

**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 THURSDAY, THE 7TH DAY OF SEPTEMBER, 2023

PETITION NO. EPT/IM/HR/12/2023

BETWEEN

1. ILO EZENWA COLLINS
2. LABOUR PARTY (LP)

PETITIONERS

AND

1. INDEPENDENT NATIONAL ELECTORAL
COMMISSION (INEC)
2. DIBIAGWU EUGENE OKECHUKWU
3. ALL PROGRESSIVES CONGRESS (APC)

RESPONDENTS

JUDGMENT

The 1st Petitioner herein, sponsored by the 2nd Petitioner, contested the election for a seat in the National Assembly House of Representatives for Oguta/Ohaji-Egbema/Oru West Federal Constituency of Imo State held on 25th February, 2023.

At the conclusion of the election, the 2nd Respondent, sponsored by the 3rd Respondent, was declared the winner and returned by the 1st Respondent. Being dissatisfied, the Petitioners filed this petition at the Registry of the National and State Houses of Assembly Election Petition Tribunal for Imo State.

In their petition filed on the 18th March, 2023, the Petitioners in Paragraph 19 specifically presented their petition on three (3) grounds thus:

- "19. The Petitioners state that the grounds upon which this petition is based are as follows:**
- a. The 2nd Respondent was not duly elected by majority of lawful votes cast at the election.**
 - b. The election of the 2nd Respondent is invalid by reason of non-compliance with the provisions of the Electoral Act, 2022.**
 - c. The election of the 2nd Respondent is invalid by reason of corrupt practices".**

The Petitioners pleaded copious facts in support of the grounds and listed documents to be relied upon. They sought the following reliefs in the petition:

- "a. That it be determined that the 2nd Respondent was not duly elected by a majority of lawful votes cast in the Federal House of**

Representatives of Nigeria election for Oguta/ Ohaji-Egbema/Oru West Federal Constituency, held on Saturday, 25th February, 2023 and therefore, the declaration and return of the 2nd Respondent by the 1st Respondent as the House of Representatives elect for the said Oguta/Ohaji-Egbema/Oru West Federal Constituency are unlawful, undue, null, void and of no effect.

- b. That it may be determined that the 1st Petitioner was duly and validly elected and ought to be returned as the Member of the Federal House of Representatives having polled the highest number of lawful votes cast at the election to the Federal House of Representatives of Nigeria for Oguta/Ohaji-Egbema/Oru West Federal Constituency held on Saturday 25th February, 2023.***
- c. That the 1st Petitioner be declared validly elected or returned in the said election.***
- d. AN ORDER directing the 1st Respondent to issue a Certificate of Return to the 1st Petitioner as the duly elected Member of the Federal House of Representatives of Nigeria for Oguta/Ohaji-Egbema/Oru West Federal Constituency.***
- e. AN ORDER declaring null and void the Certificate of Return wrongly issued to the 2nd Respondent by the 1st Respondent.***

IN THE ALTERNATIVE AND ONLY IN THE ALTERNATIVE

- f. That the said Federal House of Representatives of Nigeria election for Oguta/Ohaji-Egbema/Oru West Federal Constituency held on Saturday, 25th February, 2023 be nullified or cancelled and***

the 1st Respondent be directed to conduct a fresh election”.

Upon service of the petition on the Respondents, they filed their respective Replies denying all the material averments in the petition. The 1st Respondent filed her Reply on the 13th of April, 2023. The 2nd Respondent filed his Reply on the 17th of April, 2023, while the 3rd Respondent filed her Reply on the 11th of April, 2023.

Upon the service of Respondents’ Replies on the Petitioners, they responded by filing their Reply to the respective Replies of the Respondents. The Petitioners’ Reply to the Reply of the 1st Respondent was filed on the 15th of April, 2023. The Reply to the 2nd Respondent’s Reply was filed on 20th April, 2023 and the Reply to the 3rd Respondent’s Reply was also filed on 20th April, 2023.

Upon the close of pleadings, necessary pre-hearing session forms were issued. the parties filed their answers to the pre-hearing questions and donated issues for determination. Also during the pre-hearing, the 3rd Respondent on 17th May, 2023 filed two applications in Motion No. ***EPT/IM/HR/12^{M1}/2023*** and Motion No. ***EPT/IM/HR/12^{M2}/2023***.

The first application is for an order dismissing or striking out the petition for incompetence while the second application is for an order striking out

the Petitioners' Reply and the Further Written Statement on Oath of the Petitioners' witness, both dated and filed on 19th April, 2023. The Petitioners filed necessary processes to oppose the applications which were argued on the 23rd of May, 2023 and the rulings reserved till final Judgment as prescribed by 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 pre-hearing, session ended with the issuance of the pre-hearing scheduling report/order and trial commenced so soon thereafter. The parties adduced oral and documentary evidence in support of their respective cases at the end of which the Tribunal ordered the filing and exchange of final written address for adoption after which this case was reserved for Judgment.

RULING ON MOTION NO. EPT/IM/HR/12^{M1}/2023

This Application, dated and filed on the 17th of May, 2023, by the 3rd Respondent prayed for the dismissal or striking out of this petition on the ground that by reason of infraction of Section 77(2) and (3) of the Electoral Act, 2022, which required the 2nd Petitioner to maintain a register of its members and present same to the 1st Respondent not later than 30 days

before her primaries, and which register did not contain the name of the 1st Petitioner, he, the 1st Petitioner was not a member of the 2nd Petitioner and was thus disqualified as a candidate for the election to the House of Representatives for Oguta/Ohaji-Egbema/Oru West Federal Constituency, Imo State held on 25th of February, 2023 although the 1st Respondent wrongly included his name as the 2nd Petitioner's candidate for 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 the Counsel to the 3rd Respondent. The affidavit has a document titled "*Submission of Membership List of Labour Party Imo State*" attached to it as Exhibit 'A'. The summary of the deposition is that by Exhibit 'A', the 2nd Petitioner on the 6th of June 2022 submitted the register of its members to the 1st Respondent but the name of the 1st Petitioner was not contained therein. That the 1st Petitioner was not a member of the 2nd Petitioner and was not qualified to contest the general election to the House of Representatives for Oguta/Ohaji-Egbema/Oru West Federal Constituency held on 25th of February, 2023. That the 2nd petitioner had no candidate

for the election but the 1st Respondent wrongly included the 1st Petitioner's name as a candidate for the election.

Learned counsel to the 3rd Respondent, Eze Duruiheoma, SAN, in arguing the application adopted the written address filed in support wherein he identified a sole issue for determination viz:

"Whether the 2nd Petitioner had a candidate for the general election to the House of Representatives for Oguta/Ohaji-Egbema/Oru West Federal Constituency held on 25th of February, 2023 (hereinafter called "the general election")".

