

**IN THE NATIONAL AND STATE HOUSE OF ASSEMBLY
ELECTION PETITION TRIBUNAL, OVERRI, IMO STATE
HOLDEN AT HIGH COURT 1 & 2 COMPLEX, MARARABA,
NASARAWA STATE**

On Monday 4th day of September, 2023

BEFORE THEIR LORDSHIPS

HON. JUSTICE Y. HALILU	-	CHAIRMAN
HON. KADI M.G. ABUBAKAR	-	MEMBER I
HON. JUSTICE A.O. FAMILONI	-	MEMBER II

PETITION NO. EPT/IMO/SEN/03/2023

BETWEEN:

1. CHARLES UGOCHUKWU AHIZE	}	PETITIONERS/ RESPONDENTS
2. LABOUR PARTY (LP)		

AND

1. IZUNASO OSITA BONAVENTURE ...	RESPONDENT/APPLICANT	
2. ALL PROGRESSIVE CONGRESS (APC)	}	RESPONDENTS
3. INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC)		

JUDGMENT

The National Assembly Election for Senatorial and House of Representatives election was held on the 25th day of February, 2023 in Imo and other States of the Country.

The Independent National Electoral Commission (INEC) declared Izunaso Osita Bonaventure of the All Progressives Congress (APC) as the duly elected candidate for Imo West Senatorial District and accordingly returned him as elected.

Charles Ugochukwu Ahize of the Labour Party who was not satisfied with the declaration and return decided to approach the Election Petition Tribunal by Filing Petition **No. EPT/IM/SEN/03/2023** at the Election Tribunal Registry on the 17th March, 2023 challenging the said declaration and return on the following grounds:-

- a. That the 1st Respondent was not duly elected by majority of lawful votes cast at the election; and/or
- b. That the Election was invalid by reason of corrupt practices or non-compliance with the provisions of the Electoral Act, 2022

For above reasons, Petitioners sought for the following reliefs from the Tribunal, as follows:-

1. That it may be determined that the 1st Respondent, Izunaso Osita Bonaventure, was not duly elected or returned by the majority of

lawful votes cast at the Imo West Senatorial District Election held on the 25th day of February, 2023.

2. That it may be determined that the Imo West Senatorial District Election held on 25th February, 2023 was invalidated by non-compliance with the provisions of the Electoral Act, 2022 which non-compliance substantially affected the result or outcome of the Election.
3. An Order of this Honourable Tribunal nullifying or setting aside the Result of the Imo West Senatorial District Election held on 25th February, 2023 for substantial non-compliance with the provisions of the Electoral Act, 2022 which non-compliance substantially affected the Result or Outcome of the Election.
4. That it may be determined that the Imo West Senatorial District Election held on 25th February, 2023 was invalidated by corrupt practices which substantially affected the result or outcome of the Election.
5. An Order of this Honourable Tribunal nullifying or setting aside the result of the Imo West Senatorial District Election held on 25th February, 2023, for being invalidated by corrupt practices which substantially affected the Result or outcome of the Election.
6. An Order directing 3rd Respondent (INEC) to conduct a fresh Election for the Imo West Senatorial District in line with provisions of Section 136(1) of the Electoral Act, 2022.

The facts of the Petition as contended by the 1st Petitioner is that the Imo West Senatorial District in Imo State is made up of twelve (12) Local Government Area which is comprised of 137 Wards and 1,912 polling units in which elections were scheduled to hold on the 25th day of February, 2023.

The Petitioners state that the 1st Petitioner was the person who scored the majority of lawful votes cast at the election in the polling units and wards where the Election was held and ought to have been declared and returned winner of the Election.

It is the contention of the Petitioners that Election for Imo West Senatorial District was conducted in gross breach of the Electoral Act, 2022 and Guidelines as Accreditation was not done with BVAS machine across the Polling Units of several Wards, that Election did not hold and Voters did not vote in several Polling Units of several Wards and yet results were declared.

It is the claim of the Petitioners that Election held in Njaba Local Government Area and result recorded in Form EC8A(I) and announced by the Presiding Officer at the various Polling Units which was eventually taken to the respective Ward Collation Centres where results were collated in Form EC8B(I) which was thereafter taken to the Local Government Area Collation Centre which 1st Petitioner claimed he was in the lead then suddenly the 1st Respondent with his Agents unleashed violence and the final result could not be collated into Forms EC8C(1) and EC8D(1) for the

eventual declaration but that he was in the lead with 4,791 votes as against the 1st Respondent who had 2,270 votes.

The Petitioners state that the Election was conducted in various Polling Units of the various Wards in Njaba Local Government Area of Imo State and results of the Election duly recorded in Forms EC8A(1) and announced by the Presiding Officers at the various Polling Units. Thereafter, the Presiding Officers and their supporting officials took the Polling Units Result to the respective Ward Collation Centres where they were recorded and collated into Forms EC8B(I) by the various Wards Collation Officers.

Thereafter, the Ward Collation Officers took their various Form ECBB(I) to the Local Government Area Collation Centre for further collation. The collation of the Results of the Election at the various Ward Collation Centres in the Njaba Local Government Area clearly placed the Petitioners in the lead. Realizing this, the 1st Respondent and his supporters used thugs to unleash violence and disrupt the collation of the results at the Local Government Area Collation Centre. As a result, the Results from the Ward Collation Centres in Njaba Local Government Area could not be collated at the Local Government Collation Centre into Form ECBC (1) and transferred for final collation at the Senatorial Collation Centre.

Consequently, the results of the election in Njaba Local Government Areas could not be collated into Form EC8D(1) for the Imo West Senatorial District and reflected in the Declaration of Result (Form EC8E (I) for the Election. The Petitioners shall rely on the Forms EC8A(1), EC8B(1), EC8C(I) used for

the Election in Njaba Local Government Area as well as the FormEC8D (I) and EC8E(I) used for the collation and declaration of the Result of the Election at the Senatorial District Collation Centre. NOTICE is hereby given to the 3rd Respondent to produce the above pleaded Forms.

The Petitioners state that based on the Result of the Election collated at the various Ward Collation Centres in Njaba Local Government Area, the Petitioners scored a total vote of four thousand, seven hundred and ninety -- one (4,791) votes as against two thousand, two hundred and seventy (2,270) votes scored by the 1st and 2nd Respondents. The details of the Results of the Election from the various Wards in the Local Government Areas are as follows:

S/NO.	NAME OF POLLING UNIT	POLLING UNIT NUMBER	NUMBER OF ACCREDITED VOTERS	VOTES SCORED BY (APC)	VOTES SCORED BY (LP)
1.	Umuaka Ward I			232	1275
2.	Umuaka Ward II			261	989
3.	Umuaka Ward III			333	589
4.	Umuaka Ward IV			204	603
5.	Amucha I			188	333
6.	Amucha II			163	455
7.	Okwudor			717	426
8.	Nkume			172	121
		TOTAL		2270	4791

The total number of registered voters in the Njaba Local Government Area is 83137 while the total number of issued or collected Permanent Voters Card (PVC) for the Local Government Area is 63413.

It is similarly the claim of the Petitioner that in Oru East, Orlu and Orsu Local Government Areas, no valid election held there but results were declared.

It is further the claim of the Petitioners that in Oru West, Ohaji/Egbema and Oguta Local Government Areas, election did not hold in many Wards and Polling Units of the Local Government Areas but results were declared and mostly in favour of the 1st and 2nd Respondents.

In Ohaji/Egbema Local Government Area, the votes recorded in the Polling Unit do not match record of Accreditation of Voters as reflected in the BVAS used for the elections.

It is the claim of the Petitioners that Labour Party (LP) was leading in Nkwerre Local Government with **4,018** and All Progressive Congress (APC) **2,284** when 1st Respondent and this thugs intimidated the Collation Officers into manipulating the result in favour of the 1st and 2nd Respondents with a total of 8,754 votes against 4,017 for the Labour Party (LP).

It is the claim of the Petitioners that whatever result that was "allocated" to the 1st Respondent at the Imo West Senatorial District Election were not result emanating from the Election but result arbitrarily and unlawfully allocated to the 1st Respondent from nowhere. The Tribunal will therefore be urged to cancel the purported result assigned to the 1st Respondent. At the hearing, the Petitioner shall rely on the report/evidence of the agents and others to show that the results ascribed to the 1st Respondent in the above stated or mentioned Local Government Areas have no nexus with the actual votes cast or the electoral will of the voters in the said Local Government Areas.

The Petitioners state that if the invalid votes credited by the 3rd Respondent to the 1st Respondent or his Party in Oru East, Orsu, Orlu, Oru West, Ohaji/Egbema and Oguta Local Government Areas are subtracted from the total votes of **78,607** scored by him and the votes scored by the 1st Petitioner or his Party and the 1st Respondent or his Party in Njaba Local Government Area which were excluded from the final results that were declared for the Imo West Senatorial District are added to the **37,029** scored by the 1st Petitioner or his Party, the 1st Petitioner will emerge winner of the Election. Alternatively, taking into account the number of registered voters and record of issued or collected PVCs in the affected Wards and Polling Units, the acts of non – compliance are substantial and will substantially affect the Result of the Election.

The Petitioners and some of their agents and supporters submitted reports, and video records of the incidents of malpractices and non – compliance that took place on the day of election in **Oru East, Orsu, Orlu, Ohaji/Egbeme, Oguta and Oru West** and are hereby pleaded. Notice is hereby given to the 3rd Respondent to produce the said reports and video records.

The Petitioners state that the presence of overwhelming number of Policemen and Army full armed in and around the Polling Unit in the Imo West Senatorial District immediately before and during the Election, the role of the said Police, DSS, Egbubeagu Vigilante e.t.c gave the 1st Respondent and his APC members, thugs, hirelings edge over other

contestants and their supporters who were scared with gun shots and threatened with arrest and detention at the State Police Command, Owerri.

The Petitioners state that in many Polling Units where the 1st Respondent was recorded as winner, the election in such Polling Units were marred by malpractices and non – compliance with the Electoral Act, 2022 and the INEC’s Regulations and Guidelines especially lack of or improper accreditation of voters using the BVAS, over voting and unilateral allocation of votes to the candidates and their Parties especially the 1st and 2nd Respondents.

The Petitioners states that a comparison of the record or list of accredited voters at the Election as captured by the BVAS used for the Election with the Results of the Election especially the Form EC8A (I) series used for the Election will show that there are numerous cases where there are more votes than the number of verified/accredited voters. The results of the said Polling Units are thereby rendered null and void. This is especially so, in respect of the Polling Units in **Oru East, Orlu, Orsu, Oru West, Ohaji/Egbema and Oguta Local Government Areas** pleaded above.

The Petitioners states that if the results purportedly declared in the disputed Polling Units are nullified, it will certainly affect the result of the whole election.

The Petitioner specifically pleads that elections in Ohaji/Egbema Local Government Area and Oguta Local Government Area were heavily marred by irregularities and corrupt practices, and contends that a careful perusal of the afore pleaded Result Forms clearly shows that there were so many

instances of wrong entries and miscalculations and arbitrary allocation of votes. In some cases, the Petitioners vote scores were reduced, while in some cases the 1st and 2nd Respondents' vote scores were jacked up without any justification.

Particularly, the Petitioners state that there was no valid election in Oru East Local Government Area and Oru West Local Government Area where the 1st Respondent and the incumbent Governor of Imo State, Sen. Hope Uzodimma respectively hail from. The 1st Respondent, and the said Governor of Imo State, overawed all the electoral officials posted to the said Local Government Areas and cornered them variously to the Governor's Village, Omuma and 1st Respondent Village, Ohakpu where figures were generously allocated as votes to the 1st and 2nd Respondents. This led to clear case of over voting in Oru East and Oru West Local Government Areas. The votes ascribed to the 1st Respondent and 1st Petitioner in the Polling Units where there was over voting in the above – names Local Government Areas were **17,940** and **1,545** respectively.

The Petitioners plead that the total number of unmerited votes ascribed to the 1st Respondent in Oru East Local Government Area and Oru West Local Government Area ought to be subtracted from the total vote scored by the 1st Respondent, the votes score of the 1st Respondent will stand as follows:

78,607 votes – 17,940 votes from Oru East = 60,667

60,667 votes - 29,380 votes from Oru West = 31,287

The Petitioners further pleads that in some Local Government Areas like Ohaji/Egbema, Oguta, Oru West, the 1st Respondent and his agents stuffed the ballot boxes used for the Election with fake ballot papers which were already thumb printed in favour of the 1st Respondent. The Petitioners shall request for a recount of the votes from these Local Government Area at the hearing of this Petition. The **ballot papers used at the question election for the whole of Imo West Senatorial District** are hereby pleaded. Notice is hereby given to the 3rd Respondent to produce the said ballot papers at the hearing of this Petition.

The Petitioners and their agents protested in writing to the 3rd Respondent against the above stated anomalies observed in the course of the conduct of the Election. The Petitioners shall rely upon the **protest letters written by them, and their agents to the 3rd Respondent.** Notice is hereby given to the 3rd Respondent to produce the said protest letters or written complaints.

The Respondents used Form EC8A(I) (result sheets from Jigawa State) to write results for the 1st Respondent and uploaded same in the BVAS and/or INEC's IREV Portal.

The Petitioners state that the various acts of non – compliance with the provisions of the Electoral Act, 2022 and the INEC's Regulations and Guidelines pleaded herein are not only substantial but substantially affected the result of the Election in that by virtue of the said acts of non – compliance, it is impossible to determine fairly who between the Petitioners

and the 1st and 2nd Respondents won the Imo West Senatorial District Election held on 25th February, 2023.

Upon receipt of service of the Petition on the Respondents, the 1st, 2nd and 3rd Respondents respectively, filed their respective response to the Petition and applications challenging the jurisdiction of this Tribunal on the strength of the fact that the petition is incompetent hence seeking an Order dismissing same and or striking-out certain paragraphs of the petition and grounds... they equally filed replies to the Petition.

I now proceed to capture the replies of the Respondents to the Petition before proceeding to determine the respective Motions.

It is the reply of 1st Respondent, that the 1st Petitioner was not nominated by the mandatory number of registered voters as required by the Electoral Act, 2022 for the office of Senator in the National Assembly hence not qualified to contest the election, and that the 2nd Petitioner did not duly sponsor the 1st Petitioner as its candidate for the election held on the 25th of February, 2023.

It is similarly the 1st Respondent's reply that all the Agents of the 3rd Respondent who participated in the election discharged their respective duties in substantial compliance with the provisions of the Electoral Act, the Regulations and the Guidelines enacted thereunder.

1st Respondent contends the fact that the 1st Petitioner was not duly nominated to contest the election as a candidate of the 2nd Petitioner, hence he lack the Locus Standi to present this Petition.

It is further the reply of the 1st Respondent that he was lawfully and duly elected by majority of lawful votes cast at the Election which was conducted in compliance with the Electoral Act, 2022, and that there was no incidence of substantial non-compliance with the 2022 Electoral Act.

1st Respondent contends that ground “b” of the Petition is not competent. He also stated that BVAS Machines were used in all the Polling Units of the Wards and Local Governments Areas.

The 1st Respondent denies that the Petitioners were in lead in Njaba Local Government Area. The 1st Respondent denies the use of thugs and destruction in Njaba Local Government Area during the election. It was the Petitioners and their agents whose behavior at the said Local Government Area was untoward, and that the Petitioners did not score the votes pleaded in Paragraph 25 and the scores set out in the table for Njaba is false and denied.

ORU EAST, ORLU AND ORSU LOCAL GOVERNMENT AREAS

Paragraph 27 is denied. More political parties and their candidates scored votes in Orsu Local Government Areas than the two (2) political parties tabulated by the Petitioners in Paragraph 27.

It similarly the reply of the 1st Respondent that the 3rd Respondent's staff (Permanent and ad-hoc) engaged or deployed for the election showed up at the Polling Units to conduct the election and that he won the Election in Orlu Local Government Area.

1st Respondent denies ever using the Army, Police or thugs to thumbprint any ballot paper in favour of the 1st Respondent or to write any result at all in favour of the 1st Respondent. Paragraph 29 is vehemently denied and the Petitioners are put to the proof of the identity of the Army, the Police and thugs alleged in the Paragraph, and that the election was held in the wards and polling units of Oru West, Ohaji/Egbema and Oguta Local Government Areas. The results were duly collated and declared. The 1st Respondent pleads the results for Oru West, Ohaji/Egbema and Oguta Local Government Areas which he applied for and were issued to him by the 3rd Respondent after the Election.

The 1st Respondent further denies the allegation that the votes recorded in the Polling units do not match the record of accreditation; and that the election held in the Wards and Polling Units of Ohaji/Egbema Local Government Area.

It is also the reply of 1st Respondent that it is not true that election did hold in the wards and polling units of the Local Government Area. The Petitioners are put to the strictest proof of their allegations therein, but that the Petitioners did not win the election in Nkwerre Local Government Area. The allegations of crime set out in that paragraph are objected to and denied.

The 1st Respondent objects to and denies the criminal allegations of **"allocation," "arbitrary" and unlawful** allocation of votes allegedly made to the 1st Respondent from nowhere. The Petitioners are put to the strictest proof of the identities of the persons who committed the alleged

crime and the 1st and 2nd Respondents did not engage any person whatsoever to arbitrarily and unlawfully allocate votes and results to the 1st Respondent. The Petitioners are put to the strictest proof of the false arithmetic in Paragraph 35 of the petition without any foundation.

1st Respondent further replies that they never engaged any police men and army whether or not armed nor did they engage the services of any DSS, Ebubeagu or thugs or hirelings for any purpose at all in the election nor did they cause any person to fire gunshot or threaten any person with arrest and detention anywhere at all during the said Election.

That the Election was not marred by non-compliance with the Electoral Act, 2022 and the 3rd Respondent's Regulations and Guidelines in any manner pleaded. The 1st Respondent denies paragraph 40. The 1st Respondent denies the false allegation that many polling units where the 1st Respondent was declared the winner in the election were marred by malpractices and non-compliance with the Electoral Act 2022 and the 3rd Respondent's Independent National Electoral Commission (INEC) Regulations and Guidelines or by any irregularities and all other allegations therein in any manner pleaded.

It is also the reply of 1st Respondent, that Election in Ohaji/Egbema Local Government Area and Oguta Local Government Area were not marred by any irregularities and corrupt practices, and denied the existence or procurement of any wrong entries and miscalculations and arbitrary allocation of votes.

Learned counsel further submits, that there was valid election in Oru East, Orlu and Oru West Local Government Areas. The Governor of Imo State must naturally hail from a place and the coincidence of him hailing from Oru East and the 1st Respondent hailing from Oru West does not warrant their being tagged with allegations of crime which are hereby denied. Neither the 1st Respondent nor the Governor of Imo State posted any INEC's official (3rd Respondent's) for the conduct of the election. The 1st Respondent objects to the averment leveled against their personalities in Paragraph 57.

The 1st Respondent shall contend at the trial that the figures set out in Paragraph 52 which are hereby denied are without foundation. The 1st Respondent contend that they (the 1st and 2nd Respondents) never engaged any agent to stuff any ballot boxes whether fake or not and whether thumb printed or not in favour of the 1st Respondent and they deny the commission of crimes alleged.

1st Respondent pleads the following INEC Forms:-

1. Form EC8A for the various Polling Units in the Senatorial District.
2. Form EC8B for the various Wards in the Senatorial District.
3. Form EC8C for the various Local Government Areas in the Senatorial District.
4. Form EC8D used for the Election.
5. Form EC8E

6. All Receipts of payment in respect of the application made by the 1st Respondent for certification of the documents by the 3rd Respondent issued to the 1st Respondent.
7. Permanent Voters Cards of Voters (PVCs)
8. 1st Petitioner's Form EC9
9. 1st Petitioner's Form EC136
10. Certified Copy of INEC Report on the Labour Party Senatorial Primary Election held on Thursday, 9th June, 2022 in Imo State with supporting documents.
11. Certified copy of Notification of Venue and Dates for Labour Party Primaries in Imo State dated 26th May, 2022.
12. All other relevant documents in relation to the Election and the Petition.

The reply of 2nd Respondent is the same as that of the 1st Respondent, so needles to reproduce same.

3rd Respondent denied the fact that Petitioner scored the highest votes at the Election, and that there was due accreditation using BVAS machines, results duly collated, entered into correct Forms and announced; and that where Election did not hold, Form EG 40G(I) was filled.

It is further the reply of the 3rd Respondent, that no Army or Police were used to intimidate any Voter and that Petitioner did not score the said scores in Njaba Local Government Area as claimed.

It is the further reply of 3rd Respondent, that Election duly held in the said Polling Units of Local Governments that make-up Imo West Senatorial District, Imo State.

With the replies duly captured, I now more to determine the reserved ruling which have been consolidated.

The said applications were filed on the 18th April, 2023, 10th April, 2023 and 10th April, 2023 and reserved for ruling Pursuant to Section 285(8) of the 1999 Constitution of Federal Republic of Nigeria.

1st Petitioner also filed Counter Affidavits and reply denying the said averments and also argued that both the grounds of the Petition and the facts pleaded are not in any way in contravention of the Electoral Act or any Law and urged the Tribunal to dismiss the application.

1st Respondent's application seeks the following:-

1. An Order striking out/dismissing Petition No. **EPT/IMO/SEN/03 /2023 CHARLES UGOCHUKWU AHIZE & ANOR VS. IZUNASO OSITA BONAVENTURE & ORS** for being fundamentally defective, incompetent and incapable of vesting jurisdiction on the Tribunal to try the Petition on the merit.

2. An Order striking out ground "b" of the petition as set out in paragraph 14 of the petition for lumping two grounds in one as same offends Section 134(1)(b) of the Electoral Act, 2022 together with all the averments in support thereof as pleaded in paragraphs 20, 21, 23, 24, 27, 28, 29, 30, 33, 33a, 34, 35, 36, 37, 39, 40, 41, 42, 43, 44, 47, 48, 49, 50, 51, 53, 54, 55, 56 and 57 of the petition which are liable to be struck out along with the ground.
3. An Order striking out Ground "A" of the petition being bereft of any pleadings of lawful votes on the basis of which majority of lawful votes may be determined in favour of the Petitioners.
4. An Order striking out paragraphs 20, 21, 23, 24, 27, 28, 29, 30, 33, 33(a), 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 47, 48, 49, 50, 51, 53, 54, 55, 56 and 57 as they contain allegations of crimes, violence and electoral malpractices against persons and institutions who are not joined as parties in this petition which allegations are vague, offensive, nebulous and incompetent.
5. An Order striking out the witness depositions of the Petitioners' witnesses AA, AB, AC, AD, AF, AG, AH, AI, AJ, BA, BB, BC, BD, BE, BF, BG, BH, BI, BJ, BK, CA, CB, CC, CD, CE, CF, CG, CH, CI, CJ, CK, CL, CM, DA, DB, DC, DD, DF, DG, EA, EB, EC, ED, EE, EF, FA, FB, FC, FD, GA, GB, HA, HB, HC, HD, HE, for being chorused, parroted and generic.

