

**IN THE IMO STATE NATIONAL AND STATE
HOUSES OF ASSEMBLY ELECTION PETITION TRIBUNAL
HOLDEN AT MARARABA, NASARAWA STATE**

BEFORE THEIR LORDSHIPS:

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

THIS MONDAY, THE 4TH DAY OF SEPTEMBER, 2023

PETITION NO. EPT/IM/HR/04/2023

BETWEEN

1. HON. KINGSLEY ONYEBBULA	}	PETITIONERS
2. PEOPLES DEMOCRATIC PARTY (PDP)		

AND

1. INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC)	}	RESPONDENTS
2. CANICE MOORE NWACHUKWU		
3. ALL PROGRESSIVES CONGRESS (APC)		

JUDGMENT

On the 25th day of February, 2023, the 1st Respondent conducted the National Assembly election for Orlu/Orsu/Oru East Federal Constituency in Imo State. The 1st Petitioner was a candidate at the said election. He was sponsored by the 2nd Petitioner. The 2nd Respondent contested the said

election on the platform of the 3rd Respondent. Other political parties also sponsored candidates at the election.

At the conclusion of the election exercise, the 1st Respondent declared and returned the 2nd Respondent as the duly elected candidate for the House of Representatives for Orlu/Orsu/Oru East Federal Constituency, Imo State. Aggrieved by the declaration and return of the 2nd Respondent as the winner of the election, the Petitioners filed this petition on the 17th day of March, 2023.

The grounds of the petition as contained in Paragraph 3a & b of the petition are as follows:

- "a. There was substantial non-compliance with the provisions of the Electoral Act, 2022 in the conduct of the questioned election, and***
- b. The 2nd Respondent was not duly elected by majority of lawful votes cast at the election".***

The facts in support of the petition and the documentary evidence to be relied upon are pleaded in Paragraphs 4 and 5 of the petition respectively. The reliefs sought by the Petitioners as contained in Paragraph 6 of the petition are set out hereunder:

- "a. A DECLARATION of the Honourable Tribunal that the 2nd Respondent did not score the majority of the lawful votes cast at the election to elect the***

member to represent the Orlu/Orsu/Oru East Federal Constituency of Imo State in the House of Representatives held on the 25th February, 2023.

- b. AN ORDER of the Honourable Tribunal cancelling the elections conducted in the polling units in Orsu Local Government Area and Oru East Local Government Area as itemized in the tables at Paragraph 4.1 above in the Orlu/Orsu/Oru East Federal Constituency held on the 25th February, 2023 to elect the Member to represent the Orlu/Orsu/Oru East Federal Constituency of Imo State in the House of Representatives of the National Assembly of Nigeria for over voting.***
- c. AN ORDER of the Honourable Tribunal setting aside the return of the 2nd Respondent as the elected member to represent the Orlu/Orsu/Oru East Federal Constituency of Imo State in the House of Representatives of the National Assembly of Nigeria.***
- d. AN ORDER of the Honourable Tribunal that the Petitioners scored majority of the lawful votes cast at the election to elect the member to represent the Orlu/Orsu/Oru East Federal constituency of Imo State in the House of Representatives held on the 25th February, 2023 following the cancellation of the election in the polling units in Orsu Local Government Area and Oru East Local Government Area, itemized in the Tables contained in Paragraph 4.1 for over voting.***
- e. AN ORDER of the Honourable Tribunal returning the 1st Petitioner as the winner of the election to elect the member to represent the Orlu/Orsu/Oru East Federal Constituency of Imo***

State in the House of Representatives held on 25th February, 2023.

- e. AN ORDER of this Honourable Tribunal directing the 1st Respondent to issue the 1st Petitioner with a Certificate of Return as the member-elect for the Orlu/Orsu/Oru East Federal Constituency of Imo State in the House of Representatives.***

OR ALTERNATIVELY

AN ORDER of the Honourable Tribunal ordering the conduct of fresh elections in Ebenese/Umuezenachi Ward (12 polling units), Ihite-Owerri Ward (14 polling units) Ogberuru/Obibi Ward (16 polling units) Ohafor/Okporo/Umutanze Ward (19 polling units) Okwuabala/Ihioma Ward (14 polling units), Orlu/Mgbee/Government Station Ward (24 polling units), Owerri-Ebeiri Ward (12 polling units) and Umuzike/Umuowa Ward (16 polling units) respectively in Orlu Local Government Area and in the polling units in Orsu Local Government Area and Oru East Local Government Areas as itemized in the Tables at Paragraph 4.1 above where over voting occurred in order to elect the member to represent the Orlu/Orsu/Oru East Federal Constituency of Imo State in the House of Representatives of the National Assembly of Nigeria”.

The petition and the accompanying processes were served on each of the Respondents. The 1st Respondent filed a Reply to the petition on the 10th of April, 2023 with accompanying processes. The Reply of the 1st Respondent denied in material particulars the grounds of the petition and the facts upon which the said grounds were based. In addition, the Reply incorporated a

preliminary objection challenging the competence of the petition. The 2nd Respondent on his part filed his Reply to the petition on the 17th of April, 2023 with accompanying processes. The 3rd Respondent filed her Reply to the petition on the 10th of April, 2023 with necessary processes in defending the petition.

Upon the service of the Respondents' Replies on the Petitioners, they filed Replies to the 1st and 3rd Respondents' Replies on the 17th of April, 2023 and to that of the 2nd Respondent on the 22nd of April, 2023. The Replies were filed with accompanying processes.

With pleadings closed, the stage was set for the pre-hearing session. The parties filed their respective forms and answers to pre-hearing questions and formulated issues for determination. During the pre-hearing session, the 2nd and 3rd Respondents filed separate applications in Motion No. **EPT/IM/HR/04^{M1}/2023** and Motion No. **EPT/IM/HR/04^{M2}/2023** seeking the striking out of the Petitioners' Replies and their accompanying processes for incompetence. The 3rd Respondent also filed another application in Motion No. **EPT/IM/HR/04^{M3}/2023** seeking the dismissal of the petition for incompetence. The Petitioners filed necessary processes to oppose the applications which were argued on 16th and 23rd May, 2023

respectively and rulings reserved till final Judgment in compliance with Section 136(4) of the Electoral Act, 2022 and Section 285(8) of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

The parties adopted their respective pre-hearing processes and the pre-hearing session came to an end with the issuance of a pre-hearing scheduling report/order. The plenary trial commenced in earnest. The parties called witnesses and adduced documentary evidence. At the end, final written addresses were ordered, filed and adopted and the case was reserved for Judgment.

RULING ON MOTION NO. EPT/IM/HR/04^{M1}/2023

By his Motion on Notice dated and filed on the 9th May, 2023, the 2nd Respondent prayed this Tribunal for the following reliefs:

"1. An Order striking out:

- i. The Petitioners' Reply to the 2nd Respondent's Reply to the petition dated 22nd day of April, 2023 and filed on the same date.***
- ii. The 3^d Respondent Further Written Statement on Oath of Kingsley Onyegbula sworn on the 22nd day of April, 2023.***
- iii. The Petitioners' Further List of Documents to be relied upon at the trial dated the 22nd day of April, 2023 and filed on the same date.***

2 AND for such further Order or Orders as this Honourable Tribunal may deem fit to make in the circumstance”.

The grounds for the application are that the Petitioners filed their Reply in violation of judicial authorities and the provisions of Paragraphs 14(1) and 16(1)(a) and (b) of the First Schedule to the Electoral Act, 2022, and to merely deny the allegations of facts made in the 2nd Respondent’s Reply, which is not permissible in law.

The application is supported with a 17-paragraph affidavit deposed to by Victor Okwara, one of the counsel to the 2nd Respondent in this matter. The gist of the deposition is that the Petitioners used the opportunity of filing a Reply to the 2nd Respondent’s Reply to bring in new facts tending to amend their petition and to add to its contents to the prejudice of the 2nd Respondent who has no further opportunity in law to respond to the new facts. That the Petitioners also denied allegations of fact made by the 2nd Respondent in his Reply.

Learned counsel to the 2nd Respondent, N. Epelle, Esq. in arguing the application adopted the written address filed in support, wherein he formulated a sole issue for determination to wit:

"Whether the Petitioners aforesaid Reply, Further Written Statement on Oath and Further List of Documents to be relied upon at the Trial should not be struck out for violating judicial authorities and the provisions of paragraph 16(1), (a) and (b) of the First Schedule to the Electoral Act, 2022".

He submitted that by virtue of the provisions, a Petitioner may file a Reply to the Respondent's Reply within five (5) days from receipt of the Respondent's Reply to address any new issues of fact raised therein. He posited that the Petitioner is however not permitted to bring in new facts, grounds or prayers tending to amend or add to the contents of his petition vide the Reply. He cited in aid the cases of ***ORJI VS. UGOCHUKWU (2009) 14 NWLR (PT. 1161) 207 @ 296 – 297; DINGYADI VS. WAMA KO (2008) 17 NWLR (PT. 1116) 395; IDRIS VS. ANPP (2008) 8 NWLR (PT. 1088) 1 @ 96; HASIDU VS. GOJE (2003) 15 NWLR (PT. 843) 362.***

Counsel further argued that it was improper for the Petitioners to file a Reply to merely deny allegations in the Respondents' Reply on which issues have already been joined. He relied on ***UNITY BANK PLC VS. BOUARI (2008) 7 NWLR (PT. 1056) 372 @ 406 – 407.*** He submitted that paragraphs 3, 4, 7, 8, 9, 10, 12, 13, 14, 24, 27 and 29 of the Petitioners' Reply were not averments in response to any new issues in the Respondent's

Reply and likewise, the contents of First Petitioner's Third Further Written.

Statement on Oath and the Further List of five (5) new documents to be relied on. Counsel maintained that to allow the Petitioners to rely on the said processes and documents in this petition when the 2nd Respondent can no longer validly respond to them is unfair and prejudicial. He urged the Tribunal to strike out the three (3) processes.

In response to the 2nd Respondent's Application, the Petitioners filed a 5-paragraph counter affidavit deposed to by one Mrs. Charity Mezieobi, the Chief Litigation Secretary in the Chambers of Petitioners' Counsel. The gravamen of the deposition is that the Petitioners did not bring in any new facts through their Reply tending to amend or add to the contents of their Petition but only averred to facts in direct and specific response to issues raised by the 2nd Respondent in paragraphs 2, 2(b), (c) and (d), 4(1)x, y and z and 7(j), (i), (ii) and (iii) of his Reply and supported same with the 1st Petitioner's Third Further Written Statement on Oath and Further List of Documents.

Adopting his written address, wherein he formulated a sole issue for determination as:

"Whether this application should not be dismissed for being unmeritorious and an egregious waste of precious judicial time?"

Learned Petitioners' Counsel, I. K. Ujah, Esq. submitted that the 2nd Respondent failed to demonstrate how the Petitioners' Reply contravened the provisions of paragraph 16(1) of the First Schedule to the Electoral Act, 2022 and also failed to furnish necessary particulars in support of the objection by specifying the new facts or issues allegedly pleaded by the Petitioners vide their Reply.

Counsel argued that by virtue of Section 136 of the Evidence Act, 2011, the burden to prove the facts alleged in the Petition lies on the Petitioners and consequently, when the 2nd Respondent in his Reply denied the averment in paragraphs 1 and 4 of the Petition, it was necessary for the Petitioners to establish the averments by producing documents that were not pleaded initially. He contended that this does not amount to an amendment or addition to the Petition. Counsel further argued that the 2nd Respondent in paragraph 2 of his Reply raised a new issue of fact on the venue of the 2nd Petitioner's primaries which allegedly produced the 1st Petitioner as a candidate for the election. He submitted that this fresh issue necessitated the Petitioners' response by way of specific denial and pleading

of necessary facts and documents in their Reply, with the accompanying deposition and list of additional documents. Counsel argued that while the cases cited by the Respondent's Counsel represent the correct position of the law on the purpose, scope and ambit of a Petitioner's Reply, they are not apposite in this instance as the facts are different and the cases are distinguishable. He opined that cases are authorities for what they decide, citing ***INEC VS. RAY (2004) 14 NWLR (PT. 892) 129; A.G. CROSS RIVER STATE VS. A.G. FEDERATION (2012) 16 NWLR (PT. 1327) 425 @ 520.*** He urged the Tribunal to dismiss the application as unmeritorious and with costs.

In our view, the simple issue for determination in this application is:

"Whether Petitioner's Reply and the accompanying processes are competent".

The Petitioners filed their Petition herein on the 17th of March, 2023. Upon service of same on the 2nd Respondent, he filed a Reply on the 17th of April, 2023, in response to which the Petitioners filed a Reply with the accompanying processes herein challenged on 22nd April, 2023.

Paragraph 16(1) of the First Schedule to the Electoral Act, 2022 provides thus:

"16(1) If a person in his reply to the election petition raises new issues of facts in defence of his case which the petition has not dealt with, the Petitioner shall be entitled to file in the registry within five days from the receipt of the Respondent's reply, a Petitioner's reply in answer to the new issues of fact so that –

- a. The Petitioner shall not at this stage be entitled to bring in new facts, grounds or prayers tending to amend or add to the content of the petition filed by him and**
- b. The Petitioner's reply does not run counter to the provisions of paragraph 14(1)".**

The import of the foregoing provisions has been the subject of judicial pronouncements in several cases, albeit decided under our past electoral laws, which provisions are *in pare materia* with the current provisions in the First Schedule to our new Electoral Act, 2022 reproduced above. See **ADEPOJU VS. AWODUYILEMI (1999) LPELR-6703 (CA) 23 – 28; AKEREDOLU VS. MIMIKO (2013) LPELR-20532 (CA) 24-21; AWAMARIDI VS. INEC (2019) LPELR-49397 (CA); AKPOTI VS. INEC (2020) LPELR-50174 (CA) 56.**

It is clear that paragraph 16(1) (a) and (b) of the First Schedule to the Electoral Act, 2022 donates a right to the Petitioner to file a Reply in answer to new issues thrown up in the Respondent's Reply. This should be

within five days upon the receipt of the Respondent's Reply. This provision however does not give the Petitioner a carte blanche or liberty to raise new issues, facts or grounds or add to the content of the original petition.

Underscoring the place and essence of a Respondent's Reply in an election petition, the Court of Appeal in ***OBIVWEVBI VS. INEC (2019) LPELR-48895 (CA) 38 – 43*** stated thus:

"A Petitioner's reply as the name implies is to meet the defence of and new facts introduced in the Respondent's reply. It is never meant to re-plead, repeat, reiterate, re-emphasize or introduce new facts or issues or re-plead the case of the Petitioner". See also ***APC VS. PDP (2015) LPELR-24587 (CA); EMERHOR VS. OKOWA (2016) 11 NWLR (PT. 1522) OKE VS. MIMIKO NO. 1 (2014) 1 NWLR (PT. 1388) 285.***

With the above injunction in view, vis-à-vis the complaint of the Respondent, we have critically examined and juxtaposed the averments in the Petitioners' Reply with the averments in the 2nd Respondent's Reply to the Petition and it is our candid view that the Petitioners in several paragraphs of their Reply restated or reiterated the earlier pleadings in their Petition and also averred to new facts and pleaded fresh documents tending to add to the content of their petition in a purported response to the Respondent's Reply, wherein no fresh issues were raised.

Specifically, paragraphs 1, 2, 17, 18, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, and 31 of the Reply are a restatement or reiteration of facts in the Petitioners' Petition. Furthermore, paragraphs 3, 4 and 33a, b, c and e are pleadings tending to add to the content of the Petitioners' Petition. They are facts and documents within the knowledge and at the disposal of the Petitioners at the time of filing their Petition which were not pleaded.

It is trite that new issues or additional facts can only be raised by the Petitioners through amendment of their pleadings in line with paragraph 14 of the First Schedule to the Electoral Act. The implication is that an amendment can only be done within the twenty-one days period within which the Petitioners are entitled to file a petition. It is clear that as at 22nd April, 2023 when the Petitioner filed the Reply, the Third Further Written Statement on Oath of the 1st Petitioner and the Further List of Documents to be relied upon, the time within which the Petitioners could have amended the Petition had lapsed. It is therefore our finding that the aforesaid paragraphs in the Petitioners' Reply and the corresponding paragraphs in the 1st Petitioner's Further Written Statement on Oath and list of additional documents filed in support are improper in a Reply and are patently incompetent. They are accordingly struck out.

However, it is our observation that the 2nd Respondent in paragraphs 2 to 4 of his Reply raised the issue of the *locus standi* of the Petitioners to institute this Petition and pleaded facts and documents alleging that the primaries of the 2nd Petitioner that produced the 1st Petitioner as a candidate for the election herein challenged had been nullified by the Supreme Court. This to our mind is a new issue raised by the 2nd Respondent in his defence which required a proper response from the Petitioners vide a Reply. Therefore, the averments of the Petitioners in paragraphs 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 19 and 33d in response to this new issue in the Respondent's Reply are quite appropriate and in order. Likewise, the corresponding depositions in the 1st Petitioner's Third Further Written Statement on Oath and Further List of Documents to be relied upon. They are not incompetent and we so hold.