He submitted that by virtue of Section 65(2)(b) of the Constitution of the Federal Republic of Nigeria 1999, for anyone to be qualified to contest for a seat in the House of Representatives, he must be a member of a political party and must be duly sponsored as the party's candidate. He further submitted that Section 77(2) and (3) of the Electoral Act, 2022 required the political party to maintain a register of its members and make same available to the 1st Respondent not later than 30 days before the day for the party's primaries, congresses or conventions. He argued that the 2nd Petitioner's list of members in Exhibit 'A', forwarded to the 1st Respondent on 6th June, 2022, did not contain the 1st Petitioner's name and he was thus disqualified from being the 2nd Petitioner's candidate for

the general election and was wrongly featured by the 1st Respondent as a candidate. He posited that on this ground, the Petitioners cannot be declared as the winner of the election. He relied on ***APC VS. MARAFA (2020) 6 NWLR (PT. 1721) 373 @ 433***. He urged the Court to dismiss the petition.

In response to the 3rd Respondent's Application, the Petitioners filed a 6-paragraph counter affidavit deposed to by one Ifeanyi Stanley Onwubuariri, the Ward Chairman of the 2nd Petitioner in Mgbidi Ward 1, Oru West Local Government Area, Imo State. Attached to the affidavit as Exhibit 'A' is a photocopy of the Labour Party's Membership Card of the 1st Petitioner. The gist of the counter affidavit is that the 1st Petitioner is a card carrying member of the 2nd Petitioner, duly nominated and sponsored by the party to contest the election into the House of Representatives for Oguta/Ohaji-Egbema/Oru West Federal Constituency, which is the subject matter of this petition.

Learned counsel to the Petitioners donated three issues for determination in his adopted written address as follows:

"a. Whether the subject matter of the application is a pre-election matter.

- b. Whether the subject matter of this application is an internal affair of a party and same is not justiciable.**
- c. peradventure the above issues are decided against the Petitioners, whether the 3rd Respondent has proved its assertion that the 1st Petitioner was not a member of the Labour Party, 2nd Petitioner at the time of his sponsorship to contest the election”.**

Arguing the first issue, the Petitioners’ Counsel V. O. Nwadike, Esq. submitted that by virtue of Sections 285(9) & 14(a), (b), (c) of the 1999 Constitution (as amended) and Section 84(14) of the Electoral Act, 2022, the subject matter of this application is a pre-election issue which this Tribunal has no jurisdiction to entertain, which is already statute barred, and which the 3rd Respondent has no locus to sustain. He cited in support ***APM VS. INEC (2021) LPELR-18375 (SC)***.

On the second issue, counsel submitted that all issues pertaining to the membership of a political party such as the 2nd Petitioner, is an internal affair of the party, which is not justiciable and which the Courts will not inquire into. He relied on ***UFOMA VS. INEC (2017) LPELR-42079 (SC)***.

On the third issue, counsel submitted that the burden of proving the assertion that the 1st Petitioner is not a member of the 2nd Petitioner rests

on the 3rd Respondent who has made same by virtue of Section 131 of the Evidence Act, 2011. He argued that the 3rd Respondent failed to discharge that burden by his affidavit evidence and the Exhibit attached thereto. He contended that Exhibit 'A' is not the register envisaged by Section 77(2) of the Electoral Act, 2022 but the list of the 2nd Petitioner's leaders in Imo State. He further argued that even if Exhibit 'A' is considered as the register of the 2nd Petitioner's members as at 6th June, 2022, there is nothing placed before the Tribunal by the 3rd Respondent showing that the 1st Petitioner did not become a member of the 2nd Petitioner subsequent to that date and before the general elections into the House of Representatives for the Federal Constituency. Learned Counsel canvassed that under Section 65(d) of the Constitution there is no legal requirement for any candidate or contestant for a seat in the House of Representatives to be a member of a political party thirty days before her primaries in order to be qualified for the general election. He further argued that there is also nothing in the provisions of Section 77(2) and (3) of the Electoral Act, 2022 suggesting that the consequence of the omission or non-inclusion of a candidate's name in the political party's

register is the voiding of his candidacy for an election. He urged the Tribunal to dismiss this application as lacking in merit.

We have carefully considered the 3rd Respondent's Application and the Petitioners' response to same. To us, the simple issue for determination is:

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

In our candid opinion, the 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 name of the 1st Petitioner is not contained in the 2nd Petitioner's register of members forwarded to 1st Respondent pursuant to Section 77 of the Electoral Act and therefore 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 as 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 allied 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 omission or non-inclusion of the 1st Petitioner's name in the list of members of the 2nd Petitioner allegedly submitted to the 1st Respondent on 6th June, 2022 ahead of the party's primaries. It is fully robed in the toga of a pre-election matter notwithstanding the attempt 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 any primaries of the 2nd Petitioner. Therefore, it has no *locus* to challenge any infraction of the law pertaining thereto by another political party and belatedly too, many months after the occurrence of the alleged infraction. The cause of action, if any of 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 for non-qualification to contest an election 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 challenged the competence of the Petitioners to contest the general elections in her Reply and through 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 and incompetent and liable to be struck out. It is hereby struck out.

However, in case we are wrong to adjudge the 3rd Respondent's Application as incompetent, we shall endeavour to consider it on the merit. It is trite that he who asserts must prove, and in civil proceedings, the burden is on a party asserting a particular fact(s) to prove same or discharge the burden of proof on a balance of probabilities otherwise his action would fail.

Therefore, in this Application, the burden to prove that the 1st Petitioner is not a member of the 2nd Petitioner at the time of the vexed election, the subject matter of this Petition, rests squarely on the 3rd Respondent who has asserted same vide this Application.

It is noteworthy that the 3rd Respondent is a rival political party to the 2nd Petitioner. Nonetheless, she is claiming that the 1st Petitioner is not a member of the 2nd Petitioner and in proof of this she is relying on

Exhibit 'A', a letter titled "Submission of Membership List of Labour Party in Imo State" dated 6th June, 2022, addressed to the 2nd Respondent and signed by the 2nd Petitioner's State Chairman and Secretary with an attached 37-page list/schedule titled: "*Labour Party (LP) Local Government ExcOs and Wards*", containing the names of members of the 2nd Petitioner at Ward level, their phone numbers and positions in the party.

The 3rd Respondent has alleged that this said membership list which does not contain the name of the 1st Petitioner is the 2nd Petitioner's register of members, forwarded to the 2nd Respondent in compliance with the mandatory requirement of Section 77(3) of the Electoral Act, 2022.