6. An Order striking out the petition for want of locus standi in that the 1st Petitioner was not validly nominated as a candidate to contest the said election being that;

The information supplied by the 1st Petitioner to the 3rd Respondent was not accompanied by an affidavit indicating that the 1st Petitioner had fulfilled all the constitutional requirements for the Election.

The 1st Petitioner was nominated for Ohaji/ Egbeme, Oguta, Oru West Federal Constituency election and not for the election into the Senate.

The 1st Petitioner was not nominated by the required number of voters.

The primary election which produced the 1st Petitioner was conducted in Owerri outside the Imo West Senatorial District contrary to the Electoral Act.

7. An Order striking out the petition for being bereft of averments and grounds upon which a valid petition can be founded or sustained.
8. And for any other Order or Orders as the Honourable Tribunal may deem fit in the circumstances.

The application is supported by the following grounds; as follows:-

- a. That the petition is defective and incompetent for failure to comply with the provisions of the Electoral Act, 2022.

- b. That ground "B" of the petition lumped together two disjunctive grounds contrary to law.
- c. Several paragraphs of the petition contain allegations of crimes against persons who are not named and whose identities are not given nor are they joined in the petition.
- d. That the two grounds of the petition are defective.
- e. That the Petitioners lack the locus standi to bring the petition.
- f. That the petition being defective does not vest jurisdiction on the Honourable Tribunal to entertain it.
- g. That a defective petition is liable to dismissal as been held by several judicial authorities.
- h. That the depositions of the Petitioner's witnesses are chorused, parroted and generic and liable to be struck-out.

In support of the application, a 5 paragraph affidavit duly deposed to by One Onyekachi Odiwe, litigation secretary in the law firm of D.C. Denwigwe, SAN. It is the deposition of the 1st Respondent/Applicant that Ground "b" of the petition is defective for lumping two disjunctive grounds into one, and that paragraphs 20, 21, 23, 24, 27, 28, 29, 30, 31, 33, 33a, 34, 35, 36, 37, 39, 40, 41, 42, 43, 44, 47, 48, 49, 50, 51, 53, 54, 55, 56 and 57 contain allegations of crime against unnamed persons and institutions and that there are no particulars of the identities of such persons supplied.

It is further the deposition that the persons and the institutions against whom the allegations of crime are made are not parties to the petition, and that ground "a" of the petition is also defective in that it has no pleadings to support it, hence the Petitioners lack the locus standi to bring the petition, in that the 1st Petitioner was not validly nominated by the 2nd Petitioner.

It is also the averment that the 1st Petitioner did not accompany his petition with an affidavit deposed to at the Federal High Court, High Court of a State or High Court of the Federal Capital Territory stating that he had complied with all the Constitutional requirement for his election into the Senate for the Oru West Senatorial District Election, and that the 1st Petitioner was not nominated by the required number of voters from Imo West Senatorial District. The 1st Petitioner's nominators nominated him for Ohaji, Egbema, Oguta, Oru West Federal Constituency Election in the form he submitted to the 3rd Respondent and not for the election into the Senate of the National Assembly. The said form is hereto annexed as Exhibit "A" while the certified copies of the Petitioners Form EC9 and EC13 are annexed as Exhibits "B" and "C".

That the primary election of the 2nd Petitioner from which the 1st Petitioner emerged as the candidate was conducted in Owerri outside Imo West Senatorial District contrary to law. The INEC report on the party primary is hereto annexed as Exhibit "D".

That there are no grounds or averment to sustain this petition. The petition is fundamentally defective and ought to be dismissed.

That all depositions of the Petitioners' witnesses are chorused, parroted and generic and unreliable and that same be struck-out or dismiss the petition.

Written address was filed wherein six (6) issues were formulated for determination to-wit;

- 1. *Whether the Petition No. EPT/IMO/SEN/03/23 CHARLES UGOCHUKWU AHIZE & ANOR VS. IZUNASO OSITA BONAVENTURE & ORS is incompetent, fundamentally defective and incapable of vesting jurisdiction on the Honourable Tribunal to try same on the merit.***
- 2. *Whether Paragraphs 20, 21, 23, 24, 27, 28, 29, 30, 33, 33a, 34, 35, 36, 37, 39, 40, 41, 42, 43, 44, 47, 48, 50, 51, 53, 54, 55, 56 and 57 of the Petition which contain criminal allegations against unnamed persons which are also vague, imprecise and nebulous ought not to be struck-out.***
- 3. *Whether ground "b" of the Petition as set out in paragraph 14(b) of the petition which combined two grounds of petition is invalid by reason of being contrary to Section 134(1)(b) of the Electoral Act, 2022.***
- 4. *Whether the Petitioners have the locus standi to bring this Petition the 1st Petitioner not having been validly nominated as a candidate of the 2nd Petitioner in the said Election.***

- 5. Whether the deposition of the Petitioners' witnesses are not chorused, parroted and generic and liable to be struck-out.**
- 6. Whether the Petition is bereft of facts and grounds to sustain a valid petition.**

Learned counsel with leave proceeded to argue the issues nominated in this application together.

It is the submission of counsel that, election petition are sui generis and that the laws and rules governing its conduct are specific and strictly applied. **BARR. OKEY EZE & ANOR VS. HON. IFEANYI UGWUANYI & ORS (2015) LPELR 40644 (CA)**, learned counsel also stated that once a petition is defective it becomes bad and incompetent. Such a petition ought to be dismissed. **UZODINMA VS. UDENWA (2004)1 NWLR (Pt. 804) 303**, was cited.

It is similarly the submission of learned counsel, that the Petitioners have in several paragraphs of the petition made allegation of crimes and electoral malpractices against persons and institutions that are not parties to the petition. Those paragraphs are offensive, vague, and nebulous having not given particulars of such persons. Those persons will not be able to defend themselves against those allegations nor will they be available for cross-examination by the Applicant. Paragraph 3(iii) of the affidavit in support of the petition.

Learned counsel submits, that failure to join the individuals and unknown persons and institutions whom the Petitioners have made wild and diverse

allegations of crimes and electoral offences in the petition renders those paragraphs incompetent and liable to be struck out.

It is also the argument of learned counsel, that the Petitioners in paragraph 14(b) have lumped the two alternative grounds contained in paragraph 134(i)(b) of the Electoral Act, 2022, and that by above provisions, an election may be questioned on the ground that the election was invalid by reason of corrupt practices or non-compliance with the provisions of the Act. That is to say, that once an election is questioned on the basis of invalidity such invalidity can be predicted on corrupt practices or non-compliance. The word "or" in the said provision connotes an alternative or an option. Consequently both corrupt practices and non-compliance ought not to be joined together in one ground in an election petition. The word "or" is disjunctive and not conjunctive. This position of the law was given judicial approval in the case of **GOYOL VS. INEC (NO. 2) (2012)11 NWLR (Pt. 1311) 218 at Page 229 H.**

On the issue of locus standi; which bothers on the jurisdiction of the Tribunal to entertain a suit in this case the election Petition, where a party lacks the locus standi to institute an action the option open to a Tribunal is to strike out such a suit the authority of **ADEKUNLE VS. ADELUGBA (2011) 16 NWLR (Pt. 1272) 154 at 171 – 172, H – A** was cited.

It is further the argument of learned counsel, that in the instant petition the Petitioners have no right to present this petition in that the 1st Petitioner was not validly nominated and that the reasons for this invalidity are contained in paragraph 3(v) to (x) of the affidavit in support of the

motion. This Honourable Tribunal is urged to hold that based on the said fact as enumerated in the said paragraph of the affidavit in support the Petitioners lack the locus standi to bring this petition and to strike it out.

It is also the submission of learned counsel, that there are no fact upon which the Tribunal may determine that the 1st Respondent was not duly elected by majority of the vote cast at the election. To bring home this point more lucidly the Petitioners in paragraph 16 of the petition averred that the 1st Petitioner was the person who scored majority of the lawful votes cast at the Election and ought to be declared and returned the winner of the election. In paragraph 56 of the petition the Petitioners made a fatal averment to ground (a) of the petition when they stated thus;

"....it is impossible to determine fairly who between the Petitioners and the 1st and 2nd Respondents who won the Imo West Senatorial District Election held on 25th February, 2023."

Learned counsel submits, that this is a clear admission on the part of the Petitioners that the 1st Petitioner did not win majority of lawful votes cast at the election. The best evidence against a party is his own admission. This admission is an admission to the fact that the Petitioners have not pleaded the relevant facts in their petition to demonstrate that they won majority of the lawful votes cast at the election.

Upon service of the motion, the Petitioners/ Respondents filed a 7 paragraph counter affidavit deposed to by one Happiness Urewunwa, a Secretary in the law firm of the Petitioners/Respondents' counsel

It is the averment of 1st Petitioner that the person who signed 1st Respondent/Applicant's Motion cannot be linked with the NBA stamp or seal affixed to the Motion; consequently, hence Motion is incompetent; and having read the Affidavit in Support of the 1st Respondent/Applicant's Motion, he also believes that paragraph 3(i) - (vii), (ix) & (xii) - (xiv) thereof contain legal conclusions and arguments.

That the Grounds of the Petition stated in paragraph 14(a) & (b) thereof and the Petition itself are competent and enough to sustain the Petition, and that the net effect of the ground 14(b) of the Petition and the facts pleaded in support thereof is that the election or return of the 1st Respondent is invalidated by substantial acts of non-compliance with the provisions of the Electoral Act, 2022 and/or corrupt practices which substantially affected the result or outcome of the election.

That paragraphs 20, 21, 23, 24, 27, 28, 29, 30, 33, 33a, 34, 35, 36, 37, 39, 40, 41, 42, 43, 44, 47, 48, 49, 50, 51, 53, 54, 55, 56, & 57 of the Petition contain averments of facts, which are specific, precise and sufficient to prove the Petition; the allegations in paragraphs 20, 21, 22, 23, 24, 25 & 26 of the Petition are interrelated and are essentially allegations of non-compliance with the provisions of the Electoral Act, 2022 and INEC's Regulations and Guidelines for the Conduct of the Election (i.e. non-accreditation of voters with BVAS, non-holding of election in Polling Units and Wards in the Imo West Senatorial District, over voting, willful manipulation and recording of wrong results etc.).

That the allegations in paragraphs 27, 28, 30, 31, 32 & 33 of the Petition are particulars of allegations of non-compliance with provisions of the Electoral Act and INEC's Regulations and Guidelines for the Conduct of the 2023 General Election in Oru East, Or West, Orlu & Orsu, Ohaji/Egbema and Oguta Local Government Areas of the Imo West Senatorial District where the Election did not hold or where there was no accreditation or proper accreditation of voters.

That the allegations of acts of non-compliance with the Electoral Act and INEC's Regulations and Guidelines and corrupt practices in paragraphs 33, 33(a) & 34 of the Petition are expressly against the 1st, 2nd & 3rd Respondents who are parties in this Petition.

That the allegation of acts of non-compliance, electoral malpractices and/or corrupt practices in paragraphs 37 & 38 of the Petition in respect of OruEast, Orsu, Orlu, Ohaji/Egbema, Oguta and Or West Local Government Areas are expressly against the 1st, 2nd and 3rd Respondents who are parties in this Petition and the particulars of the allegations and their effect on the Election are contained in paragraphs 27 - 33, 34, 35 & 36 of the Petition.

That paragraph 40 of the Petition contain allegations of non-compliance with the provisions of the Electoral Act and INEC Regulations and Guidelines for the Conduct of the 2023 General Election with particular reference to none accreditation of voters, over voting and unilateral allocation of votes the particulars of which are contained in paragraphs 41, 42, 43, 44, 45, 46, 47; 48, 50, 51 & 52 in respect of Oru East, Orlu, Orsu,

Oru West, Ohaji/Egbema and Oguta Local Government Areas of the Imo West Senatorial District.

That the allegation of non-compliance in paragraph 55 of the Petition (i.e. using of Form EC8A (I)) from Jigawa State to write result for the 3rd Respondent and upload same in the BVAS and/or INEC's IReV Portal) is obviously against the 3rd Respondent (INEC) who is a party in the Petition;

That the averments in paragraphs 35 & 56 of the Petition is the effect of the acts of non-compliance including non-holding of the election in the stated Polling Units, Wards and Local Government Areas, non-accreditation of voters using the BVAS machines, unilateral allocation of votes or recording of invalid or unearned votes for the 1st, 2nd Respondents by the 3rd Respondent on the final result of the Election.

That the allegation in paragraph 23 of the Petition to the effect that the 1st Respondent and his supporters used thugs to unleash violence and disrupt the collation of result at the Njaba Local Government Area Collation Centre (which may be termed an allegation of crime or electoral malpractice) is expressly against the 1st Respondent who is a party in this Petition and that the allegation in paragraph 29 of the Petition (which may also be termed an allegation of crime or electoral malpractice) is expressly against the 1st and 2nd Respondents who are parties in this Petition.

That the allegation of corrupt practices or electoral malpractices, (i.e. stuffing of ballot boxes with fake or already thumb printed ballot papers) in paragraph 53 of the Petition is expressly against the 1st Respondent and its agents and the 1st Respondent is obviously a party in this Petition.

That the Written Depositions of the Petitioners' witnesses referred to in paragraph 4(xiv) of the Affidavit in Support contain different depositions relative to what transpired in the various Wards where the witnesses acted as Ward and Polling Agents of the 2nd Petitioner during the Election and that most of the Ward Agents of the 2nd Petitioner had to depose to the same fact that the Election did not hold in the Polling Units of their Wards on 25th February, 2023 because the election did not hold in their respective Wards on the said date.

That some of the Ward Agents of the 2nd Petitioner had to depose to the same fact that Election held in the Polling Units of their Wards, but thugs and agents of the 1st Respondent came to some of the Polling Units to disrupt the election because that was what happened in their respective Wards.

That four of the registered Voters of the 2nd Petitioner had to depose to the same fact that the Election did not hold in their Polling Units on 25th February, 2023 because the election did not hold in their respective Polling Units on the said date; and

That two of the registered Voters who made Written depositions on behalf of the Petitioners had to depose to the same fact that the Election held in their respective Polling Units on 25th February, 2023 but agents and thugs of the 1st Respondent intimidated the 3rd Respondent's staff to alter the results in their favour because the same thing happened in their said Polling Units; and that he verily believes that the depositions in the Petitioners' witnesses depositions are truthful and reliable.

That the 1st Petitioner was duly nominated or sponsored by the 2nd Petitioner to contest the election into the office of Senator representing Imo West Senatorial District held on 25th February, 2023 after winning the Party's Primary for the said election. Copies of the Certificate of Return and Nomination Form issued by the 2nd Petitioner to the 1st Petitioner as its flag bearer for the Imo West Senatorial District are hereby attached and marked Exhibits "A" and "B" respectively.

That the 1st Petitioner was never nominated or sponsored by the 2nd Petitioner to contest election into the office of Member representing Ohaji, Egbema, Oguta, Oru West Federal Constituency election as alleged by the 1st Respondent;

That the 1st Petitioner was duly nominated by the required number of voters from the Imo West Senatorial District to contest the election under the platform of the 2nd Petitioner.

That the nomination Forms of the is Petitioner submitted to the 3rd Respondent (INEC) was duly accompanied by the required Affidavit showing that he complied with all the constitutional requirements into his election into the Senate for the Orlu West Senatorial District.

That the 2nd Petitioner's Primary Election from which the 1st Petitioner was nominated as its candidate was conducted in Orlu within the Imo West Senatorial District; and indeed, the nomination or sponsorship of the 1st Petitioner by the 2nd Petitioner was the subject matter of pre-election litigation before the Federal High Court in Suit No. ***FHC/OW/CS/184/2022 - ALL PROGRESSIVES CONGRESS VS.***

INEC & 2 ORS (in which he acted as counsel for the Petitioners) which was decided in favour of the Petitioners herein. A copy of the Judgment of the Federal High Court in the Suit delivered on 14th February, 2023 which has been shown to me is attached hereto and marked Exhibit "C".

In compliance with law and procedure, learned counsel for the Petitioners/ Respondents filed a written address wherein five (5) issues were formulated for determination to-wit;

- 1. Whether the 1st Respondent's instant application is competent having regard of the fact that the name of the person that signed the application cannot be linked to the name of the legal practitioner on the Nigerian Bar Association (NBA) stamp or seal affixed to the application.**
- 2. Whether the depositions in paragraphs 3(ii) - (vii), (ix), (xii), (xiii) & (xiv) of the Affidavit in Support of the 1st Respondent's application are not extraneous and incompetent.**
- 3. Whether the instant Petition No. EPT/IMO/SEN /03/2023 - CHARLES UGOCHUKWU AHIZE & ANOR VS. IZUNASO OSITA BONAVENTURE & ORS is competent and capable of vesting jurisdiction on this Honourable Tribunal to determine the Petition on its merit regard being had grounds (a); (b), (c), (d), (1)& (g) of the application.**
- 4. In the absence of a cross Petition by any of the Respondents, whether the 1st Respondent is competent to challenge the**

nomination of the 1st Petitioner by the 2nd Petitioner before this Honourable Tribunal and if yes, whether the 1st Petitioner indeed has the locus stand to present this Petition.

5. Whether the witness depositions accompanying the Petition challenged by the 1st Respondent are competent.

Relying on the provisions of Sections 2(1) and 24 of the Legal Practitioners Act, CAP. L11 Laws of the Federation of Nigeria, 2004 only a person whose name is on the roll of legal practitioners in Nigeria is entitled to practice as a barrister and solicitor in Nigeria. Section 24 of the Act, defines a legal practitioner to mean “a person entitled in accordance with the provisions of this Act to practice as a barrister or barrister and solicitor, either generally or for the purposes of any particular office or proceedings.” Learned counsel contends, that any legal process filed by a non-legal practitioner is incompetent, null and void. ***S.P.D.C.N. LTD. VS. SAM ROYAL HOTEL (NIG.) LTD. (2016) 8 NWLR (Pt. 1514) 318 at pp. 332 – 333C – G*** was cited.

In considering the provisions of paragraph 10(1), (2) and (3) of, the Rules of Professional Conduct in the Legal Profession 2007 vis-a-viz the provisions of Sections 2(1) and 24 of the Legal Practitioner Act, the case of ***TANIMU VS. RABIU (2018) 4 NWLR (Pt. 1610) 505 at Page. 523*** was cited.

It is further the argument of counsel that, the name Chief F. A. Onuzulike, SAN is different from the name, O. F. Anayo, SAN., which is on the NBA seal.

Learned counsel then urged the Court to hold that same is incompetent and liable to be strike-out.

On issue two, learned counsel submits, by referring this Honourable Tribunal to the depositions in paragraph 3(ii) - (vii), (ix), (xii), (xiii) & (xiv) of the affidavit in support of the 1st Respondent Motion and argued unequivocally that the said paragraphs contained depositions of legal conclusions hence offensive to Section 115 of the Evidence Act and therefore incompetent.

On issue three, learned counsel submits, that the 1st Respondent's Written Address are grossly misconceived and unjustified by the state of the averments in the Petition. Save for paragraph 39 of the Petition, the allegations in the paragraphs complained of by the 1st Respondent are against the three (3) Respondents named in the Petition and the particulars of the allegations contained in the said paragraphs have been duly supplied in the Petition. Indeed, some of the said paragraphs are themselves, the particulars of the allegations of non-compliance or corrupt practices alleged in the Petition.

Learned counsel argued, that it is therefore obvious that on the state of the pleadings, the Petitioners have pleaded sufficient facts in the Petition to disclose a good cause of action against the Respondents, the material allegations in the Petition are against the three Respondents joined in the Petition. The Respondents having perfectly understood the complaints in the Petition against them have filed copious Replies to extensively join issues with Petitioners so as to put same to trial before this Honourable

Tribunal. It is therefore trivial for the 1st Respondent to suggest that the Petitioners did not plead sufficient or precise facts against the Respondents to warrant a trial on the merit or that the persons against whom the allegations of non-compliance and corrupt practices are made in the Petition have not been joined in the Petition.

Learned counsel therefore urge this Honourable Tribunal to hold that the proper parties in the Petition, that is the persons against whom the Petitioners have made material allegations of non-compliance with the provision of the Electoral Act or corrupt practices (i.e. the 1st, 2nd and 3rd Respondents) have been duly joined in the Petition.

Learned counsel contend that, the Supreme Court has gone as far as to enjoin petitioners to as much as possible couch their grounds of petition exactly the way they are stated in the Electoral Act. Learned counsel cited the case of ***OJUKWU VS. YAR'ADUA (2009) 12 NWLR (Pt. 1154) 50 at Page 121 C - E*** where the Supreme Court construed the provision of Section 145(1)(b) of the Electoral Act, 2006 which is in pari materia with section 134(1)(b) of the Electoral Act, 2022.

It is therefore not surprising that in ***PDP VS. ALI & ORS (2015) LPELR-40370(CA) at pp. 79-82*** decided by it much later than the cases of ***GOYOL VS. INEC (No. 2) (2012) 11 NWLR (Pt. 1311) 218 at p. 229 H*** relied upon by the 1st Respondent, the Court of Appeal made it clear that a ground of election petition alleging that an election is invalid by reason of corrupt practices or non-compliance with the provisions of the Electoral Act as in the instant Petition is valid.

Learned counsel submitted, that the above decision of the Court of Appeal being later in time to its earlier decision in ***GOYOL V. INEC (No. 2)*** (*Supra*) takes precedence over the said earlier decision and is therefore the binding decision to be applied by this Honourable Tribunal.

On issue four, learned counsel also argued, that none of the Respondents including the 1st Respondent filed a cross - petition in this matter against the Petitioners, and that in the absence of a cross-petition, a Respondent cannot challenge the Election or nomination of a Petitioner because an Election Petition as the Tribunal only has the jurisdiction to determine whether a person sued as a Respondent in the Petition has been validly elected. For example by virtue of Sections 285(1)(a) and (b) of the 1999 Constitution this Honourable Tribunal only has the jurisdiction to determine whether a person has been validly elected as a member of the National Assembly or House of Assembly of a State. It has no jurisdiction to inquire into whether a Petitioner was validly nominated.