In this vein, the 2nd Respondent's Application succeeds in part to the extent that only paragraphs 1, 2, 3, 4, 17, 18, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 31 and 33a, b, c and e of the Petitioners' Reply, and corresponding paragraphs in the Further Written Statement on Oath and Further List of Documents accompanying same are struck out. The surviving averments,

depositions and listed documents in the challenged processes are valid in this Petition.

**HON. JUSTICE Y. HALILU
CHAIRMAN**

**HON. KADI M. G. ABUBAKAR
MEMBER I**

**HON. JUSTICE A. O. FAMILONI
MEMBER II**

RULING ON MOTION NO. EPT/IM/HR/04^{M2}/2023

This motion by the 3rd Respondent also dated and filed on the 9th day of May, 2023 is the same in substance with that of the 2nd Respondent herein just determined. Therein, the 3rd Respondent also prayed for the striking out of the Petitioners' processes to wit: the Reply to 3rd Respondent's Reply, 2nd Further Written Statement on Oath of the 1st Petitioner and Further List of Documents to be relied upon at the trial, all dated 15th April, 2023 but filed on 17th April, 2023.

The grounds for the Application are the same with the 2nd Respondent's, earlier on reproduced in this Ruling and needs no repetition. The Application is supported with a 17-paragraph affidavit, deposed to by Izuchukwu Nwamadu, Esq., one of the counsel to the 3rd Respondent and a written address. The averments in the affidavit and the submissions in the written address are virtually the same with that of the 2nd Respondent.

Learned 3rd Respondent's Counsel, Eze Duruiheoma, SAN, in arguing the application relied on and adopted the processes filed and cited

OSHODI VS. EYIFUNMI (2000) 12 NWLR (PT. 1336) 298; PHILLIPS

VS. EBA ODAN COMMERCIAL & INDUSTRIAL COMPANY LTD. (2013)

1 NWLR (PT. 684) 310 as additional authorities in support. He urged the Tribunal to strike out the Petitioners aforementioned processes in entirety.

In response, the Petitioners equally filed a 5-paragraph counter affidavit deposed to by Mrs. Charity Mezieobi, the Chief Litigation Secretary of their Counsel and a written address. Suffice to say that the contents of the deposition and address are same in substance with the ones filed in response to the 2nd Respondent's Application. Learned Petitioners' Counsel, I. K. Ujah, Esq., also relied on and adopted the processes in urging the Court to dismiss the Application.

The issue for determination in this application is also whether the Petitioners' Reply and accompanying processes filed in response to the 3rd Respondent's Reply are competent. We hereby adopt the legal position on the propriety of a Respondent's Reply, pursuant to paragraph 16 of the First Schedule to the Electoral Act, 2022, which we earlier on adumbrated upon.

We have also examined the impugned Petitioners' Reply and juxtaposed it with the 3rd Respondent's Reply to confirm if the complaints that it raised new issues of facts tending to amend or add to the content of the Petition are genuine.

It is our finding that paragraphs 1, 2, 13d, 15, 16, 17, 18, 19, 20 and 23 are also a restatement or re-pleading of averments in the Petitioners' Petition. Likewise, paragraphs 2, and 24a, b, c, e and f are pleadings tending to add to the content of the Petitioners' Petition. They allude to facts and documents that were at the disposal of the Petitioners at the time of filing the Petition which they ought to have pleaded, frontloaded, or listed then or subsequently via an amendment of the Petition within the time limit of 21 days provided by the law. This they failed to do. They will not be allowed to smuggle them in at this stage through the back door under the guise of replying the 3rd Respondent. They are patently incompetent and are accordingly struck out.

We observed that the 3rd Respondent in paragraph 3 to 13 of her Reply to the Petition averred to facts that the 1st Petitioner was not qualified to contest the questioned election herein because the 2nd Petitioner's primaries which produced him as a candidate was invalid and therefore he was not a candidate at the election. This definitely is a new issue raised by the 3rd Respondent in her Reply which deserved a proper response by the Petitioners. The averments in paragraphs 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 and 24d of the Petitioners' Reply are in specific response to the new issue

raised by the 3rd Respondent. Likewise, the corresponding paragraphs in the accompanying 2nd Further Written Statement on Oath and Further List of Documents to be relied upon. They are quite competent and we so hold.

Conclusively, the 3rd Respondent's Application also succeeds partially to the extent that only paragraphs 1, 2, 13d, 15, 16, 17, 18, 19, 20, 23 and 24, a, b, c, e and f are plagued and accordingly struck out. The remaining paragraphs of the Reply and the corresponding paragraphs in the 1st Petitioner's 2nd Further Written Statement on Oath and the Further List of Documents are not infected and are preserved.

**HON. JUSTICE Y. HALILU
CHAIRMAN**

**HON. KADI M. G. ABUBAKAR
MEMBER I**

**HON. JUSTICE A. O. FAMILONI
MEMBER II**

RULING ON MOTION NO. EPT/IM/HR/04^{M3}/2023

This Application by the 3rd Respondent, dated and filed on 12th May, 2023, is seeking an order of this Tribunal dismissing or striking out the petition. The 3rd Respondent's grounds for the Application as contained on the face of the motion paper are as follows:

"1. The primary election of the 2nd Petitioner from which the 1st Petitioner emerged as the candidate

of the 2nd Petitioner is invalid, having been held in Aladinma Shopping Mall, Owerri, outside Orlu/Orsu/Oru East Federal Constituency.

- 2. The 2nd Petitioner had no candidate for the general election for Orlu, Orsu and Oru East Federal Constituency held on the 25th of February, 2023.***
- 3. The 1st Respondent wrongly included the name of the 1st Petitioner as the candidate of the 2nd Petitioner for the election.***
- 4. The 2nd Petitioner cannot be declared the winner of the election”.***

The Application is supported by a 7-paragraph affidavit deposed to by one Theresa Esesua Aguda, a Litigation Officer in the employment of 3rd Respondent’s Counsel. Five documents were attached to the affidavit namely, Exhibits ‘A’, ‘B’, ‘C’, ‘D’ and ‘D1’. The sum-up of the deposition is that upon a notice by the 2nd Petitioner to the 1st Respondent on 20th May, 2023, the 2nd Petitioner conducted its primary election for the State and National Assembly seats simultaneously on the 25th and 26th May, 2023 at Aladinma Shopping Mall, Owerri, outside Orlu/Orsu/Oru East Federal Constituency. The said primary election was subsequently challenged in Court and finally determined by the Supreme Court on the 13th of January, 2023, whereby the apex Court nullified the primary election in two Judgments. That by reason of the said decisions of Supreme Court, the 1st

Petitioner was not a valid candidate of the 2nd Petitioner for the Orlu/Orsu/Oru East Federal Constituency election held on 25th February, 2023 and the 1st Respondent wrongly included the name of the 1st Petitioner as the candidate of the 2nd Petitioner for the general election.

The 3rd Respondent also filed a written address in support of the motion wherein a sole issue was formulated for determination viz:

"Whether the 2nd Petitioner had a candidate for the general election for Orlu/Orsu/Oru East Federal Constituency held on the 25th of February, 2023 (hereinafter called "the general election")".

Adopting the written address and arguing the issue formulated, learned counsel to the 3rd Respondent, Eze Duruiheoma, SAN, submitted that by virtue of Section 84 of the Electoral Act, 2022, a political party's primaries for her aspirants to the State House and National Assembly must be held in the affected State and Federal Constituencies and Senatorial Districts, and where this was not done, the party's candidate for the election shall not be included in the election for the particular position in issue.

Counsel further submitted that for conducting the primary election that produced the 1st Petitioner as the candidate of the 2nd Petitioner at Aladinma Shopping Mall, Owerri, outside the appropriate designated and recognized Federal Constituency, the Supreme court of Nigeria in ***APPEAL NO.***

SC/CV/1440/2023 – HON. JERRY ALAGBAOSO VS. INEC & 2 ORS.

and; ***APPEAL NO. SC/CV/1441/2023 - HON. NNAMDI THANKGOD***

EZEANI VS. JONES ONYERERI & 2 ORS. (Exhibits 'D' and 'D1') on 13th

January, 2023 nullified the primaries.

Learned counsel argued that upon the nullification or invalidation of the primaries, the 2nd Respondent acted in violation of Section 29(1) of the Electoral Act, 2022 by submitting the name of the 1st Petitioner to the 1st Respondent as her candidate for the general election held on 25th February, 2023 and the 1st Respondent also erred by including the name of the 1st Petitioner as a candidate for the election. Counsel contended that the 1st Petitioner was not a valid candidate of the 2nd Petitioner at the election and therefore cannot be declared the winner of the election as per the reliefs sought in his petition. He referred to ***MATO VS. HEMBER (2018) 5 NWLR (PT. 1012) 258; APC VS. MARAFA (2020) 6 NWLR (PT. 1721) 383 @ 433*** and urged the Tribunal to dismiss or strike out the petition.

In opposing this Application, the Petitioners filed a 5-paragraph counter affidavit deposed to by one Mrs. Charity Mezieobi, the Chief Litigation Secretary in the Chambers of Petitioners' Counsel. Annexed to the deposition as Exhibit "PDP 1" is a certified true copy of the Report of Imo

State National Assembly Primaries Appeal Panel and Exhibit "PDP2", certified copy of the extract of the decision of the National Working Committee of the 2nd Petitioner. The gist of the counter affidavit is that the 2nd Petitioner's primaries that produced the 1st Petitioner as her candidate for the Orlu/Orsu/Oru East Federal Constituency was not the one held on 25th May, 2022 at Aladinma Shopping Mall, Owerri but the one held on 5th June, 2022 within the Federal Constituency. That the 1st Petitioner challenged the victory of one Aloysius Igwe, the aspirant who purportedly won the primaries held on 25th May, 2022 before the PDP Imo State National Assembly Primaries Appeal Panel, consequent upon which the election was set aside by the National Working Committee and a rerun ordered and conducted on 5th June, 2022, whereat he, the 1st Petitioner, emerged as the party's candidate. That the decisions of the Supreme Court being relied upon by the 3rd Respondent in challenging the locus of the Petitioners to file this petition related specifically to the 2nd Petitioner's primaries for Imo West Senatorial District and not the Orlu/Orsu/Oru East Federal Constituency of the 1st Petitioner and that the 1st Petitioner was the validly sponsored candidate of the 2nd Petitioner at the general election of 25th February, 2023 for the Federal Constituency.

In the written address filed and adopted in support of the counter affidavit, learned Petitioners' Counsel, I. K. Ujah Esq., formulated a lone issue to wit:

"Whether this application should not be dismissed for being unmeritorious and an egregious waste of precious judicial time".

Counsel submitted that the fulcrum of the 3rd Respondent's objection herein is the conduct of the primary election of the 2nd Petitioner for Orlu/Orsu/Oru East Federal Constituency held on 25th May, 2022 in which she was not an aspirant and did not participate. He argued that the 3rd Respondent having not participated in the said primary election has no *locus* to challenge the Petitioners in this petition on the basis of the conduct of the primaries. He cited in aid Section 84(14) Electoral Act, 2022; ***EZE VS. PDP (2019) 1 NWLR (PT. 1052) 1 @ 22; ABUBAKAR VS. TANKO (2019) 2 NWLR (PT. 1058) 1.***

Learned counsel further posited that the jurisdiction of this Tribunal is circumscribed by Section 285(1)(a) of the 1999 Constitution (as amended) and delimited to the determination of issues of whether any person has been validly elected as member of the National Assembly or State House of Assembly. He contended that matters pertaining to the primaries of any

political party such as is raised herein are pre-election matters, which this Tribunal lacks jurisdiction to entertain and ought to be ventilated before the Federal High Court. He relied on ***AL HASSAN VS. ISHAKU (2016) 10 NWLR (PT. 1520) 230 @ 264.*** Citing Section 285(9) & (14) of the 1999 Constitution (as amended), Counsel further argued that any action in respect of 3rd Respondent's complaint herein ought to be filed within 14 days of the occurrence of the act or event before the Federal High Court or it will be statute barred. He contended that the 3rd Respondent is bringing up this matter close to a year after the faulted primaries. He insisted that the matter is clearly statute barred. He cited in support ***BELLO VS. YUSUF (2019) LPELR-47918 (SC) 32-38.***

Addressing the issue of the Judgments of the Supreme Court of 13th January, 2023 in 3rd Respondent's Exhibits 'D' and 'D1'. Counsel contended that the 1st Petitioner was not a party in the suit, and in law, cannot be bound by the decision as this would be in violation of his constitutionally guaranteed right to fair hearing. He relied on ***BABATOLA VS. ALADEJANA (2001) 12 NWLR (PT. 728) 595; SECTION 36(5) OF THE 1999 CONSTITUTION (AS AMENDED).***

Lastly, Counsel submitted that the 3rd Respondent having failed to file a Cross Petition to challenge the qualification of the 1st Petitioner to contest the election, he cannot properly raise the issue by way of a mere motion on notice and this motion is therefore incompetent and should be summarily dismissed. He cited in support ***DICKSON VS. SYLVA (2014) 10 NWLR (PT. 1573)***. He urged the Tribunal to dismiss the Application with costs.

The 3rd Respondent in her reply on point of law argued that the 2nd Petitioner's primaries being a null and void act conferred no legal right on the Petitioners and is not subject to the time limitation prescribed in Section 285(9) of the 1999 Constitution. He referred to ***NWOSU VS. ACTION PEOPLES PARTY (2020) 16 NWLR (PT. 1749) 28 @ 60***.

Counsel submitted that the nullity of the Petitioners' primaries affects the jurisdiction of this Tribunal and should preclude it from entertaining this petition and same has been rightly raised by the 3rd Respondent vide this application. He relied on ***SYLVA VS. INEC (2015) NWLR (PT. 1486) 576 @ 631***.

We have carefully considered the Application of the 3rd Respondent and the response of the Petitioners to same. To our mind, the germane issue for determination is:

"Whether the Applicant is entitled to the relief sought".

In our view, the 3rd Respondent's Application herein is essentially a challenge to the *locus standi* of the Petitioners to file this petition. The term "*locus standi*" is a Latin term which translates to "*place to stand*". It means the legal right of a person, natural or juristic to file a suit. It is a threshold issue and in order for a Court to have jurisdiction, the Plaintiff/Claimant must have *locus standi* to commence or file the action. Put differently, if a Claimant lacks the legal right to institute an action, no Court will in turn have the power or competence or jurisdiction to entertain the suit. A Claimant's *locus* is inextricably linked with the jurisdiction of the Court as once a Claimant lacks locus, the Court is also bereft of jurisdiction. See ***AKANDE VS. JEGEDE (2022) 14 NWLR (PT. 1849) 125.***

The jurisdiction of this Tribunal is donated by Section 130(1) & (2)(b) of the Electoral Act, 2022 and Section 285(1)(a) & (b) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) wherein it is capacitated to hear and determine petitions as to whether any person has been validly elected as a member of the National Assembly or House of Assembly of a

State. See ***OBI VS. INEC (2007) LPELR-24347 (SC) 42-43; DINGYADI VS. INEC (2011) LPELR-950 (SC) 39.***

Also, for any person or party to have a right to present a petition to this Tribunal, such must be a candidate in the election or a political party which participated in the election. See Section 133(1) Electoral Act, 2022.

The grounds upon which a Petitioner may present a petition before this Tribunal are also well defined by Section 134(1)(a)(b) & (c) of the Electoral Act, 2022. They are as follows:

- "(a) That a person whose election is questioned was at the time of the election not qualified to contest the election.***
- (b) That the election was invalid by reason of corrupt practices or non-compliance with the provisions of this Act.***
- (c) That the Respondent was not duly elected by the majority of lawful votes cast at the election".***

It is noteworthy that the claim of the 3rd Respondent/Applicant is not that the Petitioners did not participate in the election of 25th February, 2023 or that the petition they presented is not cognizable under the Electoral Law. The grievance is that the primaries of the Petitioners having been nullified by the apex Court on 13th January, 2023, and before the general elections,

their subsequent participation in the election is a nullity and they have no right or *locus* to file a petition at all.

By the combined provisions of Sections 130(1) & (2), 134(1) of the Electoral Act, 2022 and Section 285(1) of the Constitution, the jurisdiction of this Tribunal is clearly limited to post-election matters. It may not dabble in or inquire into pre-election matters which are issues that arose before the election. Section 285(14) clearly defines what constitutes a pre-election matter. It provides thus *inter alia*:

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

- a. An aspirant who complains that any of the provisions of the Electoral Act or an Act of the National Assembly regulating the conduct of primaries of political parties and the provisions of the guidelines of a political party for conduct of party primaries has not been complied with by a political party in respect of the selection or nomination of candidate for an election; -----".**

The jurisdiction to determine any issue or question pertaining to the conduct and outcome of a political party's primaries and related matters is vested in the Federal High Court by Section 84(14) of the Electoral Act, 2022 which provides as follows:

"Notwithstanding the provisions of this Act or rules of a political party, an aspirant who complains that any of

the provisions of this Act and the guidelines of a political party have not been complied with in the election or nomination of a candidate of a political party for election may apply to the Federal High Court for redress”.