We have carefully perused Exhibit 'A' and we observed that there is nothing in the content of the said letter and the attached list showing or suggesting that it was forwarded in compliance with any provisions of the Electoral Act, (Section 77 inclusive) or preparatory to any party primaries or the general election. It is the law that a document speaks for itself and what is not contained therein cannot be rightly read or imputed into it. See ***IKEMEFUNA VS. ILONDIOR (2018) LPELR-44840 (CA) 18.*** Furthermore, Exhibit 'A' is described as a list of members of Labour Party,

Imo State and not a register. Though they may appear synonymous, a list of members is not the same thing as a register of members. Section 77(3) of the Electoral Act is quite explicit on what is required from political parties. It is a register of members. What the 3rd Respondent has exhibited in proof of the alleged 1st Petitioner's non-membership of the 2nd Petitioner is a list of members at the Imo State level not a register of members nation-wide as envisaged by Section 77 of the Electoral Act, 2022. We therefore opine that without a duly certified and authenticated comprehensive register of the 2nd Petitioner placed before us by the Applicant, she cannot and has not proved that the 1st Petitioner is not a member of the 2nd Petitioner and that his name is not on the party's register.

In addition, the provisions of Section 77(2) of the Electoral Act, 2022 that political parties should submit the register of their members to the 2nd Respondent at least 30 days before their primaries, congresses or conventions is very plain and unambiguous. It is a pre-congress/pre-convention and pre-primaries requirement. It is not a pre-general election requirement. Therefore, the non-inclusion of the name of any candidate duly nominated and sponsored by a party for general election as the one

herein being contested cannot be a legitimate basis to question his qualification and candidature for the election.

Lastly, the Petitioners in refuting the 3rd Respondent's allegation that the 1st Petitioner is not a member of the 2nd Petitioner at the time of the election and therefore not qualified to contest the election, exhibited the membership card of the 1st Petitioner (Exhibit 'A'). A perusal of the Exhibit shows that the 1st Petitioner is a member of the 2nd Petitioner in Mgbidi Ward 1 of Oru West Local Government, Imo State with fully paid membership subscription from January, 2022 to December, 2023. The 3rd Respondent did not file any further affidavit to deny or counter this fact. It is therefore deemed admitted and an effective rebuttal of 3rd Respondent's allegation. See ***A.G. PLATEAU STATE VS. A.G NASSARAWA STATE (1005) SCNJ 120 @ 175.***

It need be said that it is a political party that determined who its members are and sets out the criteria for membership. It is an internal affair of the party and exclusive of other political parties. See ***GWEDE VS. INEC (2014) LPELR-23763 (SC) 122.*** It is also not for the 1st Respondent to determine who is a member of a political party and who is not. Her statutory duties and powers does not extend that. it is therefore

preposterous to argue as the 3rd Respondent has done herein that the omission of a name in the membership register that a political party is required to forward or make available to the 1st Respondent under Section 77 of the Electoral Act, 2022 is conclusive proof that a person is not a member of the party and is disqualified from being a candidate at the election. The argument is flawed and untenable. Does it mean that a person who joins a political party after the submission of the register to INEC is not a valid member of the party and is ineligible for any political aspiration unless and until his name enters the party's register? We think not. Does it also mean that a person whose name is in the register of members of a political party submitted to INEC cannot subsequently cease to be a member out of his own volition or for some other reasons? We also reason not. It is thus our humble view that the register of members that a party is requested to make available to INEC is not a sole determining factor of who are its members that are qualified to be sponsored as candidates for any general election.

Arising from the foregoing, it is our finding that the 3rd Respondent's Application herein is not only incompetent, but it is totally devoid of merit.

The sole issue for determination is resolved against her and the Application is hereby dismissed.

**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/12^{M2}/2023

By this Motion on Notice dated and filed on the 17th May, 2023, the 3rd Respondent prayed this Tribunal for the following reliefs:

"1. An Order striking out:

- i. The Petitioners' Reply dated 19th April, 2023;***
- ii. The Further Written Statement on Oath of Petitioners' witness sworn to on the 19th day of April, 2023;***

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 merely to deny the allegations of facts made in the 2nd Respondent's Reply, which is not permissible in law.

The application is supported with a 16-paragraph affidavit deposed to by Theresa Esesua Aguda, a Litigation Officer in the employment of

Counsel to the 3rd Respondent in this matter. The gist of the deposition is that the Petitioners used the opportunity of filing a Reply to the 3rd Respondent's Reply to bring in new facts tending to amend their petition and to add to its contents to the prejudice of the 3rd 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 3rd Respondent in his Reply.

Learned counsel to the 3rd Respondent, Eze Duruiheoma, SAN, in arguing the application adopted the written address filed in support wherein he formulated a sole issue for determination to wit:

"Whether the Petitioners' Reply dated 19th April, 2023; and the Further Written Statement on Oath of the Petitioners' witness sworn to on 19th April, 2023 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 (as amended)".

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 case of ***ORJI VS. UGOCHUKWU (2009) 14 NWLR (PT. 1161) 207 @ 296 – 297; DINGYADI VS. WAMAKO (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 the Petitioners' failed to frontload the Further Written Statement on Oath of LP1 when they filed their petition but are now trying to slip it in through their reply. He maintained that this is not proper at all. He referred to ***SANI VS. AKWE (2019) LPELR-48756 (CA); NGIGE VS. AKUNYILI (2011) LPELR-9194 (CA).*** Counsel submitted that to allow the Petitioners to rely on the said processes in this petition when the 3rd Respondent can no longer validly respond to them is unfair and prejudicial. He urged the Tribunal to strike out the two (2) processes.

In response to the 3rd Respondent's Application, the Petitioners filed a 9-paragraph counter affidavit deposed to by one Chidinma Nwadike, a

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 3rd Respondent in paragraphs 3(c) 5 and 6 of her Reply and supported same with the Petitioners' witness Further Written Statement on Oath.

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

"Whether the 3rd Respondent in his Reply to the petition raised new issues of facts in defence of his case which the petition had not dealt with".

Learned Petitioners' Counsel, V. O. Nwadike, Esq. submitted that pursuant to paragraph 16(1) of the First Schedule to the Electoral Act, 2022 a Reply is appropriate when it replies or answers to new issues of fact raised in a Respondent's Reply.

Counsel argued that in this case, the 3rd Respondent in paragraphs 3, 5 and 6 of her Reply raised a new issue of fact on the 1st Petitioner's alleged non-membership of the 2nd Petitioner. He submitted that this fresh issue necessitated the Petitioners' response by way of specific denial and

pleading of necessary facts in their Reply, with the accompanying Further deposition of LP1. 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 urged the Tribunal to dismiss the application as unmeritorious.

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

"Whether the Petitioners' Reply and the accompanying process are competent".

The Petitioners filed their Petition herein on the 18th of March, 2023. Upon service of same on the 3rd Respondent, she filed a Reply on the 11th of April, 2023 in response to which the Petitioners filed a Reply with the accompanying process herein challenged on 19th 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 Petitioners' reply does not run counter to the provisions of paragraph 14(1)".**

The import of the foregoing provision 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 3rd Respondent, we have critically examined and juxtaposed the averments in the Petitioners' Reply with the averments in the 3rd Respondent's Reply to the Petition and it is our candid view that the Petitioners in most of the paragraphs of their Reply restated or reiterated the earlier pleadings in their Petition and in a purported response to the Respondent's Reply, wherein no fresh issues were raised.