Learned counsel submits, that the judgment in Exhibit "C" attached to the Petitioners' Counter Affidavit, the issue of the nomination or sponsorship of the 1st Petitioner by the 2nd Petitioner for the Election in question has been the subject of a pre-election litigation in the Federal High Court between the 2nd Respondent and the Petitioners/INEC which was decided in favour of the Petitioners. Exhibit "C" therefore constitutes estoppel per res judicata on the matter and as such, the 2nd Respondent is stopped from raising the same issue before this Honourable Tribunal.

Learned counsel further submits, that indeed, even Exhibit "A" (i.e. Form EC13C - the 1st Petitioner's Nomination Form for Senate) attached to the 1st Respondent's application particularly the first two pages thereof show that the Nomination Form was for Member of Senate in respect of Imo West Senatorial District of Imo State. The third page of the Exhibit which is part of a Form EC13D - Nomination Form for House of Representatives is foreign to and do not form part of the 1st Petitioner's Nomination Form for Senate. Therefore, the reference to Ohaji - Egbema - Oguta - Oru West Constituency of Imo State in the said Form EC13D has no nexus whatsoever with the 1st Petitioner. Counsel therefore urge this Honourable Tribunal to disregard same.

Learned counsel cited Section 133(1) of the Electoral Act, 2022, to buttress his point. Therefore, per force of the above provision, the 1st and 2nd Petitioners being respectively a candidate in the Election in question and the political party that sponsored the 1st Petitioner for the Election, are entitled to present this Petition. Both Petitioners therefore have the locus stand to institute this Petition and as such this Honourable Tribunal has the jurisdictional competence to entertain same.

On issue five, learned counsel submits, that in response to the submissions in paragraph 4.14 - 4. 16 of the 1st Respondent's written address, counsel humbly refer Tribunal to and rely on paragraph 4(xiv) - (xix) of the Petitioners' Counter Affidavit in submitting that the depositions in the Petitioners' witness depositions challenged by the 1st Respondent are amply justified by the facts pleaded in the Petition and are competent as

the depose to the same or similar facts that happened in the different Polling Units and Wards of the Imo West Senatorial District challenged in the 7 Local Government Areas complained of in the Petition on the date of the Election. Most importantly, the similarity of the deposition in the said Witness depositions can at the very worst raise issues of credibility or reliability of the witnesses. It does not affect the competence of the witness depositions and/or the competence of the Petition. We therefore urge your lordships to disregard this leg of the 1st Respondent's application and to equally resolve Issue 5 formulated above in favour of the Petitioners.

Learned counsel concludes by urging the Tribunal to dismiss the application and proceed to determine the Petition on its merit.

On their part, 1st Respondent/Applicant filed 14 paragraph further and better affidavit deposed to by Onyinyechi Udeh, secretary in the law firm of counsel to 1st Respondent/Applicant. It is the deposition of the 1st Respondent/ Applicant;

That Chief F.A Onuzulike, SAN and Onuzuluike Felix Anayo, SAN are the one and same person and that the Nigerian Bar Association is aware of this fact before they delivered the Stamp and Seal to him. The Nigerian bar Association arranged the name to their convenience and there is only one F.A Onuzulike who is a senior advocate of Nigeria. He was called to bar as Felix Anayo Onuzuluike hence he signed as F.A Onuzuluike.

That paragraphs 3 (ii)-(vii), (ix) & (xiv) of the Respondents/Applicants affidavit in support of motion does not contain Legal conclusions and arguments they are matters of fact.

That paragraph 4 of the counter affidavit are false, and that the 1st Petitioner was not duly nominated by the 2nd Petitioner to contest the Imo West Senatorial Election held on the 25th February, 2023.

That the 1st Petitioner did not exhibit his Nomination form (FORM EC 13) and his Affidavit in Support of Personal Particulars (FORM EC9) filed with the 3rd Respondent.

That in answer to Paragraph 5 "ii" going by the Nomination form of the 1st petitioner submitted to the 3rd Respondent, the 1st Petitioner was nominated by his nominators for Ohaji Egbema, Oguta and Oru West Federal House of Representative position and not for Imo West Senatorial District position.

That the 1st Respondent/Applicant is not aware of **Suit No. FHC/OW/CS/184/2022** and he was never at any material time a party to the suit. That the 1st Respondent having read the suit also discovered that the suit was not decided on merit as the Last Paragraph of the judgment of the court made it clear that the Election Petition Tribunal is the proper venue for challenging the nomination and candidature of the 1st petitioner by any other person who is not an aspirant.

That it is in the interest of justice to uphold the 1st Respondent/Applicant's preliminary Objection and dismiss the Petitioners petition with punitive cost.

On the part of the 2nd Respondent, the following reliefs were sought in their application:-

1. An Order striking out/dismissing Petition No. **EPT/IMO/SEN/03/2023: CHARLES UGOCHUKWU AHIZE & ANOR VS. IZUNASO OSITA BONAVENTURE & ORS**, for being fundamentally incompetent, the Petition having not been properly signed as required by law, thereby robbing the Honourable Tribunal of the requisite jurisdiction to hear and determine the same.
2. An Order striking out/dismissing Petition No. **EPT/IMO/SEN/03/2023: CHARLES UGOCHUKWU AHIZE & ANORS. VS. IZUNASO OSITA BONAVENTURE & ORS.**, the Petition having failed to state the date which the declaration of the result of the Imo West Senatorial District Election was made.
3. An Order striking out ground "a" of the grounds upon which the Petition is predicated, as contained in paragraph 14(a) of the Petition, the said ground being incompetent and defective, as there are no particulars of fact in the Petition to sustain the same.
4. An Order striking out ground "b" of the grounds of the Petition, as contained in paragraph 14(b) of the Petition for being incompetent and defective, the said ground having alleged non-compliance or

corrupt practices (all in the same ground), which offends the provisions of Section 134(1)(b) of the Electoral Act, 2022, together with all the supported averments in paragraphs 20, 21, 23, 24, 27, 28, 29, 30, 31, 32, 33, 33a, 34, 35, 36, 37, 38, 38, 40, 44, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56 and 57 of the Petition, which raise allegation(s) of corrupt practices, violence and other criminal allegations against persons and institutions not made parties to the Petition and no particulars thereof, were given in the Petition.

5. An Order striking out paragraphs 41, 42 and 43 of the Petition, for being incompetent, the said paragraphs being issues of law, violate the rules of pleadings.
6. An Order striking out the Petition for want of locus standi to present the same, in that your 1st Petitioner was not validly nominated, thus not a Candidate of your 2nd Petitioner to contest the Imo West Senatorial District Election, held on the 25th day of February, 2023.

On the part of the 3rd Respondent, the following reliefs were sought:-

1. An Order striking out/dismissing Petition number ***EPT/IMO/SEN/03 /2023 CHARLES UGOCHUKWU AHIZE & ANOR VS. IZUNASO OSITA BONAVENTURE & ORS*** for being fundamentally defective, incompetent and incapable of vesting jurisdiction on the Tribunal to try the Petition on the merit.
2. An Order striking out the petition for being vague, verbose, imprecise and very ambiguous.

3. An Order striking out paragraphs 21, 23, 24, 29, 33 and 33(a), 34, 37, 41, 42, 43, 50, 51, 53 for containing allegations of crimes, violence and electoral malpractices against persons, institutions and authorities who are not parties in this petition to avail them of any opportunity of fair hearing on the allegations made against them in the petition.

Above applications are similarly supported by grounds and written addresses.

TRIBUNAL:-

I also wish to note that the determination of the 1st Respondent's application is likely to determine those of the 2nd and 3rd Respondents in view of their similarity.

A cursory look at the reliefs sought by the 1st, 2nd and 3rd Respondents in their respective applications would clearly show that they are the same in character and form. Needless to say that the arguments are the same.

I shall not repeat the written address as it would make little or no sense in view of the fact that they both spoke the same law.

The three (3) applications in view of the similarity in argument and reliefs sought are hereby consolidated.

I shall however deal with the issues as they affect the three (3) separate applications in this Judgment.

Let me begin by dealing with the issue of the author i.e the person who signed the 1st Respondent's Motion (Chief F.A Onuzulike, SAN) and (Onuzulike Felix Anayo, SAN) as contained in the seal Nigerian Bar Association (NBA) stamp or seal, as raised by the Petitioner's counsel.

It is the argument of learned counsel for the Petitioners, that the two names aforementioned are not one and the same, thereby making the entire application incompetent. Learned counsel cited Section 2(1)and (24) of the Legal Practitioners Act, CAP L11 Laws of the Federation of Nigeria, 2004 to say that the author of the Motion filed and argued by the 1st Respondent was not filed by a legal Practitioner hence incompetent.

I have considered the arguments of both parties on this issues raised. My take on this is that the whole essence of the NBA Stamp and seal is geared towards ensuring only persons who have qualified to practice Law and are indeed called to Bar and enrolled at the Supreme Court as Barristers and Solicitors can practice law in Nigeria. It is aimed at identifying quacks and impostors.

The person of Onuzulike, SAN, has risen to the climax of his profession. Only one Onuzulike Felix Anayo, SAN, or Chief F.A. Onuzulike, SAN, can lay claim to one enrolment number at the Supreme Court. I so hold.

The argument that the said Motion was not signed by Legal Practitioner as contended by Petitioners' counsel is unfortunately technical and laughable, in view of the fact that Petitioners' counsel has not provided any other evidence of another Onuzulike. This said argument falls within the domain of technicality and accordingly refused and dismissed.

I have considered the aforementioned paragraphs which Petitioners argued offends Section 115 of the Evidence Act.

I refuse to strike-out the said paragraphs complained of by learned counsel for the Petitioners as same are not offensive to the provision of Section 115 Evidence Act. I so hold.

I now proceed to determine the applications filed by the 1st, 2nd and 3rd Respondents which have been consolidated.

Jurisdiction is a threshold issue and so fundamental that once raised, shall be addressed to avoid proceeding on a voyage that at the end of it will spell doom.

It is trite and well settled principle, that the issue of jurisdiction is not merely important, but rather fundamental in the administration of justice.

MADUKOLU VS. NKEMDILIM (1962) SCNLR 341 is the locus classicus.

For a Court or Tribunal to be competent to entertain a case, there should be no feature in the case which prevents the Court from exercising its jurisdiction.

What does the provision of Section 134(1)(b) of the 2022 Electoral Act says..

SECTION 134(1)(b)

"An Election may be questioned on any of the following grounds."

(b)

"The Election was invalid by reason of corrupt practices or non-compliance with the provisions of the Act."

The bone of contention is whether with the word "or" in Section 134(1)(b), the ground is conjunctive or disjunctive.

The interpretation of Section 18(3) of the interpretation Act, 1964 with respect to how the word "or" and "other" shall be construed in any enactment has been dealt with in the case of ***FRN VS. IBORI & ORS (2014) LPELR – 23214 (CA); INAKOJU VS. ADELEKE (2007)4 NWLR (Pt. 1205) 423 at 612 Paragraphs B – C (SC)*** Per Niki Tobi, JSC (blessed memory).

Both Court held that where the word "or" appears in an enactment it shall be construed to mean disjunctive and not implying similarity.

The authority cited by Denwigwe, SAN, for the 1st Respondent on this point is most apt and on point.

Similarly, the effect of lumping grounds once upheld by a Court of law, the implication will be to strike-out the said offensive ground. See the cases of ***GOYOL VS. INEC (No. 2) (2012) 11 NWLR (Pt. 1311) 218 at Page 229 H.***

Election petition is generally in a class of its own hence sui-generis.

The proceedings are distinct from the ordinary civil proceedings... it is such that in certain circumstances, the slightest default in complying with a procedural step which otherwise could be ignored or waived in other civil proceedings could result in fatal consequences to the grounds or the petition ultimately.

See ***BUHARI & ANOR VS. YUSUF & ORS (2003) LPELR – 812 (SC)***.

Realising the consequences of his action on the issue of non-compliance with the provision of Section 137(1)(b) of the 2022 Electoral Act, learned counsel Abubakar, Esq. for the Petitioners, I could recall, drew the attention of this Tribunal to the said ground “b” of their Petition and applied, albeit in error and or confusion to orally abandon the **2nd part of ground “b”** which is on the issue of corrupt practices, which had been made an issue in the application under consideration.. what then is the implication of such an oral application, if I may I ask, supposing such could be made!

This indeed is admission against interest of the fact that Petitioners lumped two grounds in one.

See ***EZEANI VS. ANIUNOH (2012) LPELR – 19940 (CA)***;

Section 24 of Evidence Act, 2011, in clear on this.

Learned counsel for the Petitioners ought to know that this is election petition and there is clearly a time for everything.

Is the oral application seeking to abandon part "b" of ground "b" of the petition dealing with allegation of corrupt practices not tantamount to amending the said Petition?

Can such amendment be allowed at this point!

Without any further hesitation, I answer the question in the negative.

See the case of ***IGE VS. OLUNLOYO (1984)1 SC NLR.***

Without much ado, I hold that ground "b" of the Petition which has two (2) grounds which have been lumped, offends Section 137(1)(b) of the Electoral Act, 2022 hence incompetent.

In consequence therefore, the said ground is hereby struck-out.

It is settled law that, evidence is the regalia of any pleaded fact and has to be in support of such fact. Now that the said ground "b" is struck-out, all evidence so led in relation thereto, shall go with it.

On the whole, all evidence so led in support of the said ground "b" goes to no issue hence hereby jettisoned.

In the event that I am wrong in striking-out the said ground "b", which I strongly doubt, can the said ground of corrupt practices and allegations which was made against unnamed persons stand in the eyes of the law!

I answer this in the negative for the reason that prove in a criminal allegation is elevated to beyond reasonable doubt and not on preponderance of evidence in view of the Constitutional Presumption of

Innocence Pursuant to Section 36(5) of the Constitution of the Federal Republic of Nigeria (FRN) 1999 (as amended).

See ***AYINDE VS. STATE (2018) LPELR – 44761 SC.***

Even though learned counsel for the Petitioners has argued in vain to say that the perpetrators of the crime were the Agents of the Respondents, no law has been cited to show the existence of vicarious liability, if any does exist, in criminal jurisprudence. I am totally in agreement with the argument of learned counsel for the Respondents on this issue that failure to join such persons who allegedly committed the offence in question renders the said paragraphs unsustainable and incompetent. You cannot shave their heads behind their backs. I so hold.

Consequently, the said paragraphs **21, 23, 24, 29, 33, 33a, 34, 35, 37, 41, 42, 43, 50, 51 and 53** are hereby struck-out.

I now gravitate to the issue of Locus Standi of the 1st Petitioner.

Locus Standi was explained in the case of ***NWORIKA VS. ANONEZE-MADU & ORS (2019) LPELR – 46521 (SC)*** as the actual legal capacity of instituting or commencing an action in a competent Court of law without inhibition, obstruction or hindrance from any person or body whatsoever. 1st Respondent and the other Respondents have raised the issue of the competence of the 1st Petitioner to have contested the said Election in the first place arising from non-nomination, hence the lack of Locus Standi.

I am minded to observe that none of the Respondents filed cross-petition on this issue against the 1st Respondent. In the absence of a cross-petition,

I make bold to say that Respondents cannot at this point challenge the nomination of the 1st Respondent.

The jurisdiction of this Tribunal is settled. See Section 285(1)(a) & (b) of the 1999 Constitution of Federal Republic of Nigeria (FRN).

I agree with Petitioners' counsel on this.

I shall preclude myself from further commenting on the said issue in view of the fact same is incompetent without a cross-petition.

Supposing without conceding that a cross-petition had been filed and the issue of the competence of the 1st Petitioner is so raised, it would have amounted to an abuse of Court Process in view of the fact that same had been litigated upon in Suit No. **FHC/OW/CS/184/2022** and by the principle of Estoppel per Res Judicata, this Tribunal cannot re-litigate on the subject matter.

What more, the combined effect of Sections 29(5) and 84(14) of the Electoral Act, 2022, only the Federal High Court has the jurisdictional competence to entertain issues of nomination of a Candidate.

I am morethan fortified by the Nomination Form and Certificate of Return annexed by the 1st Petitioner to show that he was indeed validly nominated by his Political Party i.e (Labour Party).

I am not in agreement with learned counsel for the 1st Respondent on this issue of nomination of 1st Petitioner. The argument fails and is hereby dismissed.

The next issue to be considered is that of the competence of ground "a" which learned counsel for the 1st Respondent also contended is incompetent for the reason that there are no material facts pleaded in the Petition to sustain same.

This pattern of argument runs through the three (3) applications filed by the three Respondents.

I have juxtaposed the reaction of the 1st Petitioner on this issue with the argument of the 1st Respondent.

It is instructive to note that a ground of petition is the pillar upon which a Petitioner's case is founded and therefore a Petitioner cannot put up a case that does not originates from the ground of his petition.

I have considered the pleaded facts wherein the 1st Petitioner for example said that he participated in the Election and listed in its paragraph 11 of the names of all the Candidates of Political Parties who participated in the Elections and their scores, amongst other facts contained in the body of the Petition.

Above facts, I dare say, indicate and support the said ground "a". Praying this Tribunal to strike-out the said ground is most untenable. The arguments of the Respondents' counsel on this ground is refused and dismissed.

On the whole, therefore, the consolidated applications of 1st, 2nd and 3rd Respondents succeed in part.

.....
HON. JUSTICE Y. HALILU
(CHAIRMAN)

.....
HON. KADI M.G. ABUBAKAR
(MEMBER I)

.....
HON. JUSTICE A.O. FAMILONI
(MEMBER II)

Now, with the determination of the applications aforementioned, I now proceed to consider the only ground of the Petition i.e **that the 1st Respondent was not duly elected by majority of lawful votes cast at the Election.**

It is necessary to mention at this juncture that Imo West Senatorial District comprised of 12 Local Government Areas, as follows;

Ideato North, Ideato South, Isu, Njaba, Nkwerre, Nwangele, Oguta, Ohaji/Egbema, Oru East, Oru West, Orsu and Orlu.

Petitioners however challenged the declaration and return of Izunaso Osita Bonaventure (1st Respondent) as the winner of the election in only 8 Local Government Areas, as follows; **Njaba, Orsu East, Orlu West, Ohaji/Egbema, Oguta, Nkwerre, Oru East and Orlu** Local Government Areas.

I need also to mention that out of the 29 witnesses called by the Petitioners, 25 of them were Ward Collation Agents, 3 were Voters from their respective Polling Units and the 1st Petitioners himself who gave evidence as PW28.

It is similarly important to state that all the 25 witnesses who gave evidence as Ward Collation Agents tendered their letters of appointment whereas PW1, PW10 and PW14 who gave evidence as Voters from their respective Polling Units, tendered Permanent Voters Card (PVC).

Learned counsel for the Petitioners Abubakar, Esq., thereupon tendered certified true copies of documents from the Bar, which were admitted and marked as Exhibits "29" to "40" respectively.

The documents are as follows;

1. List of record of Permanent Voters Card (PVC) issued or collected in the various Polling Units in Imo West Senatorial District.
2. List of record of Bimodal Voters Accreditation System (BVAS) of Voters accredited for each Polling Units in the Imo West Senatorial District.
3. Result Sheet used for Imo West Senatorial District Election i.e **Forms EC 8A(1), EC 8B(1), EC 8C(1), EC 8D(1) and EC 8E(1)**.
4. Form EC 40G, i.e summary of Record of Polling Units where Election were cancelled/not held during the Imo West Senatorial Election.
5. List of presiding Officers in all the Polling Units in Imo West Senatorial Election.

6. Independent National Electoral Commission (INEC) guidelines and manuals for the conduct of the 2023 General Election.
7. Two Independent National Electoral Commission (INEC) receipts dated the 28th March, 2023 and 5th May, 2023.
8. Certificate of Return by the 2nd Petitioner to the 1st Petitioner as its flag bearer for Imo West Senatorial District Election.
9. Independent National Electoral Commission (INEC) Report in respect of the 2nd Petitioner's Senatorial Primary Election.
10. Affidavit in support of personal particulars of the 1st Petitioner in respect of the Imo West Senatorial Election.
11. Nomination Form of the 1st Petitioner in respect of the Imo West Senatorial Election, and
12. Judgment of the Federal High Court in Suit No. ***FHC/OW/CS/184/2022 – APC VS. INEC & 2 ORS*** delivered on the 14th February, 2023.

Petitioners thereafter closed their case on the 14th June, 2023.

D.C. Denwigwe, SAN, for the 1st Respondent fielded nine (9) witnesses for the 1st Respondent.

N. Epelle, Esq., on behalf of the 2nd Respondent called a total of four (4) witnesses.

J.O. Asoluka, SAN, for the 3rd Respondent, upon review of the evidence before the Tribunal did not find it necessary to put any witness in the witness box and decided to rely on elicited evidence before the Court.

I will like to mention here that the nine (9) witnesses fielded by 1st Respondent i.e DW1 – DW8 were registered Voters from their respective Polling Units across the various Wards and the 1st Respondent himself who gave evidence as DW9.

Petitioners' counsel called a total number of 29 witnesses and tendered a total number of 40 documents which were admitted and marked as Exhibits "1" – "40" respectively.

For the purposes of clarity and understanding, I now proceed to reproduce the evidence of the witnesses as filed and adopted before the Tribunal by the witnesses on the one hand and the ensuing cross-examination and re-examination, where necessary:

PW1 (Acholonu Chidi) gave evidence as follows;

That he is a Registered Voter in Polling Unit 001, Eluama Square in Orlu/Mgbe Government Station Ward and he had a right to vote but was disenfranchised due to the non-availability or absence of Independent National Electoral Commission (INEC) officials/ad-hoc staff posted to his Polling Unit for the Senatorial Election of 25th day of February, 2023, and that as a Registered Voter, he was issued with Permanent Voters Card (PVC) by Independent National Electoral Commission (INEC) for the 2023

general Election. That the Senatorial Election did not hold in his Polling Unit on the 25th day of February, 2023.

Under cross-examination, PW1 stated that he does not know the identity of Independent National Electoral Commission (INEC) ad-hoc Staff posted to the Polling Units and that Election did hold, but that nothing disrupted the Election of 25th February, 2023.

PW2 (Okenze Chidi) gave evidence as follows:

That he is the Labour Party (LP) Ward Collation Agent in charge of Ebenator Ward, Orsu Local Government Area, Imo State in the just concluded Presidential and National Assembly Elections held on the 25th day of February, 2023. That he was also issued with a letter of appointment, and that by virtue of his duties as the Ward Agent of his party, he supervised the Elections in all the Polling Units in his Ward.

That on the said day of election, there was no election in all Polling Units in Ebenator Ward namely: Polling Unit 001, 002, 003, 004, 005, 006, 007, 008, 009, 010, 011, 012, 013, 014, 015, 016, 017, 018 and 019.

