurisdiction of the Tribunal is therefore not in dispute.

(c) The constitution of Nigeria aforesaid does not regulates the contents of Election Petition and what must be mandatorily pleaded, by paragraph 4 of the First Schedule of the Electoral Act, 2022.

On the second ground of the Preliminary Objection which is predicated on the ground that the 1st Petitioner "was not legitimately or at all validly sponsored by the 2nd Petitioner as its member …" is most misconceived, incompetent and entirely without merit for the reasons:

(i) An Election Tribunal has no jurisdiction to adjudicate or try any issue relating to validity of the membership, nomination and/or sponsorship of a candidate at an election by a Political Party. That is a per-election matter with specific jurisdiction granted to the Federal High Court by the provisions section 285(14)(b) and (c) of the 1999 constitution (as amended) and sections 29 and 84 of the Electoral Act, 2022.

(ii) The 1st and 2nd Respondent have no *locus standi* to challenge the membership, nomination or sponsorship of the 1st Petitioner as the candidate of the 2nd petitioner not being "Aspirants" within the contemplation of the constitution and the Electoral Act, 2022.

(iii) Complaints relating to validity of the nomination and sponsorship of a candidate, whether on grounds of membership of a Political Party or otherwise, must be brought within fourteen days of the occurrence of the event. The petitioner was nominated at Primary Election of the Petitioner which was held in June, 2022 while the 3rd respondent published his name as the duly nominated sponsored candidate of the Petitioner on 4th October, 2022, any dispute as to these issues are now statute barred.

(iv) Membership of a political Party is not justiciable in any Court, including an Election Tribunal. Once a Political Party affirms that a person is its member, no Court can enquire into whether or not such a person is indeed its member. The membership requirement is section 106(d) the constitution aforesaid is merely to invalidate and nullify independency candidacy not to challenge Political Parties as to who are not its members. Qualification for Political Office is regulated by the constitution. There is no requirement in the constitution as to the period of time a person will be a member of a Political Party to qualify to contest election on the platform of the party.

(v) The requirement in the Election Act for political to submit their membership Registers to INEC 30 days to the Primary Elections has absolutely nothing to do with verification or certificate of membership status of candidates. INEC has no powers to determine who are or are not members of a Political Party or how long they will be members before qualifying to contest, be nominated and/or sponsored as candidates of the Party. That is entirely the internal affairs and discretion of Political Parties.

(vi) This ground of objection is incompetent and should be dismissed.

In respect to the preliminary objection of 1st and 2nd respondents, the petitioners' filed a 7 paragraph Counter Affidavit dated 22nd May, 2023. The petitioners relied on 5 exhibits marked A-E attached to the counter affidavit. Furthermore, the petitioners filed on 19th May, 2023 a written Address opposing the said preliminary objection.

Correspondingly, the respondents filed reply on points of law dated 26th May, 2023; in response to the above counter affidavit particularly as it relates to exhibits A-E attached to the counter affidavit. The applications also contained written address boardering on *locus standi* of the petitioners to present this petition.

This application seeks for an order dismissing or striking out the petition for being incurably defective, incompetent and thereby robs the tribunal of the jurisdiction to entertain the petition; on the ground that the petitioners failed to state the date the result of the election was declared and the 1st respondent returned as winner of the election in accordance with section 285(5) of the Constitution. And that this tribunal has no jurisdiction to entertain the petition because the petitioners have no *locus standi* to present the petition. Finally, the respondent said that the petitioners did not disclosed any cause of action as the petition fundamental requirements to

support the complaint of the petitioners and the reliefs sought are completely lacking or absent in this case.

The petitioners on their counter affidavit dated and filed on 22nd May, 2023 stated in paragraph 2 of the counter that there is no requirement under the constitution or the Electoral Act to state the date of declaration of result, as condition precedent for competence of a petition. The Electoral Act clearly and expressly set out the mandatory particulars to be pleaded in a petition which were duly complied with. They submitted that the respondent are importing into both the Constitution and the Electoral Act, conditions and particulars not specified therein.

The complaint of the Respondents before this tribunal concerns questioning the competency of the petition; particularly of being in contravention of paragraphs 14(2) (i)-(iii) and 16(1)(a)and(b) of the Electoral Act, 2022.