Specifically, paragraphs 1, 3, 4, 5 and 6 of the Reply are a restatement or reiteration of facts in the Petitioners' Petition. The aforesaid paragraphs in the Petitioners' Reply and the corresponding paragraphs in the Petitioners' witness Further Written Statement on Oath

are improper in a Reply and are patently incompetent. They are accordingly struck out.

However, it is our observation that the 3rd Respondent in paragraphs 3, 5 and 6 of her Reply raised the issue of the 1st Petitioner's non-membership of the 2nd Petitioner, alleging that he was neither qualified nor a candidate at the election herein challenged. This to our mind is a new issue raised by the 3rd Respondent in her defence which required a proper response from the Petitioners vide a Reply. Therefore, the averment of the Petitioners in paragraph 2 in response to this new issue in the Respondent's reply is quite appropriate and in order. Likewise, the corresponding deposition in the Petitioners' witness, LP1 Further Written Statement on Oath. They are not incompetent and we so hold.

In this vein, the 3rd Respondent's Application succeeds in part to the extent that only paragraphs 3, 4, 5, and 6 of the Petitioners' Reply, and the corresponding paragraphs in the Further Written Statement on Oath of LP1 accompanying same are struck out. The surviving averment and depositions in the challenged processes are valid in this Petition and we so hold.

**HON. JUSTICE Y. HALILU
CHAIRMAN**

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

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

The Petitioners opened their case on 2nd June, 2023 and closed it on 17th June, 2023. They called 29 witnesses and tendered 156 Exhibits. At the trial session of 6th June, 2023, the Petitioners' Counsel sought to tender Certified True Copies (CTC) of several statutory Forms to wit: EC8A(II), EC8B(II), EC8C(II), EC8D(II) used in the conduct of the election plus other documents such as the Bimodal Voters Accreditation System (BVAS) Report, Voters' Register in electronic form with certificates of compliance and receipts of payment for certification from the Bar. The documents were admitted in evidence as Exhibits '7' to '122'. On 17th June, 2023, learned Counsel also sought to tender some additional documents to wit: Forms EC40G, EC8A, EC8B from the Bar and they were admitted in evidence as Exhibits '154', '155' and '156' respectively. The Tribunal considers it unnecessary to list out these copious documents hereto but shall specifically refer to and make use of them as deemed relevant and appropriate in this Judgment.

Marcel Ezeocha, testified as the Petitioner's first witness (PW1). He adopted his written statement on oath on page 103 - 105 of the petition as his evidence-in-chief. He tendered his agent tag as 2nd Petitioner's ward collation agent for Orlu Ward 1, Oru West Local Government Area, Imo

State in the election and it was admitted in evidence as Exhibit '1'. He tendered duplicate copies of Form EC8A, the polling unit results, for thirteen polling units in the ward and they were admitted in evidence as Exhibit '2'. PW1 stated that as the Petitioners' Ward Collation Agent in his ward at the Federal Constituency election held on 25th February, 2023, he supervised the election from the beginning to the end, and received reports of electoral activities from the polling unit agents in all the 13 polling units in the ward. That the polling unit agents submitted Exhibit '2' to him which he scrutinized to deduce the lawful votes scored by the 2nd Respondent in each polling unit. He further stated that after the election, scanned copies of the originals of Exhibit '2' were uploaded on the 1st Respondent's Result Viewing Portal (IReV) by presiding officers using the Bimodal Voter Accreditation System (BVAS). That despite the low voters' turnout occasioned by insecurity, the 1st Respondent credited the 2nd and 3rd Respondents with non-existent votes. Under cross-examination, the PW1 said he is a registered voter in polling unit 001 in his ward. He admitted that he was not appointed as a polling unit agent and did not function as such. He admitted that he narrated the facts in his adopted deposition to the Petitioners' lawyer in Igbo language.

Ifeanyi Onwubuariri is the Petitioners' second witness (PW2). He adopted his written deposition on page 111-114 of the petition as his evidence-in-chief. He tendered his agent tag as 2nd Petitioner's ward collation agent for Mgbidi1 Ward, Oru West Local Government Area, Imo State in the election and same was admitted as Exhibit '3'. He tendered duplicate copies of Form EC8A, polling unit results, for twenty polling units in the ward and they were admitted in evidence as Exhibit '4'. The PW2 swore that as the Petitioner's ward collation agent at the Federal Constituency election held on 25th February, 2023, he supervised the election from start to finish and received reports of electoral activities from the polling unit agents in all the twenty polling units in the ward. That the polling unit agents submitted Exhibit '3' to him which he scrutinized to deduce the lawful votes scored by the 2nd Respondent in each polling unit. He stated further that after the election, scanned copies of the originals of Exhibit '4' were uploaded on the 1st Respondent's IReV Portal by the Presiding Officers, using the BVAs machines. That despite the low voters' turnout occasioned by prevalent insecurity, the 1st Respondent credited the 2nd and 3rd Respondents with non-existent votes in the polling units across the ward. Under cross-examination, the witness stated that he is

a registered voter at polling unit 009 in his ward. He admitted he was appointed as a ward collation agent but also doubled as a polling unit agent in the election and signed Exhibit '4' for Polling Unit 009.

Obinna Okafor testified as the Petitioners' third witness (PW3). He adopted his written statement on oath on page 106 – 108 of the petition as his evidence-in-chief. He tendered his agent tag as 2nd Petitioner's Ward Collation Agent for Ozara Ward 1, Oru West Local Government Area, Imo State and it was admitted in evidence as Exhibit '5'. He tendered duplicate copies of Form EC8A, polling unit results, for seven polling units in his ward and they were admitted in evidence as Exhibit '6'. The remainder of his testimony is in agreement with that of PW1 and PW2 and needs no restatement herein. Under cross-examination, he stated that he is a registered voter at polling unit 003 in his ward. He admitted he was not a polling unit agent in the election. He admitted he was not physically present in all the polling units in the ward on the day of the election.

Okey Oguchienci testified as the Petitioners' fourth witness (PW4). He adopted his written deposition on page 115 – 118 of the petition as his evidence-in-chief. He tendered his agent tag as the 2nd Petitioner's ward collation agent for Mgbidi II Ward, Oru West Local Government Area, Imo

State and it was admitted in evidence as Exhibit '114'. He tendered duplicate copies of Form EC8A, polling unit results, for twenty-eight polling units in his ward and they were admitted in evidence as Exhibit '115'. The rest of his testimony is in harmony with that of PW1, PW2 and PW3. Under cross-examination, he stated that he did not function as a polling unit agent during the election. He admitted that the polling unit agents who submitted Exhibit '115' to him are still alive. He insisted that his adopted deposition is based on facts within his knowledge.