In this instant case, the complaint of the 3rd Respondent upon which this application is grounded centres on and revolves round the primaries of the Petitioners conducted for the selection or nomination of candidates for the general elections. It is fully robed in the toga of a pre-election matter notwithstanding the effort of the 3rd Respondent to divest it of same. The proper venue for the ventilation of the complaint is not this Tribunal but the Federal High Court. It is a matter outside the jurisdiction of the Tribunal and we therefore reject the invitation of the 3rd Respondent to inquire into it by this application.

Furthermore, by virtue of Section 285(9) of the 1999 Constitution, the complaint of the 3rd Respondent herein being a pre-election matter, it may only be raised within 14 days of the holding of the primaries and only by an aspirant who took part in the primaries. The 3rd Respondent is a political party. A rival political party for that matter. It was not an aspirant at the questioned primaries of the 2nd Petitioner. Therefore, it has no locus to challenge same and belatedly too, many months after the primaries. The

cause of action if any at all is clearly statute barred. It is dead and this Tribunal is not the forum to raise it back to life under any guise. See ***SHINKAFI VS. YARI (2011) 7 NWLR (PT. 1511) 340; MAIHAJA VS. GAIDAM (2018) 4 NWLR (PT. 1610) 454; PDP VS. INEC (2023) LPELR-60457 (SC) 23.***

Lastly, it is settled law that a Respondent wishing to challenge the locus or right of a Petitioner to file a petition before an Election Petition Tribunal on ground of non-qualification can only do so properly by a Cross-Petition. See ***IDRIS VS. ANPP (2008) 8 NWLR (PT. 1088) @ 97-98; DICKSON VS. SYLVA (2017) 10 NWLR (PT. 1573) 299; MODIBO VS. USMAN (2020) 3 NWLR (PT. 1712) 470 @ 515.*** In this case, the 3rd Respondent only questioned the competence of the Petitioners to contest the general elections in her Reply and in this Application. She did not file any Cross-Petition which is a prerequisite to ventilating such issue before this Tribunal.

In the light of the foregoing, we find the 3rd Respondent's motion wanting, incompetent and liable to be struck out. It is hereby struck out.

However, assuming but not conceding that the 3rd Respondent's application is competent and is properly before this Tribunal, we shall endeavour to consider it on the merit.

It is observed that the bedrock of the 3rd Respondent's motion are the two Judgments of the Supreme Court of Nigeria of 13th January, 2023, which invalidated the primary election of the 2nd Petitioner held at Aladinma Shopping Mall Complex, Owerri, Imo State on 25th of May, 2022. The Supreme Court Judgments were exhibited in the affidavit in support of the 3rd Respondent's/Applicant's affidavit as Exhibit 'D', ***SC/CV/1440/2022 – HON. JERRY ALAGBAOSO VS. INEC & 2 ORS.*** And Exhibit 'D1', ***SC/CV/1441/2022 – HON. NNAMDI THANKGOD EZEANI VS. JONES ONYERERI & 2 ORS.*** It is the claim of the 3rd Respondent that the said Judgments, which allegedly invalidated the primaries of the 2nd Petitioner herein (who was the 2nd Respondent in those appeals) for Imo West Senatorial District of Imo State held on 25th of May, 2022 at Aladinma Shopping Mall, Owerri affects the 1st Petitioner herein and is binding on him and therefore his candidature and participation as a contestant for the House of Representatives seat for Orlu/Orsu/Oru East Federal Constituency, Imo State in the general election held on 25th February, 2023 is invalid.

However, in refuting this claim, the Petitioners deposed that the 1st Petitioner did not emerge as the 2nd Petitioner's candidate at the vexed primary election of 25th February, 2022 but at a subsequent one, held on 5th June, 2022, which was not the subject of any litigation or adverse Judgment. They exhibited Exhibits 'PDP 1' and 'PDP 2', the Report of the PDP Imo State National Assembly Primaries Appeal Panel and the Extract of the decision of the National Working Committee of the 2nd Petitioner thereon, on the basis of which the election of one Aloysius Igwe was set aside and a rerun was conducted at which he emerged as the party's flagbearer for the general election.

It is worthy of note that in Exhibit 'B', attached to the 3rd Respondent/Applicant's affidavit, is a certified true copy of the list of the aspirants who emerged victorious at the primaries held at Aladinma Shopping Mall, Owerri on 25th May, 2022, which was forwarded to the 1st Respondent, INEC. Therein, one Aloysius Igwe was listed as No. 6 and the aspirant who emerged victorious as candidate for the Orlu/Orsu/Oru East Federal Constituency election. The name of the 1st Petitioner was not featured. The claim of the 1st Petitioner that he was not the candidate produced at the primaries of 25th May, 2022 is therefore confirmed by Exhibit

'B' of the 3rd Respondent. Furthermore, the 1st Petitioner's claim in his deposition that the primary election that produced him as candidate was held on 5th June, 2022 was not countered or denied in any further affidavit by the 3rd Respondent. In law, it is deemed admitted. See ***A. G. PLATAEU STATE VS. A. G. NASSARAWA STATE (2005) SCNJ 120 @ 175.***

On the above premise, it is our view that if the 1st Petitioner's emergence as the 2nd Petitioner's candidate for the Orlu/Orsu/Oru East Federal Constituency seat did not arise from the primary held at Aladinma Shopping Mall, Owerri on 25th May, 2022, the Judgement of the Supreme Court invalidating the said primary cannot affect his candidature which arose from a subsequent primary which was not the subject of any litigation or adverse Judgment.

We have also carefully perused the Supreme Court Judgments in Exhibits 'D' and 'D1' and we found that neither the 1st Petitioner nor the 2nd and 3rd Respondents were parties thereto. Therein, the issue for determination inter alia was the validity of the primary election of the 2nd Petitioner for Imo West Senatorial District held at Aladinma Shopping Mall, Owerri on 25th May, 2022, which was in another Senatorial District. Neither the 1st Petitioner nor the primary election for his Orlu/Orsu/Oru East Federal

Constituency were mentioned in the Judgments. No reference was made to the alleged subsequent rerun primary of 5th June, 2022, whereat he emerged as the party's candidate for this election. In this wise, we find and hold that the Supreme Court Judgments did not invalidate the primary election that produced the 1st Petitioner as the party's candidate for the Orlu/Orsu/Oru East Federal Constituency and are not binding on the Petitioners in that respect regarding the general elections held on 25th February, 2023 and the petition herein brought by them to challenge the outcome.

Conclusively, we resolve the sole issue against the 3rd Respondent. Her Application is devoid of merit and same is hereby dismissed.

**HON. JUSTICE Y. HALILU
CHAIRMAN**

**HON. KADI M. G. ABUBAKAR
MEMBER I**

**HON. JUSTICE A. O. FAMILONI
MEMBER II**

The Petitioners opened their case by tendering certified true copies of scheduled documents from the Bar. The documents were admitted in evidence and marked as follows:

- 1. 5 copies of Form EC8A for Orlu Local Government; 6 copies of Form EC8A for Orsu Local Government; 10 copies of Form EC8A for Oru East Local Government – Exhibit 'A'.***

2. **3 copies of Form EC8B for Orlu Local Government; 11 copies of Form EC8B for Orsu Local Government; 12 copies of Form EC8B for Oru East Local Government - Exhibit 'B'.**
3. **1 copy of Form EC8C for Orlu Local Government; 1 copy of Form EC8C for Orsu Local Government; 1 copy of Form EC8C for Oru East Local Government – Exhibit 'C'.**
4. **1 copy of Form EC8D – Exhibit 'D'.**
5. **1 copy of Form EC8E – Exhibit 'E'.**
6. **4 copies of Form EC40G – Exhibit 'F'.**
7. **1 copy of Form EC40G – Exhibit 'G'.**
8. **Imo State PVC issuance status for 2023 for Orlu/Orsu/Oru East Local Government - Exhibit 'H'.**
9. **1 copy of Form EC9 – Exhibit 'I'.**
10. **1 copy of Form EC13D – Exhibit 'J'.**
11. **BIVAS Report with the application and payment receipt for certification – Exhibit 'K'.**
12. **2 video recordings (in flash drives) with certificate of compliance – Exhibit 'L'.**
13. **Application for issuance of EC9 together with payment receipt for certification – Exhibit 'M'.**
14. **1st Petitioner's identification certificate – Exhibit 'N'.**
15. **1st Petitioner's identification letter – Exhibit 'O'.**
16. **Extract of the meeting of the National Working Committee of the 2nd Petitioner – Exhibit 'P'.**
17. **Report of the PDP, Imo State National Assembly Primary Appeal Panel – Exhibit 'Q'.**
18. **1st Petitioner's Permanent Voter's Card – Exhibit 'R'.**
19. **1st Petitioner's PDP Membership Card – Exhibit 'S'.**
20. **Application for issuance of certified true copy of Backend Server Report – Exhibit 'T'.**
21. **3 Counterpart copies of petition written to INEC Chairman for cancellation of the results of the election – Exhibit 'U'.**
22. **Hardcopy photographs of the event of the election – Exhibit 'V'.**
23. **15 Pink copies of Form EC8A issued to 1st Petitioner's Agents – Exhibit 'W'.**
24. **1 Pink copy of Form EC8D II – Exhibit 'X'.**
25. **Payment receipt for certification of Forms EC8A, EC8B, EC8D, EC8E and EC40G for Orlu/Orsu/Oru East Federal Constituency – Exhibit 'Y'.**

26. Application for issuance of certified true copies of documents used for the conduct of the House of Representatives election of Orlu/Orsu and Oru East Federal Constituency – Exhibit 'Z'."

John Utasi testified as the Petitioners' first witness (PW1). He adopted his written deposition on page 49 – 50 of the petition as his evidence-in-chief. He tendered his letter of appointment as a polling unit agent for the 2nd Petitioner at polling unit 004 (Isieke Hall) Okwuetiti Ward, Orsu Local Government Area at the election. It was admitted in evidence as Exhibit 'Z1'. He stated that no election was conducted in his polling unit on 25th February, 2023. That he was present at the Orsu Local Government Headquarters in the morning of the election and witnessed the distribution of polling materials to 1st Respondent's officials to go and conduct election in the polling units. That instead, the officials of the 1st Respondent conducted the election at the Orsu Local Government Headquarters despite his protest and assigned one vote to the 2nd and 3rd Respondents.

PW1 identified Exhibit 'L' and upon the application of Petitioners' Counsel, it was demonstrated by playing the video recording before the Tribunal. Under cross-examination, PW1 maintained that he made Exhibit 'L'

with the certificate of compliance. He admitted that the facts of making the video were not contained in his adopted written deposition.

A. C. Nwadike testified as the Petitioners' second witness (PW2). He adopted his written deposition on page 33-34 of the petition as his evidence-in-chief. He tendered his letter of appointment as a polling unit agent for the 2nd Petitioner at polling unit 003. (Akwaorji Hall, Ezeogwu) Ohwuamara Ihie Ward 1, Orsu Local Government Area at the election. Same was admitted in evidence as Exhibit 'Z2'. He deposed that no election was conducted in his polling unit on 25th February, 2023. That he was at the Orsu Local Government Headquarters in the morning on that day with other parties' agents to witness and ensure deployment of polling materials to polling units. That the 1st Respondent's officials, after collecting polling materials, insisted they would conduct the election at the Local Government Headquarters and they did despite his protest. That thereafter, they assigned one vote to the 2nd and 3rd Respondents. The PW1 identified the polling unit result in Exhibit 'A'. Under cross examination, he maintained that no election was conducted in his polling unit. He claimed he is a registered voter but without his Permanent Voter's Card (PVC) in Court. He said he did not vote because the venue for the election was wrong.

Francis Chukwuemeka testified as the Petitioners' third witness (PW3). He adopted his written statement on oath on page 27-28 of the petition as his evidence-in-chief. He tendered his letter of appointment as a polling unit agent for the 2nd Petitioner at polling unit 005 (Girls Secondary School) Okwufuruaku Ward, Orsu Local Government Area at the election. It was admitted in evidence as Exhibit 'Z3'. He swore that no election held in his polling unit on 25th February, 2023. He said he was at the Orsu Local Government Headquarters, Awo Idemili, with agents of other political parties in the morning of the election to witness and ensure the distribution of polling materials to officials of the 1st Respondent for the conduct of the election. That after collecting the items, the 1st Respondent's officials insisted they would conduct the election in the Local Government Headquarters and they did despite his protest. That thereafter, they assigned two votes to the 2nd and 3rd Respondents. He identified the polling unit result in Exhibit 'A'. Under cross-examination, the PW3 maintained he was duly appointed as a polling unit agent for the 2nd Petitioner and that election did not hold in his polling unit on that day.

Thaddeus Ogeoo testified as the Petitioners' fourth witness (PW4). He adopted his written deposition on page 63-64 of the petition as his evidence-

in-chief. He tendered his letter of appointment as polling unit agent for the 2nd Petitioner at polling unit 004 (Community School III Eziawa 1) Eziawa Ward, Orsu Local Government Area at the election. It was admitted in evidence as Exhibit 'Z4'. He stated that he was at the Orsu Local Government Headquarters, Awo Idemili, with agents of other political parties in the morning of the election to witness and ensure the deployment of polling materials to officials of the 1st Respondent for the election. That after collecting the items, the officials insisted that they would conduct the election in the Local Government Headquarters and they did, despite his protest. That they assigned one vote to the 2nd and 3rd Respondents. He identified the polling unit result in Exhibit 'A' and said it is a fabricated result. When he was cross-examined, he stated that he is a registered voter but without his Permanent Voter's Card in Court. He insisted that he did not sign the polling unit result because it was prepared by the 1st Respondent's officials at the Local Government Headquarters.

Dr. Livingstone Ikebuasi is the Petitioners' fifth witness (PW5). He adopted his written statement on oath on page 23-24 of the petition as his evidence-in-chief. He tendered his letter of appointment as polling unit agent for the 2nd Petitioner at polling unit 014 (Afor Idu Market Square) Ebenator

Ward, Orsu Local Government Area at the election. Same was admitted in evidence as Exhibit 'Z5'. He testified that no election held in his polling unit on 25th February, 2023. He stated that he was at the Orlu Local Government Headquarters, Awo Idemili, with other parties agents that morning to witness and ensure the distribution of polling materials to 1st Respondent's officials for the conduct of the election. That after collecting the materials, the officials insisted they were going to conduct the election in the Local Government Headquarters, which decision he protested against. That nonetheless, they conducted the election there and assigned one vote to the 2nd and 3rd Respondents. He identified the polling unit result in Exhibit 'A'. Under cross-examination he maintained he was a polling unit agent. He admitted he did not sign the polling unit result. He also admitted that the polling unit result did not indicate on its face that the election was conducted at the Orsu Local Government Headquarters.

Florence Asonye testified as the Petitioners' sixth witness (PW6). She adopted her written deposition on page 37-38 of the petition as her evidence-in-chief. She tendered her letter of appointment as polling unit agent for the 2nd Petitioner at polling unit 005 (Community Primary School Obibi II). Okwuamara Ihie Ward I, Orsu Local Government Area at the election. It was

admitted in evidence as Exhibit 'Z6'. She swore that no election took place in her polling unit on the 25th February, 2023. That she was at the Local Government Headquarters early in the morning with other parties' agents to monitor the distribution of poll materials to electoral officials, who after collecting the materials, set up to conduct the election at the Local Government Headquarters. That despite her protests, the election was conducted at the venue and one vote was assigned to the 2nd and 3rd Respondents. She identified the polling unit result in Exhibit 'A' and said it did not emanate from her polling unit as there was no election there. Under cross-examination the PW6 said she is a registered voter but without her Permanent Voter's Card in Court. She insisted election materials were never brought to her polling unit and that no election was conducted there.

Desmond Iwuoha testified as the Petitioners' seventh witness (PW7). He adopted his written statement on oath on page 67 - 68 of the petition as his evidence-in-chief. He tendered his letter of appointment as polling unit agent for the 2nd Petitioner at polling unit 010 (Ama Orji Umuawula) Amaruru Ward, Orsu Local Government Area at the election. It was admitted in evidence as Exhibit 'Z7'. He swore that no election held in his polling unit on 25th February, 2023 and that he was at the Local Government Headquarters

with other agents that morning. His remaining testimony is in agreement with that of PW1 to PW6 and needs no repetition. He said the officials of the 1st Respondent assigned two votes to 2nd and 3rd Respondents. He identified the polling unit result in Exhibit 'A'. Under cross-examination, he said he did not sign Exhibit 'A' because no election held in his polling unit. He insisted that he is a registered voter in his Ward.

Nnamdi Onwuamuize testified as the Petitioners' eighth witness (PW8). He adopted his written deposition on page 35-36 of the petition as his evidence-in-chief. He tendered his letter of appointment as polling unit agent for the 2nd Petitioner at polling unit 004 (Community Primary School, Obiri 1), Okwuamaraihie Ward 1, Orsu Local Government Area at the election. It was admitted in evidence as Exhibit 'Z8'. He testified that no election was conducted in his polling unit on 25th February, 2023. He stated that he was present at the Orsu Local Government Headquarters together with other political parties' agents in the morning of the election day. His remaining testimony is in sync with that of the PW1-PW7 and needs no restatement. He also said the polling officers assigned three votes to the 2nd and 3rd Respondents, two votes to the Petitioners, and one vote to the Labour Party. He identified the result of the polling units in Exhibit 'A'. Under cross-

examination, he maintained that he was present at the Orsu Local Government Headquarters on the day of the election. He insisted that there was no election held at his polling unit. He admitted that he did not go to his polling unit at all on that day.