Section (285(1)(a) provides:

> **There shall be established for each State of the Federation and Federal Capital Territory, one or more election tribunal to be known as the National and State Assembly Election Tribunal which shall, to exclusion of any Court or Tribunal, have original**

Jurisdiction to hear and determine Petition as to whether:

(a) Any person has been validly elected as member of the National Assembly; or …"

Whilst section 134(1) of the Electoral Act, 2022 (as amended), provides as follows:

An election may be questioned on any of the following grounds:

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

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

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

Now, by the combined effects of sections 285(1)(a) and 134(1)(a) of the Electoral Act, 2022 (as amended); this petition has fulfilled the requirements of these provisions. This is because a ground in the context of election petition is the fundamental reason, basis or justification for questioning an election. A petition must be based on the ground(s) contained in section 134(1)(a)-(c) of the Electoral Act, 2022; since the Petitioner complied with section 134(1)(b) then this Petition is

well established on concrete foundation. The extant petition adequately shows a cause of action, the question as to whether the petition will succeed is a different thing altogether.

It follows, therefore, this Hon. Tribunal has a responsibility to look into the Petition and decide whether the facts supporting the ground (i) of Petition may or may not sustain the Petition.

Because in the case of **Hassan v. Aliyu** (2010) LPELR-1357 (SC) p. 90, para. D, it was held that the purpose of Preliminary Objection is meant to consider the issue of jurisdiction or competence of the tribunal to entertain a petition.

The petitioners in paragraph 12 adequately stated the facts supporting their allegation of substantial non-compliance with provisions of the Act; which they say affected the result of the election, in 6 wards, as follows:

(a) Umunna Nsulu Ward 2 with 6 Polling Units

(b) Isiala Nsulu Ward 3 1 polling

(c) Ngwaukwu I, Ward 4, 1 Polling Units

(d) Ngwaukwu II, Ward 5, 15 Polling Units

(e) Amasaa Ntigha Ward 7, 3 Polling Units

(f) Nbawsi/Umuomainta Ward 10, 9 Polling Units

From paragraphs 13 -28 of the petition, the petitioners claimed and averred that in the 35 polling units identified there was failure to comply with the express, extant and mandatory provisions of the electoral Act, regulations and guidelines for the conduct of the 2023 general election.

My lords, these are sufficient facts to sustain the petition on the basis on allegation of substantial non compliance with the provision of the Act in the said general election. The 1st and 2nd respondents in paragraph 1.4 of their addresses said that the petitioners did not state the date of the declaration of the result of the election. The respondents, however, stated that non declaration of date result was announced was fatal to the petition; because they need to plead the date result was declared.

Authorities in the presentation of a petition provide that the date ought to be pleaded as that is usually the parameter or guide in determining the validity of all the steps taken by the parties concerned right from the date the election was conducted, the date the results were declared and up to the date of filing the election petition. The court cannot speculate as to the date an election was held even though it can be take judicial notice of the date or matters relating to it on INEC documents.

Section 285(5) of the 1999 Constitution (as amended) provides:

"An election petition shall filed within 21 days after the date of the declaration of result of the election"

The question, in the instant, petition is that the respondent has no proved before this tribunal that the petition has been filed outside the time frame stipulated by the constitution.

Paragraphs 3 of the 1st Schedule to the Act prescribed the procedure for presentation of an election petition, while paragraph 4 stated the content of election petition and paragraph 5 requires for further particulars the court or tribunal may order for as may be necessary, for example, to prevent surprise and unnecessary expense and to ensure fair hearing.

We, accordingly, have carefully considered the processes filed on the submissions of counsel. However, the respondents did not offer any proof that the petition was presented outside the specific provision of the constitution which provided the time frame within which a petition must be presented. It is a settled principle of law that a party praying for a specific relief(s) must provide clear factual and legal basis to support reliefs sought. In the instant case the respondents did not prove that the petition was filed outside the 21 days allowed by the law.

It should be noted that, in bringing these applications before this tribunal the combined effects of paragraphs 12(5) and 47(2) of the 1st Schedule to the Act must be complied with.