Cecilia Okenkwu is the Petitioners' fifth witness (PW5). She adopted her written statement on oath on page 179-180 of the petition as her evidence-in-chief. She tendered her tag as 2nd Petitioner's polling unit agent for her polling unit 016/01/006 in Nempi/Eleh Ward, Oru West Local Government Area and it was admitted in evidence as Exhibit '116'. She stated that there was no election in her polling unit on 25th February, 2023 because the 1st Respondent officials did not come to the polling unit to conduct election. That consequently, she and other registered voters who wanted to vote in the polling unit were disenfranchised. That she would have voted for the Petitioners if the election was conducted. That despite the fact that the prevalent insecurity greatly affected the holding of the

election, the 1st Respondent credited the 2nd and 3rd Respondents with huge non-existent votes from the polling unit where no election was held because of insecurity. When she was cross-examined, the witness asserted that she served as polling unit agent in polling unit 006 where she registered as a voter. She admitted there were no incidents of violence on the election day at the polling unit. she insisted that she made and signed her deposition. She signed her specimen signature at the instance of 3rd Respondent's Counsel and it was tendered and admitted in evidence as Exhibit '117' to contradict her.

Olachi Nwugo, on subpoena, testified as Petitioners' sixth witness (PW6). She deposed that she is a Chief Legal Officer in the Legal Services Department of the 1st Respondent in Imo State. She identified Exhibit '7'. The Certified True Copy (CTC) of the BVAS Accreditation Report of the election of the Federal Constituency but stated she could not confirm its authenticity because she is not working in the Information and Communication Technology (ICT) Department of the 1st Respondent that issued it. She further stated that the 1st Respondent deployed the BVAS machine for accreditation and verification of voters at the election and it was also used by Presiding Officers to upload the snapped copies of polling

unit results to the IReV Portal. That the election results were collated at every level, from the polling unit level to the Federal Constituency Collation Centre level by the 1st Respondent's officials before the declaration of the Result by the Returning Officer. Under cross examination the PW6 admitted she did not play any role in the election for Oguta/Ohaji-Egbema/Oru West Federal Constituency on 25th February, 2023. She conceded that the BVAS machine is different from the BVAS Report and that the authentic information/data on accreditation by BVAS is derived from the BVAS machine itself.

Celina Ejikonye is the Petitioners' seventh witness (PW7). She adopted her written statement on oath on page 155-156 of the petition as her evidence-in-chief. She tendered her letter of appointment as 2nd Petitioner's polling unit agent for polling unit 006/24/01/002 Nempi/Eleh Ward, Oru West Local Government Area in the election and it was admitted in evidence as Exhibit '118'. She swore that election did not hold in her polling unit on 25th February, 2023 and she and other registered voters were thus disenfranchised. That despite the prevalent insecurity situation, which affected the holding of the election, the 1st Respondent credited the 2nd and 3rd Respondents with non-existent votes. Under cross-

examination, the PW7 said she narrated the facts in her deposition to the Petitioners' lawyer in Igbo language. She insisted that she made and signed her adopted deposition. She signed her specimen signature at the instance of the 3rd Respondent's Counsel and it was tendered and admitted as Exhibit '119' to contradict her. She maintained that no election was conducted in her polling unit.

Justin Ezeremobi testified as the Petitioners' eighth witness (PW8). He adopted his written statement on oath on page 221-222 of the petition as his evidence-in-chief. He tendered his letter of appointment as 2nd Petitioner's polling unit agent for polling unit 016/24/01/013, Nempi/Eleh Ward, Oru West Local Government Area in the election and same was admitted in evidence as Exhibit '120'. He swore that election did not hold in his polling unit on 25th February, 2023. The rest of his testimony is in sync with that of PW4. He stated that despite the fact that no election held in the polling unit due to insecurity, the 1st Respondent credited the 2nd and 3rd Respondents with non-existent votes from the polling unit. Under cross-examination, he stated that there was no violence in his polling unit on election day. He asserted that he is a registered voter in polling unit 011 in his ward. He insisted that he made and signed his

adopted deposition. He signed his specimen signature at the instance of 3rd Respondent's Counsel and it was tendered and admitted in evidence as Exhibit '121'.

Evelyn Ejinkeoye is the Petitioners' ninth witness (PW9). She adopted her written deposition on page 197-198 of the petition as her evidence-in-chief. She tendered her letter of appointment as 2nd Petitioner's polling unit agent for polling unit 016/24/01/009, Nempi/Eleh Ward, Oru West Local Government Area in the election and it was admitted in evidence as Exhibit '122'. She deposed that election did not hold in her polling unit on 25th February, 2023. That she was disenfranchised with other voters in the polling unit. The rest of her testimony is in agreement with that of PW4, PW7 and PW8. She said that despite the fact that election did not hold due to insecurity, the 1st Respondent credited the 2nd and 3rd Respondents with huge, non-existent votes in the polling unit. Under cross examination, the PW9 said there was no violence in the polling unit on election day. She admitted that she narrated the facts in her adopted deposition to the Petitioners' lawyer in Igbo language.

Augustine Unaigwe testified as the Petitioners' tenth witness (PW10). He adopted his written statement on oath on page 215-216 of

the petition as his evidence-in-chief. He tendered his letter of appointment as 2nd Petitioner's polling unit agent for polling unit 016/24/01/012 Nempi/Eleh Ward, Oru West Local Government Area in the election and it was admitted in evidence as Exhibit '123'. He stated that election did not hold in his polling unit on 25th February, 2023 due to prevalent insecurity. That despite the non-holding of election, the 1st Respondent credited the 2nd and 3rd Respondents with huge votes from the polling units. When he was cross-examined, he stated that he narrated the facts in his adopted deposition to Petitioners' lawyer in Igbo language. He said he is a registered voter in polling unit 012 in his ward. He insisted he was at the polling unit from morning till evening on the election day and that there was no election.

Hycenta Onyima testified as the Petitioners' eleventh witness (PW11). She adopted her written deposition on page 191–192 of the petition as her evidence-in-chief. She tendered her letter of appointment as 2nd Petitioner's agent for polling unit 016/24/01/008 Nempi/Eleh Ward, Oru West Local Government Area in the election and it was admitted in evidence as Exhibit '124'. She stated that election did not hold in her polling unit on 25th February, 2023. That she was disenfranchised with

other voters in the polling unit. That despite the fact that no election was conducted in the polling unit owing to prevalent insecurity, the 1st Respondent credited the 2nd and 3rd Respondents with non-existent votes from the polling unit. When she was cross-examined, the witness maintained that she made her written deposition. She admitted that she narrated the facts in the deposition to the Petitioners' lawyer in Igbo language. She insisted that there was no election in her polling unit.