Ogbuneke Kate Uchenna is the Petitioners' ninth witness (PW9). She adopted her written statement on oath on page 21-22 of the petition as her evidence-in-chief. She tendered her letter of appointment as polling unit agent for the 2nd Petitioner at polling unit 002 (Central School Amachu) Ebenator Ward, Orsu Local Government Area, at the election. Same was admitted in evidence as Exhibit 'Z9'. She deposed that there was no election in her polling unit on 25th February, 2023. She stated that she was present at the Orsu Local Government Headquarters on the morning of the election together with other agents of political parties. The remainder of her testimony is in tandem with that of PW1-PW8. She said that officials of the 1st Respondent assigned one vote to the 2nd and 3rd Respondents. She identified the result of the polling unit in Exhibit 'A'. When she was cross-examined, she maintained that no election was conducted but votes were allotted by officials of the 1st Respondent.

Finbar Umbanaso testified as the Petitioners' tenth witness (PW10). He adopted his written deposition on page 86-88 of the petition as his evidence-in-chief. He tendered his letter of appointment and tag as the Constituency Collation Agent of the 2nd Petitioner at the election. They were admitted in evidence as Exhibits 'Z10' & 'Z11'. He stated that there was no collation of the results of the election at the Constituency Collation Centre, Orlu on 25th February, 2023 after the election. That he was at the Collation Centre till 10.00pm that day and he had to leave when the Returning Officer did not show up. That on 26th February, 2023, he returned to the Constituency Collation Centre and was told by the Returning Officer and Collation Officer for Orsu Local Government that there were no results yet from Orsu and Oru East Local Government to collate and he left the centre at 6.00pm after collection the phone number of the Constituency Returning Officer, one Dr. Ali Bilar.

According to the witness, on 27th February, 2023, he phoned Dr. Ali Bilar who informed him that he was at INEC Headquarters in Owerri, where he went to meet him. That Dr. Bilar told him he was still awaiting the election results from Orsu and Oru East Local Governments and he decided to join him in waiting for them. That later, Dr. Ali Bilar left him in the INEC premises

and after waiting for some hours without seeing him, he decided to leave. That on his way, he saw Dr. Ali Bilar and one Chris Mbarie, the Sole Administrator of Orlu Local Government Area, and some known members of the 3rd Respondent inside one Immaculate Hotel, very close to INEC Headquarters. That Dr. Ali Bilar was carrying a white polythene bag.

PW10 stated further that Dr. Ali Bilar informed him that they were heading to Orlu Local Government Headquarters to declare the results of the election. That he wanted to ask questions but Dr. Bilar said he could not answer any questions then because of the people around him. That Dr. Ali Bilar thereafter left the Hotel with Chris Mbarie in a vehicle but he managed to snap their pictures and make a video of both of them in the Hotel before their exit.

Still testifying, PW10 stated that he followed the duo to the Constituency Collation Centre, Orlu, where Dr. Bilar told him that he had received the awaited results from Oru East and Orlu Local Government Areas and brought them out of the white polythene bag he was carrying at Immaculate Hotel. that he then proceeded to declare the results which he, PW10, snapped with his Samsung Galaxy AV21 Mobile Phone to the annoyance of Dr. Ali Bilar. That he was given a duplicate copy of the Form

EC8D(II) and he printed the snapped result with a functional HP Laser Jet Pro M102a Printer. Lastly, he said Dr. Bilar never returned the 2nd Respondent as winner of the election at the Constituency Collation Centre, Orlu, but at INEC office in Owerri. He identified Exhibit 'V' as the pictures of Dr. Ali Bilar and Chris Mbarie he took at Immaculate Hotel, Owerri. He tendered the printed snap shot copy of Form EC8D(II) in evidence and it was admitted as Exhibit 'Z12'.

Under cross-examination, the witness maintained that the contents of the white polythene bag he saw with Dr. Ali Bilar were the written result of the election, one of it being Exhibit 'Z12'. He insisted that Dr. Ali just read the result at the Constituency Collation Centre but did not make any declaration or return of the 1st Petitioner at Orlu. He denied that the result of the Federal Constituency was duly collated and the result declared. He admitted the Exhibit 'Z12', which he snapped on 27th February, 2023, has no date. At this juncture, Petitioners' Counsel sought to tender a certified true copy of Form EC8D(II) from the Bar. The document was admitted in evidence and marked as Exhibit 'Z13'.

Kingsley Onyegbula, the 1st Petitioner, testified as the Petitioners' eleventh witness (PW11). He adopted his written deposition on page 71 –

85 of the petition and his three further written depositions on page 8-9 of his Reply to 1st Respondent's Reply, page 10-13 of his Reply to 2nd Respondent's Reply and page 10-13 of his Reply to 3rd Respondent's Reply respectively as his evidence-in-chief. He identified and confirmed Exhibits 'A', 'E', 'I', 'J', 'K', 'L', 'M', 'O', 'P', 'Q', 'R', 'S' and 'U' already in evidence.

The PW11 stated that he was the candidate of the 2nd Petitioner at the election for the Orlu/Orsu/Oru East Federal Constituency of Imo State held on 25th February, 2023. That the 2nd Respondent was also a candidate sponsored by the 3rd Respondent for the election. He stated that at the conclusion of the election, in which candidates from 13 political parties participated, the 1st Respondent declared that he, the 1st Petitioner, polled 1000 votes while the 2nd Respondent polled 15,977 votes out of the total votes cast, consequent upon which the 2nd Respondent was declared as the winner of the election, having allegedly scored the majority of votes cast at the election and returned as the Member of the House of Representatives for the Orlu/Orsu/Oru East Federal Constituency Imo State. The PW11 deposed that the 2nd Respondent's election is invalid by reason of substantial non-compliance with the provisions of the Electoral Act, 2022 and that he was not duly elected by majority of lawful votes cast at the election.

He testified that the Federal Constituency is made up of three Local Governments to wit: Orsu, Orlu and Oru East, comprising 34 Wards and 517 polling units. He stated that there was no election in the 11 Wards and 137 polling units in Orsu Local Government on the day of the election as polling officials of the 1st Respondent did not go to the designated polling units to conduct election but stayed at the Orsu Local Government Headquarters, Awo Idemili, where they conducted the election and allocated votes to the candidates arbitrarily. He said that because of the disfranchisement of voters in the Local Government, only 50 votes were allegedly cast in a Local Government with 13,693 registered voters. He also said there was over voting in Orsu Local Government as there was zero accreditation in five polling units, yet votes were credited to the Petitioners and 2nd and 3rd Respondents.

As regard the election in Oru East Local Government, the Petitioner deposed that in the 171 polling units across 10 wards in the Local Government Area, where the 2nd Respondent was declared winner, there was massive over voting as the record of accredited voters by BVAS was far less than the records of voters. That whereas only 595 voters were accredited according to the BVAS report, a total of 18,512 votes were recorded as having

been cast in the Local Government. The Petitioner also observed that though in several polling units in Oru East, the accreditation record by BVAS was zero, yet humongous votes were credited to the 2nd Respondent in the election. That some staff of the 1st Respondent were caught on camera, massively thumbprinting ballot papers in favour of the 2nd and 3rd Respondents.

In respect of Orlu Local Government, the 1st Petitioner testified that election held in only five out of thirteen Wards. He further stated that the results of eleven polling units in one of the five Wards (Eziachi/Amike Ward) where election held was excluded by the 1st Respondent during collation. He claimed that if the election result of Orsu and Oru East Local Governments are voided for non-compliance with the Electoral Law and the wrongfully excluded votes from Eziachi/Amike Ward are added to his valid votes cast at the election, he, rather than the 2nd Respondent will have the majority of valid votes cast at the election. He therefore prayed the Tribunal to grant him the reliefs sought in his petition. Upon the application of his counsel, Exhibit 'L' was demonstrated by playing the video before the Tribunal.

Under cross-examination, the PW11 stated that he did not vote on the day of the election because officials of the 1st Respondent failed to bring

polling materials to his polling unit in Orlu Local Government to conduct the election. He confirmed that he had polling unit agents in all polling units in the Federal Constituency and they furnished him with the reports of what happened across the polling units. He admitted that his evidence of what happened at the election was derived from the information supplied by his polling unit agents. He admitted he did not make Exhibit 'L', the video of alleged thumb-printing of ballot papers in favour of 2nd and 3rd Respondents at the election. He asserted that apart from what his agents told him, he moved round the Constituency on the day of the election and witnessed what happened. At this juncture, the Petitioners' Counsel closed their case.

Okafor Obiora is the only witness called by the 1st Respondent. He testified as DW1. He adopted his written deposition on page 27 - 34 of the Reply as his evidence-in-chief. He tendered some Forms EC8A, EC8B and EC8C for Orlu/Orsu/Oru East Local Government Area and they were admitted in evidence as Exhibit 'Z14'. He stated that he was the Electoral Officer assigned to Orsu Local Government Area for the conduct of the election for Orlu/Orsu/Oru East Federal Constituency election held on 25th February, 2023. That the 1st Petitioner and the 2nd Respondent were candidates at the election. That election was conducted in the various polling units across the

10 wards/registration areas and 137 polling units in Orsu Local Government Area. That all accredited voters cast their votes in the election at the designated polling units in the Local Government Area. That the results were collated at the Constituency Collation Centre and the 2nd Respondent, who scored the majority of lawful votes cast, was duly declared as the winner of the election. That the 1st Petitioners did not win the election and did not score the majority of lawful votes cast having come a distant third position. He prayed the Court to dismiss the petition.

Under cross-examination, the DW1 maintained that he is the head of the 1st Respondent in Orsu Local Government Area. That INEC office for Orsu Local Government is housed in the Local Government Headquarters where election materials were distributed to polling officers. That he distributed materials to Supervisory Officers who in turn distributed them to the Presiding Officers. That he also moved round polling units in Orsu Local Government Area to monitor and supervise the election and observed that voters' turnout was low due to insecurity. He denied that the 1st Respondent forced her officials and party agents to conduct election at the Local Government Headquarters and allocate arbitrary votes to contestants. He however admitted that the same Presiding Officer signed the polling unit

results for polling units 001, 003, 005 and 008 in Orsu – IHITEUEKWE Ward in Exhibit 'Z14'. He also admitted the result of polling unit 005 in Eziawa Ward was unnamed and unsigned. On this note, 1st Respondent Counsel closed her case.

The 2nd Respondent opened his case by tendering polling unit Form EC8A(II) & EC8B(II) from two Local Government Areas from the Bar as follows:

- 1. Ohaelle/Okporo, Orlu Local Government – Exhibit 'Z15'.**
- 2. Umudioka, Orlu Local Government – Exhibit 'Z16'.**
- 3. Umuna, Orlu Local Government – Exhibit 'Z17'.**
- 4. Amaiteke, Orlu Local Government – Exhibit 'Z18'.**
- 5. Awo Omamma 1, Oru East Local Government – Exhibit 'Z19'.**
- 6. Awo Omamma II, Oru East Local Government Area – Exhibit 'Z20'.**
- 7. Awo Omamma III, Oru East Local Government – Exhibit 'Z21'.**
- 8. Awo Omamma IV, Oru East Local Government – Exhibit 'Z22'.**
- 9. Amiri I, Oru East – Exhibit 'Z23'.**
- 10. Amiri II, Oru East – Exhibit 'Z24'.**
- 11. Amagu, Oru East – Exhibit 'Z25'.**
- 12. Akara – Exhibit 'Z26'.**
- 13. Akuma – Exhibit 'Z27'.**
- 14. Omuna, Oru East Local Government – Exhibit 'Z28'.**
- 15. Form EC8C(II) – Exhibit 'Z29'.**
- 16. Form EC8D(II) – Exhibit 'Z30'.**
- 17. Form EC8E(II) – Exhibit 'Z31'.**

Canice Moore, the 2nd Respondent, testified as a sole witness (DW2) for the 2nd Respondent. He adopted his written deposition on page 68 – 77 of his Reply to the petition as his evidence-in-chief. He tendered the receipt of payment for certification of the INEC Forms tendered from the Bar and it was admitted in evidence as Exhibit 'Z32'. He identified and confirmed Exhibits 'Z14' – 'Z28'. He deposed that he contested the election for the Orlu/Orsu/Oru East Federal Constituency on the platform of the 3rd Respondent. That he won the election by majority of valid votes cast on 25th February, 2023 and was rightly declared and returned as the winner by the 1st Respondent. He stated that election was conducted in all polling units across the Wards in the three Local Government making up the Federal Constituency. That voters were duly accredited with the BVAS, voted, and the results were collated and declared at all levels of collation. He further stated that there was no over voting in Oru East Local Government and there was no arbitrary allocation of votes. He deposed that election was conducted in all the polling units in Orsu Local Government at the designated places for voting and the results were collated at the Constituency Collation Centre where he was declared and returned as the winner of the election having scored the majority of valid votes cast, totaling 15,977 as against the 1st

Petitioner that scored 1000 votes. He prayed the Tribunal to dismiss the petition as unmeritorious.

Under cross-examination, the 2nd Respondent maintained that the election was free, fair and peaceful and that he won by majority of valid votes cast. He denied that elections did not hold in Oru East and that results were just generated. He confirmed that the votes score of the 3rd Respondent in Exhibits 'Z19' and 'Z28' are 171 and 213 respectively. He denied there was no accreditation in Akaba and Awo Omamma Ward 1. He denied that election took place in just five Wards in Orlu Local Government. At this juncture, Counsel to the 2nd Respondent close his case.

The 3rd Respondent did not call any witness. She rested her case on the defence of the 1st and 2nd Respondents.

The Tribunal ordered learned Counsel for all the parties to file and exchange their respective final written addresses as prescribed by the provisions of the First Schedule to the Electoral Act.

The 1st, 2nd and 3rd Respondents' final written addresses were filed on 20th July, 2023 and upon the receipt of the Petitioners' final written address, the 1st and 3rd Respondents in response, filed Replies on points of law on 28th

and 29th July, 2023 respectively. The Respondents in their respective final written addresses formulated a sole issue for determination thus:

"Whether the Petitioners have proved their petition to be entitled to the reliefs sought".

The Petitioners upon the receipt of the Respondents' final written addresses filed their own final written address on 26th July, 2023. Therein they formulated the issue for determination as follows:

"Whether having regards to the entirety of the pleadings of the parties vis-à-vis the totality of the evidence adduced at the trial, the Petitioners did not prove their case on the preponderance of evidence in order to be entitled to the reliefs claimed by them, particularly reliefs (a) (b) (c) (d), (e) & (e) respectively as sought in their petition".

On 30th July, 2023, learned Counsel adopted their respective final written addresses. The Respondents' Counsel urged this Tribunal to dismiss the petition on the ground that the Petitioners have failed to prove same whilst the Petitioners' learned Counsel prayed the Tribunal to grant all the reliefs sought by the Petitioners.

We have carefully gone through the facts of this petition, the totality of evidence adduced by parties, and the legal arguments of Counsel. We hold a firm view that the sole issue formulated for determination by both

sides is basically the same although couched differently. We adopt the sole issue for determination as framed by the Respondents thus:

"Whether the Petitioners have proved their petition to be entitled to the reliefs sought".

Addressing us on this issue, learned Counsel to the 1st Respondent, O. O. Okonkwo, Esq. answered the question in the negative. Starting out with the preliminary objection to the petition as incorporated in 1st Respondent's Reply to the petition, Counsel submitted that the petition is incongruent and not in conformity with the Electoral Act.

He argued that pursuant to Section 134(1) of the Electoral Act, 2022, there are three (3) distinct grounds upon which an election may be questioned. He submitted that a Petitioner in presenting his petition is bound to couch the ground(s) in harmony with the provisions of the said Electoral Act. He said that failure to do so will render the ground(s) incompetent and liable to be struck out. Counsel posited that the grounds as couched in the Petitioners' petition are fundamentally defective. He pointed out that the Petitioners lumped two grounds together in one and thereby derogated from the strict requirement of the law regulating the stating of grounds in election petition. He submitted that if a statute prescribes a mode of doing anything that way and no other may be followed. He relied on ***WADA VS. BELLO***

(2016) 17 NWLR (PT. 1542) 374 @ 453. He submitted that the fundamental defect in the grounds for presenting this petition rendered it incompetent. He referred to ***LIBIE VS. OKEKE (1999) 8 NWLR (PT. 613) 165; MELAYE VS. TAJUDEEN (2012) 15 NWLR (PT. 1323) 315 @ 338; SALIS VS. INEC (2022) 10 NWLR (PT. 1839) 467.*** He contended that the grounds as presented by the Petitioners are alien to the Electoral Act. He therefore urged the Tribunal to dismiss the petition for incompetence. He relied on ***OLARIN VS. ABRAHAM (2004) 10 NWLR (PT. 881) 434 @ 450.***

Again, on the reliefs sought in the petition, Counsel argued that the Petitioners sought for contradictory reliefs by asking for the voiding of the election and the declaration of the Petitioners as the winner of the election together. He stated that the reliefs are not grantable. He cited in aid ***ONUIGWE VS. EMELUMBA (2008) 9 NWLR (PT. 1092) 391; RE ONWUBUARIRI (2019) LPELR-49121 (CA).***

On the merit of the petition, Counsel reviewed the oral and documentary evidence adduced by the Petitioners. He submitted that they failed to discharge the burden of proof placed by the law on the Petitioners to sustain the petition.