That there were no presence of Independent National Electoral Commission (INEC) ad-hoc staff, accreditation of voters using the BVAS, no voting, no declaration of result, and that the results declared were simply conjured in favour of the 1st Respondent by officials of the 2nd Respondent.

Under the cross-examination, the PW2 stated that the Polling Units in his Ward are scattered in various locations of the Ward and that he was not

present at the Polling Units from beginning to the end, and further stated that Election did not hold.

It's similarly his evidence under cross-examination, that he had Agents in all the Polling Units who were reporting to him, and that he reported the fact that Election did not hold in his Ward to his Party.

PW3 (Elumezie Chimezie) gave evidence as follows:

That he is the Labour Party (LP) Ward Collation Agent in charge of Uwaorie Ward, Oguta Local Government Area, Imo State in the just concluded Presidential and National Assembly Elections held on the 25th day of February, 2023. That he was also issued with a letter of appointment, and by virtue of his duties as the Ward Agent of his party, supervised the Elections in all the Polling Units in his ward.

That on the said day of election, there were no election in all Polling Units in his Ward namely; Polling Unit 001, 002, 003, 004, 005, 006, 007, 008, 009, 010, 011, 012, 013, 014, 015, 016, 017, 018 and 019, and that there was no presence of Independent National Electoral Commission (INEC) ad-hoc staff, accreditation of voters, using the BVAS, no voting, no declaration of result. And finally that the results declared were simply conjured in favour of the 1st Respondent by officials of the 2nd Respondent.

Under cross-examination, PW3 stated that his Polling Party deployed Polling Unit Agents to all the Polling Units in his Ward which are scattered, and that he was not personally present in each and all the Polling Units in

his Ward from the beginning to the end of the Election, but that Election did not hold.

PW4 (Ojimba Ugbonna) gave evidence as follows:

That he is the Labour Party (LP) Ward Collation Agent in charge of Ihitenansa Ward, Orsu Local Government Area, Imo State in the just concluded Presidential and National Assembly Elections held on the 25th day of February, 2023. That he was also issued with a letter of appointment, and that by virtue of his duties as the Ward Agent of his party, he supervised the Elections in all the Polling Units in his Ward.

That on the said day of election, there were no election in all Polling Units in Ihitenansa Ward namely: Polling Units 001, 002, 003, 004, 005, 006, 007, 008, 009, 010, 011, 012, 013, 014, 015, 016, 017, 018, 019, 020, 021, 022 and 023.

That there were no presence of Independent National Electoral Commission (INEC) ad-hoc staff, accreditation of voters using the BVAS, no voting, no declaration of result, and that the results declared were simply conjured in favour of the 1st Respondent by officials of the 2nd Respondent.

Under cross-examination, PW 4 stated that his Party posted Polling Unit Agents in all the Polling Units of his Ward and that the Polling Units are scattered across his Ward. He said he did not witness any person conjuring results in his Ward, and that he does not know the identity of the Independent National Electoral Commission (INEC) Staff, but that Election did not hold in his Polling Units on the 25th February, 2023.

PW5 (Onuegbu Vitalis) gave evidence as follows;

That he is the Labour Party (LP) Ward Collation Agent in charge of Mbala/Uba Ward, Oguta Local Government Area, Imo State in the just concluded Presidential and National Assembly Elections held on the 25th day of February, 2023. That he was also issued with a letter of appointment, and that by virtue of his duties as the Ward Agent of his party, supervised the Elections in all the Polling Units in his Ward.

That on the said day of election, there were no election in all Polling Units in his Ward namely; Polling Units 001, 002, 003, 004, 005, 006, 007, 008, 009, 010, 011 and 012, and that there was no presence of Independent National Electoral Commission (INEC) ad-hoc staff, accreditation of voters, using the BVAS, no voting, no declaration of result, also that the results declared were simply conjured in favour of the 1st Respondent by officials of the 2nd Respondent.

Under cross-examination, PW5 stated that results were conjured because Election did not take place but there was results, but that he does not know the names of the people who conjured the results.

It is his evidence that he visited all the Polling Units and did not see any INEC Staff. That his Polling Agents told him Election did not hold.

PW6 (Valentine Ndujife Chukwu) gave evidence as follows:

That he is the Labour Party (LP) Ward Collation Agent in charge of Amagu Ward, Oru East Local Government Area, Imo State in the just concluded Presidential and National Assembly Elections held on the 25th day of

February, 2023. That he was also issued with a letter of appointment, and by virtue of his duties as the Ward Agent of his party, he supervised the Elections in all the Polling Units in his ward. Spoke further that on the said day of Election, there were no election in all Polling Units in Amagu Ward 1 namely; Polling Units 001, 002, 003, 004, 005 and 006.

That there were no presence of Independent National Electoral Commission (INEC) ad-hoc Staff, accreditation of voters using the BVAS, no voting, no declaration of result, and that result declared were simply conjured in favour of the 1st Respondent by officials of the 2nd Respondent.

Under cross-examination, PW6 stated that Election did not hold on the 25th February, 2023.

PW7 (Cyril E. Amakanjaha) gave evidence as follows;

That he is the Labour Party (LP) Ward Collation Agent in charge of Omuma Ward, Oru East Local Government Area, Imo State in the just concluded Presidential and National Assembly Elections held on the 25th day of February, 2023. That he was also issued with a letter of appointment, and that by virtue of his duties as the Ward Agent of his party, he supervised the Elections in all the Polling Units in his Ward.

That on the said day of election, that there was no valid election in all the Polling Units in Omuma Ward namely: Polling Units 001, 002, 003, 004, 005, 006, 007, 008, 009, 010, 011, 012, 013, 014, 015, 016, 017, 018, 019, 020, 021, 022, 023, 024, 025, 026, 027, 028, 029, 030, 031, 032, 033, 034, 035, 036, 037, 038, 039, 040, 041, 042, 043, 044, 045 and 046.

That there were no presence of Independent National Electoral Commission (INEC) ad-hoc Staff, accreditation of voters using the BVAS, no voting, no declaration of result, and that the results declared were simply conjured in favour of the 1st Respondent by officials of the 2nd Respondent.

Under cross-examination, PW7 stated that Independent National Electoral Commission (INEC) conjured results in favour of the Respondents.

PW7 also stated that his Party appointed Polling Unit Agents for all the Polling Units. He however maintained that Election did not hold.

PW8 (Ozobi Kenneth) gave evidence as follows:

That he is the Labour Party (LP) Ward Collation Agent in charge of Akatta Ward, Oru East Local Government Area, Imo State in the just concluded Presidential and National Assembly Elections held on the 25th day of February, 2023. That he was also issued with a letter of appointment. He explained that by virtue of his duties as the Ward Agent of his Party, he supervised the Elections in all the Polling Units in his Ward.

That on the said day of election, there were no election in all Polling Units in Akatta Ward namely: Polling Units 001, 002, 003, 004, 005, 006, 007, 008, 009, 010, 011, 012, 013, 014, 015, 016, 017, 018, 019, 020, 021 and 022.

That there was no presence of Independent National Electoral Commission (INEC) ad-hoc staff, accreditation of voters using the BVAS, no voting, no

declaration of result, and that the results so declared were simply conjured in favour of the 1st Respondent by officials of the 2nd Respondent.

Under cross-examination, PW8 stated that he does not know the meaning of conjure and that he merely signed his statement on oath. He also said Election did not take place.

PW9 (Okoro Leonard Jackson Chinedu) gave evidence as follows:

That he is a Registered Voter in Polling Unit 010, Ukwugbu Village Square in Egbema Ward "B" and he had a right to vote and voted in the Senatorial Election of 25th day of February, 2023, and that as a Registered Voter, he was issued with Permanent Voters Card (PVC) by Independent National Electoral Commission (INEC) for the 2023 general election.

That in the case of his Polling Unit, elections duly held and the candidate of Labour Party (LP) won overwhelmingly but enraged agents and thugs of the 1st Respondent then had to intimidate the 3rd Respondent's staff to alter the results in their favour which caused uproar.

That the Divisional Police Officer, Umuagwo, Ohaji was called upon and he intervened and assisted in moving the results, materials and staff of the 3rd Respondent to the Police Headquarters Umuagwo, and that the result from the Polling Unit was altered and changed and results were entered in favour of the 1st Respondent at the Local Government Collation Centre, Mmahu, Ohaji/ Egbema Local Government Area, Imo State.

Under cross-examination, PW9 stated that he was not a Polling Unit Agent of any Political Party during the Election of 25th February, 2023.

PW9 also stated under cross-examination, that he did not know the names of the thugs who came with Police and took away the votes cast. It is also his evidence that Independent National Electoral Commission (INEC) altered the result with people suspected to be All Progressive Congress (APC). He also said he did not report to the Police.

PW10 (Anuebu Cyriacus) gave evidence as follows:

That he was the Labour Party (LP) Ward Collation Agent in charge of Okwua Bala/Ihioma Ward, Orlu Local Government Area, Imo State in the just concluded Presidential and National Assembly Elections held on the 25th February, 2023. That he was also issued with a letter of appointment, and that by virtue of his duties as the Ward Agent of his party, supervised the elections in all the Polling Units in his ward.

That on the said day of election, there were no election in all Polling Units in Okwua Bala/Ihioma Ward namely: Polling Units 001, 002, 003, 004, 005, 006, 007, 008, 009, 010, 011, 012, 013 and 014, and that there were no presence of Independent National Electoral Commission (INEC) ad-hoc staff, accreditation of voters using the BVAS, no voting, no declaration of result, and that the results declared were simply conjured in favour of the 1st Respondent by officials of the 2nd Respondent.

Under cross-examination, PW10 stated that there was no Election on the 25th February, 2023.

PW11 (Duru Bona C.) gave evidence as follows;

That he is the Labour Party (LP) Ward Collation Agent in charge of Awo-Omamma Ward IV, Oru East Local Government Area, Imo State in the just concluded Presidential and National Assembly Elections held on the 25th day of February, 2023. That he was also issued with a letter of appointment, he also mentioned that by virtue of his duties as the Ward Agent of his party, he supervised the elections in all the Polling Units in his Ward. He further stated that on the said day of Election, there were no election in all Polling Units in Awo-Omamma Ward IV namely: Polling Units 001, 002, 003, 004, 005, 006, 007, 008, 009, 010, 011, 012, 013 and 014, and that there were no presence of Independent National Electoral Commission (INEC) ad-hoc staff, accreditation of voters using the BVAS, no voting, no declaration of result, and that the results declared were simply conjured in favour of the 1st Respondent by officials of the 2nd Respondent.

Under cross-examination, PW11 stated that he functioned as Ward Collation Agent for his Party and that Election did not hold but that results was conjured by Independent National Electoral Commission (INEC) and All Progressive Congress (APC). Witness however said he did not have the result he is questioning in Court

PW12 (Uche Aghanwa) gave evidence as follows:

That he is the Labour Party (LP) Ward Collation Agent in charge of Awo-Omamma Ward 1, Oru East Local Government Area, Imo State in the just concluded Presidential and National Assembly Elections held on the 25th day of February, 2023. That he was also issued with a letter of

appointment, and by virtue of his duties as the Ward Agent of his party, supervised the elections in all the Polling Units in his Ward.

That on the said day of election, there were no election in all Polling Units in Awo-Omamma Ward 1 namely: Polling Units 001, 002, 003, 004, 005, 006, 007, 008, 009, 010, 011, 012, 013, 014, 015, 016, 017, and that there was no presence of Independent National Electoral Commission (INEC) ad-hoc staff, accreditation of voters using the BVAS, no voting, no declaration of result, and also that the said results declared were simply conjured in favour of the 1st Respondent by officials of the 2nd Respondent.

Under cross-examination, PW12 maintained that he functioned as Ward Agent and not Polling Agent and that Election did not hold.

PW13 (Eluke Angus Uchenna) gave evidence as follows:

That he is a Registered Voter in Polling Unit 006, Akanu in Umuapu Ward and he had a right to vote and voted in the Senatorial Election of 25th day of February, 2023, he was issued with Permanent Voters Card by Independent National Electoral Commission (INEC) for the 2023 general election, and that in the case of his Polling Unit, elections duly held and the candidate of Labour Party (LP) won overwhelmingly but enraged Agents and thugs of the 1st Respondent then had to intimidate the 3rd Respondent's Staff to alter the results in their favour which cause roar.

That the Divisional Police Officer, Umuagwo, Ohaji was called upon and he intervened and assisted in moving the results, materials and staff of the 3rd Respondent to the Police Headquarters Umuagwo, and that the result from

the Polling Unit was altered and changed and results were entered in favour of the 1st Respondent at the Local Government Collation Centre, Mmahu, Ohaji/ Egbema Local Government Area, Imo State.

Under cross-examination, PW13 maintained that Election held in his Polling Unit but that enraged Agents came and made away with everything.

It is his further evidence that Election held but there was no declared results, and that he did not mentioned the names of the thugs.

PW14 (Augustine Onwumere) gave evidence as follows:

That he is the Labour Party (LP) Ward Collation Agent in charge of Awo-Omamma Ward III, Oru East Local Government Area, Imo State in the just concluded Presidential and National Assembly Elections held on the 25th day of February, 2023. That he was also issued with a letter of appointment, and by virtue of his duties he was the Ward Agent of his Party, he supervised the elections in all the Polling Units in his Ward, and he also said on the said day of election there were no election in all Polling Units in Awo-Omamma Ward III namely; Polling Units 001, 002, 003, 004, 005, 006, 007, 008, 009, 010, 011.

That there was no presence of Independent National Electoral Commission (INEC) ad-hoc staff, accreditation of voters using the BVAS, no voting, no declaration of result, and that the results declared were simply conjured in favour of the 1st Respondent by officials of the 2nd Respondent.

Under cross-examination, PW14 stated that he functioned only as Ward Agent but that results was conjured even when Election did not hold.

PW15 (Ekene Idu Uchenna) gave evidence as follows:

That he is the Labour Party (LP) Ward Collation Agent in charge of Amiri Ward II, Oru East Local Government Area, Imo State in the just concluded Presidential and National Assembly Elections held on the 25th day of February, 2023. That he was also issued with a letter of appointment, his duties as the Ward Agent of his Party, he supervised the elections in all the Polling Units in his Ward.

That on the said day of election, there were no election in all Polling Units in Amiri Ward II namely; Polling Units 001, 002, 003, 004, 005, 006, 007, 008, 009, 010, 011, 012, 013, 014 and 015. That there was no presence of Independent National Electoral Commission (INEC) ad-hoc staff, accreditation of voters using the BVAS, no voting, no declaration of result, and that the results declared were simply conjured in favour of the 1st Respondent by officials of the 2nd Respondent.

Under cross-examination, PW15 said that he was a Ward Agent and that results of Election was conjured.

PW16 (Uche Nzeribe) gave evidence as follows:

That he is the Labour Party (LP) Ward Collation Agent in charge of Aji Ward, Oru West Local Government Area, Imo State in the just concluded Presidential and National Assembly Elections held on the 25th February, 2023. That he was also issued with a letter of appointment, and that by

virtue of his duties as the Ward Agent of his party he supervised the elections in all the Polling Units in his Ward.

That on the said day of election, there were no election in all Polling Units in his ward namely; Polling Units 001, 002, 003, 004, 005, 006 and 007, and that there was no presence of Independent National Electoral Commission (INEC) ad-hoc staff, accreditation of voters using the BVAS, no voting, no declaration of result, that the result declared were simply conjured in favour of the 1st Respondent by officials of the 2nd Respondent.

Under cross-examination, PW16 stated that he does not know the names of the 2nd Respondent who conjured the said results but that Election did not hold, but that he did not report that fact to the Police.

PW17 (Nlemedin Kelechi) gave evidence as follows:

That he is the Labour Party (LP) Ward Collation Agent in charge of Obudi/Aro Ward, Oguta Local Government, Imo State in the just concluded Presidential and National Assembly Elections held on the 25th day of February, 2023. That he was also issued with a letter of appointment, and that by virtue of his duties as the Ward Agent of his Party, he supervised the elections in all the Polling Units in his Ward.

That on the said day of election, there were no election in all Polling Units in his Ward namely; Polling Units 001, 002, 003, 004, 005, 006, 007, 008, 009, 010, 011, 012, 013, 014, 015 and 016, and that there was no presence of Independent National Electoral Commission (INEC) ad-hoc Staff, accreditation of voters, using the BVAS, no voting, no declaration of

result, that the result declared were simply conjured in favour of the 1st Respondent by officials of the 2nd Respondent.

Under cross-examination, PW17 maintained that results were conjured even though Election did not hold.

PW18 (Sylvester Asotaibe) gave evidence as follows:

That he is the Labour Party (LP) Ward Collation Agent in charge of Ezianya Obaire Ward, Nkwere Local Government Area, Imo State in the just concluded Presidential and National Assembly elections held on the 25th February, 2023 That he was also issued with a letter of appointment, and that by virtue of his duties as the Ward Agent of his Party, supervised the elections in all the Polling Units in his Ward.

That on the said day of election, there were election in al Polling Units in my Ward but before the close of the Poll, thugs and Agents of the 1st Respondent came to some of the Polling Units one after the other and disrupted the election and those Polling Units are 002, 003, 004 and 005, and that based on the above stated, elections were not concluded in the above mentioned Polling Units and to that effect, there was no result emanating from them.

Under cross-examination, PW18 stated further that no Political Party or Agent came to the Polling Unit with any apparel to identify them as members of any Political Party, but that Agents of the 1st Respondent came and took away all the voting materials and that there was no results. He said he reported to his Party and not the Police.

PW19 (Izuchukwu Enyia) gave evidence as follows:

That he is the Labour Party (LP) Ward Collation Agent in charge of Assa/Obile Ward, Ohaji/Egbema Local Government Area, Imo State in the just concluded Presidential and National Assembly Elections held on the 25th day of February, 2023. That he was also issued with a letter of appointment, and that by virtue of his duties as the Ward Agent of his party, supervised the elections in all the Polling Units in his Ward. Also that on the said day of election, there were no election in all Polling Units in his Ward namely; Polling Units 001, 002, 003, 004, 005, 006, 007, 008, 009, 010, 011, 012, 013, 014, 015 and 016.

That there was no presence of Independent National Electoral Commission (INEC) ad-hoc staff, accreditation of voters, using the BVAS, no voting, no declaration of result and 016.

That there was no presence of Independent National Electoral Commission (INEC) ad-hoc staff, accreditation of voters, using the BVAS, no voting, no declaration of result, and that the results declared were simply conjured in favour of the 1st Respondent by officials of the 2nd Respondent.

Under cross-examination, PW19 said that All Progressive Congress (APC) and Independent National Electoral Commission (INEC) conjured the results when Election did not hold.

PW20 (Ibeto Remi Obichukwumee) gave evidence as follows:

That he is the Labour Party (LP) Ward Collation Agent in charge of Ibiasoegbe Ward, Oru West Local Government Area, Imo State in the just

concluded Presidential and National Assembly Elections held on the 25th day of February, 2023. That he was also issued with a letter of appointment and that by virtue of his duties as the Ward Agent of his party, supervised the elections in all the Polling Units in his Ward.

That on the said day of election, there were no election in all Polling Units in his Ward namely; Polling Units 001, 002, 003, 004, 005, 006, 007, 008, 009,010, 011 and 012 and that there was no presence of Independent National Electoral Commission (INEC) ad-hoc staff, accreditation of voters, using the BVAS, no voting, no declaration of result and that the results so far declared were simply conjured in favour of the 1st Respondent by officials of the 2nd Respondent.

Under cross – examination, PW20 stated that he functioned as Ward Agent and that Independent National Electoral Commission (INEC) and All Progressive Congress (APC) conjured results of Election when there was no Election.

PW21 (Bernard Okonkwo) gave evidence as follows:

That he is the Labour Party (LP) Ward Collation Agent in charge of Nempi/Eleh Ward, Oru West Local Government Area, Imo State in the just concluded Presidential and National Assembly Elections held on the 25th day of February, 2023. That he was also issued with a letter of appointment and that by virtue of his duties as the Ward Agent of his party, supervised the elections in all the Poling Units in his Ward.

That on the said day of election, there were no election in all Polling Units in his Ward namely; Polling Units 001, 002, 003, 004, 005, 006, 007, 008, 009, 010, 011, 012, 013, 014, 015, 016, 017, 018 and 019.

That there were no presence of Independent National Electoral Commission (INEC) ad-hoc staff, accreditation of voters using the BVAS, no voting, no declaration of result and that the results so declared were simply conjured in favour of the 1st Respondent by officials of the 2nd Respondent.

Under cross – examination, PW21 maintained that all the Polling Units you mentioned had Polling Units Agents assigned to them and that he was not one of them.

PW21 said that All Progressive Congress (APC) and Independent National Electoral Commission (INEC) conjured results when election did not take place.

PW22 (Charles Ngbenwelu) gave evidence as follows:

That he is the Labour Party (LP) Ward Collation Agent in charge of Ubulu Ward, Oru West Local Government Area, Imo State in the just concluded Presidential and National Assembly Elections held on the 25th day of February, 2023. That he was also issued with a letter of appointment and that by virtue of his duties as the Ward Agent of his party, he supervised the elections in all the Polling Units in his Ward. Also that on the said day of election, there were no election in all Polling Units in his ward namely; Polling Units 001, 002, 003, 004, 005, 006, 007, 008, 009, 010, 011, 012, 013, 014, 015, 016, 017, 018, 019, 020, 021, 022, 023 and 024.

That there was no presence of Independent National Electoral Commission (INEC) ad-hoc staff, accreditation of voters, using the BVAS, no voting, no declaration of result and that the results declared were simply conjured in favour of the 1st Respondent by officials of the 2nd Respondent.

Under cross – examination, PW22 gave further evidence that there was no Election but that result was declared. He said Independent National Electoral Commission (INEC) and All Progressive Congress (APC) conjured the results.

PW23 (Uba Lars) gave evidence as follows:

That he is the Labour Party (LP) Ward Collation Agent in charge of Amafuo Ward, Oru West Local Government Area, Imo State in the just concluded Presidential and National Assembly elections held on the 25th day of February, 2023. That he was also issued with a letter of appointment and that by virtue of his duties as the Ward Agent of his party, supervised the elections in all the Polling Units in his Ward.

That on the said day of election, there were no election in all Polling Units in his Ward namely; Polling Units 001, 002, 003, 004, 005. And that there was no presence of Independent National Electoral Commission (INEC) ad – hoc staff, accreditation of voters, using the BVAS, no voting, no declaration of result and also that the results declared were simply conjured in favour of the 1st Respondent by officials of the 2nd Respondent.