Thus, where a respondent elect either of the two options, he cannot turn around to take advantage of the second option, because it settled law that where a party elects to follow a specific procedure, cannot thereafter abandon that procedure for another one; as it was decided in the case of **F.H.A v. Kale jaiye** (2011) All FWLR (t. 1502) p. 645. Consequent upon the *sui generis* and time bound of election petition the respondent cannot combine the two options together to challenge the competence of this petition.

For the avoidance of doubt paragraph 12(5) of the 1st Schedule provides:

> **A Respondent who has an objection to the hearing of the petition shall file his reply and state the objection in it and the objection shall be heard along with the substantive petition.**

Whilst paragraph 47(2) of the said Schedule provides:

> **Where by these rules any application is authorized to be made to the tribunal or court, such application shall be made by motion which may be supported by**

affidavit and shall state under what rule or law the application is brought and shall be served on the Respondent.

By the combined effect of these provisions, a party seeking to challenge an election petition is given the right to elect which options he shall take. In the instant petition, the respondents raised preliminary objections to dismiss or strike out this petition in their reply to the petition. This fact was dealt with in a motion on notice dated and filed on 14th May, 2023. Nevertheless, in paragraph 3 of the affidavit supporting the motion the respondents still embedded a preliminary objection to the competence of the petition, as part of their defence; incorporating the grounds for the objection to the petition in accordance with relevant paragraphs of the Electoral Act and 1st Schedule to the Act.

Another point as earlier on stated was that the respondents raised the issue of qualification in the reply to the petition and also made applications in respect of the same; an issue which has taken care of by the constitution itself. This innovation, obviously, contravenes the above provisions.

The narrow issue here is whether this tribunal may grant the application dismissing or striking out the petition or the specified paragraphs thereof as sought by the respondents? It is our considered view that the petitioners should be given every

opportunity to have their electoral grievance determined on the merit because our tribunal was enjoined to do substantial justice in election petition, as it was decided in the case of **Ikpeazu v Otti** (2016)8 NWLR (pt. 1513) 38 at 97.

What is also strange is that both motions seek for orders to strike the petition on ground that the petitioners did not state the date the result was declared as well as the issue of *locus standi* seeking striking the petition under the guise of non compliance with specific paragraphs of the 1st Schedule to Electoral Act; while in another breath also seek an order in the second motion also dismissing the petition on ground of lack of *locus standi* to present the petition, that is because the 1st petitioner has double membership, which made him unqualified to contest the election.

These applications also touch on the disqualification to present the petition and also want of legal right to present the petition.

It is our considered view that, the respondents clearly missed the point, since they seem to have not known the reliefs they seek in their applications. This attitude rendered the applications both cumbersome and untidy.

In the absence of clear evidence to support the respondents' allegations, the extant applications filed by the respondent stand compromised *ab intio*. Accordingly,

both the interlocutory applications and the preliminary objections herein contained have no merit and they are hereby discountenanced.

Be that at as it may, it is pertinent, out of abundance of caution that the first issue that will be dealt with extensively is to resolve the disputed qualification/ disqualification issue to present this petition. This is because the issue squarely bordered on the jurisdiction of this tribunal even to entertain the petition; which is a threshold issue to cross before going in the substance of the petition itself.

Issue 1:

> **Having regard to the provisions of Section 106(d) of the 1999 Constitution as amended, whether the 1st Petitioner has the necessary *locus standi* to present this Petition in the light of his admitted membership of the 2nd Respondent (PDP) at all times material for the election of 18th March, 2023.**

This crucial point or question of party membership and nomination of candidates for election will now be properly addressed.

With respect to the leading counsels' to the respondents, in this petition they failed to situate the issue of nomination of candidate (s) under section 285 of the 1999 Constitution; which deals with the issue of pre election matters. The issue of pre

election matters under the constitution is non justiciable in post election matters. It is our considered view that these issues are strictly matters concerning the internal affairs of the petitioners over which outsiders like the respondents have no *locus standi* to complain about.

Now from the import of section 106(d) concerning qualification for membership of House of Assembly, 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 respondents who clearly belong to a different political party, is **one seeking the disqualification of another party's candidate for contest of the House of Assembly seat** based on section 106(d) of the 1999 Constitution and section 77 (3) of the Electoral Act.