Learned Counsel drew the attention of the Tribunal to Exhibits 'A' to 'Z' tendered from the Bar by the Petitioners, which the 1st Respondent objected to. He submitted that the majority of the documents were dumped on the Tribunal and undemonstrated through witnesses. That particularly, the makers were not called to testify and breathe life to the documents as required by the law. He argued that the documents are therefore undeserving of any probative value whatsoever. He cited in aid ***UCHA VS. ELECHI (2012) 13 NWLR (PT. 1317) 330; AUDU VS. INEC (2010) 13 NWLR (PT. 1212) 451; ACN VS. NYAKO (2015) 18 NWLR (PT. 1491) 352 @ 425; OMISORE VS. AREGBESOLA (2015) 15 NWLR (PT. 1482) 205 @ 322.***

On Exhibit 'L', the two video clips demonstrated before the Tribunal, Counsel submitted that the first video clip was not pleaded by the petitioners and no oral evidence was proffered by PW1, the supposed maker. He argued that the evidence adduced on un-pleaded fact goes to no issue. He relied on ***FALEKE VS. INEC (2010) 18 NWLR (PT. 1543) 65 @ 150.***

Regarding the second video clip, Counsel submitted that it is documentary hearsay having not been tendered by the maker but by the 1st Petitioner who admitted not being the maker. He urged the Court to expunge

or discountenance it. He further submitted that Exhibit 'L' failed to satisfy the mandatory requirements for admissibility of computer-generated evidence under Section 84 of the Evidence Act, 2011 and should be rejected. He cited ***DICKSON VS. SYLVA (2017) 8 NWLR (PT. 1567) 167 @ 200-221.***

Disparaging the testimonies of Petitioners' witnesses, PW1-PW11, Counsel submitted that they are riddled with inadmissible hearsay and contradictions, rendering them incredible and unreliable.

On the Petitioners' ground of substantial non-compliance with the provisions of the Electoral Act in the conduct of the election, Counsel submitted that the Petitioners are bound to prove the acts of non-compliance, polling unit by polling unit, ward by ward, in the Federal Constituency and how it affected the outcome of the election. He posited that the Petitioners did not call sufficient witnesses, particularly, polling unit agents to give credible evidence of the alleged non-compliance in the over 500 polling units in the Federal Constituency and the evidence of PW1-PW11 did not suffice at all for that purpose. He referred to ***GUNDIRI VS. NYAKO (2014) 2 NWLR (PT. 1391) 211 @ 246; OKE VS. MIMIKO (NO. 2) (2014) 1 NWLR***

(PT. 1388) 332 @ 376; MAKU VS. AL-MAKURA (2016) 5 NWLR (PT. 1505) 201.

Specifically, on the complaint of alleged over voting, Counsel argued that the pleading and tendering of the voters' register of the polling units, the over voting are alleged to have occurred, with the statutory Forms EC8As is crucial to proving same. He cited in aid ***LADOJA VS. AJIMOBİ (2016) 10 NWLR (PT. 1519) 87 @ 147-148; UDOM VS. UMANA (NO. 2) (2015) 12 NWLR (PT. 1526) 289; ABUBAKAR VS. INEC (2020) 12 NWLR (PT. 1737) 37; APC VS. PDP (2020) 17 NWLR (PT. 1754) 420 @ 437 – 438.***

Counsel argued that the Petitioners failed to tender the voters' register of the polling units where over voting allegedly took place and this omission is fatal to this case.

Learned Counsel further canvassed that under the regime of the new Electoral Act, 2022, the evidence required to prove non-accreditation, improper accreditation and over voting in an election are the BVAS machines, the register of voters and the polling unit results. Counsel again pointed out that the Petitioners in addition to their failure to tender the voters' register equally failed to tender the BVAS machines used in the conduct of the

elections. He referred to ***OYETOLA VS. INEC (2023) LPELR-60392 (SC)***. He opined that the Petitioners ground of non-compliance has collapsed for lack of proof. He relied on ***DOMA VS. INEC (2012) 13 NWLR (PT. 1317) 297; NGIGE VS. INEC (2015) NWLR (PT. 1440) 287 @ 325***.

On the Petitioners' complaint that the 2nd Respondent was not duly elected by majority of the lawful votes cast at the election, Counsel submitted that the Petitioners are bound to plead two sets of results emanating from the election and must adduce credible evidence that the Respondent did not score the majority of lawful votes cast by proving the votes illegally credited to him which ought to be deducted from his result as well as votes excluded from the score of the Petitioners, if any, which ought to be added. He argued that in law, the oral evidence of polling unit agents is absolutely necessary to prove any allegation under this ground and failure of the Petitioners to call adequate oral evidence of polling unit agents in this regard is also fatal. He relied on ***WADA VS. INEC (2022) 11 NWLR (PT. 1341) 93 @ 326-327***.

Lastly, Counsel submitted that the witnesses called by the Petitioners in proof of the petition are all tainted witnesses whose evidence should not be ascribed any credibility. He stated that on the whole, the Petitioners failed to adduce any cogent, satisfactory and sufficient evidence to justify the

success of the petition. He urged the Tribunal to dismiss the petition as lacking in merit.

The 2nd Respondent's Counsel, N. Epelle, Esq. in his argument also submitted that the Petitioners' petition must fail for lack of proof. On the documentary evidence adduced by the Petitioners, his argument is a replica of the 1st Respondent's argument. He further stated that Exhibits 'A', 'B' and 'C', consisting of the polling units, wards and Local Government collated results are inadmissible because they were not specifically pleaded in the petition. On Exhibits 'L' and 'M', Counsel argued that they were also not pleaded and were therefore wrongly admitted in evidence and should be expunged. Concerning Exhibit 'K' (BIVAS Report) and Exhibit 'V' (Hardcopies of photographs), Counsel submitted that they are inadmissible for lacking certificate of authentication and thereby failed to meet the requirements of Section 84(2) of the Evidence Act, 2011 for admission of computer-generated documents and should be expunged.

Addressing on the evidence adduced by the Petitioners in proof of the allegation of non-compliance with the provisions of the Electoral Act, 2022 in Oru East Local Government, Counsel submitted that the Petitioners adduced the oral evidence of only the 1st Petitioner (PW11), which evidence was not

direct evidence and therefore lacking in probative value to prove any allegation of non-accreditation or improper accreditation. He further argued that Exhibit 'L', the video clip of alleged thumbprinting of ballot papers in favour of the 2nd and 3rd Respondents in Oru East Local Government, which was referenced in PW11's testimony is inadmissible evidence as he was not the maker.

In respect of Orlu Local Government where the Petitioners alleged that election did not hold in 8 of the 13 wards, Counsel submitted that the Petitioners failed to adduce evidence in proof of this allegation to warrant the calling of any evidence in rebuttal.

Regarding Orsu Local Government, where Petitioners claimed that election was not conducted across the 10 wards and 137 polling units, but that the officials of the 1st Respondent unlawfully conducted the election in the Local Government Headquarters, Awo Idemili, learned Counsel submitted that the Petitioners led contradictory evidence of witnesses that are not credible in their effort to discharge the initial burden of proof placed on them. That the testimonies of PW1-PW9 contradicted Exhibits 'A' and 'W', the result sheets of polling units whereat election allegedly did not hold. He urged the Tribunal to discountenance their evidence. He referred to ***OLUJINLE VS.***

ADEAGBO (1988) 2 NWLR (PT. 75) 238-254; Section 128(1) Evidence Act, 2011.

On the Petitioners ground that the 2nd Respondent did not secure the majority of lawful votes cast in Oru East Local Government as there was massive over voting, Counsel submitted that the Petitioners did not call any credible or adequate oral and documentary evidence to substantiate the allegation. That the documents tendered and relied upon by the Petitioners, particularly Exhibit 'K' (BVAS Report) were dumped on the Tribunal because the makers were not called to testify on them and be cross-examined. Therefore, the exhibits are worthless and valueless in proving the allegation. Counsel further submitted that a Petitioner seeking declaratory reliefs must justify entitlement to them on the strength of his case and not the weakness of his opponent's case. He relied on ***CPC VS. INEC (2011) LPELR (426) SC.; JUSTICE PARTY VS. INEC (2006) ALL FWLR (PT. 339) 917; PDP VS. INEC (2012) LPELR-8409.*** He posited that in this case, the Petitioners woefully failed in adducing such quantum and quality of evidence to prove the petition under the law and are therefore not entitled to any of the reliefs sought. He urged the Tribunal to dismiss the petition.

The 3rd Respondent's argument on the sole issue for determination is more or less a repetition of the arguments of the 1st Respondent on the inadmissibility of documents tendered by the Petitioners and the paucity, poverty and unreliability of the other evidence in support of the case. It is unnecessary to reproduce same herein. Suffice to say that on the strength of the submissions by her Counsel, Morrison Amefula, Esq., she also urged the Tribunal to dismiss the petition.

The learned Senior Counsel for the Petitioners, N. A. Nwawuchi, SAN, in arguing the issue in this petition and in addressing on the preliminary objection of the 1st Respondent to the competence of the petition because the grounds for the petition as couched are allegedly in violation of Section 134(1) of the Electoral Act, 2022 and not cognizable thereunder, he submitted that the Petitioners merely adjusted the words used in the said provision without altering or going outside the ambit of the said subsection and that this is permissible in law. He argued that the case of ***SALIS VS. INEC supra*** cited by the 1st Respondent in support of the objection is not apposite at all as the said authority is actually in favour of the Petitioners rather than against them as it was held therein that a Petitioner is at liberty to use his own language to convey the exact meaning and purport of the

subsection so long as he does not go outside the ambit of the subsection. He urged the Tribunal to dismiss the objection as lacking in merit.

On the challenges of the Respondents to the admissibility and reliability of the documentary exhibits tendered by the Respondents in Exhibits 'A' -'Z' on grounds that the makers were not called to testify and relate the documents to the Petitioners case and that the documents were dumped on the Tribunal, learned silk submitted that it must be realized that election petition matters are *sui generis* and the novel provisions of Section 137 of the Electoral Act, 2022 has clearly made it unnecessary for the Petitioners to call oral evidence where the complaint is on non-compliance with the Electoral Act that is evident on the face of documents tendered. He argued that the documents were properly tendered and are admissible and the Respondents' objection thereto are totally unfounded. Learned Senior Counsel further posited that contrary to the argument of Respondents that Exhibits 'A', 'B', 'C', 'L' and 'N' were not pleaded by the Petitioners, the documents were clearly pleaded. He referred us to Paragraph 5 of the petition and Paragraphs 12 of the Petitioners' Replies to the Respondents' Replies to his petition. He urged us to discountenance the Respondents' submissions in this regard.

According to learned Senior Advocate, the Petitioners pleaded and proved the two grounds upon which this petition is brought with sufficient and satisfactory evidence and in accordance with the requirements of the law.

On the complaint of over voting across the 171 polling units in the 10 wards in Oru East Local Government, learned Senior Counsel submitted that the Petitioners succeeded in establishing this by proving that the number of votes cast at the election was far more than the number of accredited voters by the BVAS as borne out by Exhibit 'K' (the BVAS backend server Report). He argued that by virtue of the provisions of Section 47(1) of the Electoral Act, 2022 and Clause 18 of the INEC Electoral Regulations and Guidelines for the Conduct of Election, 2022, the voters' register is no longer relevant in proof of improper or non-accreditation or over voting and what is necessary is the accreditation report by the BVAS. Counsel submitted that the 1st Petitioner who testified to over voting in Oru Local Government identified Exhibit 'K' which amply corroborated his uncontradicted testimony of over voting in the wards in the Local Government.

Learned Silk pointed out that the *subpoena ad testificandum et duces tecum* on the Resident Electoral Commissioner of the 1st Respondent, Imo

State to produce the BVAS machines used in each of the polling units in Oru East Local Government for the questioned election and the voters' register was not honoured despite the service of same on the 1st Respondent. He submitted that this amounts to withholding of evidence and the Tribunal should presume and hold that if these documents were produced, they would be unfavourable to the case of the 1st Respondent. He relied on **Section 167(d) Evidence Act, 2011** and ***OJO VS. GHARORO (2006) 10 NWLR (PT. 987) 173*** and urged the Tribunal to invoke the presumption in favour of the Petitioners in this case.

He further drew our attention to **Section 137 Election Act, 2022** as a novel provision in the new Electoral Law, which provisions made it unnecessary to call the polling unit agents from the polling units in Oru East Local Government to testify in proof of alleged non-accreditation and over voting. Counsel submitted that by virtue of the section, read in conjunction with Section 47(2) of the Electoral Act, the testimony of PW11 and Exhibit 'K' sufficed to prove the allegation of over voting in the polling units in the Local Government to warrant their cancellation in tenor with Section 51(2) of the Electoral Act. He urged the Tribunal to so find and hold.

Counsel submitted that of the 15,977 votes allegedly scored by the 2nd Respondent, 15,823 came from polling units in Oru East Local Government where non-accreditation of voters by BVAS and over voting are established to have taken place. That if the invalid votes are subtracted from the votes purportedly scored by the 2nd Respondent, he will be left with votes less than the Petitioners' valid votes. He canvassed that the non-compliance by over voting has evidently affected the result of the election and urged the Tribunal to so hold. He relied on ***OMISORE VS. AREGBESOLA (2015) 15 NWLR (PT. 1462) 205.***

On the complaint that no election was conducted by the 1st Respondent in the 11 wards and 137 polling units of Orsu Local Government, and that the 1st Respondent's officials held the election in the Local Government Council Headquarters, learned Senior Counsel rested on the testimonies of PW1-PW9 and Exhibit 'L'. He submitted that PW1-PW9 were polling unit agents who functioned in the election and gave credible and unimpeached direct evidence which the Respondents did not call any contrary evidence to discredit or rebut. He postulated that the evidence of DW1, the Electoral Officer for Orsu Local Government, that election held at the polling units was pure inadmissible hearsay which did not effectively counter the vivid

testimonies of PW1-PW9. He further submitted that the admission of the DW2 under cross-examination to inconsistency between the votes credited for him in polling units in Oru East Local Government and the zero accreditation records in Exhibit 'K' from the same polling units totally discredited his testimony on no over voting.

Counsel argued that the voters in Orsu Local Government Area were disenfranchised by the holding of the election at the Council Secretariat, Awo Idemili, instead of the various polling units in violation of Section 40(2), 47(1) and 56 of the Electoral Act. That the infraction rendered the election thereat null and void. He urged the Tribunal to cancel the purported votes scored by the 2nd Respondent at the invalid election and subtract same from his scores.

On the complaint that election only held in 5 out of the 13 wards in Orsu Local Government, with the result in one of the 5 wards (Eziachi/Amike Ward) excluded at the collation level, Counsel submitted that the Respondents did not join issues with them in their pleadings and are deemed to have admitted same. He further argued that the uncontroverted testimony of the 1st Petitioner (PW11) on the issue is corroborated by Exhibit 'C', (Form EC8C) for Orlu Local Government, which is useful as a hanger to assess the

credibility of the Petitioners' oral evidence. He cited ***OYEWUSI VS. OLAGBAMI (2018) 14 NWLR (PT. 1639) 297.***

Counsel submitted that in proof of the exclusion of their votes from Eziachi/Amike Ward in the collation process, the Petitioners tendered Exhibit 'W', the duplicate originals of the result sheets (Form EC8As) from the polling units in the ward. He argued that the results were primary evidence of the result declared by the 1st Respondent in the polling units which were unlawfully excluded. He relied on ***UZODINMA VS. IHEDIOHA (2020) 5 NWLR (PT. 1718) 529.*** He submitted that a recomputation of the results by the Tribunal whereby the unlawful votes credited to the 2nd Respondent are subtracted and the valid votes excluded are added to the individual scores would ultimately result in the emergence of the 1st Petitioner as the candidate with the majority of valid votes scored at the election and a justification for the grant of the reliefs sought.

In his final adumbration, learned Silk emphasised that Exhibit 'K' is a secondary evidence which satisfied the provisions of Section 89(b) and 102 of the Evidence Act and is admissible in proof of the content of the BVAS machines which the 1st Respondent failed to produce and cannot therefore be rightly jettisoned. He submitted that Exhibit 'K' should enjoy the

presumption of regularity as certified official records and conclusive evidence of over voting in this case. He urged the Tribunal to grant all the reliefs sought.

In their replies on points of law, learned Counsel to the 1st and 3rd Respondents submitted that the mere identification and reference to Exhibit 'K' by the PW11 in his testimony before the Tribunal did not confer on it the status of reliable evidence the Tribunal can countenance. Counsel argued that the document was tendered from the Bar and the PW11 who gave evidence on it was not the maker. They maintained that on the authority of ***ANDREW VS. INEC (2018) 9 NWLR (PT. 1629) 507***, Exhibit 'K' cannot be accorded any probative value.