Under cross – examination, PW23 maintained that Polling Units of his Ward are scattered across where he worked as Ward Agent and that he

was not at the Polling Units at the same time. He maintained also that Election did not hold and that he reported to his Superiors.

PW24 (Sunday Onyemma) gave evidence as follows:

That he is the Labour Party (LP) Ward Collation Agent in charge of Ebenese/Umueze/Nnachi Ihioma Ward, Orlu Local Government Area, Imo State in the just concluded Presidential and National Assembly Elections held on the 25th day of February, 2023. That he was also issued with a letter of appointment, and by virtue of his duties as the Ward Agent of his Party, he supervised the elections in all the Polling Units in his Ward.

That on the said day of election, there were no election in all Polling Units in Ebenese/Umueze/ Nnachi Ihioma Ward namely; Polling Units 001, 002, 003, 004, 005, 006, 007, 008, 009, 010, 011 and 012, and that there were no presence of Independent National Electoral Commission (INEC) ad-hoc staff, accreditation of voters using the BVAS, no voting, no declaration of result, and also that the results declared were simply conjured in favour of the 1st Respondent by official of the 2nd Respondent.

Under Cross-examination, PW24 maintained that he had 12 Polling Units in his Ward. He maintained that results was conjured but that he does not know the names of those who did it.

PW25 (Iheanocho Chukwuemeka) gave evidence as follows:

That he is the Labour Party (LP) Ward Collation Agent in charge of Izombe Ward, Oguta Local Government Area, Imo State in the just concluded Presidential and National Assembly Elections held on the 25th day of

February, 2023. That he was also issued with a letter of appointment, and that by virtue of his duties as the Ward Agent of his Party, he supervised the election in all the Polling Units in his Ward, and also that on the said day of election, there were no election in all Polling Units in his Ward namely; Polling Units 001, 002, 003, 004, 005, 006, 007, 008, 009, 010, 011, 012, 013, 014, 015, 016, 017, 018, 019 and 020.

Under cross-examination, PW25 stated that his Polling Units Agents told him Election did not hold.

PW26 (Ibe Christopher) gave evidence as follows:

That he is the Labour Party (LP) Ward Collation Agent in charge of Ohafor/Okporo/Umutanze Ward, Orlu Local Government Area, Imo State in the just concluded Presidential and National Assembly Elections held on the 25th day of February, 2023. That he was also issued with a letter of appointment, and that by virtue of his duties as the Ward Agent of his Party, he supervised the election in all Polling Units in his Ward.

That on the said day of election, there were no election in all Polling Units in Ohafor/Okporo/ Umutanze Ward namely; Polling Units 001, 002, 003, 004, 005, 006, 007, 008, 009, 010, 011, 012, 013, 014, 015, 016, 017, 018 and 019, and that there were no presence of Independent National Electoral Commission (INEC) ad-hoc Staff, accreditation of voters using the BVAS, no voting, no declaration of result and also the results declared were simply conjured in favour of the 1st Respondent by officials of the 2nd Respondent.

Under cross-examination, PW26 further stated that he had 19 Polling Units in his Ward and that he functioned as Ward Agent. It is his evidence that Election did not hold, and results was conjured by people whom he said INEC should know.

PW27 (Igwilo Josephat Allwell) gave evidence as follows:

He said he is the Labour Party (LP) Ward Collation Agent in Charge of Eziawa Ward, Orsu Local Government Area, Imo State in the just concluded Presidential and National Assembly Elections held on the 25th day of February, 2023. That he was also issued with a letter of appointment, and that by virtue of his duties as the Ward Agent of his party, he supervised the elections in all the Polling Units in his Ward.

He mentioned that on the said day of election, there were no election in all Polling Units in Eziawa Ward namely; Polling Units 001, 002, 003, 004, 005, 006, 007 and 008, and that there was no presence of Independent National Electoral Commission (INEC) ad-hoc staff, accreditation of voters using the BVAS, no voting, no declaration of result, and also the result declared were simply conjured in favour of the 1st Respondent by officials of the 2nd Respondent.

Under cross-examination, PW27 stated that the Polling Units in his Ward are scattered in various places and that he was not in all the Polling Units at the same time.

He also gave evidence that Independent National Electoral Commission (INEC) and All Progressive Congress (APC) conjured the results when Election did not hold.

PW28 (Charles Ugochukwu Ahize (Petitioner)) gave evidence as follows:

That he is the 1st Petitioner in this petition by virtue of which position he is quite conversant with facts and circumstances of this petition deposed to herein, that he sworn to this witness statement on oath on behalf of himself and the 2nd Petitioner being the political party that sponsored her for the Imo West Senatorial District Election which is the Election in question in this petition, and that he was a Candidate of the 2nd Petitioner in the Imo West Senatorial District Election held on the 25th day of February, 2023 (hereinafter referred to as "the Election:").

That he is a registered Voter with Permanent Voters Card (PVC) with Permanent Voters Card at Ihioma in Oruly Local Government Area of Imo State but could not vote at the said Election due to the absence of Independent National Electoral Commission (INEC) Officials to conduct the Election in his Polling Unit.

That the 2nd Petitioner, Labour Party (LP) is a registered Political Party in Nigeria which sponsored him as its candidate for the Election held on the 25th day of February, 2023, and that the 1st Respondent was a member of the 2nd Respondent and was the Candidate of the 2nd Respondent for the Imo West Senatorial District Election held on the 25th day of February, 2023.

That the 2nd Respondent is a registered political party in Nigeria which sponsored the 1st Respondent as its Candidate for the Imo West Senatorial District Election held on the 25th day of February, 2023, and that 3rd Respondent, Independent National Electoral Commission (INEC) was a body corporate established by the Constitution of the Federal Republic of Nigeria and charged with the responsibility of undertaking, conducting, organizing, supervising and managing all Elections to all elective offices under the 1999 Constitution in which capacity it conducted the 2023 National Assembly Elections including the Imo West Senatorial District Election held on the 25th day of February, 2023, and that he knows as a fact that all persons who acted as resident Electoral Commissioner, Imo State, the Returning Officer for National Assembly Election for Imo West Senatorial District, Electoral Officers (EO), Presiding Officer (PO), Assistant Presiding Officers (APO), Supervisory Presiding Officers (SPO), Poll Clerks (PC), Ward Supervisory Presiding Officers (WSPO), Collation Officers (CO) including Ward Collation Officer, Local Government Area Collation Officers, Senatorial Collation Support Officer and other Officials whether permanent or ad-hoc staff during the Imo West Senatorial District Election held on the 25th day of February, 2023 are and acted as Agents of the 3rd Respondent.

That the 2nd Petitioner and he has the right to present this petition by virtue of the fact that he was a Candidate at the Election and the 2nd Petitioner participated in the election by sponsoring him as its candidate in the election, and that the Election was held on Saturday, the 25th day of February, 2023 with 14 Political Parties on the ballot including the 2nd

Petitioner with him and its Candidate and the 2nd Respondent with the 1st Respondent as its Candidate.

That at the end of the election, the 3rd Respondent through its Returning Officer for the election declared the 1st Respondent winner.

That aggrieved by the result of the election as declared by the 3rd Respondent, his party and himself are challenging the Result and return of the 1st Respondent as the winner of the election before this Honourable Tribunal on the following grounds:

- a. That the 1st Respondent was not duly elected by majority of lawful votes cast at the election; and/or

That the Imo West Senatorial District in Imo State with Headquarters in Orlu and popularly referred to as "Orlu Senatorial Zone" is made up of twelve (12) Local Government Areas which is comprised of 137 Wards and 1,912 Polling Units in which Elections were scheduled to hold on the 25th day of February, 2023 as follows:-

S/N	LOCAL GOVERNMENT AREA	WARDS	POLLING UNITS
1.	IDEATO NORTH	14	196
2.	IDEATO SOUTH	13	152
3.	ISU	11	128
4.	NJABE	11	134
5.	NKWERRE	10	131
6.	NWANGELE	11	113
7.	OGUTA	11	184
8.	OHAJI- EGBEMA	12	210

9.	ORU-EAST	10	171
10	ORU-WEST	10	147
11	ORSU	11	137
12	ORLU	13	209
	TOTAL	137	1,912

That he is the person who scored the majority of lawful votes cast at the election in the Polling Units and Wards where the Election was held and ought to have been declared and returned winner of the Election if the Election was valid, and that he knows as fact that as part of the requirements of the election, the 3rd Respondent requested all participating Political Parties to appoint Agents and submit a List of such Agents to the Commission and most of the political parties including his party and 2nd Respondent complied. He therefore, place reliance on the said List of Agents submitted to the 3rd Respondent.

That he has read the Independent National Electoral Commission (INEC) Regulations and Guidelines and he knows that the Regulations and Guidelines state in clear terms the method of the Election and the various steps to be taken for the conduct of the Election including attendance at the Polling Units, mandatory use of Bimodal Voters Accreditation System (BVAS), the accreditation and voting process, voting procedure, sorting and counting of ballots and recording of votes, electronic transmission of results and upload of results to the Independent National Electoral Commission (INEC) Results Viewing Portal (IREV), over voting e.t.c, and that having been involved in the Imo West Senatorial District Election held on Saturday, the 25th day of February, 2023, and observed how the

election was conducted, he verily believes that the election was conducted in gross breach of the Electoral Act, 2022 and the Independent National Electoral Commission's (INEC) Regulations and Guidelines and the bread of or non-compliance with the provisions of the Act, Regulations and Guidelines substantially affected the Result or outcome of the election.

That contrary to the provisions of the Electoral Act, 2022 and INEC's Regulations and Guidelines, the accreditation of voters with BVAS was not done in several Polling Units of several Wards in the Imo West Senatorial District. Indeed, election did not hold and voters did not vote in several Polling Units of several Wards in the Senatorial District and yet results were declared for such Polling Units.

That over voting was recorded in several Polling Units of several Wards in the Senatorial District and yet results were declared for such Polling Units. Many of the results were wilfully calculated wrongly with many of the Result sheets cancelled and mutilated and fictitious result entered therein, and that election results in several Polling Units of several Wards where his party and himself were in clear lead were deliberately suppressed and not collated and reflected in the final result declared by the 3rd Respondent through its Returning Officer for the Election.

That in Njaba Local Government Area of the Senatorial District, State, the election was conducted in various Polling Units of the various Wards in the Local Government Area and results of the election duly recorded in Forms EC8A(I) and announced by the Presiding Officers at the various Polling Units. Thereafter, the Presiding Officers and their supporting Officials took

the Polling Units Result to the respective Ward Collation Centres where they were recorded and collated into Forms EC8B(I) by the various Wards Collation Officers, and that thereafter, the Ward Collation Officers took their various Form EC8B(I) to the Local Government Area Collation Centre for further Collation. In the results collated at the said Ward level of the Njaba Local Government Area, his party and himself were clearly in the lead. Realizing this, the 1st Respondent and his supporters used thugs to unleash violence and disrupt the collation of the results at the Local Government Area Collation Centre. As a result, the Result from the Ward Collation Centre in Njaba Local Government Area could not be collated at the Local Government Collation Centre into Form EC8C(I) and transferred for final collation at the Senatorial Collation Centre.

That consequently, the results of the election in Njaba Local Government Area could not be collated into Form EC8D(I) for the Imo West Senatorial District and reflected in the Declaration of Result (Form EC8E(I)) for the election. I am placing reliance on the Forms EC8A(I), EC8B(I), EC8C(I) used for the Election in Njaba Local Government Area as well as the Form EC8D(I) and EC8E(I) used for the collation and declaration of the Result of the election at the Senatorial District Collation Centre, and that based on the Result of the election collated at the various Ward Collated Centre in Njaba Local Government Area, his party and himself scored a total vote of four thousand, seven hundred and ninety-one (4,791) votes as against two thousand, two hundred and seventy (2,270) votes scored by the 1st and 2nd Respondents.

That the total number of registered voters in the Njaba Local Government Area is 64,068 while the total number of issued or collected Permanent Voters Card (PVC) for the Local Government Area is 57,036, and that due to insecurity, the INEC Official posted to Oru East, Orlu and Orsu Local Government Areas in the Imo West Senatorial District absconded and/or could not report to their duty posts to conduct the election on the 25th day of February, 2023. As a result, no valid election was held in the various Polling Units of the Wards in the above stated Local Government Areas. Yet the 3rd Respondent recorded and declared results in the said Polling Units, Wards and Local Government Areas in favour of the Petitioners and the 1st and 2nd Respondents as follows:

ORU EAST LOCAL GOVERNMENT AREA

S/NO.	LOCAL GOVERNMENT AREA	NO. OF ISSUED OR COLLECTED PVC	NO. OF ACCREDITATED VOTERS	VOTES RECORDED FOR APC	VOTES RECORDED FOR LP
1.	ORU EAST		20,431	17,940	1,545
2.	ORLU		1,352	965	327
3.	ORU		54	49	04

That in Orlu Local Government Area, the INEC staff (permanent and ad-hoc) engaged or deployed for the Election did not show up at the Polling Units to conduct the elections, and that in Orsu Local Government Area, what the 1st Respondent and his APC party did was to use the Army, the Police and his thugs to thumb print the ballot papers in favour of the 1st Respondent and his party and to write results in favour of the 1st Respondent at the Local Government Headquarters Awo-Idemili thereby

resulting to over voting as the votes ascribed to the 1st Respondent is far more than the number of voters captured by the BVAS even though it was unlawfully done at the Local Government Headquarters.

That in Oru West, Ohaji/Egbeme and Oguta Local Government Areas, the elections did not hold in many Wards and Polling Units and yet results were declared in the said Wards and Polling Units especially in favour of the 1st and 2nd Respondents, and that in Oru West Local Government Area, the election only took place in Mgbidi I, Mgbidi II and Otulu Wards. That the election did not hold in the Wards listed below and yet results were declared for them. In addition, the votes recorded in the Polling Units in the said Wards do not match the record of accreditation of voters as reflected in the BVAS used for the election in the said Polling Units.

S/N O.	WARD	NO. OF ISSUED OR COLLECTED PVC	NO. OF ACCREDITED VOTERS	VOTES RECORDED FOR APC	VOTES RECORDED FOR LP
1	AJI				
2.	OHAKPU			2,568	12
3.	OZARA			59	22
4.	IBIASOEGBE				
5.	NEMPI/ELEH			6	0
6.	UBULU				
7	AMAOFUO				
8.	TOTAL				

That he humbly relied on the Forms EC8A(I) and EC8B(I), the BVAS used for the election in the above stated Wards and Polling Units and the List of record of accredited voters uploaded from the BVAS to INEC's IReV Portal in respect of the Election, and that in Ohaji/Egbeme Local Government Area, the election did not hold in the following Wards and Polling Units and

yet Results were declared in the said Wards and Polling Units. And in addition, the votes recorded in the Polling Units in the said Wards to not match the record of accreditation of voters as reflected in the BVAS used for the election in the said Polling Units.

S/N O.	WARD	NO. OF ISSUED OR COLLECTED PVC	NO. OF ACCREDITED VOTERS	VOTES RECORDED FOR APC	VOTES RECORDED FOR LP
1.	OHOBA				
2.	ASAA			365	79
3.	EGBEMA C			1,051	231

That he humbly relies on the Forms EC8A(I) and EC8B(I), the BVAS used for the election in the above stated Wards and Polling Units and the record of accredited voters uploaded from the BVAS to INEC's IReV Portal in respect of the election, and that in Oguta Local Government Area, the election did not hold in the following Wards and yet Results were declared in the Wards and Polling Unit therein. And that in addition, the votes recorded in the Polling Unit in the said Wards do not match the record of accreditation of voters as reflected in the BVAS used for the election in the said Polling Units.

That he humbly relied on the Forms EC8A(I) and EC8B(I), the BVAS used for the election in the above stated Wards and Polling Units and the record of accredited voters uploaded from the BVAS to INEC's IReV Portal in respect of the election, and in the light of the above, he verily believes that results or scores that were "allocated" to the 1st Respondent at the Imo West Senatorial District Election were not results or scores that emanated from the actual election held in the Senatorial District. That on the

contrary, he believes that were arbitrarily and unlawfully allocated to the 1st Respondent without any basis. That he shall be placing reliance on report/evidence of our agents and others to show that the results ascribed to the 1st Respondent in the above stated Local Government Areas have no nexus with the actual votes cast or the electoral will of the voters in the said Local Government Areas.

That if the invalid or unlawful votes credited by the 3rd Respondent to the 1st Respondent and his party in Oru East, Orsu, Orlu, Oru West, Ohaji/Egbema and Oguta Local Government Areas are subtracted from the total votes of 78,607 scored by him and the votes scored by his party and himself and that of the 1st Respondent and his party in Njaba Local Government Area which were excluded from the final results that were declared for the Imo West Senatorial District are added to the 37,029 scored by his party and himself, and that he will emerge winner of the election, and that alternatively, taking into account the number of registered voters and record of issued or collected PVC's in the affected Wards and Polling Units, he verily believes that the acts of non-compliance are so substantial to substantially affect the Result of the election and nullify same.

That he knows as fact that accreditation of voters for the questioned election was done using BVAS and that where the BVAS failed to function, the election was suspended or supposed to be suspended until a functional BVAS was brought or repaired by the Registration Area Technical support (RATECH).

That the exact number of the voters who presented their Permanent Voters Card (PVC) for verification at the questioned election was captured by the BVAS used at all the Polling Units that comprise the Imo West Senatorial District where election held. That the aforesaid data capture by the said BVAS were subsequently uploaded in to the internet server of the 3rd Respondent. He thereby places reliance, on the list of the verified and/or accredited voters as captured by the BVAS used for the questioned election, together with the Certificate of Compliance relating to computer generated evidence in support of this petition.

That the 3rd Respondent has a list clearly showing the number of verified/accredited voters at the questioned election for each of the Polling Units that make up the Imo West Senatorial District. He was therefore placing reliance on the said list in support of this petition.

That the act of non – compliance with the provisions of the Electoral Act and the INEC’s Regulations and Guidelines referred to above are so replete a substantial that he verily believes that they substantially affected the Result of the Election in that by virtue of the and acts of non – compliance, it is impossible to determine fairly who between himself and the 1st Respondent who actually won the Imo West Senatorial District Election held on the 25th day of February, 2023.

PW28 then prays that:-

- a. That it may be determined that the 1st Respondent, (Izunaso Osita Bonaventure), was not duly elected or returned by the majority of

lawful votes cast at the Imo West Senatorial District Election held on the 25th day of February, 2023.

- b. That it may be determined that the Imo West Senatorial District Election held on the 25th day of February, 2023 was invalidated by non – compliance with the provisions of the Electoral Act, 2022 which non – compliance substantially affected the Result or outcome of the election.
- c. An Order of this Honourable Tribunal nullifying or setting aside the Result of the Imo West Senatorial District Election held on the 25th day of February, 2023 for substantial non – compliance with the provisions of the Electoral Act, 2022 which non – compliance substantially affected the result or outcome of the Election.
- d. That it may be determined that the Imo West Senatorial District Election held on the 25th day of February, 2023 was invalidated by corrupt practices which substantially affected the result or outcome of the election.
- e. An Order of this Honourable Tribunal nullifying or settling aside the result of the Imo West Senatorial District Election held on the 25th day of February, 2023 for being invalidated by corrupt practices which substantially affected the result or outcome of the election.

PW28 further stated in his evidence that he was duly nominated or sponsored by the 2nd Petitioner to contest the Election into the office of senator representing Imo West Senatorial District held on the 25th day of

February, 2023 after winning the party's primary for the said election. Copies of my certificate of return and nomination form from the 2nd Petitioner are attached hereto.

That he was never nominated or sponsored by the 2nd Petitioner to contest election into the office of member representing Ohaji – Egbema/Oguta/Oru West Federal Constituency as alleged by the 2nd Respondent.

That indeed, his nomination or sponsorship by the 2nd Petitioner was the subject matter of pre – election litigation before the Federal High Court in Suit No. FHC/OW/CS/184/2022 – ***ALL PROGRESSIVES CONGRESS VS. INEC & 2ORS*** which was decided in his favour. That a copy of the judgment of the Federal High Court in the Suit delivered on the 14th day of February, 2023 is attached thereto.

Under cross-examination, PW28 stated that he did not write the Election Forms which he identified in evidence. He also said he brought BVAS Report and not Machine to Court, but maintained the fact that Election did not hold in Orlu Local Government Area.

PW28 contended that all allegations of irregularities in his Petition are true, and that he won Election in Njaba Local Government Area.

PW29 (Ikenna Dimoriaku) gave evidence as follows:

That he is a registered voter in Polling Unit 018, Obinugwu Village Square in Ihitenansa Ward and he had a right to vote but was disenfranchised due to the non – availability or absence of Independent National Electoral

Commission (INEC) Officials/ad-hoc staff posted to his Polling Unit for the Senatorial Election of the 25th day of February, 2023.

That as a registered voter, he was issue with Permanent Voters Card (PVC) by Independent National Electoral Commission (INEC) for the 2023 general election and that the Senatorial Election did not hold in his Polling Unit on the 25th day of February, 2023.

Under cross-examination, PW29 stated further that Election did not hold.

The Petitioners closed their case to pave way for Defence.

DW1 (Kelechi Kennedy Ezeribe) stated in his evidence, that he is a registered voter in Polling Unit 006 Unity Central School, Awo Omamma Ward 1.

It is his evidence that he voted on the day of election.

That the INEC ad – hoc staff checked his name on his PVC to confirm that it is on the register of voters and used the Bimodal Voter’s Accreditation System (BVAS) device to confirm his identity as a registered voter and thereafter issued him three ballot papers for the Presidential, Senate and House of Representatives Election respectively.

That he was thereafter directed to the polling booth where he thumbs printed the candidates of my choice on each of the ballot papers, came out and put each ballot paper into the ballot boxes respectively.

That he waited till the end of the voting exercise, with every voter going through the same procedure that he went through.

That at the end of the voting exercise, the votes were counted for each of the candidates and entered into the appropriate result sheet after announcing the winner.

That the winner of the Senatorial Election in my Polling Unit is Senator Izunaso Osita Bonaventure the 1st Respondent in this petition.

Under Cross – examination, he stated that there was peace in his Polling Unit 006 of Awo Omamma and that after the election, votes were collated and declared. That the result was recorded in the appropriate result sheets and 1st Respondent won the Election.

It is also his evidence, that Independent National Electoral Commission (INEC) officials came for the Election and that accreditation duly took place and people voted and there was no violence on the said date.