With respect to the learned counsels' to the respondents, 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 respondent would lack the *locus standi* and/or legal right to present a challenge on the basis of

sections 106(d) of the constitution and section 77 (3) of the Electoral Act. Without *locus standi*, this tribunal will not have jurisdiction to, *ab-initio,* even look into the complaint. See **APM V INEC (Supra) 419.** Indeed in this case, the Court of Appeal instructively held and we shall quote them in extensor; that 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:

(a) 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 respondents is with respect to section 77 (3) of the Electoral Act 2022. The non-compliance for which the constitution has imbued the respondents with *locus standi* is where the complaint of non-compliance is against

INEC which is not the complaint of the respondents here. The complaint is on the alleged failure of 1st petitioner to forward its register of members to INEC not later than 30 days before the primaries.

We note that the respondent at trial relied on evidence of DW1, DW2, and DW3 who tendered various exhibits to prove that the 1st petition enjoyed double membership of the 2nd petitioner and 2nd respondent and that the 1st petitioner did not resigned the membership of 2nd respondent before joining the 2nd petitioner.

It is our respected view that these pieces of evidence are irrelevant before this Hon. Tribunal as it relate to the pre election matters. It therefore discountenanced and hereby struck out and expunged from the record of this tribunal as regards proof on qualification or disqualification of the 1st petitioner to bring this petition. The 1st petitioner from the clear provisions of the constitution and authorities cited has requisite *locus standi* to present the petition.

The Supreme Court cases in **Dangana V Usman (2013) 6 NWLR (Pt 1349) 50** and **Wambai V Donatus (2014) 14 NWLR (Pt 1427) 223** is regularly cited as an authority 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 in respect to internal affairs of parties which are pre-election matters are no longer justiciable and they are not matters for the post-election matters which tribunal such as ours can entertain. 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 .Let us perhaps refer to a recent pronouncement by the **Supreme Cour**t on the issue in **People's 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 dried. 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 authority is very clear on this issue. 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 106 and is not disqualified under section 107 thereof, he is qualified to stand election for a seat in the House of Assembly.

We must repeat the point that section 77 of the Electoral Act on maintaining register member by a political party does not create a new set of criteria for qualification in addition to those set out in section 106 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 107 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 106 and 107 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 respondents.

Issue 2:

> **Having regard to the state of pleadings of the parties and the evidence before the Honourable Tribunal, whether the Petitioners proved their allegation of non-compliance with provisions of Electoral Act 2022 by reason of alleged over-voting and/or non-accreditation with the BVAS machine during the election of 18/3/2023, to entitle them to the reliefs sought.**

This issue flows from the 2nd arm of ground 2(b) of the grounds of the petition to wit:

"…that the election was invalid by non compliance with the provisions of Electoral Act 2022".

Section 134(1) (b)of the Electoral Act provides 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 picked the second alternative ground and project their case.

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 ground upon which the allegation of non compliance with the provision of the Act, hinges as contained in paragraphs 11 on pages 4 –5; whilst the facts supporting this ground of the petition where in paragraphs 12 -28 with reliefs

sought in paragraphs 29 on pages 5-13 of the petition. The petitioners contended that the 3rdRespondent did not substantially adhere to the provisions of compliance with the Act in 6 wards comprising 35 polling units in the constituency in question.

The petitioners plead that in 35 indentified polling units there was failure to comply with express and mandatory provisions of the Act and its regulations/guidelines; which mandated accreditation of voters with Smart Card Reader. The petitioners contended that non compliance with the provisions of the Act in the aforesaid 35 polling units substantially affected the results of the election which resulted to voters were allowed to Vote without Accreditation with the BVAS Smart Card Reader and that there was over voting as more voters than accredited using the BVAS Smart Card Reader were allowed to vote.

The Petitioners, in paragraphs 28 of the petition and the deposition of PW1 it was stated that the total number of Registered voters in the 35 Polling Units where the elections have been invalidated and nullified because for non-accreditation of voters or over voting is **23,420** Registered Voters. The paragraphs equally contain allegations of malfunction of BVAS, non-accreditation of voters and disenfranchisement of voters among other complaints. The petitioners pleaded that by margin of lead principle if those votes were invalidated the 1st Respondent shall not be declared as the winner of the election.