On the argument of the Petitioners that the alleged failure of the 1st Respondent to produce the BVAS machines upon a subpoena should be held as tantamount to withholding evidence and presumed against the 1st Respondent, Counsel submitted that the Petitioners did not prove the service of the subpoena on the 1st Respondent and that even if they did, and the subpoena was disobeyed, there are laid down procedures the Petitioners could follow in law to compel obedience which they did not pursue or explore.

They submitted that in the circumstance, Section 167(d) of the Evidence Act cannot be invoked against the 1st Respondent.

On the argument of the Petitioners on the import of Section 137 of the Electoral Act, 2022, Counsel argued that the provisions of the section have by no means abrogated or suspended the force on impact of Section 83 of the Evidence Act, 2011. They opined that while Section 137 of the Electoral Act deals with how originals and certified true copies of documents may be used to prove non-compliance, Section 83 of the Evidence Act, 2011 deals with who may properly do so before it could attract any probative value. They cited in aid ***ABUBAKAR VS. INEC (2020) 12 NWLR (PT. 1737) 37 @ 129-130; PDP VS. INEC (2022) 18 NWLR (PT. 1863) 653 @ 683.***

It is our observation that the further submissions of learned Counsel on the admissibility and evidential value of Exhibit 'W' and the alleged lumping or joining of two grounds of the petition in one by the use of the word "and" are not fresh issues in the Petitioners' address calling for reply. They are tantamount to re-arguing his address. Same will not be allowed. Consequently, the arguments are discountenanced.

Before we delve into the resolution of the sole issue formulated for determination in this petition, it is imperative that we first tackle the 1st

Respondent's preliminary objection to the petition embedded in her Reply, which is a threshold issue. It is the contention of the 1st Respondent that the Petitioners' stated grounds for the petition are incongruent and not in conformity with the Electoral Act, 2022 and as such are liable to be struck out. There is no doubt that the ground of an election petition is jurisdictional and any defect in or incompetence of same will rob this Tribunal of jurisdiction to entertain the suit.

The grounds for instituting an election petition under **Section 134(1) of the Electoral Act, 2022** are reproduced hereunder:

- "(a) That a person whose election is questioned was at the time of the election not qualified to contest the election;***
- (b) That the election was invalid by reason of corrupt practices or non-compliance with the provisions of this Act;***
- (c) The Respondent was not duly elected by the majority of lawful votes cast at the election".***

It is well settled in law that a Petitioner in couching the grounds of his petition must ensure that they are in conformity with the provisions of the Electoral Act and not in contradiction. His stated grounds must not enlarge, expand, or alter the grounds as stated in the Law. Though it is permissible for a Petitioner to use his own words in drafting the grounds of his petition,

so long as the meaning, import and purport of the recognised grounds in the Electoral Act are conveyed and nothing more, there would be no sanction. However, any serious derogation from the recognised grounds in the Act would attract judicial sanction and render the affected ground liable to be struck out for incompetence. See ***OGBORU VS. IBORI (2004) 7 NWLR (PT. 871) 192 @ 223 – 224; OBASANJO VS. YUSUF (2004) 9 NWLR (PT. 877) 141 @ 222; BUHARI VS. INEC (2008) 4 NWLR (2008) 4 NWLR (PT. 1078) 546 @ 643 – 644.***

Underscoring the importance of couching the grounds of a petition in conformity with the provisions of the Electoral Act to avoid any ambiguity and confusion, Tobi, JSC (as he then was, now of blessed memory) in his pronouncement on Section 145(1) of the Electoral Act, 2006, which provisions are in *pare materia* with the provisions of Section 134(1) of Electoral Act, 2022 enthused instructively as follows in ***OJUKWU VS. YAR'ADUA (2009) 12 NWLR (PT. 1154) 69-70:***

"A Petitioner is required to question an election on any of the grounds in Section 145(1) of the Act. He is expected to copy Section 145(1) grounds word for word. I think a Petitioner can also use his own language to convey the exact meaning and purpose of the subsection. In the alternative situation, a Petitioner cannot go outside the ambit of Section 145(1) of the Act.

In other words, he cannot add to or subtract from the provisions of Section 145(1). In order to be on the safer side, the ideal thing to do is to copy the appropriate ground or grounds as in the subsection. A Petitioner who decides to use his own language has the freedom to do so, but he should realize that he is taking a big gamble, if not a big risk----".

The wisdom of the Supreme Court in the above mentioned case has been followed subsequently in several decisions of our appellate Courts. See ***OSHIOMOLE VS. AIRHIAVBERE (2013) 7 NWLR (PT. 1353) 376; MUHAMMED VS. ABDULLAHI (2015) LPELR-40632 (CA); NYESOM VS. PETERSIDE (2016) LPELR-4003 (SC).***

In view of the strict judicial position on couching the grounds of a petition in alignment with the Electoral Act, any failure or default in that regard by the Petitioners will certainly attract severe penalty.

In this instant case, the Petitioners' grounds as stated in Paragraph 3 of their petition are reproduced hereunder:

"Your Petitioners state that the grounds and facts upon which they rely for the petition are as follows:

- a. There was substantial non-compliance with the provisions of the Electoral Act, 2022 in the conduct of the questioned election; and***
- b. The 2nd Respondent was not duly elected by majority of lawful votes cast at the election".***

We have carefully compared the grounds for the petition as stated therein with the provisions of Section 134(1) of the Electoral Act, 2022 wherein the cognizable grounds for bringing a petition are enshrined. While it is obvious that the Petitioners did not use the exact words of the subsection in couching their two grounds for bringing the petition but used their own language, they have not in any way occasioned any ambiguity or confusion in communicating or expressing their grouse against the election on two of the three grounds provided for in the subsection.

For practical purposes, in using their own words or language to couch the two grounds, the notable additions to the wordings of Section 134(b) is the introduction of the word "substantial" before non-compliance. They also inserted the word "and" between ground a and ground b in their petition. Apparently, the 1st Respondent is peeved by the use of the word "and" between the two grounds and perceives it as lumping two grounds together as one in the petition, hence her argument that the grounds are couched in violation of the express provision of the Act and must therefore be pulled down.

However, with due respect to learned Counsel, we think his contention lacks substance and bothers on petty nitpicking and catering to undue technicality which is detrimental to substantial justice. This is because the use of the word "and" by the Petitioners between their two grounds of the petition, which are clearly stated in separate sub-paragraphs 'a' and 'b' in the petition has not in any way altered the recognised grounds for filing a petition under the Electoral Act, 2022, neither has it conveyed the impression that the Petitioners are relying on only one ground in the petition. We therefore opine that the use of the word "and" between the Petitioners' grounds 'a' and 'b' is innocuous and inconsequential, as it has not in any way brought the grounds outside the purview of the acceptable grounds under the Act to warrant any sanction. The Courts are courts of justice and are wary of slavish adherence to technicalities in their adjudicatory role. The authorities cited by the 1st Respondent in support of his objection are not apposite because in those cases, the Petitioners in couching the grounds in their petition strayed outside the grounds stated in the Electoral Act. That is not the case here. It is also to be noted that the Petitioners followed up the two grounds stated in Paragraph 3 of the petition by separately heading them with necessary pleadings under Paragraphs 4.1 and 4.2 of the petition respectively. They

were not lumped together at all as alleged by the 1st Respondent. On this score, we hold that the preliminary objection is unmeritorious and same is hereby dismissed.

Now to the resolution of the sole issue. It is also necessary to first address the submission of the 1st and 3rd Respondents with which they prefaced their legal arguments that the Petitioners' reliefs are not grantable because they are contradictory. They canvassed that the Petitioners in one breath asked for the voiding of the election and in another breath, prayed the Tribunal for the declaration and return of the 1st Petitioner as the winner of the election.

It is trite law that a party that alleges that an election was invalid cannot at the same time seek to be declared the winner of that election. See ***NEKA VS. KUNINI (2015) LPELR-2603***. This is because the invalidation or nullification of an election by the Tribunal sweeps away all the votes cast at the election in favour of both the Petitioner and the declared winner and there is nothing left therefrom upon which the Petitioner may rightly be declared as winner or returned as duly elected.

We have carefully scrutinized the reliefs sought by the Petitioners in this petition. Their prayer is not for the nullification of the entire election in the 3 (three) Local Governments constituting the Federal Constituency but in only two, namely Orsu and Oru East, and their declaration and return as the winner of the election based on the computed results in Orlu Local Government or in the alternative, an order for a fresh election in specified wards in the Federal Constituency.

It is our view that so long as a Petitioner does not ask for the invalidation of an election in entirety, it is not inappropriate for him to pray for declaration and return as the victorious candidate based on the remaining result which he accepts, provided they give him a clear lead as the candidate with the majority of valid votes cast at the election or alternatively, a fresh election.

In this case, the prayer of the Petitioners in Paragraph 6(a) of the petition is for the cancellation of the election conducted in polling units in Orsu and Oru East Local Governments and not in the whole of the Federal Constituency. Therefore, their prayers in Paragraphs 6(d) and (e) for an Order that the 1st Petitioner scored the majority of lawful votes cast in the Federal Constituency and an Order returning him as the winner of the

election are not contradictory at all. He may rightly be declared and returned as the winner of the election on the remaining valid votes cast in the Federal Constituency in the event of the invalidation of faulted votes if the Tribunal so finds. The submissions of the 1st and 3rd Respondents on this point is therefore considered as tenuous and is hereby rejected.

As earlier said, the Petitioners' grouse as encapsulated in their petition is two-fold, namely:

1. *That the election was characterised and vitiated by substantial non-compliance with the provisions of the Electoral, 2022.*
2. *That the 2nd Respondent did not score or secure the majority of lawful votes cast at the election.*

By virtue of **Section 131(1) and 133(1) & (2) of the Evidence Act, 2011**, the burden of establishing a case in civil matters, including election petitions, which are *sui generis* in nature, rests on the Petitioner who asserts the existence of the facts upon which the petition is based. He must discharge the burden by adducing cogent and credible evidence to prove same otherwise his case will fail.

In this case, the Petitioners' pleadings in support of their ground of substantial non-compliance with the Electoral Act, 2022 are contained in

Paragraph 4.1 of the petition and the sub-paragraphs thereunder. In a nutshell, the first allegation under this ground is that the 1st Respondent did not conduct any election in the 137 polling units in the 11 wards constituting Orsu Local Government on the 25th February, 2023. The second allegation is that the 1st Respondent conducted the purported election in the Orsu Local Government Council Headquarters, Awo Idemili, instead of the designated wards and polling units in the Local Government. The third allegation is that the 1st Respondent's officials arbitrarily allocated paltry votes to the Petitioners, the 2nd and 3rd Respondent's and other parties in the election and generated fake election results. The fourth allegation is that there was over voting in virtually all the 171 polling units in the 10 wards of Oru East Local Government, where the 2nd Respondent polled the majority of votes cast at the election. The fifth allegation is that there was massive thumb-printing of ballot papers by 1st Respondent's agents in favour of 2nd and 3rd Respondents in Oru East Local Government and the sixth allegation is that there was no collation of the result at the Federal Constituency Collation Centre, Orlu but the result was conjured by the 1st Respondent's Returning Officer for the Constituency in Owerri and thereafter taken to Orlu Local Government where it was read out by him.

It is settled in law that for a petition to succeed on the ground of non-compliance with the provisions of the Electoral Act, the Petitioner must not only prove the non-compliance, he must also prove that the non-compliance substantially affected the result of the election. See ***OKE VS. MIMIKO NO. 2 (2014) 1 NWLR (PT. 1388); OGBORU VS. OKOWA (2018) 11 NWLR (PT. 1522) 84 @ 148.***

Furthermore, where a Petitioner complains of non-compliance with the provisions of the Electoral Act, he has a duty to prove it, polling unit by polling unit, ward by ward, and the standard required is proof on the balance of probabilities and not on minimal proof. He must show figures that the adverse party was credited with as a result of the non-compliance. He must establish that the non-compliance was substantial and that it affected the election result. It is only then that the Respondents are to lead evidence in rebuttal. See ***UCHA VS. ELECHI (2012) 13 NWLR (PT. 1317) 380 @ 359.***

In their quest to prove the allegation of Respondents' non-compliance with the Electoral Act, the Petitioners called the oral testimonies of the PW1-PW11. The PW1-PW9, who were the Petitioners' polling unit agents in nine polling units in Orsu Local Government Area, Imo State, testified that they

went to the Orsu Local Government Headquarters, Awo Idemili, in the morning of 25th February, 2023, where in company of agents from other political parties, they witnessed the distribution of polling materials to the officials of the 1st Respondent for the conduct of the elections in polling units across the Local Government. They swore that the Independent National Electoral Commission (INEC) officials did not proceed to the polling units but set up the polling booths at the Local Government Headquarters and conducted the election there amidst their protests. That the 1st Respondent's officials also allocated or assigned votes to the 2nd and 3rd Respondents. They identified the polling unit results for their polling units allegedly generated or fabricated by the 1st Respondent's officials in Exhibit 'A' for Orsu Local Government.

The law is now settled that a Petitioner who asserts that there was no voting must prove same by calling a registered voter from each of the polling units in each of the wards in the respective Local Government Area to show that they could not vote during the said election. In addition, the voters must tender their voters' card and their names must be verified from the voters' register which must also be tendered in evidence. See ***CHIMA VS. ONYIA***

***(2009) ALL FWLR (PT. 480) 673; AUDU VS. INEC (NO. 2) (2010) 13
NWLR (PT. 1212) 456 @ 523.***

We have critically examined the oral evidence of the PW1-PW9, the Petitioners' polling unit agents in 9 polling units out of the 137 polling units in Orsu Local Government, Imo State. It is our observation that not a single one of them in their evidence-in-chief testified that they were present at their respective polling units on the day of the election. Rather, they all asserted that they went to the Local Government Council Headquarters to monitor the distribution of polling materials to the Electoral officials for the conduct of election in the polling units. As polling unit agents, this is not their duty under the law. Their duty is to represent their party and her candidates at the assigned polling unit which is their duty post. They are the eyes and ears and hands of their political party at the polling unit level, which is the base of the pyramid of the electoral process. Therefore, their evidence of what allegedly transpired at a location other than their respective polling units on the day of the election is most irrelevant in our view and cannot be countenanced at all in determining what happened at the polling units where the election should take place. They were never at their duty post in their respective polling units and therefore their evidence that no election held

thereat is mere speculation and totally lacking in credibility and evidential value.

What is more, the Petitioners did not call the evidence of any registered voter from any of the 137 polling units in Orsu Local Government Area. The PW1–PW9 did not prove that they were registered voters. They did not tender any voters' cards or establish their identities as registered voters in any of the polling units in the Local Government. In fact, the Petitioners did not even tender any voters' register for Orsu Local Government Area in the election. The requirement of the law undergirding the competence and credibility of a witness in proof of an allegation of non-holding of an election has clearly not be met by the Petitioners. We therefore hold that the evidence of PW1-PW9, who allegedly witnessed the non-holding of election at their polling units on the day of the election, is insufficient to discharge the burden of proof on the Petitioners to prove the allegation by concrete and cogent evidence.

In proof of the allegation that the 1st Respondent's officials conducted the queried election at the Orsu Local Government Headquarters instead of the designated polling units, the Petitioners in addition to the oral evidence of PW1–PW9 tendered Exhibit 'L', a video clip of the electoral activity which

was demonstrated before the Tribunal. The said video recording was purportedly made by the PW1, also a polling unit agent of the Petitioners at the election. It is our observation that the video clip being an electronically generated evidence must be made in compliance with Section 84 of the Evidence Act for it to be admissible. The Certificate of Compliance with the Act, tendered along with Exhibit 'L', dated 1st March, 2023 was made by PW1. We find and hold that the video clip is admissible evidence upon which the Tribunal could act and was rightly admitted in this wise.

However, it is noteworthy that Exhibit 'L' which was made by the PW1 on 25th February, 2023 at Orsu Local Government Council Headquarters with the Certificate of Compliance made on 1st March, 2023 was not pleaded in the Petitioners' petition dated and filed on 17th March, 2023. Furthermore, no mention was made of the video clip and the Certificate of Compliance in the PW1's deposition of 17th March, 2023, which he adopted as his evidence-in-chief before this Tribunal. It is trite that evidence on facts not pleaded goes to no issue and therefore the Petitioners having failed to plead the facts of making the video clip, Exhibit 'L' and its Certificate of Compliance, this Tribunal cannot countenance the Exhibit in proof of the allegation it seeks to

establish. The evidence is clearly an afterthought and it is therefore discountenanced.

It is also to be noted that the attempt by the Petitioners to plead Exhibit 'L' in their reply to the Respondents' replies to the petition was stiffly resisted and the subject matter of the objections filed by the 2nd and 3rd Respondents in Motions No. ***EPT/IM/HR/04^{M1}/2023*** and ***EPT/IM/HR/04^{M2}/2023*** earlier on determined. In our rulings, the paragraphs in the Petitioners' reply, wherein Exhibit 'L' was pleaded with the corresponding depositions in the 1st Petitioner's further written statements on oath were struck out as incompetent for being in violation of paragraph 16 of the First Schedule to the Electoral Act. Therefore, Exhibit 'L' *ab initio* was not properly before the Court as pleaded and admissible evidence and is consequently expunged.