Beatrice Nwachukwu testified as the Petitioners' twelfth witness (PW12). She adopted her written statement on oath on page 227-228 of the petition as her evidence-in-chief. She tendered her agent tag as 2nd Petitioners' polling unit agent for polling unit 016/24/01/014, Nempi/Eleh Ward, Oru West Local Government Area in the election and it was admitted in evidence as Exhibit '125'. She stated that there was no election in her polling unit on 25th February, 2023. That despite the non-holding of election due to insecurity, the 1st Respondent credited the 2nd and 3rd Respondents with non-existent votes from the polling unit. Under cross-examination, the witness said there was peace in the polling unit on election day but there was voter-apathy due to the insecurity situation. She admitted she narrated the facts in her deposition to the Petitioners'

lawyer in Igbo language. She maintained that she made and signed her deposition.

Okonkwo Bernard is the Petitioners' thirteenth witness (PW13). He adopted his written deposition on page 151-152 of the petition as his evidence-in-chief. He tendered his Permanent Voter's Card (PVC) and it was admitted in evidence as Exhibit '126'. He testified that he is a registered voter in polling unit 016/24/01/002, Nempi/Eleh Ward, Oru West Local Government Area in the election. That no election was conducted in the polling unit on 25th February, 2023. That he could not vote and was thus disfranchised with other registered voters who wanted to vote. That he would have voted for the Petitioners if the election held. That despite the fact that no election held due to prevalent insecurity, the 1st Respondent credited the 2nd and 3rd Respondents with non-existent votes from the polling unit. Under cross examination he admitted that there was no form of violence at the polling unit on the election day but there was voters' apathy due to insecurity. He maintained that he made and signed his deposition. He signed his specimen signature at the instance of 3rd Respondent's Counsel and it was tendered and admitted in evidence as Exhibit '120' to discredit him.

Oyinye Okafor, on subpoena, testified as the Petitioners' fourteenth witness (PW14). She stated that she works in the ICT Department, Headquarters office, Abuja of the 1st Respondent. She tendered two letters of authority issued to her by the 1st Respondent to testify and they were admitted in evidence as Exhibit '128'. She told the Tribunal that the BVAS machine is a technological device used by the 1st Respondent for the accreditation of voters during the election and to upload the election results on the IReV portal after the election. She identified Exhibits '7' and '8' as the CTC of BVAS accreditation Report for the Oguta/Ohaji-Egbema/Oru West Federal Constituency election held on 25th February, 2023. She identified Exhibit '42' as the receipt of payment for certification of the results downloaded from the IReV. She also identified Exhibit '43' to '112' as Certified True Copies (CTC) of the results downloaded from the IReV portal. Under cross-examination, the witness stated that she did not participate in the conduct of the election at Oguta/Ohaji-Egbema/Oru West Federal Constituency election on 25th February, 2023. She admitted that she did not operate any BVAS machine at the election and did not sign Exhibit '8', the certificate of compliance. She maintained she came

to testify upon the subpoena issued by the Tribunal to the ICT Department of the 1st Respondent and denied being on a frolic of her own.

Asiegbulem Edith Nwanneka testified as the Petitioners' fifteenth witness (PW15). She adopted her written deposition on page 157 – 158 of the petition as her evidence-in-chief. She tendered her Permanent Voter's Card (PVC) and it was admitted in evidence as Exhibit '129'. She stated that she is a registered voter in polling unit 016/2401/003, Nempi/Eleh Ward, Oru West Local Government Area in the election. She swore that election did not hold in the polling unit on 25th February, 2023. That she could not vote and was thus disfranchised with other registered voters who wanted to vote for the Petitioners. That despite the fact that election did not hold due to prevalent insecurity, the 1st Respondent went ahead to credit the 2nd and 3rd Respondents with non-existent votes from the polling unit. Under cross-examination, the PW15 said there was violence on the day of election which occasioned voters' apathy. She maintained that she was at the polling unit from morning till evening on the election day and no election was conducted. She admitted that she narrated the facts in her deposition to the Petitioners' lawyer in Igbo language.

Chigozie Okafor (PW16) adopted his written deposition on page 183–184 of the petition as his evidence-in-chief. He tendered his Permanent Voter’s Card (PVC) and it was admitted in evidence as Exhibit ‘130’. He testified that he is a registered voter in polling unit 016/24/01/007 in Nempi/Eleh Ward, Oru West Local Government Area in the election. He deposed that election was not conducted in the polling unit on 25th February, 2023. That he could not vote and was disfranchised with other registered voters who wanted to vote for the Petitioners. That although election did not hold owing to the insecurity situation, the 1st Respondent credited the 2nd and 3rd Respondents with non-existent votes from the polling unit. When he was cross-examined, he asserted that there was no violence in the polling unit on that day. He admitted that he narrated the facts in his deposition to the Petitioners’ lawyer in Igbo language. He maintained that he made and signed his deposition. He signed his specimen signature at the instance of 3rd Respondent’s Counsel and it was tendered and admitted in evidence as Exhibit ‘131’.

Chukwube Clementina (PW17) adopted her written statement on oath on page 159–160 of the petition as her evidence-in-chief. She tendered her Permanent Voter’s Card (PVC) and it was admitted in

evidence as Exhibit `132`. She deposed that she is a registered voter in polling unit 016/24/01/003 in Nempi/Eleh Ward, Oru West Local Government Area in the election. She said that election did not hold in the polling unit on 25th February, 2023 and therefore she could not vote and was disenfranchised with other voters who wished to vote for the Petitioners. She stated that though the election did not hold due to the insecurity situation, the 1st Respondent credited the 2nd and 3rd Respondents with votes from the polling unit. Under cross-examination, the witness stated that there was no violence in the community and the polling unit on the election day. She maintained that she was present at the polling unit throughout the day and no election held whatsoever. She admitted that she narrated the facts in her deposition to the Petitioners' lawyer in Igbo language.

Okechukwu Amadi (PW18) adopted his written deposition on page 143-144 of the petition as his evidence-in-chief. He tendered his agent card as the 2nd Petitioner's ward collation agent for Umuapu Ward, Ohaji Egbema Local Government Area in the election and it was admitted in evidence as Exhibit `131`. He tendered a duplicate of Form EC8A, the polling unit result for polling unit 002 in the ward and it was admitted in

evidence as Exhibit '134'. The witness stated that as the 2nd Petitioner's Ward Collation Agent at the Federal Constituency election of 25th February, 2023, he supervised the election from the beginning to the end and received reports of electoral activities from polling unit agents in the ward. That the polling unit agent submitted Exhibit '134' to him which he scrutinized and discovered that 64 lawful votes cast for the Petitioners were omitted by the 1st Respondent in the computation of scores of the candidates at the election. That scanned copies of the polling unit results were uploaded on the IReV portal of the 1st Respondent by the presiding officers, using the BVAS machine. When he was cross-examined, he admitted that he did not function as a polling unit agent during the election. He admitted that his testimony of events at polling unit 002 is based on what the polling unit agent told him and that the agent is alive. He insisted that he made and signed his deposition. He gave a specimen of his signature at the instance of 3rd Respondent's Counsel and same was tendered and admitted in evidence as Exhibit '135' to contradict him.