DW2 (Obinatu Paul Chidorue) stated in his evidence, that he is a registered voter in Polling Unit 002 Health Center Amagu. And that on the 25th day of February, 2023, he arrived his Polling Unit about 8.00a, to perform his civic duty in the 2023 general election scheduled by the Independent National Electoral Commission for the Senator to represent Imo West Senatorial Zone amongst other offices contested that day, and that he voted.

That the INEC ad – hoc staff checked his name on his permanent voters' card to confirm that it is on the register of voters and used the BIMODAL

Voters Accreditation System (BVAS) device to confirm his identity as a registered voter and thereafter issued his three ballot papers for the Presidential, Senate and House of Representatives election respectively.

That he watched till the end of the voting exercise with every voter going through the same procedure that he went through and that at the end of the voting exercise, the votes were counted for each of the candidates and entered into the appropriate result sheet after announcing the winner.

That the winner of the senatorial election in his polling unit is Senator Izunaso Osita Bonaventure the 1st Respondent in this petition.

Under cross – examination, he stated that he queued up amongst other Voters and was accredited before he voted and that at the end of the day 1st Respondent was declared and returned as winner of the Election.

DW3 (Cosmas Obodoeze) stated in his evidence, that he is a registered voter in Polling Unit 006, Ikenga Masquerade Square, Ohakpu Ward with the right to vote thereat and that on the 25th day of February, 2023, he arrived his polling unit at about 8.25am to perform his civic duty in the 2023 general election scheduled by the Independent National Electoral Commission for the Senator to represent Imo West Senatorial Zone amongst other offices contested that day.

That he has his Permanent Voter's Card (PVC) which he voted with on the said day of election.

That INEC ad-hoc staff checked his name on his permanent voter's card to confirm that it is on the register of voters and used the BIMODAL Voters

Accreditation System (BVAS) device to confirm his identity as a registered voter and thereafter issued him three ballot papers for the Presidential, Senate and House of Representatives Election respectively.

That he waited till the end of the voting exercise with every voter going through the same procedure that he went through and that at the end of the voting exercise, the votes were counted for each of the candidates and entered into the appropriate result sheet after announcing the winner.

That the winner of the Senatorial election in his polling unit is Senator Izunaso Osita Bonaventure the 1st Respondent in this petition.

Under cross – examination, he stated that he was at his Polling Unit to vote and that Election was peaceful, results were collated, declared and 1st Respondent won the election and that he was accredited using BVAS Machine.

DW4 (A. Kelechi Solomon) stated in his evidence, that he is a registered voter in Polling Unit 006 Community School Amaokwe, Okwufuruaku Ward with the right to vote thereat, and that he voted on the 25th February, 2023.

That he waited till the end of the voting exercise with every voter going through the same procedure that he went through.

That at the end of the voting exercise the votes were counted for each of the candidates and entered into the appropriate result sheet after announcing the winner.

That the winner of the Senatorial Election in his polling unit is Senator Izunaso Osita Bonaventure the 1st Respondent in this Petition.

Under cross – examination, DW4 stated that he voted in his Polling Unit on the said date of Election and the Election was very peaceful and that after the collation and declaration of the result, the 1st Respondent won in his Polling Unit. He said he was duly accredited on Election Day, other Voters present at the Polling Unit also voted.

DW5 (Nwadike Reginald) stated in his evidence, that he is a registered voter in Polling Unit 004 Onusa Ward 1 with the right to vote thereat, and did vote on the 25th February, 2023.

That he waited till the end of the voting exercise with every voter going through the same procedure that he went through.

That at the end of the voting exercise, the votes were counted for each of the candidates and entered into the appropriate result sheet after announcing the winner.

That the winner of the senatorial election in his polling unit is Senator Izunaso Osita Bonaventure the 1st Respondent in this petition.

Under cross – examination, DW5 stated further that he proceeded to Polling Unit 004 to vote, and the election was peaceful in his Polling Unit, and that 1st Respondent won the election in his Polling Unit.

DW6 (Ezewanne Chineme Earnest) stated in his evidence, that he was a registered voter in polling unit 007 Amaukwu Umueme, Awo Omamma

Ward 4 with the right to vote thereat, and that he voted on the 25th February, 2023.

That the INEC ad-hoc staff checked his name on his permanent voter's card to confirm that it is on the register of voters and used the BIMODAL Voters Accreditation System (BVAS) device to confirm his identity as a registered voter and thereafter issued him three ballot papers for the Presidential, Senate and House of Representative election respectively.

That he waited till the end of the voting exercise with every voter going through the same procedure that he went through.

That at the end of the voting exercise, the votes were counted for each of the candidates and entered into the appropriate result sheet after announcing the winner.

That the winner of the Senatorial election in his polling unit is Senator Izunaso Osita Bonaventure the 1st Respondent in this petition.

Under cross – examination, he stated that Election held on the 25th February, 2023 and same was peaceful and he voted. It is his evidence that the declared results, the 1st Respondent won in his Polling Unit.

He stated that All Progressive Congress (APC) from the result of Oru East had 246 votes while Labour Party (LP) had 4 votes.

DW7 (Ndubuisi Oguebie) stated in his evidence, that he is a registered voter in Polling Unit 002 Central School Mgbidi, Mgbidi Ward 2 with the right to vote thereat, and on the 25th day of February, 2023, he arrived his

Polling Unit about 8:00am to perform his civic duty in the 2023 General Election scheduled by the Independent National Electoral Commission for the Senator to represent Imo West Senatorial Zone amongst other offices contested that day.

It is also his evidence that INEC ad-hoc Staff arrived the Polling Unit for the conduct of the Election where they met him and several other voters and party Polling Unit Agents who were already there while others arrived later, also that the INEC ad-hoc Staff checked his name on his Permanent Voter's Card to confirm that it is on the register of voters and used the Bimodal Voters Accreditation System (BVAS) device to confirm his identity as a registered voter and thereafter issued his three ballot papers for the Presidential, Senate and House of Representatives Election respectively.

That he was thereafter directed to the Polling Booth where he thumbs printed the candidates of his choice on each of the Ballot papers, came out and put each ballot paper into the ballot boxes respectively, and that he waited till the end of the voting exercise with every voter going through the same procedure that I went through.

That at the end of the voting exercise, the votes were counted for each of the Candidates and entered into the appropriate result sheet after announcing the winner, and that the winner of the Senatorial Election in his Polling Unit is Senator Izunaso Osita Bonaventure the 1st Respondent in this Petition.

Under cross-examination, DW7 stated that he voted in his Polling Unit 002, election was peaceful in his polling unit.

He also said other Voters were accredited with BVAS Machine before they voted, and that there was accreditation where BVAS was used, and 1st Respondent won in his Polling Unit.

DW8 (Stanley Okwuosha) stated in his evidence, that he is a registered voter in Polling Unit 004 Mmahu Secondary School II, Egbema Ward A with the right to vote thereat, and that on the 25th day of February, 2023, he arrived his Polling Unit about 8:20am to perform his civic duty in the 2023 General Election scheduled by the Independent National Electoral Commission for the Senator to represent Imo West Senatorial Zone amongst other offices contested that day.

That he has his Permanent Voter's Card (PVC) which he voted with on that said day of election, and that at about 9:15am INEC official/ad-hoc staff arrived the Polling Unit for the conduct of the election where he and several other voters and party Polling Unit Agents who were already there while other arrived latter, also that the INEC ad-hoc staff checked his name on his permanent voter's Card to confirm that it is on the register of voters and used the Bimodal Voters Accreditation System (BVAS) device to confirm his identity as a registered voter and thereafter issued his three ballot papers for the Presidential, Senate and House of Representatives election respectively.

That at the end of the voting exercise, the votes were counted for each of the Candidates and entered into the appropriate result sheet after announcing the winner, and that the winner of the Senatorial Election in

his Polling Unit is Senator Izunaso Osita Bonaventure the 1st Respondent in this petition.

Under cross-examination, he stated that he voted in his Polling Unit on Election Day, and that there was no compulsion on any Independent National Electoral Commission (INEC) Staff on Election Day.

DW9 (Izunaso Osita Bonaventure) stated in his evidence, that he is the 1st Respondent in this petition and by virtue of his aforesaid position he is conversant with the facts and circumstances of this petition deposed to herein, and that he made this written statement on oath for himself.

That he is a registered voter with the Permanent Voter's Card in Polling Unit 002 CPS Ohakpu, Ohakpu Ward in Oru West Local Government Area of Imo State. On the 25th day of February, 2023, he voted at his Polling Unit with his said PVC, and that the winner of the Senatorial Election in his Polling Unit, Ward, Local Government and Imo West Senatorial District is himself, Senator Izunaso Osita Bonaventure the 1st Respondent in this petition.

That after the election, declaration of results and return, he was issued with the Certificate of Return as the Senator Elect for Imo West Senatorial District, Imo State, and that after the election exactly on the 28th day of March, 2023, he was served with the copy of this petition by the 1st and 2nd Petitioners which he responded to hereinafter as follows:

That he was duly returned as the winner of the Imo West Senatorial Election held on the 25th day of February, 2023, and that he was duly

elected by a majority of lawful votes cast at the election and the election was not invalid by reason of corrupt practice or non-compliance with the provisions of the Electoral Act, 2022. He further stated that there was no incident of substantial non-compliance with the provision of the Electoral Act, 2022 in the conduct of the election, and that the election was held and result duly announced and return made with him as the winner of the election.

That the 1st and 2nd Respondents duly appointed their respective agents whose names were duly submitted to the 3rd Respondent. The Petitioners did not comply with the 3rd Respondent's requirement which they pleaded in paragraph 17. They are put to the strictest proof of their compliance, and that the election was not conducted in gross breach of the Electoral Act, 2022 and the 3rd Respondent's Regulations and Guidelines nor was it conducted in non-compliance with the provisions of the Act, Regulations and Guidelines let alone such substantially affecting the result of the election.

That the Petitioners are put to the strictest proof of each and every Polling Units of several Wards in the Imo West Senatorial District where BVAS were allegedly not used. The Petitioners are also put to the strictest proof of each and every Polling Unit and every Ward in the Senatorial District where election did not hold and yet results were declared for each Polling Units.

That the Petitioners did not score the votes pleaded in paragraph 25 and the score set out in the table for Njaba is false and denied, and that he

knows as a fact that more political parties and their Candidates scored votes in Orsu Local Government Areas than the two Political Parties tabulated by the Petitioners in paragraph 27. That the 3rd Respondent's staff (Permanent and ad-hoc) engaged or deployed for the election showed up at the Polling Units to conduct the election.

That he further denies the allegation that the votes recorded in the Polling Units do not match the record of accreditation. He shall put the Petitioners to the strictest proof of their averments in paragraph 31 as well as the proof of their allegations on the overall result of the election, and that the election held in the Wards and Polling Units of Ohaji/Egbema Local Government Area. The Petitioners are put to the strictest proof of their averments thereunder. The Petitioners are further put to the strictest proof of the effect of their allegations on the overall result of the election.

That it is not true that election did not hold in the Wards and Polling Units of the Local Government Areas. The Petitioners are put to the strictest proof of their allegations therein, and that the Petitioners did not win the Election in Nkwerre Local Government Area. The Petitioners are also put to the strictest proof of their allegations in relation to Form EC8A(I), EC8A(I) and the BVAS used for the election in the pleaded Wards and Polling Units. The Petitioners are also put to the strictest proof of the difference in scores falsely pleaded in paragraph 33(a) sub-paragraphs 2 and 3.

That the provisions of the Electoral Act, 2022, the INEC (3rd Respondent) Regulations and Guidelines are matters of Law which speak for themselves without any invitation of argument in pleading. He, therefore objects to

paragraphs 41, 42 and 43 of the petition, and that he shall contend that the agents of INEC (3rd Respondent) are required to achieve substantial compliance with the provisions of the Electoral Act, 2022 and the Guidelines and Regulations enacted by thereunder and that unless it is demonstrated that the election was conducted in substantial non-compliance affecting the result of the election, the election will not be tampered with.

That the tables set out in that paragraph are baseless and without any statistical utility, and that Election in Ohaji/Egbema Local Government Area and Oguta Local Government Area were not marred by any irregularities and corrupt practices, and that he denies the existence or procurement of any wrong entries and miscalculations and arbitrary allocation of votes. The Petitioners are put to the strictest proof of the identities of the persons against whom they have alleged such crimes including the allocation of “jacking up” my votes and the 2nd Respondent’s votes scores or reducing the Petitioners’ scores without any justification. He has no such powers to jack up votes.

That there was valid election in Oru East, Orlu and Oru West Local Government Areas. The Governor of Imo State must naturally hail from a place and the coincidence of him hailing from Oru East and himself hailing from Oru West does not warrant us being tagged with allegations of crime which he denies as false. Neither him nor the Governor of Imo State posted any INEC’s Official (3rd Respondent’s) for the conduct of the election. He objects to the averment leveled against our personalities in

paragraph 57. He stated that there was no other voting and shall put the Petitioners to the strictest proof thereof.

That the figures set out in paragraph 52 are without foundation. He shall contend at the trial that 1st and 2nd Respondents never engaged any agent to stuff any ballot boxes whether fake or not and whether thumb printed or not in his favour and he denies the commission of crime alleged. The Petitioners are put to the strictest proof of their allegations of crimes in paragraph 53, and that paragraph 56 which claim that it is impossible to determine fairly between the 1st Petitioner and himself who won the Imo West Senatorial District Election held on the 25th day of February, 2023, is contradictory to paragraph 16 of the Petition which claim that the 1st Petitioner scored majority of the lawful votes.

That he denies liability to each and any relief set out and claimed by the Petitioners in paragraph 58 of the Petition. He shall at the Trial urge the Honourable Tribunal to dismiss this petition as lacking in merit,

Under cross-examination, has stated that it is true to say that he voted in the Election that produced him as the winner. That the Election in his Polling Unit was peaceful. That he thereafter returned to his house where you waited for the outcome.

He stated that he and Hope Ozodinma did not take Electoral Officers to their houses where they manipulated the outcome of the election. He said Election was duly held. He said that INEC did not jack-up his scores, and that over 600 people voted for him on Election Day because he is from Ohakpu.

It is also his evidence that he was born there and elected 20 years ago to represent his people at the House of Representatives. He will be surprised to lose a single vote in his place. He is their Political Party.

On the part of 2nd Respondent, he called four witnesses (DW10 – DW13)

DW10 (Obioha Eranus Odyssey), stated in his evidence that, as a registered voter in Amiri Ward II in Oru East and the Ward Collation Agent of the 1st and 2nd Respondent in Amiri Ward II. He tendered and identified Exhibits "D18" and "D19".

Under cross – examination, DW10 stated that the Election in his Ward was smooth, collation peacefully done, no violence and all Polling Unit Results were collated into Form EC 8B(I) and same taken to the Local Government Area Collation Centre.

DW11 (Jude Oduoma) stated in his evidence that, he testified as a registered voter and Ward Collation Agent of the 1st and 2nd Respondent in Umuna Ward in Orlu LGA. He tendered Exhibits "D20" and "D21".

Under cross – examination, DW11 stated that was collation successfully done in his Ward, there was no violence and that votes were not manipulated and or arbitrarily allocated.

DW11 said BVAS was used for accreditation. As the Ward Collation Officer, he received the Polling Unit Results from the Polling Unit Agents in his Polling Unit and he was there when collation was carried out.

He said no result was conjured, and that the Election was conducted in compliance with the Electoral Act.

DW12 (Ukachukwu Godson Chike) stated in his evidence that, he testified as a registered voter and Ward Collation Agent of the 1st and 2nd Respondents in Omuma Ward, Oru East LGA and tendered Exhibits "D22" and "D23"

Under cross – examination, he stated that collation in his Ward was done successfully, and there was no any case of violence in his Ward. There was also no stuffing of ballot boxes. He also said BVAS Machine was used.

It also his further evidence, that Collation of Results was done from Polling Units and no Party was allocated any votes arbitrarily.

DW13 (Uche Nwosu) stated in his evidence that, he testified as a registered voter in Eziachi/Amike in Orlu LGA and the Imo West Senatorial District Collation Agent of the 1st and 2nd Respondents. DW13 tendered Exhibits D24 and D25.

Exhibits D18, D19, D20, D21, D22, D23, D24, and D25 are the Permanent Voters Cards and Appointment Letters of DW10-DW13 respectively.

Under cross – examination, he stated that collation was done successfully in the Senatorial District, there was no violence, and the Election was peacefully conducted. He said he did not also receive any report on irregularity.

It is his evidence that Election held in Njaba Local Government Area and that the Results are missing, but he could not read the total number of accredited Voters, but that the Respondent's Party scored the votes as shown on the said Exhibit "13".

At the close of the hearing, parties filed their respective final written addresses.

Petitioners' counsel filed their final written address and formulated three (3) issues for determination to-wit;

- 1. *Whether the Petition is competent.***
- 2. *Whether the 1st and 3^d Respondents' replies to the Petition are competent.***
- 3. *On the state of the Pleadings and the evidence before this Honourable Tribunal and on a balance of probabilities, whether the Petitioners are entitled to the grant of the reliefs sought in the Petition.***

Issues 1 and 2 afore-formulated have been dealt with in the course of determining the respective Preliminary Objections of parties in the preceding part of this Judgment.

I am only left with issue no. 3, i.e ***on the state of the Pleadings and the evidence before this Honourable Tribunal and on a balance of probabilities, whether the Petitioners are entitled to the grant of the reliefs sought in the Petition.***

It is the contention of learned counsel, that the standard of proof in an Election Petition alleging non-compliance, like in any other civil case is on a preponderance of evidence: ***IKPONMWOSA VS. EGHAREVBA & ORS (2009) LPELR-4685(CA) AT PP. 58-59*** was cited in support.

Learned counsel contends, that having abandoned their allegation of corrupt practices, this petition is now premised principally on allegation of non-compliance with the provisions of the Electoral Act, 2022 including the subsidiary thereof (i.e. INEC Regulations and Guidelines for the Conduct of Elections 2022 and INEC Manual for Electoral Officials, 2023 e.t.c.).

It is the submission of learned counsel for the Petitioners that the material allegation of non-compliance with the provision of the Electoral Act, 2022 and INEC Regulations and Guidelines for the conduct of the 2022 Election Stems from the fact that despite the available evidence that Election held in Njaba Local Government Area, no Collation and Declaration was so made to that effect.

As it relates to the other Local Government Areas of Orlu, Oru East, Orsu, Oru West, Ohaji/Egbema, Oguta, Nkwerre Local Government Areas, that Election did not hold in the various Polling Units and that results were declared and that the said results did not match the record of accreditation of Voters as reflected in the BVAS report which learned counsel for the Petitioner insists amounts to over-voting.

Relying on the provision of Paragraph 46(4) of the First Schedule of the Electoral Act and Section 137 of the Electoral Act, 2022, learned counsel for the Petitioner argued that the Petitioner need not oral evidence to

prove the content of a document once there are original copies before the Tribunal and that the argument by the Respondents' counsel that documents of the Petitioner were dumped on the Tribunal is misplaced and be discountenanced with.

It is further the argument of Petitioner's counsel that INEC who are the makers of Exhibits "29", "30" and "31" must not be called as witness.

Learned counsel further queried the inability of INEC to call any evidence and urged the Tribunal to hold that they have abandon their pleadings, and urged the Tribunal to hold that Petitioner proved its Petition.

In compliance with the rules and procedure, 1st Respondent filed written address wherein three (3) issues were formulated for determination to-wit;

1. **Whether this Petition is competent? And if it is then**
2. **Whether the Petitioners have proved their entitlement to the reliefs sought in this Petition?**
3. **Whether the Petition is not liable to be dismissed?**

The competence of this petition has already been determined.

On issues 2 and 3, i.e "**Whether the Petitioners have proved their entitlement to the reliefs sought in this Petition and;**

Whether the Petition is not liable to be dismissed, learned counsel with leave argued both together and contended that the burden rests squarely on the Petitioners to prove their allegation of corrupt practice and

or non-compliance as the ground two of their petition. Because of their allegations of crime, the Standard of proof is beyond reasonable doubt. The case of ***D.P.P VS. INEC (2009)4 NWLR (Pt. 1130) Page 92 at 114 G – H, 114 C – D, and 114 – 115 H – B*** was cited in support of this preposition.

It is further the argument of learned counsel, that Petitioners witnesses admitted making their depositions in Igbo language and that failure to tender the Igbo version of the statement and the evidence of the interpreters makes the evidence of the witnesses valueless. The case of ***GUNDIRI VS. NYAKO (2014)2 NWLR (Pt. 1391) 211 at 244 B – C, E, 265 C – F, 242 C – E, 259 G – H, 240 C, 243 – 244 D – B, 246 – 247 G – B, 260 B – E and 241 A – D, 241 G – H, 260 – 261 G – C*** was cited.

It is his further argument that the Petitioners cannot escape the fatality of their inability to call direct evidence from the Polling Units. ***BUHARI VS. OBASANJO (2005) 13 NWLR (Pt. 941) Page 1*** was cited.

Learned counsel further submit that, on the effect of their failure to call the makers of the documentary evidence or those who directly witnessed or took part in the making of the documents, see ***OLATUNJI VS. WAHEED (2012) 7 NWLR (Pt. 1298) Page 24 at Page 47 Paragraphs E – H thus:***

"A Proper person to tender a document is the maker of such document. Where the make of the document is not called to testify before the Court and subjected to Cross –

examination as to the source of his information, the Court cannot attach probative value to such document.”

OMISORE VS. AREGBESOLA (2015) 15 NWLR (Pt. 1482) Page 205 at 322 Paragraphs F – H was cited to the effect that documents are to be tested and demonstrated in Open Court and not in the Court’s recess of Chambers. It is also apt to restate that the Petitioners must work hard enough to rebut the presumption of validity and accuracy of the results as declared by INEC.

ABUBAKAR VS INEC (2022) 12 NWLR (Pt. 1737) Page 37 was cited.

Learned counsel cited the case of ***D.P.P VS. INEC (Supra) at 114 G-H***, where the Court of Appeal adjudged that care must be taken not to upturn any election on the flimsiest non-compliance. The severity of the non-compliance and the effect it has on the voting public must be quantified and assessed before reaching a decision to nullify any election.

The adjuration is in line with the dicta of the Court of Appeal in ***NWOLE VS. IWUAGWU (Supra);***

GUNDIRI VS. NYAKO (Supra) at 255 were cited on allegation of crime and standard of proof.