As touching the complaint of fabrication or generation of votes and arbitrary allocation of same to the 2nd and 3rd Respondents by the 1st Respondent, allegedly evidenced by Exhibit 'A', the results of the polling units the PW1 – PW9 were assigned to, this is clearly an imputation of corrupt practices or crime which requires proof beyond reasonable doubt. It is the requirement of the law that where such imputation is made, it must be specifically pleaded with necessary particulars and supported with strong

evidence for it to be established. See ***ABUBAKAR VS. YAR'ADUA (2008) 19 NWLR (PT. 1120) 143-144; AREGBESOLA VS. OYINLOLA (2011) 9 NWLR (PT. 1212) 544.***

However, beyond the allegation in the petition and the sparse testimonies of the PW1-PW9 on it, the Petitioners did not adduce any shred of admissible evidence to prove the allegation. The particular officers of the 1st Respondent who perpetrated the alleged electoral fraud were not identified or mentioned. PW1–PW9 did not even testify that they witnessed the making of the polling unit results or knew the officers who allegedly generated same. Their evidence on the allegation is general, vague, nebulous and lacking in particulars and substance. The electoral forms, being public documents used in the conduct of the election, enjoys the presumption of regularity. There is nothing on their faces or in the entire gamut of the evidence of Petitioners' witnesses that sufficed to rebut that presumption. Indeed, the said forms, tendered in evidence by the Petitioners did not aid their case, it rather weakened it. Conclusively on this point, we find and hold that the allegation of fabrication or generation of fake results and declaration of same by the 1st Respondent in favour of the 2nd and 3rd Respondents in the election in Orsu Local Government is unproved.

Regarding the allegation of over voting in 5 polling units in Orsu Local Government and 141 polling units in Oru East Local Government, it is curious that the Petitioners are alleging that no election was conducted in Orsu Local Government and at the same time contending that there was over voting in some polling units in the Local Government. These are mutually inconsistent claims. There cannot be "no voting" in a polling units and "over voting" at the same time. A party should be consistent in his claim for his evidence to attract credibility.

Be that as it may, the Petitioners did not adduce any oral evidence aside that of the 1st Petitioner in proof of the allegation. They relied majorly on documentary evidence tendered, that is the statutory forms, Exhibits 'A', 'B' & 'C' series, tendered from the Bar, referenced in the adopted deposition of the 1st Petitioner, and identified and confirmed by him before the Tribunal. Particularly, the Petitioners rested on Exhibit 'K', the backend server report of the BVAS accreditation records of the vexed election.

Section 51(2) of the Electoral Act, 2022 explains what constitutes over voting and its implication as follows:

"where the number of votes cast at an election in any polling unit exceed the number of accredited voters in

that polling unit, the presiding officer shall cancel the result of the election in that polling unit”.

In clause 40 of the INEC Regulations and Guidelines for the Conduct of Election 2022, the concept and import of over voting is likewise reiterated as follows:

“where the total number of votes cast at a polling unit exceeds the number of accredited voters at the polling unit, the result of the election for that polling unit shall be declared null and void and a report in that regard shall be made to the collation officer”.

From the foregoing, it is crystal clear that an allegation of over voting, if proved, has very serious consequences as the affected election in question will be invalidated and all votes cast would be nullified.

Over voting and its dire consequence is a poignant aspect of our electoral jurisprudence over time and therefore there are a plethora of authorities on what a Petitioner praying for the invalidation of an election upon complaint of over voting must prove. Expounding on the requirements, the apex Court. In the case of ***IKPEAZU VS. OTTI (2016) 8 NWLR (PT. 1513) 38 @ 88*** per Galadinma JSC (As he then was) held as follows:

“To prove over voting, the law is trite that the petitioner must do the following:

1. ***Tender the voters' register.***
2. ***tender the statement of results in the appropriate forms, which would show the number of accredited voters and number of actual votes.***
3. ***Relate each of the documents to the specific area of his case in respect of which the documents are tendered.***
4. ***Show that the figure representing the over voting, if removed would result in victory for the Petitioner".***

In ***EMERHOR VS. OKOWA (2016) 11 NWLR (PT. 1522) 1 @ 29-30*** the Supreme Court, per Okoro JSC, in addition to the requirements stated in ***IKPEAZU VS. OTTI supra*** added a fifth requirement when he stated thus:

"In view of the introduction of the card reader machines in election ----- the Petitioners should tender the card reader report if it did not fail to function".

Reiterating this well settled position on the essential elements needed to prove over voting as a specie of non-compliance with the Electoral Act, the Supreme Court again in the case of ***ANDREW VS. INEC (2017) LEPLR-48518 (SC) 124*** held thus:

"the settled position of the law is that where a Petitioner alleges non-compliance, he has the onus of presenting evidence of eye witnesses at the various polling units who can testify directly in proof of the alleged non-compliance, particularly where the allegation relates to non-accreditation, improper

accreditation, inflation or reduction of scores, alteration of result, over voting etc.”.

It is instructive to note that although the aforementioned pronouncements of the Supreme Court were on cases decided under the 2010 Electoral Act, the Supreme Court in the recent case of ***OYETOLA VS. INEC (2023) LPELR-60392 (SC) 12***, decided under the 2022 Electoral Act, re-emphasized the relevance and vital importance of tendering the voters' register, the statements of result, the Bimodal Voters Accredited System (BVAS) and its report in proving over voting when it stated categorically as follows:

"the evidence required to prove non-accreditation, improper accreditation and over voting under the Electoral Act, 2022 are the BVAS, the register of voters and the polling units results in INEC form EC8A by virtue of Section 47(1), (2) and 51(2) of the Electoral Act, 2022, Regulation 14, 18, 19(b) (i-iv), e (i-iii) and 48(a) of the INEC Regulations and Guidelines for the Conduct of Elections 2022".

In consenting to the leading Judgment in the case, delivered by Agim JSC, the erudite jurist of the apex bench, Okoro JSC, enthused admirably as follows on page 48-49:

"whenever it is alleged that there was over voting in an election, it is my view that the documents needed to

prove over voting are the voters' register to show the number of registered voters, the BVAS to show the number of accredited voters and the forms EC8As to show the number of votes cast at the polling unit. These documents will show exactly what transpired at the polling units. Failure to tender these documents would be fatal to any effort to prove over voting for how would you prove over voting when you do not know the number of registered voters in the unit even when the BVAS have shown the number accredited".

Against the foregoing backdrop, our task has been made easy. It is just to find out if by the evidence adduced by the Petitioners, they have scaled the hurdle of the legal parameters for establishing their allegation of over voting.

Now, the Petitioners did not adduce any oral evidence in support of the allegation of over voting except that of the 1st Petitioner himself who testified as PW11. His evidence was actually more or less a repetition of his pleadings. He was not an eye-witness to the elections in any of the polling units in Orsu and Oru East Local Government where over voting was alleged. He admitted that much under cross-examination and further said that the information about the alleged infractions he deposed to were received from his polling unit agents. His evidence on over voting is therefore based on what polling unit agents who were not called to testify told him. In law, the evidence is

inadmissible hearsay and cannot be accorded any probative value. It is accordingly discountenanced. See ***JOHNSON VS. INEC (2019) LPELR-49442 (CA) 23-28.***

The Petitioners in Exhibit 'A' tendered polling unit results of some polling units from Orlu Local Government, Orsu Local Government and Oru East Local Government. However, none of the nine polling unit agents from Orsu Local Government who testified as PW1-PW9 gave any evidence in proof of the allegation of over voting. They also did not relate any of the polling unit results from the Local government to the aspect of the Petitioners' case on over voting. Also, no evidence of polling unit agents from Orsu and Oru East Local Government was adduced to establish the alleged mass incidents of over voting particularly, in Oru East Local Government where it is alleged that only 554 voters were accredited to vote in the election but a total of 19,969 votes were recorded as cast, out of which the 2nd Respondent scored 17,453 and the 1st Petitioner scored 536. (See Paragraph 4(i) of the petition and Paragraph 17 of the Statement on Oath of PW11).

Furthermore, the petitioners conspicuously failed to tender the voters' register of the polling units where over voting was alleged to have taken place. They equally failed to tender the BVAS machines which is the primary

evidence of the authentic and reliable accreditation records of voters in the election.

In their effort to excuse the non-tendering of the voters' register and the BVAS machines, the Petitioners argued that it was due to the refusal or neglect of the 1st Petitioner to obey the subpoena *ad testificandum et duces tecum* issued by this Tribunal and served on the 1st Respondent, wherein she was requested to produce the register of voters and the BVAS machines at the trial. The Petitioners contended that the 1st Respondent's default in this regard should warrant the invocation of Section 167(d) of the Evidence Act, 2011 against the Respondent and the Tribunal should therefore presume that the 1st Respondent failed to produce the evidence because she knew same would be unfavourable to her case.

As convincing as the Petitioners' argument may appear, it has no backing in law. This is because it is trite that where a subpoena is issued on a witness to produce a document or give evidence, the failure to do so shall not be a subject of adverse finding by the Court. See ***BUHARI VS. OBASANJO (2005) 13 NWLR (PT. 941); OLORUNJUWON VS. IDOWU (2010) LPELR-4761 (CA) 14***. It also cannot form the basis for invoking the presumption of withholding evidence pursuant to Section 167(d) of the

Evidence Act, 2011. See ***BUSARI VS. ADEPOJU (2015) LPELR-47104 (CA) 52-53***. On what a party faced with the disobedience of a subpoena issued at his instance on an adverse party should do, the Court held in ***ZIMAKO VS. NWOGU (2003) LPELR-7204 (CA) 31-33*** as follows:

"the Petitioner ought to have obtained the Order from the Tribunal to compel the REC to produce those documents if he so desired. Having abandoned his right to follow the laid down procedure by getting those documents by compulsion, he cannot now be heard to complain on the same matter".

In the light of the above decision, the alleged disobedience of the subpoena on the 1st Respondent to produce the BVAS and the voters' register cannot absolve the Petitioners from the fatal consequences of their failure to adduce the machines and documents in evidence. See ***RABIU VS. BABANGIDA (2019) LPELR-49458 (CA) 20-21***.

It is also to be noted that the backend server report of the BVAs accreditation tendered as Exhibit 'K' is not the BVAS accreditation report which is what is specifically required to prove accreditation by the BVAs. The Supreme Court in the case of ***OYETOLA VS. INEC supra*** clarified on the difference between the BVAS accreditation report or records and the backend server report. The Court held that the backend server report, which is

extracted from INEC database after the election, is not a substitute for the BVAs accreditation report on the BVAS, provable by examination of the BVAS itself or coupled with a Certificate by INEC on the content of the BVAS machines used in accreditation of voters at the election. Hear the Supreme Court on this per Agim JSC on page 18-20 of the Judgment:

"Exhibit BVR, the report of the examination of the content of the INEC database or backend server containing the number of accredited voters and number of votes cast, transmitted by the BVAS for each polling unit to the database or backend server does not qualify as the BVAS provided for in Regulation 48(a) and the number recorded therein as extracted from the INEC database is not "the number recorded in the BVAS" as provided in Regulation 48(a). There is no part of the Electoral Act or the INEC Regulations and Guidelines for the conduct of Elections 2022 that makes INEC data base or backend server a part of the accreditation process or record of accredited voters. The INEC database is a post-election record created by Section 62 of the Electoral Act, 2022 and named therein as the National Electronic Register of Election Results for the purpose of keeping reliable and veritable records of past election results polling unit by polling Unit".

We have examined Exhibit 'K' upon which the Petitioners relied heavily to prove over voting in 5 polling units in Orsu Local Government and 191 polling units in Oru East Local Government. It is not the actual BVAS Report but the backend server report issued by the 1st Respondent's ICT,

Department on 16th March, 2023, upon the request of the Petitioners vide their Counsel's application letter dated 28th February, 2023. Exhibit 'K' was not made on the day of the election but many days after. It is therefore not the actual BVAS Report that is required to be compared with the polling unit results, which are presumed correct and regular, to establish over voting. The implication of this default for the Petitioners is that Exhibit 'K' relied upon and related by the 1st Petitioner, PW11, to their complaint of over voting is not a credible, reliable, acceptable or admissible evidence to rebut the presumption of regularity of the polling unit results of polling unit in Orsu and Oru East Local Government wherein the numbers of accredited voters and the number of actual voters at the election are stated. Therefore, in the absence of the BVAS machines and the actual BVAS records/report, the Petitioners' allegation of over voting is unproved. We therefore opine that the failure of the Petitioners to tender the voters' register, the BVAS machines and the BVAS Report in proof of the complaint of over voting is fatal to their claim herein and we so hold.

Assuming without conceding that Exhibit 'K', the backend server BVAS report, is admissible and reliable evidence in proof of the Petitioners' allegation of over voting, we still posit that same cannot be accorded any

probative value as it was tendered from the Bar and related to the case through the 1st Petitioner (PW11) who was not the maker and who was not privy to its making. Therefore, his purported evidence seeking to relate the document, which is documentary hearsay in the absence of the oral and credible evidence of the 1st Respondent's official who made it, and could be cross-examined on it, cannot be considered by this Tribunal as deserving of any probative value in proving the allegation of over voting.

The futility of relying on a card-reader's (the forerunner of BVAS) Report, tendered through a witness other than the maker in an election petition was brought to the fore by the Supreme Court in ***NYESOM VS. PETERSIDE (2016) 7 NWLR (PT. 1521) 452 @ 522-523*** where Kekere Ekun, JSC stated thus:

"It is worthy of note that at the point of tendering Exhibit 'A9', PW49 an Assistant Director ICT with INEC, acknowledged that the report was in fact prepared by one Mrs. Eneua (sic) (Mrs. Nnenna Essien), a member of staff in her unit. She admitted under cross-examination that she was not in Rivers State for the election and did not examine any of the card readers after the election. She stated that the machines were in Port Harcourt. She did not participate in any stage of accreditation of voters. She was certainly not in a position to testify as to how the card readers functioned during the election in Rivers State".

It is therefore now settled beyond peradventure that a certified accreditation report such as Exhibit 'K' herein must be tendered and related to the case through the maker and not just anybody or staff of INEC for it to attract any probative value. See **MOMOH VS. FRANCIS (2019) LPELR-49000 (CA) 36; RABIU VS. BABANGIDA (2019) LPELR-49418 (CA) 18.**

In this case, the 1st Petitioner (PW11) who purported to demonstrate Exhibit 'K' in his evidence before the Court is not the staff of INEC who made the report. He could not be cross-examined on the contents of the report. Though the report being a certified true copy of a public document, tendered from the Bar, is admissible in evidence, it is well settled that admissibility and the probative value to be attached to a document are two different things altogether.

On the evidential value of a public document tendered in evidence without the maker or a witness privy to same breathing life to it through oral evidence, the Supreme Court in **ANDREW VS. INEC (2017) 9 NWLR (PT. 1625) 507 @ 577-558**, held thus:

"where a public document is tendered just to show the existence of such document only, though not tendered

by the maker, it will not ordinarily be termed hearsay. But where a witness who did not participate in making of the document ventures to give evidence on the contents of the document and tries to persuade the Court on the truth of its content as was done in this case, it becomes hearsay and shorn of the exceptions granted by Sections 52 Evidence Act. In the circumstance, there is a big gulf between the admissibility of a document and probative value to be placed on it by the Court”.

In this context, it is our considered view that Exhibit 'K' is nothing but documentary hearsay and the evidence of the 1st Petitioner on its content goes to no issue, he not being the maker. It is therefore discountenanced.

We are not unmindful of the argument of learned Senior Counsel for the Petitioners on Section 137 of the Electoral Act, 2022 which provides that it shall not be necessary for a party alleging non-compliance with the provisions of the Act in the conduct of an elections to call oral evidence if originals or certified true copies manifestly disclose the non-compliance alleged. Learned Silk submitted that based on the provision, it was not necessary for the Petitioners to call the evidence of polling unit agents or the maker of Exhibit 'K' to relate it to the Petitioners' case and that the testimony of the 1st Petitioner alone sufficed. In our opinion, the provisions of Section 137 of the Electoral Act, 2022 are plain and unambiguous. It does not absolve a party from calling oral evidence when necessary to prop up original

or certified true copies of documents he seeks to rely upon in the discharge of the burden placed upon him by the law. It also definitely does not license a party to call an incompetent witness to speak to any such document or relate it to the party's case. Therefore, Section 137 of the Electoral Act is not a crutch for the Petitioners to lean on or a shelter under which they can find refuge in their failure to call competent witnesses to relate Exhibit 'K' to their case. On this note, we again find that the Petitioners' allegation of over voting has failed for lack of proof.