Umar Caleb (PW19) adopted his written statement on oath on page 141–142 of the petition as is evidence-in-chief. He stated that as the 2nd Petitioner's ward collation agent for Obitti/Mgbidi Ward, Ohaji-Egbema

Local Government Area in the election held on 25th February, 2023, he supervised the election and received electoral activities report and polling unit results from all the polling unit agents in his ward. That he scrutinized the results and deduced therefrom the lawful votes scored by the 2nd Respondent in four polling units in the ward. That the presiding officer uploaded scanned copies of the polling unit results on the IReV portal of the 1st Respondent with the use of the BVAS machine. Under cross-examination, the witness stated that he is a registered voter in polling unit 001 in his ward. He admitted that he did not function as a polling unit agent in the election. He admitted that the polling unit agent reported the facts of what happened in their polling units to him though he moved round the polling units to monitor the election.

Theo Igwebe testified as the Petitioners' twentieth witness (PW20). He adopted his written statement on oath on page 54-99 of the petition as his evidence-in-chief. He tendered his agent card as the 2nd Petitioner's Local Government Area Collation Agent in the election and it was admitted in evidence as Exhibit '136'. He tendered the Petitioners' application for the BVAS Report and it was admitted in evidence as Exhibit '137'. He tendered the official receipt of payment for CTCs of Form EC8As, seven

on-line Newspaper Reports with Certificate of Compliance and they were admitted in evidence as Exhibits '138' and '139' respectively. He testified that he is the Petitioners' Oru West Local Government Area Collation Agent and doubled as the Federal Constituency Collation Agent. That he was also the Director General of the 1st Petitioner's Campaign Organization for the election.

According to the witness, the 1st Petitioner and the 2nd Respondent were candidates of their respective political parties, LP and PDP, in the election of Oguta/Ohaji-Egbema/ Oru West Federal Constituency, Imo State held on 25th February, 2023. That at the end of the election, the 1st Respondent returned and declared the 2nd Respondent as the winner of the election with a total vote score of 35,191 as against the 1st Petitioner who allegedly scored 7,568. The witness swore that the 2nd Respondent was not duly elected by the majority of lawful votes cast at the election and his election is invalid by reason of non-compliance with the provisions of the Electoral Act, 2022 and corrupt practices. He stated that the 1st Respondent credited the 2nd Respondent with 29,829 votes from 124 polling across the Federal Constituency where elections did not hold because of prevalent insecurity. That the 1st Respondent also failed to

properly collate votes particularly between the polling unit level and ward collation level across the Federal Constituency. That the true result upon a proper computation of the lawful votes cast at the election established that the 1st Petitioner scored 6,706 votes while the 2nd Respondent scored 5,362 votes and the Petitioners therefore deserved to be returned and declared as the winners of the election. The PW20 further deposed that election did not hold nor result declared in seven named Wards in Oguta Local Government, one Ward in Ohaji-Egbema Local Government and four Wards in Oru West Local Government Areas. That the total number of votes cast as collated by the 1st Respondent in the polling units across the Federal Constituency are inconsistent with the number of duly accredited voters. That if the unlawful votes credited to the 2nd Respondent are nullified, it is the 1st Petitioner that would have the majority of valid votes scored. He prayed the Tribunal to grant the reliefs sought by the Petitioners.

Under cross-examination, the PW20 admitted that he played no one role besides that of the Petitioners' Local Government Area Collation Agent in the election. He admitted that the facts in his adopted deposition were based partly on what he personally observed and partly on what was

relayed to him by polling unit agents. He admitted that he was not physically present at the polling units across the Federal constituency during the election. He conceded that the Petitioners had polling unit agents deployed across the Federal Constituency. He stated that his ward is Nempi/Eleh Ward and maintained that election was not conducted at all in the Ward. He expressed surprise that the 1st Respondent posted results for polling units in Nempi-Eleh Ward on the IReV portal where no election was conducted.

Clementina Omoreolyeugwu (PW21) adopted her written deposition on pages 278 – 288 of the petition as her evidence-in-chief. She tendered her Permanent Voter's Card (PVC) and it was admitted in evidence as Exhibit '140'. She testified that she is a registered voter in polling unit 016/24/06/004, Ohakpu Ward, Oru West Local Government Area in the election. She further deposed that election did not hold in the polling unit on 25th February, 2023. That she could not vote and was disenfranchised with other registered voters who wanted to vote for the Petitioners. That though election did not hold due to the prevalent insecurity in the area, the 1st Respondent credited the 2nd and 3rd Respondents with non-existent votes from the polling unit. Under cross-examination, she admitted that

she did not have the voters' register of her polling unit. She maintained that she was at her polling unit to vote on the day of the election but the election was not held. She admitted she narrated the facts in her deposition to the Petitioners' lawyer in Igbo language.

Christian Ubaleku (PW22) adopted his written statement on oath on page 297–298 of the petition as his evidence-in-chief. He tendered his Permanent Voter's Card (PVC) and it was admitted in evidence as Exhibit '141'. He stated that he is a registered voter in polling unit 016/24/06/006, Ohakpu Ward, Oru West Local Government Area in the election. That election did not hold in the polling unit on 25th February, 2023 and that he could not vote and was disenfranchised with other voters who wanted to vote for the Petitioners. That though election was not conducted, the 1st Petitioner allocated non-existent votes to the 2nd and 3rd Respondents from the polling unit. When he was cross-examined he asserted that there was violence in the polling unit on the election day but it did not deter voters from coming out to vote. He admitted that he narrated the facts in his adopted deposition to the Petitioners' lawyer in Igbo language. He maintained that he made and signed his deposition. He gave a specimen

of his signature at the instance of the 3rd Respondent's Counsel and it was tendered and admitted in evidence as Exhibit '142' to contradict him.

Onyinyechi Okwuchukwu (PW23) adopted her written statement on oath on page 275-276 of the petition, as her evidence-in-chief. She tendered her Permanent Voter's Card (PVC) and it was admitted in evidence as Exhibit '143'. She stated that she is a registered voter in polling unit 016/24/06/002, Ohakpu Ward, Oru West Local Government Area in the election. That election did not hold in the polling unit on 25th February, 2023. That she could not vote and was thus disenfranchised alongside other voters who wished to vote for the Petitioners. That the 1st Respondent nonetheless assigned non-existent votes to the 2nd and 3rd Respondents from the polling unit where election was not conducted due to insecurity. Under cross-examination, she stated that there was violence in the community on the election day which resulted in voters' apathy. She admitted that she narrated the facts in her deposition to the Petitioners' lawyer in Igbo language. She insisted that she made and signed her deposition. She signed a specimen signature at the instance of 3rd Respondents Counsel and same was tendered and admitted in evidence as Exhibit '144' to discredit her testimony.