Learned Counsel respectfully submit that, by the very nature of the pleadings of the Petitioners, they fell far short of what is required to persuade the Tribunal to up -turn the return of a member. If they are to expect the Honourable Tribunal to reach a decision that the 1st Respondent

did not scores the majority of lawful votes cast in the election, they must lead a qualitative evidence to enable the Tribunal to;

- a. See an outlay of the votes cast in the election at each polling units;
- b. The scores of each Candidates in the election; (to leave the Tribunal is no doubt as to how the Candidates shared the votes.
- c. Demonstrate the mis-application of votes
- d. Show that by a proper application of the votes, the 1st Respondent did not score the majority of lawful votes.

The Case of FALEKE VS. INEC (2016) 18 NWLR (Pt. 1543) Page 61 at 151 Paragraphs B and D- G, was cited where the Supreme Court held that:

"...where an election is questioned on the ground that the Respondent was not duly elected by majority of lawful votes cast...the Petitioner is required to plead two sets of figures; the score announced by INEC and the scores he considers to be correct. Where appropriate he is expected to call witnesses to testify as to the mis-application of the votes..."

Learned counsel submit that, the Petitioners in this case did not plead or set out the two sets of scores as required by law. The 1st Respondent called 8 witnesses and testified on the 9th day of July, 2023 as the DW9. He identified and spoke to the documents i.e. Exhibits "D11", "D4", "D12", "D13", "D14", and "D15". Those Exhibits include Certified Copies of

Statement of Results at the various levels of Collation of Results, the BVAS Reports, Register of Voters, (Voter's Register). He tendered his PVC as Exhibit "D16", Receipt for Certification as Exhibit "D17", Exhibit "D10", Exhibit and "D15".

Learned counsel further submit that, he testified that he voted. He denied each and every allegations which the Petitioners pleaded against him. In effect he gave evidence of voting. He testified and identified Exhibits "29" and "30" which he denied under Cross - examination by the Petitioner's Counsel. With his evidence his case was closed.

In conclusion, learned counsel submitted that, the summation of the case of the 1st Respondent is that the Petitioners have failed to prove their Petition or entitlement to the reliefs which they are claiming.

It is further his argument that, there is a presumption of regularity of the election as declared by INEC which regularity and accuracy the Petitioners have failed to rebut. ***INEC VS. ANTHONY (Supra) at 20-21 H- B and at 22-23 C-B was cited.***

Counsel respectfully urge the Honourable Tribunal to find as a fact and to decide that the Petition lacks merit by the standard abundantly decided by the preponderance of judicial precedent.

Learned counsel finally concludes by urging the Honourable Tribunal to dismiss this Petition on the grounds earlier urged in their Interlocutory application which was filed on the 13th day of April, 2023, and if the

Honourable Tribunal opt ex abundante cautela to decide otherwise, then we again urge the Tribunal to dismiss the Petition for want of merit.

On the part of 2nd Respondent, they filed written address and distilled two (2) issues were formulated for determination to-wit;

- 1. *Whether the petition is competent?***
- 2. *Whether the Petitioners have proved their entitlement to the reliefs***

The same line of argument as stated by the 1st Respondent's counsel was equally done by 2nd Respondent with relation to the same issue. I shall not reproduce same as it will add no value, save for the fact that 2nd Respondent called in evidence DW10 – DW13 who are all Voters from their respective Polling Units and Wards.

Learned counsel concludes, that the Petitioners have failed to prove the grounds upon which the petition is predicated, and therefore urge the Tribunal to hold that:

1. There was substantial compliance with the provisions of the Electoral Act, 2022, in the conduct of the questioned election.
2. The election was not invalid by reason of corrupt practices
3. The 1st Respondent was duly elected by majority of lawful votes cast at the election; and

4. That the Petitioners have not proved entitlement to the reliefs sought in the petition.

Counsel urge the Honourable Tribunal to so hold.

On the part of the 3rd Respondent, final written address was filed wherein two (2) issues were distilled, as follows:-

a. "Whether the Petition is competent"?

b. "Whether the Petitioners have proved their entitlement to their relief"?

Both issues were conjunctively argued.

I will like to observe that the argument of learned counsel for the 3rd Respondent is the same in character and form with those of the 1st and 2nd Respondents, hence the decision not to reproduce same but paraphrase same in the course determining this petition.

I similarly note the fact that being the electoral umpire, INEC admitted the fact that the 1st Respondent was duly elected and returned as the Senator representing Imo West Senatorial District by Exhibit "3" i.e Forms EC 8A(I), EC 8B(I), EC 8C(I), EC 8D(I) and EC 8E(I).

It is the argument of learned counsel for the 3rd Respondent Asoluka, SAN, that the said Declaration enjoys presumption of regularity and relied on the cases of ***ABUBAKAR VS. INEC (2022)12 NWLR (Pt. 1737);***

UDOM VS. UMAMA (No.1) (2016)12 NWLR (Pt. 1526) Page 179.

Learned counsel contended that, the Petitioner also alleged non-accreditation and improper accreditation of Voters. The Supreme Court has laid this issue to rest in Unreported Appeal No. **SC/CV/508/2023: OYETOLA VS. INEC & ORS** delivered on the 9th day of May 2023, the Supreme Court held that the evidence required to prove voting was allowed without accreditation or that there was improper accreditation are the Register of Voters, BVAS Machines and the Polling Unit Result as in Form EC8A and that the evidence required to prove that there was over-voting are the record of accredited voters in the BVAS and the Polling Unit Results in Form EC8A.

Counsel further submit that, the Petitioners neither produced the register of voters nor the BVAS Machine to prove non-accreditation.

Learned counsel argued further on the complaint of not holding election that the Petitioners tendered **Form EC40G** from the Bar, with no appropriate witness that spoke to the documents, and that the said Form EC40G tendered by the Petitioners was not signed and no indication of the reasons for not holding the elections.

On the claim of Petitioners that the 1st Respondent did not score majority of the lawful votes cast at the election, Asoluka, SAN, cited the case of **CONNAD & ANOR VS. BEM & ORS (2019) LPELR-48786 (CA), the Court of Appeal held thus;**

"In NADADA VS. DABAI (2011) 7 NELR (Pt.1245), 155, 177 OKORO JCA (NOW JSC) as he then was state that: where a Petitioner is alleging that the respondent was not elected by

a Majority of lawful votes, he ought to plead and prove the votes which ought to have been credited to him and also the votes which should be deducted from that of the supposed winner in order to see if it will affect the result of the election where that is done, it will be difficult for the Court to effectively address that issue".

It is the further argument of Asoluka, SAN, that the Petitioners failed to do this and counsel respectfully urge the Tribunal to so hold.

Learned counsel submit with respect as earlier stated, the evidence of the Petitioners witnesses is at variance with the Petitioners complaint in the Petition and no probative value ought to be given to the complaints.

See ***YUSUF VS. OBASANJO (2005) 18 NWLR (Pt. 956) Page 96 at Page 213 paragraphs C-D*** was cited.

Counsel further submit that, the Petitioners who are seeking the nullification of the election subject matter of this Petition must succeed on the strength of their own case and not on the weakness of the adverse Party's case. Consequently, the failure of the adverse party to call evidence will not relieve the Petitioners seeking nullification of the election from satisfying the Tribunal by cogent and reliable proof of evidence in support of the Petition. This burden the Petitioners, we submit have failed to discharge.

In conclusion, counsel submit that from the foregoing we must humbly ask the Honourable Tribunal to dismiss this Petition for being frivolous, Incompetent, vexatious, unmeritious and an abuse of Court Process.

Upon receipt of the Petitioners' final written address, 1st Respondent equally filed reply on point of law wherein he emphasized the facts that all the documents Petitioners' counsel tendered from the Bar were not spoken to by way of demonstration and therefore dumped.

Learned counsel reiterated the fact that Petitioners are under an obligation to proof their Petition and not the other way round, and that they have failed to so prove their case.

Learned counsel urge the Tribunal to dismiss the petition.

TRIBUNAL:-

I have abreast myself with the issues formulated by the Petitioners on the one hand and 1st, 2nd and 3rd Respondents' issues, on the other hand. The issues are same in a nutshell save for nomenclature and plagiarization.

Issue No. 3 submitted by the Petitioners' counsel seem all encompassing and apt, same is hereby adopted as that of Tribunal for determination.

The issue is;

On the state of the Pleadings and the evidence before this Honourable Tribunal and on a balance of probabilities, whether

the Petitioners are entitled to the grant of the reliefs sought in the Petition.

In civil cases, election Petition inclusive, the onus of proof shifts from the Petitioner to the Respondent and vice versa from time to time as the case progresses. The onus rests heavily on the Party who will fail if no evidence at all, or more, as the case may be, were given on either side. Sections 131, 132 and 133 of the Evidence Act, 2011 and the authority of ***EJOGU VS. ONYEAGUOCHA (2006) ALL FWLR (Pt. 317) 467*** are instructive on this point.

The Petitioner in a nutshell has the evidential burden thrusts upon him to establish the grounds or ground on which he founded his petition in Order to succeed.

The case of ***BUHARI VS. INEC (2008)12 SCNJ 1 at 68*** is instructive on this point.

Sections 131, 132, 133 and 134 of the Evidence Act, 2011 are apt.

ONI VS. OJOGBOGBO & ORS (2015) LPELR – 41741 (CA).

Petitioners cannot shirk from their onerous duty by throwing the burden on the Respondents.

The golden rule is, he who assert the existence of a fact or facts must lead evidence to establish such.

Even though I had dealt with the attempt Petitioners' counsel in its final written address made to severe part "a" and "b" of ground "b" which were

lumped together as one ground and the said ground challenged on ground of competence by the respective Respondents, I am minded to re-emphasize that counsel ought to appreciate the function of final written address. Final written address is only meant to speak on those issues already dealt with in the course of hearing evidence in the matter and therefore not to be used to penal beat the case of a Party by either adding or subtracting what is already before the Court.

Election petition in particular has no such luxury of time unlike the conventional civil matters in view of its sui generis nature. The attempt made by Abubakar of counsel who used his final written address to apply for the severance of the two grounds lumped together was most exposing, moreso that such ground had already been challenged, and the reason why the Tribunal agreed with the reasoning of the Respondents and in that order struck-out the said ground.

I now proceed to consider the weight of the evidence of the 1st Petitioner's witnesses in law to ascertain whether by such evidence, the onus has been discharged hence shifted on to the Respondents.

As stated already, the 1st Petitioner called a total of 29 witnesses and their evidence have already been reproduced in the earlier part of this Judgment.

I need mention here that 25 of the 29 witnesses gave evidence as Ward Collation Agents and in that order tendered their letters of appointment identifying them as such.

Petitioners' counsel Abubakar, Esq. tendered Exhibits "29" to "40" from the Bar which have been mentioned in the earlier part of this Judgment:-

List of record of PVC issued, list of BVAS captured Accredited Voters, Results Sheet used for Imo West Senatorial Election, Form EC 40G, list of Presiding Officers, INEC Guidelines and Manuals for the 2023 General Election, two INEC receipts, Certificate of Return by the 2nd Petitioner to the 1st Petitioner as its flag bearer, INEC report on the Primary Election of the 2nd Petitioner, Affidavit in support of Particulars of 1st Petitioner, Nomination Form and Judgment of the Federal High Court in Suit No. FCT/OW/CS/184/2022.

I shall pause here and state the position of the law as it relates to whether it is only a Polling and or Ward Agents or a person who was present at a Polling Unit or Ward during Election or Collation at Ward Level that can give admissible evidence of what transpired at the Polling Unit.

The law is established by an unending line of judicial authorities that it is only a Polling Unit Agent or a person who was present at a Polling Unit during Poll that can give admissible evidence of what transpired during Poll at the Unit. Equally, it is only the Ward Collation Agent or a person who was present during Collation of Polling Units Results in a Ward Collation Centre that give admissible evidence of what transpired at such centre. Only a Local Government Collation Agent or a person present during Collation of Ward Results at the Centre can give admissible evidence of what happened there. The PW1 to PW27 who were not in all the Units during Poll cannot be eye witnesses of what transpired thereat, except

evidence of what they are told took place in those Units. So their evidence of what took place in such Polling Units, can only at best be hearsay evidence which is inadmissible to establish the truth of what happened during Polls.

See ***BUHARI VS. INEC & ORS (2008)19 NWLR (Pt. 1120) 246 at 424*** in which the Supreme Court per Tobi JSC, held thusly, **"An Agent is the representative of the Candidate in the Polling Station. He sees all the activities. He hears every talk in the Station. He also sees actions and inactions in the Station. And evidence given by a person who was not present at the Polling Units or Polling Booth is certainly hearsay. And here, we so regard the evidence of PW1 – PW27 who identified Forms EC8A(I) as documentary hear say."**

They were given the information by their Agents. The Million Naira question is, why did these Agents not make statement as witnesses even when the Ward Agents admitted under cross-examination that they are alive?

In our view, Agents are in the most vantage point to give evidence of wrong doing in a Polling Unit or Polling Booth. Can the Petitioner say in reality that he has established his case as it relates to what happened at the respective Polling Units when no such Polling Unit Agents were called?

In ***BUHARI & ANOR VS. OBASANJO & ORS (2006) EPR 295 at 559 – 560***, the Apex Court again held thus: **"On the question whether the evidence led in support is sufficient to warrant the decision reached on the point by the Court below, it is necessary to**

examine the said evidence led. The position of the law regarding the type of evidence which must be led in support at an election are being challenged should come direct from the Officers who were on the field where the votes were counted and/or collated.

In ***HASHIDU VS. GOJE (2003)15 NWLR (Pt. 843) 352 at 386*** it was held thus – None of these Party Agents was called to testify. Similarly none of the INEC Polling Agents was called to testify and confirm the figures since they should be the makers of the Forms on which the figures given were written.

PW1 to PW27 can only give admissible evidence of Collation process in their respective Wards. See ***DOMA & ANOR VS. INEC***. Anything outside this, will be a black market evidence and most inadmissible.

PDP & ANOR VS. INEC & ORS (2019) LPELR – 4810 (CA),

ABAYOMI OLALEKAN VS. THE STATE (2001) LPELR – 2561 (SC) and **Sections 37 and 38 of the Evidence Act, 2011** are instructive on this point.

On the other hand, 1st Petitioner who is laying claim to the fact that Election did not take place in some specific Polling Units and that results were conjured in favour of the 1st Respondent, is under an obligation to call Voters from the affected Polling Units who must come to the Tribunal with evidence of their being from the affected Polling Units i.e PVC and who must also identify their names from their respective Voters Registers across the Polling Units and Local Government Area whether or not they were accredited to vote, and voted or not.

Above underscore the importance of Voters Register which has been tendered and admitted in evidence and which Petitioners failed to demonstrate same by calling Voters from the affected Polling Units to link their PVC to the said Voter Register of the said Polling Units.

The case of ***NWOBASI VS. OGBAGA & ORS (2015) LPELR – 40669 (CA)*** is instructive on the significance of Voters Register.

Petitioner's failure to call Voters from the affected Polling Units where he alleged Elections did not take place and result conjured in favour of the 1st Respondent, is fatal to his claim.

I have read with interest the argument of learned counsel for the Petitioners that the provision of **Section 137 of the Electoral Act** and **Paragraph 46(4) of the First Schedule to the Electoral Act** have clearly made it unnecessary for a party to call oral evidence where there is or are documents, i.e certified true copy disclosing non-compliance as alleged.

The position of the law on issue of General and Specific provision is already settled.. where there is a specific and General provision on a named subject matter, the specific provision takes precedence over the General provision.. The maxim is, Expressio unis Ext Exclusio Alterius Rule..

The following cases are instructive:-

INAKOJU & ORS. VS. ADELEKE & ORS. (2007) LPELR – 1510 (SC).

It is necessary therefore, for me to reproduce the said provisions for ease of reference:-

Section 137 of the Electoral Act, 2022:

"It shall not be necessary for a Party who alleges non-compliance with the two (2) provisions of this Act for the conduct of Elections to call oral evidence if originals or certified true copies manifestly disclose the non-compliance alleged."

And

Paragraph 46(4) of the First Schedule to the Electoral Act, 2022;

"Documentary evidence shall be put in and may be read or taken as read by consent, such documentary evidence shall be deemed demonstrated in open Court and the parties in the Petition shall be entitled to address and urge argument on the content of the document, and the Tribunal or Court shall scrutinize or investigate the content of the document as part of the process of ascribing probative value to the document or otherwise."

Earl of Selborne LC in the case of ***VERA CRUZ (1884) 10 APP. CAS 59 at Page 68*** has this to say with respect to above interpretation;

"If anything be certain it is this, that where there are general words in a later Act capable of reasonable and sensible

application without extending them to subjects specifically dealt with by earlier legislation, you are not to hold that earlier and special legislation indirectly repealed, altered or derogated from merely by force of such general words, without any indication of a particular intention to do so.

Above dictum was applied by the Court of Appeal in the case of **ZAKARI VS. IGP (2000) 8 NWLR (Pt. 670) Page 666 at 683 – 684.**

It is most misplaced for the Petitioners' counsel to imagine that the provision of **Section 137 of the Electoral Act, 2022** and **Paragraph 46(4) of the First Schedule of the Electoral Act, 2022** could be used as a draconian monster to repeal and abrogate the legendary provisions of the Evidence Act which deals with issues of oral or documentary evidence as it relates to the onus of proof. This line of argument is most misplaced.

Is it not true that having not called the said Polling Unit Agents or Voters who participated in making the said Form EC8A(I) at the respective Polling Units to speak to the said Polling Unit Results, same clearly would have been dumped on the Tribunal?

The argument of the Respondents' counsel on the facts that the documents were either dumped and or hearsay is most apt and sustained.

See **ALADE VS. ADEKANYE & ORS (2021) LPELR – 52710 (CA).**

I now turn to the 1st Petitioner. 1st Petitioner himself who gave evidence as PW28 attempted to identify the said Exhibits "29" – "33" which are Forms **EC 8A(I), EC 8B(I), EC 8C(I), EC 8D(I) and EC 8E(I) and Form 40G**

for the affected Polling Units, Wards, Local Governments in contention that makeup Imo West Senatorial District.

PW28 who identified the said aforementioned exhibits was neither the maker nor an eye witness who saw everything from the Polling Unit, Ward level Local Government Collation Centre and where the Declaration was made.

PW28 under cross-examination confirmed the fact that he had Agents at all the levels of the Election process who are indeed all alive.

His evidence clearly has fallen short of the requirement of the law and no gainful value, therefore, can be ascribed to same.

At best, it is hearsay and inadmissible in evidence. Just as the evidence of PW1 – PW25 was caught in the web of inadmissible evidence hence worthless, the same is applicable to the evidence of PW28 as it relates to those documents aforementioned.

I now proceed again to consider the complaint of the Petitioner as contained in Exhibit "32", i.e Form EC 40G i.e summary of Polling Units where Election did not hold or inconclusive. The document is lifeless in view of the fact that it is signature that gives life to a document.

See the case of ***DAVIDSON & ORS VS. INEC (2021) LPELR 52805.***

An unsigned document generally has no efficacy in law. Such a document where same is tendered shall not be given value.

I have looked at the said Exhibit EC 40G. There is no indication as to the reason why Election did not hold. What is more.., the said document has no signature and the implication in law is that such a document is indeed worthless.

See ***OMEGA BANK (NIG) LTD. VS. O.B.C LTD. (2005) LPELR 2636 (SC).***

Accordingly, the said Form EC 40G tendered is hereby jettisoned, same being worthless.

Again I shall examine the effect of Exhibit "30" i.e the BVAS report which was tendered by 1st Petitioner's counsel from the Bar and identified as such by the Petitioner in evidence as the BVAS report.

Above represents the story told by the 1st Petitioner in support of his argument that Election did not hold in the eight (8) Local Government Areas namely; **Njaba, Oru East, Orlu, Orsu, Oru West, Ohaji/Egbema, Oguta and Nkwerre**, that makeup Imo West Senatorial District.

I make bold to say that 1st Petitioner did not produce or tender any BVAS machine in evidence, throughout the Prosecution of his petition.

Needless to say that the content of the BVAS report tendered as Exhibit "30" was never demonstrated by the Petitioner.

What is the effect of such!

Above position was illuminated in the unreported case of **ADEGBOYEGA ISIAKA OYETOLA & ANOR VS. INEC & 2 ORS.** Appeal No: **SC/CV/508/2023** in the following words;-

"It is glaring from the above reproduced provisions of the Electoral Act and the INEC Regulations and Guidelines that the evidence required to prove that there was over voting are the record of accredited voters in the BVAS and the Polling Unit result in Form EC8A. Having determined the evidence required to prove the assertions of non - accreditation, improper accreditation and over-voting, let me now consider what evidence the appellants produced in the tribunal to prove their above assertions. The evidence relied on and tendered by the petitioners to prove grounds 2 and 3 of the Petition include the testimonies of their two witnesses, PW1 and PW2, polling units results in INEC Form EC8A for each of the 744 polling units and the report of the examination of the content of the INEC database or back end (Exhibit "BVR") The BVR issued on 27th July, 2022 is said to contain information on the number of accredited voters and results transmitted from BVAS used in the 16th July, 2022 election in the 744 polling units. The BVAS devices for each of the 744 polling units which the appellants solely relied on as the basis for grounds 2 and 3 of their petition were not produced and tendered by them as evidence in support of their case. Rather they sought to prove the record of

accredited voters in the BVAS devices for each of the 744 polling units by means of a report of the examination of the INEC data base or back end server (Exhibit "BVR") said to contain the information on the number of accredited voters and number of votes cast in a polling unit transmitted by the BVAS to the said INEC data base during the election on election day. The record in the BVAS machine for each polling unit is the direct and primary record of the number of voters accredited in that polling unit on Election day in the process of the election. It is not in dispute that the disputed Polling Units results were collated in their respective wards by their Ward Collation Officers. The Collation by virtue of Regulation 48(a) of INEC Regulations and Guidelines, a presumption arises from the collation of the polling units results that the number of accredited voters recorded in the result in Form EC8A agrees with the record of the accredited voters in the BVAS. The Petitioners cannot rebut this presumption without producing the BVAS machines in evidence.... Exhibit "BVR", the report of the examination of the content of the INEC database or back end server containing the number of accredited voters and number of votes cast transmitted by the BVAS for each polling unit to the data base or back end server does not qualify as the BVAS provided for in the Regulation 48(a) and the number recorded therein as extracted from the INEC data base is not

the "the number recorded in the BVAS" as provided in Regulation 48(a). There is no part of the Electoral Act or INEC Regulations and Guidelines for the conduct of Elections, 2022 that makes INEC data base or back end server a part of the accreditation process or record of accredited voters... in the light of the foregoing, I hold that the INEC data base or National Electronic Register of Election Results is not relevant evidence in the determination of whether there was non-accreditation or over-voting or not in an election in a Polling Unit and cannot be relied on to prove over voting". (Underlining for Emphasis).