The case of the petitioners is that, their witness (PW1 and also the 1st Petitioner) who relied on documents pleaded and listed by the Petitioners in paragraph 10 of the petition tendered from the Bar through him as exhibits P1 – P29B; are the documentary evidence, which speak to itself, as provided under section 137 of the Act. The petitioners then argued that the Respondents adopted and relied on those documents tendered as exhibits by the Petitioners. The petitioners, therefore, contended that the Respondents are bound by the contents of the said documents. This being the case, the respondents are no longer in dispute as to the admissibility, relevance, weight or probative value attached to those documents and exhibits; since the respondents have no objection to their admissibility. The point of the petitioners, here is that the respondents already admitted and relied on the content of the said document. Thus, the petitioners have discharged their burden in proving their case. The burden is now shifted on the respondent to disprove same.

The petitioners urge this tribunal to give full effect to the contents of the said admitted documents and exhibits; upheld and grant the reliefs sought.

The petitioners pleaded that the 1st and 2nd Respondents called three witnesses. The 1st Respondent was the DW1 who during his Evidence in Chief identified the documents and exhibits tendered by the Petitioners and also said he was relying on

them. He then tendered other documents relating to the issue of alleged qualification and non-qualification of the 1st Petitioner to contest the said election.

The petitioners also stated that DW2 and DW3 were **witnesses on subpoena** whose evidence was also entirely in relation to the issue of qualification and non-qualification of the 1st petitioner to contest the election. Thus, their evidence did not touch on the questioned election before the Court. They relied on the purported Witness Statements on Oath which did not accompany the Reply of the 1st and 2nd Respondents to the Petition. They did not seek nor obtain the leave of the honorable Tribunal to rely on and adopt the said Depositions as their evidence. They said that the Depositions and all the documents which came in through it and tendered in evidence are incompetent, nullities and should be struck out by the Honorable Tribunal and expunged from its records.

The petitioners further stated that the 3rd Respondent did not call any witness and did not tender any document in reply to the Petition. They contended that the pleading of 3rd respondent is deemed abandoned; since pleadings in respect of which no evidence is adduced is deemed abandoned.

The petitioners rightly stated that since the respondents relied on the exhibits they tendered the respondent have no any objection to their admissibility. We hold that since the document tendered are relevant and the respondents did not make any submission in their final addresses on the objection, the objection is deemed abandoned. However, it is trite law that admissibility is not the same as the weight to be attached to documents tendered. The next thing that the petitioners must show is what probative value that these documents tendered through PW1may have in supporting the petition.

The petitioners vehemently relied on Section 137 of the electoral Act in their final addresses to the respondents. For example, in the petitioners' final address to the 3rd respondent, from paragraphs 26-44 they explained in details exhibits tendered particularly at paragraphs 15-17. The petitioners made various allegations without proof and the petitioners relied on those exhibits.

The Respondents, on the other hand argued that the mere dumping documents without calling evidence to demonstrate same cannot prove the case of the petitioners.

Obviously my lords, we are confronted with a situation where a complaint is averred in the pleadings without evidence to support same. In the instant case

petitioners absolutely proffered nothing either in the pleading or evidence to support the contention of non compliance or over voting.

The 1st and 2nd respondents' case is that when the matter proceeded to trial, the Petitioners called a sole witness (PW1); through whom they tendered the total of 245 documents marked as exhibits P1 – P29B. Objections were taken to the Documents tendered by the Petitioners and reasons for the objections were reserved to the Final Address.

Similarly, on the part of the 1st and 2nd Respondents a total of 3 witnesses were called, that is DW 1, DW2 and DW3 and tendered a total of 7 Exhibits through DW1 which are marked exhibits D1– D6. The 1st and 2nd respondent also on INEC Forms EC8A, EC8B, EC8C and EC8E(1) for the 35 Polling Units in 6 Wards questioned by the petitioners. The 1st and 2nd respondent also relied on the declaration of Results tendered by the Petitioners as exhibits P8 – P24.