The 5th allegation by Petitioners of non-compliance with the Electoral Act in the conduct of the election on 25th February, 2023 is to the effect that the officials of the 1st Respondent in Oru East were involved in massive thumb-printing of ballot papers in favour of the 2nd and 3rd Respondents during the election. This is clearly an allegation bothering on corrupt practices and a crime which requires proof beyond reasonable doubt. See ***OMISORE VS. AREGBESOLA (2015) 15 NWLR (PT. 1482) 205 @ 334 – 335.***

In proving this allegation, the Petitioners did not call any oral evidence apart from that of the 1st Petitioner (PW11) who admitted under cross-examination that he did not witness the alleged thumb-printing of ballot

papers. Therefore, his evidence on the matter is pure hearsay and inadmissible in proof of the weighty allegation. The Petitioners also placed reliance on Exhibit 'L', the video clip of the alleged thumb-printing of ballot papers by some persons. The video clip was confirmed by the 1st Petitioner in his oral testimony and played before the Tribunal. However, we observed that the Certificate of Compliance pursuant to Section 84 of the Evidence Act, tendered in support of the video clip, dated 17th March, 2023 was not made by the PW11 but by one Gibson Okorie, who was not called as a witness. The evidence of the said maker is crucial to the admissibility of the said exhibit and in the absence of same, the document is inadmissible. See ***KUBOR VS. DICKSON (2012) LPELR-9817 (SC) 48-60***. The inadmissibility of the Exhibit 'L', the video clip, in evidence is further reinforced by the admission of the PW11 under cross-examination that he was not the maker. In this wise, Exhibit 'L' is patently inadmissible and lacking in probative value. It is therefore expunged accordingly. And in the absence of any admissible and credible evidence to substantiate the allegation of electoral malpractices by the 1st Respondent's officials in favour of the 2nd and 3rd Respondents, we find and hold that the Petitioners have not proved the damning allegation at all.

The last complaint of the Petitioners under the ground of non-compliance is that the collation of the result was not done by the Returning Officer at the Federal Constituency Collation Centre but at one Immaculate Hotel in Owerri on 27th March, 2023, two days after the election. To prove this allegation, the Petitioners called the oral evidence of PW10, their Federal Constituency Collation Agent, who identified and confirmed Exhibit 'V', the purported photographs of the Returning Officer, Dr. Ali Bilar with the results of the Federal Constituency at Immaculate Hotel, Owerri. He also tendered Exhibit 'Z12', a snapshot copy of Form EC8D(II), which he allegedly took with his phone on 27th March, 2023 at the Federal Constituency Collation Centre, Orlu Local Government, where the Returning Officer allegedly read out the purported collated results.

It is the law that the proper place for the collation of result is as designated by the Electoral Law. For the results at the polling unit level, it must be at the polling unit where the election was held and from where the results will be transferred to the ward collation level and from there to the Local Government Collation level, and finally to the Constituency Collation level for the final collation and declaration of the winner. Any default in this

regard is tantamount to non-compliance with the prescription of the Electoral Act.

We have examined the evidence of the PW10 offered to substantiate this allegation. It is our observation that while the witness deposed before the Tribunal in his evidence-in-chief that Dr. Ali Bilar, the Returning Officer declared the result at the Federal Constituency Collation Centre, Orlu Local Government on 27th March, 2023, under cross-examination, he flatly denied that the 2nd Respondent was declared as the winner of the election by the returning officer at Orlu but claimed he merely read out the result in Exhibit 'Z12'. In our opinion this is a material contradiction on a material issue robbing the testimony of the PW10 of any credibility. It is trite law that where a witness makes two contradictory statements on a material issue on oath, such a witness is not worthy of credibility and his testimony is liable to rejection. See ***IKPEAZU VS. OTTI (2016) LEPLR-40005 (SC) 20***. We therefore reject the evidence of the PW10 for this reason.

The Petitioners further sought to prove that the result of the election was not collated at the Federal Constitution Collation Centre but allegedly concocted at Immaculate Hotel, Owerri on 25th February, 2023 through Exhibit 'V', the photographs of the Returning Officer and others allegedly

taken by the PW10. The pictures were tendered from the Bar and identified/confirmed by the witness in his evidence. However, the pictures, being in the category of a computer-generated evidence, requiring oral evidence or certificate of authentication of the process of its making as mandated by Section 84 of the Evidence Act was tendered in evidence without any certificate of compliance by PW10 the maker. Likewise, Exhibit 'Z12' which was allegedly taken with a mobile phone and produced from a printer was unsupported by any certificate of compliance or any oral evidence in lieu, which is a condition precedent to admissibility in evidence. In consequence, the two Exhibits, 'L' and 'Z12' are expunged as inadmissible evidence.

It is to be noted that Exhibit 'E', a certified true copy (CTC) of Form EC8E(II), for the declaration of the result at the Federal Constituency Collation Centre was part of scheduled documents tendered from the Bar by the Petitioners. On the face of it, it was made on 25th March, 2023 and duly signed by the Returning Officer stated therein as Dr. Ali Bilar. In law, it enjoys the presumption of regularity which may only be rebutted by credible and cogent contrary evidence. It is our opinion that the testimony of the PW10 and Exhibits 'V' and 'Z12' are neither credible or reliable to rebut this

presumption in favour of Exhibit 'E' that election results were duly collated, declared and the winner returned by the Returning Officer at the Federal Constituency Collation Centre, Orlu on 25th February, 2023. On this note, we opine that the Petitioners' allegation of non-compliance on this plank must fail.

In totality, it is our finding that the Petitioners have not succeeded in proving any of the allegations of non-compliance with the provisions of the Electoral Act, 2022 and we so hold.

The Petitioners' pleadings in support of the ground of their petition that the 2nd and 3rd Respondents did not score the majority of lawful votes cast at the election is contained in Paragraph 4.2 of their petition and its subparagraphs. In summary, the first allegation under this ground is that the 1st Respondent did not conduct election in 8 of the 13 wards in Orlu Local Government and no result was announced therefrom. The second allegation is that the 1st Respondent conducted election in only 5 wards in the Local Government and excluded the result of 12 polling units in one of the wards, Eziachi/Amike Ward in the collation process. The last complaint is that the 1st Respondent ought to have cancelled the results from Orsu and Oru East Local Governments for over voting and deduct same from votes credited to

the candidates in the election by which the Petitioners would have secured the majority of valid votes cast at the election.

The law is settled that where an election is contested on the ground that the Respondent was not duly elected by majority of lawful votes cast at election, the Petitioner is actually challenging the election for errors of collation, miscalculation or exclusion of lawful votes to his disadvantage. Therefore, for him to succeed on this ground, he must plead and prove the necessary facts to show that there was wrongful computation of votes to his detriment and in favour of the candidate declared as the winner. See ***ANOZIE VS. OBICHERE (2006) 8 NWLR (PT. 981) 140 @ 155; DEEN VS. INEC (2019) LPELR-49041 (CA) 8-10.***

The Petitioners have argued that their pleadings on the non-holding of election and non-declaration of results in eight wards in Orsu Local Government were admitted by the Respondents in their replies to the petition. That since facts admitted need no further proof, the Tribunal should grant the reliefs sought on the basis of the admission by the Respondents.

We have carefully examined the replies of the 1st, 2nd and 3rd Respondents to confirm if they actually admitted the Petitioners' claim that

election held in only 5 out of 13 wards in Orlu Local Government. Our discovery is that the 1st and 3rd Respondents admitted that election was conducted in the 5 wards wherein the Petitioners claimed that election held, namely, Amaiteke, Ohaeke/Okporo, Umudioka, Umuna and Eziachi/Amike. They were silent on the conduct of election in the other 8 wards. However, the 2nd Respondent in paragraph 7b of his reply clearly denied that election did not hold in any of the wards in Orlu Local Government and averred that election was conducted across the 13 wards in the Local Government. Therefore, the 2nd Respondent having denied the claim of the Petitioners, it behooved them to prove the allegation by adducing satisfactory evidence in support of same.

Furthermore, the argument of the Petitioners that the Respondents' admission that election did not hold in 8 wards in Orlu Local Government is a legitimate basis for this Tribunal to grant the reliefs sought without much ado is not sustainable at all. This is because the principal relief sought by the Petitioners is declaratory in nature. It is trite law that in declaratory actions, a Plaintiff/Petitioner must prove his case. He must rely on the strength of his case and not on any admission by his opponent or any weakness in his defence to justify his entitlement to the reliefs sought. See

AREGBESOLA VS. OYINLOLA (2011) 9 NWLR (PT. 1253) 468, 594;
RABIU VS. BABANGIDA (2019) LPELR-49458 (CA) 13-18.

Therefore, notwithstanding the purported admission of the allegation by the Respondents, which is not proved, the Petitioners still have a duty to adduce sufficient evidence to prove their claim before they can be entitled to the reliefs sought.

In their bid to prove this allegation, the Petitioners called the oral evidence of the 1st Petitioner (PW11) who testified that he hailed from Orlu Local Government and swore that election did not hold on 25th February, 2023 in all the polling units of eight wards in the Local Government, namely Ebeneze/Umuezenachi, Ihite-Owerri, Ogberuru/Obibi, Ohafor/Okporo/Umutanze, Okwuabala/Ihioma, Orlu Mgbée, Owerri-Ebeiri and Umuzike/Umuowa, because the 1st Respondent's officials failed to show up at the polling units to conduct the election. However, he admitted that he was not physically present in all the polling units though he visited some. He also admitted that he relied on the information given to him by his polling unit agents deployed across the polling units in the Local Government and the Federal Constituency. He however failed to call the evidence of any of his informants, polling unit

agents or registered voters in the eight wards where election allegedly did not take place.

It is settled law that the credible evidence in proof of an allegation that election was not conducted and that there was no voting is that of the registered voters who were disenfranchised. They must tender their voters' cards and confirmed their names in the voters' register of their polling unit in addition to their testimony that election was not conducted and that they did not vote. See ***NGIGE VS. INEC (2015) 1 NWLR (PT. 1440) 281, 326; OKE VS. MIMIKO (NO. 2) (2014) 1 NWLR (PT. 1388) 332.***

In this case, the testimony of the 1st Petitioner that election did not hold in 127 polling units across 8 wards in Orlu Local Government is not based on what he witnessed or personally perceived but based on what he was told by agents who did not testify. His evidence is therefore hearsay and is inadmissible and unreliable in proof of the allegation It is hereby discountenanced.

Apart from the oral evidence of the PW11, the Petitioners also tendered Exhibit 'G', Form EC40G(I), the summary of registered voters of polling units where election was not held or was cancelled. Listed in the exhibit are the

eight wards in Orlu Local Government and the total number of PVCs collected by registered voters. However, the document was part of the scheduled documents tendered from the Bar by the Petitioners. The maker of the document was not called as a witness. Also the Petitioners' Local Government Collation agent, where the document was made was not called as a witness. The document was dumped on the Tribunal and cannot be accorded any probative value. It is hereby discountenanced. We, therefore find and hold that the Petitioners allegation herein is unproved.

On the Petitioners' complaint of exclusion of their 365 lawful votes from 12 polling units in Eziachi/Amike Ward, Orlu Local Government, the Petitioners also called the oral evidence of the 1st Petitioner (PW11) who attested to the fact in his evidence before the Tribunal. However, no polling unit agent from any of the polling units was called to testify in proof of the allegation. The Ward Collation Agent of the Petitioners also did not give evidence. As earlier said, the testimony of the PW11, not being an eye witness to the alleged infraction at the polling unit level and other collation levels is pure hearsay. It is inadmissible in proof of the allegation and is no substitute for the testimony of the agents who witnesses the collation process. The testimony of the PW11 is therefore discountenanced.

In addition to the testimony of the PW11, the Petitioners tendered the certified true copy (CTC) of polling unit results of the 12 polling units in Eziachi/Amike Ward, Orlu Local Government. Another 6 duplicate originals of the polling unit results (pink copies) were also tendered as Exhibit 'W'. The Petitioners further tendered CTC of the Local Government Collation result as Exhibit 'C'. All the documents were tendered from the Bar. None of the makers of the documents were called to give evidence to relate them to the specific aspect of the Petitioners' case. The Petitioners' agents at the Ward and Local Government Collation levels, who were competent to testify on where, when and how the alleged exclusion of Petitioners' votes occurred did not testify. The Petitioners also did not tender the ward collation result, Form EC8B(II) for Eziachi/Amike Ward at all and no explanation was proffered for the gaffe. The Petitioners cannot effectively prove the alleged exclusion of their lawful votes from the collation process without the ward collation result, Form EC8B(II), which is the link between Exhibit 'A', the polling unit results and Exhibit 'C', the Local Government Collation result. See ***UDUMA VS. ARUNSI (2012) 7 NWLR (PT. 1298) 55 @ 118-119.***

The Petitioners' default by not tendering the ward collation result of Eziachi/Amike ward and calling the evidence of the Ward Collation Agent and

Local Government Collation Agent to relate the documents to the case is fatal to their claim. In this wise, we find and hold that the allegation is unproved.

On the Petitioners' complaint that they won the election by securing 809 valid votes while the 2nd and 3rd Respondents scored 380 votes as against the 1000 votes and 15,977 votes respectively declared for them by the 1st Respondent, the Petitioners adduced the evidence of the 1st Petitioner (PW11) who deposed that the results of the election at Orsu Local Government should be nullified for disenfranchisement of voters and fraud while that of Oru East Local Government should be nullified for over voting. He stated that if the unlawful votes from the two Local Governments are deducted from the scores of the parties and the excluded score of 365 votes for the Petitioners and 198 votes for the 2nd and 3rd Respondents are added to their valid scores, the Petitioners would emerge as the clear winner of the election.

It is settled in law that the results of an election as declared by the electoral umpire, in this case, the 1st Respondent, enjoys the presumption of regularity, which can only be dislodged on rebutted by concrete and credible contrary evidence. See ***BUHARI VS. INEC (2008) 19 NWLR (PT. 1120) 246, 354; BUHARI VS. YUSUF (2005) 13 NWLR (PT. 941) 1.*** In this

vein, the result of the election for the Orlu/Orsu/Oru East Federal Constituency held on 25th February, 2023 are presumed regular and valid unless the Petitioners rebut the presumption through their evidence before the Tribunal.

We have considered the evidence adduced by the Petitioners in support of this ground, which we had carefully reviewed and evaluated in the foregoing. The Petitioners did not succeed in proving that elections did not hold in Orsu Local Government. They also did not prove that there was over voting in Oru East Local Government. Therefore, there is no basis to nullify the result of the elections in these Local Government as declared by Independent National Electoral Commission (INEC) or deduct them from the total results. Furthermore, the Petitioners did not prove the unlawful exclusion of valid votes from their scores in Eziachi/Amike Ward, Orlu Local Government, and therefore there is no justification for any addition to their votes score in the Local Government as collated by INEC. We therefore find and hold that the Petitioners have failed to prove that the 2nd and 3rd Respondents did not score the majority of valid votes cast at the election.

By virtue of Section 136 of the Evidence Act, 2011, the onus is on the Petitioners to establish their case first by credible, cogent and admissible

evidence and with persuasive arguments. It is after they have established or proved their case that the onus would shift to the Respondents to rebut the case as established by the Petitioners. Thus, Petitioners who have not led sufficient and credible evidence in support of their case are not entitled to have their case placed on the imaginary scale of justice since it would be illogical to place nothing on something. See ***ANDREW VS. INEC (2017) LPELR-48518 (SC) 39-41.***

In this case, the 1st Respondent in her defence called one witness and tendered documents. The 2nd Respondent in his defence also testified as witness and tendered documents. The 3rd Respondent did not call any witness or tender any document. She rested on the case of the other Respondents.

However, the defence of the Respondents will only be necessary for consideration where the Petitioners had successfully established their case by adducing *prima facie* evidence to substantiate the grounds of the petition. Where the Petitioners had failed to achieve this, any evaluation of the Respondents' case by the Tribunal with a view to weighting it against the evidence proffered by the Petitioners to decide which one preponderates will be an exercise in futility.

It is our finding, upon a thorough and holistic evaluation of the Petitioners' case above, that they have failed to prove any of the two grounds of their petition to warrant the consideration of any evidence offered by the Respondents in rebuttal.

The Petitioners prayed this Tribunal for six reliefs and one alternative relief. The first relief is for a declaration. It is the law that a party seeking a declaratory relief is bound to make a case for it by adducing cogent and credible evidence to prove same. He is expected to succeed on the strength of his own case and not on the weakness of the case of the defence. Should he fail to do so, his case collapses and his cause is lost. Where the Petitioner fails to establish a case for his reliefs, the Respondent is not bound to call evidence. See ***EMENIKE VS. PDP (2012) LPELR-443 (SC) 27; OKEREKE VS. UMAHI (2016) 11 NWLR (PT. 1524) 438 @ 488; NWABUEZE VS. AMADI (2015) LPELR-41762 (CA).***

It is our considered view that the Petitioners, for afore-stated reasons have failed to make a case for the declaratory and other reliefs sought before this Tribunal. Thus, the lone issue for determination is resolved against the Petitioners.

Therefore, arising from the foregoing, we adjudge this petition as liable to dismissal and it is hereby dismissed. Since we have dismissed the petition due to the inability of the Petitioners to prove same, we hereby confirm the election and return of the 2nd Respondent as the Member of the Federal House of Representatives for Orlu/Orsu/Oru East Federal Constituency of Imo State.

**HON. JUSTICE Y. HALILU
CHAIRMAN**

**HON. KADI M. G. ABUBAKAR
MEMBER I**

**HON. JUSTICE A. O. FAMILONI
MEMBER II**