What then is the effect of Exhibit "30" i.e the BVAS report which was tendered without demonstrating same from the content of BVAS machine in view of the Supreme Court decision in ***OYETOLA's case (Supra)?***

It shall not be ascribed any evidential value in law. Exhibit "30" is hereby jettisoned.

With the determination of the status of Exhibit "30" i.e the BVAS report, the plight of the case of Petitioners would have been laid bare on the judicial table for consideration.

I shall now gravitate to the evidence of 1st, 2nd and 3rd Respondents who are vehement that Election held in all the Local Government Areas of Imo West Senatorial District and that the 1st Respondent won the Election.

Permit me to state from the onset the position of the law as it relates to any such Declaration made by Independent National Electoral Commission (INEC), i.e the 3rd Respondent in this petition.

When an official Act is shown to have been done in a manner substantially regular, it is presumed that all formal requisites for its validity were indeed complied with. See **Section 168(1) of the Evidence Act, 2011** and ***NIGERIAN AIRFORCE VS. JAMES (2002) LPELR 3191 (SC)*** on this presumption.

Above is expressed in the maxim omnia praesumuntur rite esse acta.

It is instructive to note at this point that Respondents in all called 13 witnesses with 1st and 2nd Respondents calling nine (9) and four (4) witnesses respectively.

1st Respondent's counsel, D.C. Denwigwe, SAN, called a total of nine (9) witnesses who gave evidence as DW1 – DW9. DW1 – DW9 gave evidence as Voters from their respective Polling Units of the Wards in the Local Government Areas. 1st Respondent's counsel tendered certified true copies of the following documents from the Bar, as follows:-

1. Certified True Copy of INEC Report of Labour Party Senatorial Primary Election held on the 9th June, 2022 together with Notification of venue and date for Labour Party primaries in Imo State dated the 26th June, 2022.
2. Certified True Copy of INEC Petitioner Form EC13C submitted to INEC.

3. INEC Certified True Copy of 1st Petitioner INEC Form EC9 submitted to INEC.
4. Result sheets including Forms EC8A(1), EC8B(1), EC8C(1), EC8D(1) and EC8E(1) used for the Imo West Senatorial District Election held on the 25th February, 2023.
5. Voters Register used for the Imo West Senatorial Election of 25th February, 2023 and
6. BVAS Report of Imo West Senatorial Election held on 25th February, 2023

These documents were identified by the 1st Respondent as documents that eventually saw him been declared Pursuant Exhibit "13" (Form EC 8E(I)) i.e Declaration of Results.

On the other hand, 2nd Respondent called four (4) witnesses who were equally Voters from their respective Polling Units.

I have considered the documents tendered by the 1st Respondent's counsel, D.C. Denwigwe, SAN, from the Bar.

Suffices to mention that I have dealt with the issue of the competence of the Petition and 1st Petitioner in the preceding part of this Judgment and shall not again re-consider same arising from the documents tendered by the 1st Respondent's counsel, touching on the competence of the Petition and 1st Petitioner.

I shall therefore restrict myself to only the documents used for the conduct of the Imo West Senatorial Election held on the 25th February, 2023 i.e Forms EC 8A(I), EC 8B(I), EC 8C(I), EC 8D(I) and EC 8E(I).

I would like to reiterate the fact that Petitioners, and Petitioners only have the responsibility thrust upon them to proof their assertion or facts that 1st Respondent did not win the said Election for the Imo West Senatorial District which was conducted on the 25th February, 2023 in compliance with the provisions of the Electoral Act and the law.

This is in line with the revered principle of onus of proof Pursuant to Sections 131, 132, 133, 134 and 135 of the Evidence Act, 2011.

It is already established from the available evidence, that 25 of the witnesses fielded by the Petitioners were Ward Collation Agents who could not have validly in law given evidence as to what transpired at the Polling Unit Level especially when they all admitted not being at those Polling Units. Their evidence to that effect has already been found to be inadmissible, same being hearsay.

Similarly, the evidence of 1st Petitioner himself who gave evidence as PW28 and who attempted to identify Polling Unit Results, Ward Collation Results, Local Government Collation Results was found to be inadmissible, same being hearsay.

What then is left of the Petitioners' petition in the absence of any admissible evidence?

As stated from the preceding part of this Judgment, the only time the evidential pendulum of prove can tilt is where Petitioners would have led credible evidence in prove of their own claim. This, I dare say has clearly not been met by the Petitioners.

Let me now look at what the Respondents have put before the Tribunal.

I have seen the Polling Unit Results, Summary of Polling Unit results from Polling Unit Collation Area, Local Government Collation from eleven (11) Local Governments out of 12 Local Governments that makeup Imo West Senatorial District as follows:

1. Oru West L.G.A
2. Oru East L.G.A
3. Ohaji/Egbema L.G.A
4. Orlu L.G.A
5. Ideato North L.G.A
6. Ideato South L.G.A
7. Isu L.G.A
8. Nwangele L.G.A
9. Orsu L.G.A
10. Nkwerre L.G.A
11. Oguta L.G.A

I have similarly seen the summary of results from Local Government Area Collation at the Senatorial Level and the Declaration of result for Imo West Senatorial District Election tendered together as Exhibit "13".

From the results tendered by the 1st Respondent, Petitioner won election in Ideato North, Isu, Nwangele and Oguta Local Government Areas.

On the other hand, 1st Respondent won in Oru West, Oru East, Ohaji/Egbema, Orlu, Ideato South, Orsu and Nkwerre Local Government Areas of Imo State that makeup Imo West Senatorial District, as follows

S/N	L.G.A	APC (Scores)	LP(Scores)
1.	IDEATO NORTH	2,923	5,619
2.	ISU	3,357	6,722
3	NWANGELE	2,988	5,298
4.	OGUTA	1,277	1,639
5.	ORU WEST	29,380	3,372
6.	ORU EAST	17,940	1,545
7.	OHAJI/EGBEMA	6,124	3,955
8.	ORLU	965	327
9.	IDEATO SOUTH	500	489
10.	ORSU	49	4
11.	NKWERRE	8,754	4,017

Similarly, from the result collated at the Senatorial District Level, the 1st Respondent polled a total number of **78,607 (Seventy Eight Thousand, Six Hundred and Seven) Votes** on the one hand, while the Petitioner polled a total of **37,029 (Thirty Seven Thousand and Twenty Nine) Votes**.

Where then do we go from here!

Petitioners' counsel contended the fact that there was over-voting, improper accreditation or absence of accreditation in most of the Polling Units of the Local Government Areas affected in this Petition.

What then must a Petitioner do to prove above claim?

The Supreme Court has laid this issue to rest in Unreported Appeal No: **SC/CV/508/2023: OYETOLA VS. INEC & ORS** delivered on the 9th day of May 2023, in the following words;

"It is glaring from the above reproduced provisions of the Electoral Act and the INEC Regulations and Guidelines that the evidence required to prove that there was over voting are the record of accredited voters in the BVAS and the Polling Unit result in Form EC8A. Having determined the evidence required to prove the assertions of non - accreditation, improper accreditation and over-voting, let me now consider what evidence the appellants produced in the tribunal to prove their above assertions. The evidence relied on and tendered by the petitioners to prove grounds 2 and 3 of the Petition include the testimonies of their two witnesses, PW1 and PW2, polling units results in INEC Form EC8A for each of the 744 polling units and the report of the examination of the content of the INEC database or back end (Exhibit "BVR") The BVR issued on 27th July, 2022 is said to contain information on the number of accredited voters and results transmitted from BVAS used in the 16th July, 2022

election in the 744 polling units. The BVAS devices for each of the 744 polling units which the appellants solely relied on as the basis for grounds 2 and 3 of their petition were not produced and tendered by them as evidence in support of their case. Rather they sought to prove the record of accredited voters in the BVAS devices for each of the 744 polling units by means of a report of the examination of the INEC data base or back end server (Exhibit "BVR") said to contain the information on the number of accredited voters and number of votes cast in a polling unit transmitted by the BVAS to the said INEC data base during the election on election day. The record in the BVAS machine for each polling unit is the direct and primary record of the number of voters accredited in that polling unit on Election day in the process of the election. It is not in dispute that the disputed Polling Units results were collated in their respective wards by their Ward Collation Officers. The Collation by virtue of Regulation 48(a) of INEC Regulations and Guidelines, a presumption arises from the collation of the polling units results that the number of accredited voters recorded in the result in Form EC8A agrees with the record of the accredited voters in the BVAS. The Petitioners cannot rebut this presumption without producing the BVAS machines in evidence.... Exhibit "BVR", the report of the examination of the content of the INEC database or back end server

containing the number of accredited voters and number of votes cast transmitted by the BVAS for each polling unit to the data base or back end server does not qualify as the BVAS provided for in the Regulation 48(a) and the number recorded therein as extracted from the INEC data base is not the "the number recorded in the BVAS" as provided in Regulation 48(a). There is no part of the Electoral Act or INEC Regulations and Guidelines for the conduct of Elections, 2022 that makes INEC data base or back end server a part of the accreditation process or record of accredited voters... in the light of the foregoing, I hold that the INEC data base or National Electronic Register of Election Results is not relevant evidence in the determination of whether there was non-accreditation or over-voting or not in an election in a Polling Unit and cannot be relied on to prove over voting". (Underlining for Emphasis).

Next as claimed by the Petitioner is the issue of the Results of Njaba Local Government Area, which falls within the Senatorial District. It is the claim and evidence of the Petitioner that he was leading in the Polling Units of the Local Government when the Election was stalled and that declaration and return was not made.

1st Petitioner claimed albeit, without any admissible evidence that he was leading with **4,791 votes** while 1st Respondent polled **2,270 votes** in **Njaba Local Government Area.**

It is instructive to note that no such evidence has been creditably adduced before the Tribunal to justify Petitioners claim.

1st Petitioner ought to know that in Court, claims must be backed by evidence otherwise they remain like lame duck that cannot fly.

If I may ask, and I hereby ask the Petitioner to answer the following questions, "what is the effect of the said scores allegedly scored or earned by the 1st Petitioner in Njaba Local Government, and had same been added to the overall results?"

The votes gap between the 1st Respondent and the 1st Petitioner from Form EC8E(I) admitted in evidence is so wide that the alleged results from Njaba Local Government could not have swung the pendulum in favour of the 1st Petitioner.

The argument touching on the votes of Njaba Local Government therefore, is most inconsequential.

What more.., 1st Petitioner who in one breath alleged that Election did not hold in part of the eight (8) Local Governments mentioned earlier, in another breath claimed to have won the said election. Which is the Tribunal expected to believe, is it that the election did not hold in these Local Government Areas or that the election held and Petitioner actually won the Election?

Where then is the second result declaring the Petitioner as winner of the Election, I dare ask the 1st Petitioner?

On this, I rely on the case of ***NADADA VS. DABAI (2011) 7 NELR (Pt. 1245), 155, 177*** where Okoro, JCA as he then was, (now JSC) stated that: ***"where a Petitioner is alleging that the respondent was not elected by a Majority of lawful votes, he ought to plead and prove the votes which ought to have been credited to him and also the votes which should be deducted from that of the supposed winner in order to see if it will affect the result of the election where that is done, it will be difficult for the Court to effectively address that issue."***

The case of ***WADA VS. INEC (2022) 11 NWLR (Pt. 1841) 293***, is also very instructive.

In proving that voting did not take place in an election, the Petitioner must lead positive and credible evidence on the alleged non holding of the election in each of the polling booths that voting did not take place. See ***CHIME VS. ONYIA (2009) 2 NWLR (Pt. 1125) Page 263***, In an Election Petition, where an allegation is made that registered voters did not cast their votes, the allegation must be proved by concrete evidence.

Petitioners who are alleging non-voting must call a voter from each polling booth in the affected Constituency as witnesses to tender their voters' card and testify that they did not vote on the day of the election.

Evidence of non-voting in a particular polling booth is provable by production of voters register, production of voters card, production of the BVAS Machine by the provisions of the Electoral Act 2022 and the oral evidence of registered voters who were available and turned up to vote at their respective polling booths on the day of election but could not vote for a variety of reasons. The above position of the law was given judicial pronouncement in the case of **AUDU VS. INEC (No. 1) (2010) 13 NWLR (Pt. 1212) Page 431 at Page 522-523 Paragraphs H-D.**

Lack of evidence to show that the names of those disenfranchised voters were not actually ticked as having voted in the voters' register and the failure to tender the BVAS Machine to show non- accreditation of voters Is fatal to the Petition. **OYETOLA VS. INEC (Supra)** is apt.

The Petitioners failed to bring Witnesses to speak and or demonstrate and link the exhibits to relevant aspects of their case. A Party tendering documents has the duty to ensure that such document qua Exhibits are linked to the relevant aspects of his case which they relate. See **SOKOTO VS. INEC (2022) 3 NWLR (Pt. 1818) Page 577 at Pages 596** was cited.

None of the documents and Exhibits were tendered by their makers. The proper person to tender a document is its maker, who alone can be Cross - examined on it and where a Person who did not make it tenders it. Where such happens, as in this case, no probative value shall be given to same.

I find solace in the case of **BELGORE VS. AHMED (2013) 8 NWLR (Pt. 1355) Page 60 at 100.**

In the case of ***UCHA VS. ELECHI (2012) 13 NWLR (Pt. 1317) Page 330 at Page 367 – 368***, the court had this to say;

"It is not the duty of a Court to untie exhibits in Chambers and assess them. It is not the duty of Court to embark upon cloistered Justice by making enquiry into the case in Chambers by examination of documents which were in evidence but not demonstrated by witnesses before the Court. A Judge is an adjudicator and not an investigator".

Documents cannot be dumped on the Court or Tribunal as the Petitioners did in the instant case, as it is not the duty of the Court or Tribunal to process through documents tendered by the parties, which were not demonstrated in open Court.

No probative value can be ascribed to the document tendered as such Exhibits amounts to documentary hearsay. See Section 37 of the Evidence Act.

See ***PDP & ANOR VS. INEC & ORS (2019) LPELR-48101 (CA)*** was cited.

The Petitioners dumped the Voters Register of the Polling Units they alleged elections never held. They also did not tender the BVAS Machine to show non-voting, non-accreditation and or improper accreditation. Worst still for the Petitioner is their failure to tender Form EC40G, which should have evidenced the non-holding of the election.

The evidence required by the Petitioners to prove allegations of non-accreditation, improper accreditation and over-voting under the Electoral Act 2022, has been laid to rest in the very recent case of **OYETOLA VS. INEC & ORS (2023) LPELR -60392 (SC) (Supra)** wherein the Supreme Court held that the evidence required to prove non-accreditation, Improper accreditation and over-voting under the Electoral Act 2022 are the BVAS Machines, the Register of Voters and the Polling Unit result in INEC Form EC8A by virtue of Section 47(1), (2) and 51(2) of the Electoral Act 2022, Regulations 14, 18, 19(b), (i-iv), (e), (i-iii) and 48(a) of the INEC Regulations and Guidelines for the conduct of Elections 2022.

The emphasis and significance of the Bi-modal Voters Accreditation System (BVAS) as emphatically stated in the case of **OYETOLA VS. ADELEKE (Supra)** is like our Qur'an and Bible. Non-adherence with the Quranic and Biblical injunction is tantamount to disobeying God the Creator of Heavens and Earth and all the Occupants.

Similarly therefore, non-compliance with on the use of BVAS machine in an Election is not just suicidal but clearly an affront to our Electoral jurisprudence.

Petitioners who though tendered BVAS Report, failed to tender the BVAS Machine in Court and demonstrate same using the said BVAS Report and the Voters Register. This is most inimical to the case of the Petitioners. I say this because use of BVAS Machine for accreditation in our Election process is indeed aimed at giving credibility to the whole process.

Now that Petitioners are casting aspersion on what Independent National Electoral Commission (INEC) has done, they are under an obligation to do what is correct and right in the eyes of the law... This, Petitioners have not done.

What is next... Petitioner claimed 1st Respondent did not poll the majority of lawful votes cast at the Election.

The position of the law on the allegation that a respondent did not score a majority of the lawful votes cast in an election subject of an election petition is that, when a Petitioner alleges that a Respondent has not won by majority of the lawful votes in an election, as in this Petition, to succeed in the claim/action/petition, the law enjoins the Petitioner firstly to specifically plead the existence of two sets of results emanating from the election, and thereafter, the Petitioners must adduce credible evidence that the Respondents did not score the majority of lawful votes cast at the election.

Petitioners must plead and prove votes cast at the various polling units, the votes illegally credited to the declared winner, the votes which ought to have been deducted from the supposed winner in order to find out if it will affect the result of the election. The best form of evidence to lead in prove of such allegation is those of the polling unit agents who witnessed the infractions at the various polling units. Failure to call polling units agents to testify is detrimental to the Petition.

WADA VS. INEC (2012) 11 NWLR (Pt. 1841) Page 293 at Pages 326 – 327 Paragraphs D – C was cited.

I have seen the table Petitioner provided in his petition to show the number of accredited Voters and those who voted. The said table in question cannot speak for itself at all. Accreditation was done by the use of BVAS Machine and it is only the said BVAS Machine that could give us the accurate number of those who were accredited which shall be compared with the number of Voters that voted. Who is supposed to do the magically calculation in the absence of such demonstration in Court using the BVAS Machine and what is the effect of the non-demonstration in law!

I ask the said question in view of the fact that it is the Petitioner who has alleged that he won the election when the 1st Respondent has been declared and returned the winner of the said Election... How can you plead facts without evidence in support!

That is clearly not in agreement with the rule of pleadings and evidence.

Petitioners failed to call any Polling Unit Agents and called only Twenty-Five (25) Ward Agents whose evidence has been tainted as hearsay.

Petitioners have failed to prove the allegations of non-compliance which substantially affected the result of the election. See ***OMISORE VS. AREGBESOLA (2015) 15 NWLR (Pt. 1482) Page 205 at Pages 280-281 paragraphs G-A.***

Bereft of any substance, the result declared by the 3rd Respondent (INEC) which enjoys presumption of regularity stands tall and unfazed. This petition is clearly academic and is bound to be dismissed.

1st Respondent was on the strength of the votes polled and in compliance with the provisions of the Electoral Act and Guidelines for the conduct of the 2023 Election declared the Winner of Imo West Senatorial Election by the 3rd Respondent (INEC).

The plight of Petitioner has been dealt a blow when the allegation of crime which was found incompetent was struck-out along with the evidence.

Petitioners have failed to dislodge the credibility of the declaration made in favour of the 1st and 2nd Respondents by Independent National Electoral Commission (INEC), having failed to call credible witnesses from Polling Units who actually saw what transpired at the respective Polling Units of the respective Local Government Areas. These Polling Units Agents are very necessary to establish Petitioners' claim.

Instead of leading credible evidence in aid of their petition, Petitioners merely offloaded their documents and relied on the provision of Section 137 of the Electoral Act, 2022, to do the magic.

The attitude of Petitioners and their counsel was described by Legendary Niki Tobi, JSC, (blessed memory) in the case of ***BUHARI VS. INEC & ORS (2008) LPELR – 814 (SC) at Pages 175 – 178*** in the following words.

"The Court of Appeal cannot collect evidence from the market overt; for example from the Balogun market, Lagos; Dugbe market, Ibadan; main market, Jos; Central market, Kaduna; Central market (former Gwari market), Minna;

Wuse market, Abuja. On the contrary, the Court of Appeal, has to wait for evidence, as the court did, in the court building duly constituted as a court qua adjudicatory body. Courts of law being legal and sacred institutions do not go on a frolic or on a journey to collect inculpatory or exculpatory evidence. On the contrary, they deal only with evidence before them which is procedurally built on arid legalism. For the avoidance of doubt, I am not saying by this judgment that all was well with the conduct of the Presidential Election conducted in 2007. What I am saying is that there was no evidence before the Court of Appeal to dislodge section 146(1) of the Electoral Act.”

Were Petitioners expecting this Tribunal to embark on discovery of evidence by visiting all the Polling Units in the Local Governments that makeup the Imo West Senatorial District? It is not our job.

I am in no difficulty resolving the issue formulated in favour of the Respondents.

Having failed to establish its case against the Respondents, the Respondents are not under any obligation to lead evidence in rebuttal moreso that the presumption of correctness of the work done by Independent National Electoral Commission (INEC), even though rebuttable, is as firm as the Iroko Tree in this case.

See Fabiyi, JCA (as he then was) in ***NWOLE VS. IWUAGWU (2005)16 NWLR (Pt. 952) 543 at 571 A – C*** thus:-

"Finally let me express the view that the return of a member should be accorded a sacrosanct status. It should not be toyed with. A Judge should be satisfied that the election was void before knocking it down. Such a return is a serious matter and should not be lightly set aside".

See also ***HARRIMAN VS. UDEH [1999] 9 NWLR (PT. 619) AT 461,***
Per **Akintan JCA** (as he then was) as follows:-

"..... before any Tribunal could nullify any election duly conducted by the authority saddled with the assignment, all necessary facts must be meticulously taken into consideration, with the aim of ensuring that there are compelling factors to warrant or justify such a serious decision. This stand is buttressed by the facts that nullification or invalidation of an election is the gravest punishment that a Candidate duly declared elected and the authority charged with conducting such election can experience. This is because such a decision would mean going through the expenses, trauma and other hazards of having to go over another election"

Supporting these judicial adjuration, the National Assembly enacted Section 135(1) of the Electoral Act, 2022 thus:-

"An election shall not be liable to be invalidated by reason of non-compliance with the provisions of this Act if it appears to the Election Tribunal or Court that the election was

conducted substantially in accordance with the principles of this Act and that the non-compliance did not affect substantially the result of the election".

The declaration and return of the 1st Respondent as the winner of the February, 25th, 2023 Election as Senator representing Imo West Senatorial District is most deservedly earned by the 1st and 2nd Respondents.

I have no reason to disturb the said declaration, at all.

The petition of the Petitioners bereft of all necessary qualities is left in limbo to wither away as a judicial gate-crasher that has by operation of law been consigned to a forlorn heap of legal fossil.

The law indeed cannot command an impossibility. The essence of justice is to do what is true and correct.

Arising from all that I have stated, this petition is clearly bound to be dismissed with an Order for same to be allowed to rest in peace.

On the whole, Petition No. **EPT/IM/SEN/03/2023** is hereby dismissed.

.....
HON. JUSTICE Y. HALILU
(CHAIRMAN)

.....
HON. KADI M.G. ABUBAKAR
(MEMBER I)

.....
HON. JUSTICE A.O. FAMILONI
(MEMBER II)