The 3rd Respondent, however, did not call any witness but tendered 2 documents, through the PW1 under Cross-Examination on 20th July, 2023, which are marked as exhibits P29A and P29B. The 3rd Respondent also relied on the evidence of the 1st and 2nd Respondents as well as evidence obtained from the cross-examination of

the PW1 and DW1 – DW3. The 3rd respondent, in his reply on points of law contended that, the contention of the petitioners that the 3rd respondent having not called any witness in support of her pleading is said not to have participated in the trial is highly misconceived. The position of the law is that a party who participated in the proceeding by cross examining the witnesses of the adverse party and elicited answers from said witnesses which also support his pleading cannot be said not to have participated in the proceedings. He cited **Okoroji v. Onwenu** (2017) All FWLR pt. 871 p. 1347 at 1369 paras. B-D; where the court held that:

> **Evidence elicited by plaintiff in the course of cross examination of the defence witnesses which support the case put forward by him in his pleadings is relevant evidence adduced by him in proof of the claim he made before the court, such evidence is of the same position as evidence given by the plaintiff own witness in support of the claim.**

He also cited **Akomolafe v Guardian Press LTD (Printers)** (2020) All FWLR pt. 517 p. 773.

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 a proof of facts if not admitted. See **Adegbite V Ogunfolu** (1990) 4 NWLR (Pt 146) 518.

In the instant petition, the petitioners merely tendered from the Bar through PW1 35 polling units vide exhibits P1 – P29B in the State Constituency without more; but fail to show how the tendering of these documents will translate to proof of over voting because of non compliance with the Act.

The 3rd respondent submitted in his final written address that the petitioners challenging the election in 35 polling units out of the total of 185 polling units in the constituency; by their pealings and evidence before the tribunal did not dispute the result of the election in the remaining 150 polling units.

He further submitted that the law is now settled that whoever desires any court to give judgment as to any legal right exist or liability dependent on the existence of facts he assets, must prove that those facts exist. He must lead credible evidence to prove same. In the instant case, the petitioners failed to prove over-voting and their case must surely fail; he cited **Adesina vs Air France** (2023) All FWLR pt. 1184 p. 891. He also referred to sections 136 and 137 of the Evidence Act, that the burden of proof lies on the party who will lose if no evidence is adduced at all.

The petitioners only fielded PW1 who is the 1st petitioner tendered exhibits from the Bar but without calling oral evidence from the various complain polling units to testify. The petitioners only relied on the said exhibits and folded their hands for the respondent to disprove same.

The respondents contended that the exhibits relied upon by the petitioners are all hearsay documentary evidence which must discountenanced by the tribunal; as no oral evidence called to demonstrate same.

As alluded earlier on, and we must again underscore this point at the risk of sounding prolix, that the petitioners in paragraph 12-28 of the petition aver that in **Isiala Ngwa North State Constituency** which consisted of 10 wards and 185 polling units. In support the paragraph containing allegation of non compliance in 6 wards consisting of 35 polling units as stated earlier, nobody was presented to situate the complains made and how it affected substantially the elections.

n **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.

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

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

the facts alleged in the petition, before considering the evidence produced by the respondents to find out if the evidence has disproved the case established by the petitioners on a balance of probabilities". See also **Buhari V INEC (2008) 19 NWLR (Pt. 1120) 246 at 350.**

In the petition, the petitioners highlighted in the same paragraph 12 incidents of over voting but there was absolutely no demonstration of these complaints. Tendering of the Exhibit P1 – P29b from the Bar, simpliciter, cannot be a basis to hold there was non–accreditation or over voting amounting to substantial non compliance of the Act. This is because the provisions of sections 47 and 60 of the Electoral Act provides 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 substantial non compliance that resulted to over voting.

The petitioners, in the extant petition, only dumped on the court **Exhibits P1 – 29b** 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:

1) **"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 the instant petition the petitioners only dumped the exhibited documents on the tribunal. It is not the duty or responsibility of the tribunal to determine or decipher in chambers what relevant exhibit relate to what fact that petition sought to established.

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 malfunction of BVAS machines and non-accreditation of voters, where is the evidence to support these averments? Absolutely nothing was proffered. Indeed no one single voter who was allegedly voted without accreditation was called to testify; from the entire constituency which as alleged by the petitioners has 23,420 registered voters, as contained in paragraph 28 of the petition. If any BVAS malfunctioned, no such BVAS machine was brought before the tribunal to demonstrate how it operates; only BVAS report was tendered. None of the Electoral agents or officers in the election came to say anything about malfunction of BVAS machine. In fact their evidence confirmed everything worked well and there was no challenge of any kind with the accreditation. The law is clear and settled that pleading 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.**

In an election petition were a petition as in this case complains of non-compliance with the Electoral Act based on non compliance with act and over voting, 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, it is clear without any doubt that the petitioners have not established and not situated 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 are not affected negatively on the election under review.

As to the second leg of the complaint, the petitioners alleged in paragraph 28 that the total number of registered voters in the 35 polling units where the election ought to have been invalidated and nullified because of non-accreditation of voters

or over voting is 23,420 registered voters. Going by the margin of lead principle, this is far above the difference in votes between first and second place, the Petitioners pleaded that in these circumstances, the 3rd Respondent should be ordered by the Honorable Tribunal to conduct fresh or supplementary elections in the affected 35 polling units in 6 wards of **Isiala Ngwa North State Constituency,** with the result and scores added to those determined by the tribunal as the valid scores of the election held on 8th March, 2023 after the invalid votes in the 35 polling units have been deducted, in order to determine the winner of the said election.

However, the petitioner further pleaded that the difference in votes between the highest scoring party, PDP with a total of **10,070** votes and the Labour Party which came second with a total of **7, 922** votes there is wide gap of a total of 2, 148 votes. These figures which contradicted paragraphs 26 and 27 of the petition are not proved. This is a mere allegation devoid of any evidence. Since this allegation is not supported by evidence. The margin of lead principle provided for under Regulations 62 of the Regulations and Guidelines for the conduct of the 2023 election is not applicable here.

The margin of lead principle provided states, as follows:

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

On this point the submission of the respondents was that, the petitioners did not satisfy the requirement proving that if the figure representing the alleged over voting is removed, will turn the pendulum of success in favour of the petitioners. It goes without saying that, the over voting areas if removed revealed that, still the 1st respondent will be leading the 1st petitioner by a margin lead of **2, 148** votes.

We are unable to situate the argument of the petitioners on the margin of lead principle, because they admitted in their pleading and also by the 1st petitioner under cross examination that, by his admission that the 1st respondent was still

ahead of him even if the 35 polling units with deducted the result. It is easily discernible from the pleading, facts supporting and the evidence that the 1st respondent has won at least 150 polling units out of 185 polling units of the Constituency. That means the 1st Respondent has more than 60% of the votes cast in that Constituency. It is on record that the petitioners did not dispute the fact that wards 3 and 10 were wrongly included in the 6 wards that the petitioners are complaining. It is a trite principle of law that what is admitted does not require further proof, in the instance case, the above facts. Margin of lead principle cannot therefore be invoked in the circumstances of this petition.

This is because as contended by the respondents and admitted by the petitioners, that the said disputed 4 or 6 wards consisting of 35 polling units are very insignificant in the circumstances of this case because the 3rd respondent leads in the said election.

We really wonder how, even if the petitioners proved the substantial non – compliance with the Act, that non compliance will impact on the result; since if the 35 polling units result are deducted still the 1st respondent would have won the election by more than 2/3 of the polling units result of the Constituency under review.

Issue 2 is therefore resolved against the petitioners.

Finally, the petitioners have clearly failed to prove by relevant, credible and admissible evidence, the elaborate allegations made in the petition. It is not in dispute that 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.

Accordingly, we hold that the petitioners have not been able to establish the sole **ground 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 **Reliefs sought** are really not availing.

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

HON. JUSTICE AHMAD MUHAMAD GIDADO
MEMBER I

Appearance:

1. **Nnamadi U. Nwokocha Esq.,with Louis U. Itiba, Esq and Ogochukwu N. Ofor, for the Petitioners.**

2. **C.C. Elele, Esq., with C.C. Nwogu, Esq. for the 1st and 2nd Respondents.**

3. **J. Olaiya Omotiba, Esq. for the 3rd Respondent.**