Obiefule Collins Chukwuebuke (PW24) adopted his written deposition on page 289-290 of the petition as his evidence-in-chief. He swore that he was the polling unit agent of the 2nd Petitioner for polling unit 016/24/06/004, Ohakpu Ward, Oru West Local Government Area in the election. He said that no election was conducted in the polling unit on 25th February, 2023. That despite the non-holding of election due to the insecurity situation, the 1st Respondent credited the 2nd and 3rd Respondents with non-existent votes from the polling unit. Under cross-examination, he stated that he is a registered voter at polling unit 004 and was not a polling unit agent. He admitted that he narrated the facts in his deposition to the Petitioners' lawyer in Igbo language. He maintained that he made and signed his adopted deposition. He signed his specimen signature at the request of 3rd Respondent's Counsel. It was tendered and admitted in-evidence as Exhibit '145' to contradict him.

Oputa Nduka (PW25) adopted his written statement on oath on page 122-124 of the petition as his evidence-in-chief. He tendered his agent tag as 2nd Petitioners' ward collation agent for Oguta B Ward, Oguta Local Government Area, Imo State in the election and it was admitted in evidence as Exhibit '146'. He also tendered the duplicate of form EC8A,

polling unit result, for a polling unit in the ward and it was admitted in evidence as Exhibit '147'. He testified that as the 2nd Petitioner's ward collation agent at the Federal Constituency election of 25th February, 2023, he supervised the election and received reports of electoral activities from polling unit agents in his ward. That in that capacity, the polling unit agent submitted Exhibit '147' to him and he deduced that 47 and 9 lawful votes cast for the 1st Petitioner in two polling units respectively were omitted by the 1st Respondent in the computation of the score of candidates in the ward collation result. That scanned copies of the polling units' results were uploaded with the BVAs to the 1st Respondent IReV portal by the presiding officers. That the prevalent insecurity greatly affected the turnout of votes negatively. Under cross-examination, he admitted that he is not a registered voter in the two polling units. He maintained that he received Exhibit '147' from the polling unit's agent. He admitted that he narrated the facts in his deposition to the Petitioners' lawyer in Igbo language. He admitted that Exhibit '147' was part of the report he received from the polling unit agent.

Eze Martins (PW26) adopted his written statement on oath on page 307-308 of the petition as his evidence-in-chief. He tendered his letter of

appointment as the 2nd Petitioner's polling unit agent for polling unit 016/24/06/007, Ohakpu Ward, Oru West Local Government Area in the election and it was admitted in evidence as Exhibit '148'. He deposed that there was no election in his polling unit on 25th February, 2023 due to insecurity but the 1st Respondent ascribed non-existent votes to the 2nd and 3rd Respondents from the polling unit. When he was cross-examined, he maintained that election was not conducted in the polling unit on the election day. He insisted that he made and signed his deposition. He signed his specimen signature at the instance of the 3rd Respondent's Counsel which was tendered and admitted in evidence as Exhibit '149'.

Nsofor Nosike testified as the Petitioners' twenty-seventh witness (PW27). He adopted his written deposition on page 119-120 of the petition as his evidence-in-chief. He tendered his appointment letter as 2nd Petitioner's ward collation agent for Oguta A Ward, Oguta Local Government Area in the election and it was admitted as Exhibit '150'. He also tendered Form EC8A, polling unit result for one polling unit in his ward and it was admitted in evidence as Exhibit '151'. The PW27 testified that in his capacity as the 2nd Petitioner's ward collation agent at the Federal Constituency election held on 25th February, 2023, he supervised the

election and received reports of electoral activities and polling unit results from polling unit agents in his ward. He stated that Exhibit '151' was submitted to him by the polling unit agent and upon a close scrutiny he realized that 57 lawful votes for the 1st Petitioner were omitted by the 1st Respondent in the computation of scores of candidates in the ward collation results sheet. That the scanned copies of the polling units result of his ward were uploaded on the 1st Respondent's IReV portal with the BVAS by the Presiding Officers. Under cross-examination, the witness answered that there are 51 polling units in his ward. He admitted that Exhibit '151' is the result sheet for polling unit 014 while his testimony referenced polling unit result for polling unit 009. He admitted he did not function as a polling unit agent and maintained that he received Exhibit '151' from the polling unit agent.

Madukazor Prince is the Petitioners' twenty-eighth witness (PW28). He adopted his written deposition on page 319-320 of the petition as his evidence-in-chief. He tendered his letter of appointment as 2nd Petitioner's polling unit agent for polling unit 016/24/06/030, Mgbidi II Ward, Oru West Local Government Area in the election and it was admitted in evidence as Exhibit '152'. The witness testified that election did not hold

in the polling unit on 25th February, 2023. That the prevalent insecurity greatly affected the holding of the election but the 1st Respondent proceeded to credit the 2nd and 3rd Respondents with non-existent votes from the polling unit where no election was conducted. Under cross-examination, the PW28 admitted that there was no violence on the day of the election. He maintained that the 1st Respondent did not conduct any election whatsoever in the polling unit.

Ikwame Emmanuel (PW29) testified as the Petitioners' last witness. He adopted his written statement on oath on page 313-314 of the petition as his evidence-in-chief. He tendered his letter of appointment as the 2nd Petitioners' polling unit agent for polling unit 016/24/06/025, Mgbidi II Ward, Oru West Local Government Area in the election and it was admitted in evidence as Exhibit '153'. He swore that there was no election in his polling unit on 25th February, 2023. That despite the fact that no election was conducted due to prevalent insecurity in the area, the 1st Respondent ascribed non-existent votes to the 2nd and 3rd Respondents from the polling unit where there was no election. When he was cross-examined, the PW29 said he is a registered voter but without the voter's register for

his polling unit 025. He insisted that election did not hold at all in the polling unit.

It was upon the conclusion of the evidence of PW29 that the Petitioners' Counsel closed their case.

The Respondents opened their case on 8th July, 2023 and closed on 14th July, 2023. the 1st Respondent called no witness and tendered no documentary evidence. The 2nd Respondent called seven witnesses and tendered 13 exhibits. the 3rd Respondent called one witness and tendered 3 exhibits.

Metu Franklin Fabian testified as the 2nd Respondent's first witness (DW1). He adopted his written statement on oath on page 113–115 of the 2nd Respondent's Reply as his evidence-in-chief. He tendered his Permanent Voter's Card (PVC) and same was admitted in evidence as Exhibit 'D1'. He stated that he is a registered voter in polling unit 013, Nempi/Elem Ward, Oru West Local Government Area in the election. That election duly held at the polling unit on 25th February, 2023. That he was duly accredited with the BVAS machine by the 1st Respondent's staff who came to conduct the election. That thereafter, he was given the ballot paper and he cast his vote. That at the end of the voting exercise, the

votes were counted and the results entered into the appropriate result sheets and the winner announced. That the 2nd Respondent won the election in the polling unit. That the exercise was peaceful all through. Under cross-examination, he maintained that election held in the polling unit and that security officials were on ground to maintain law and order. He denied any knowledge of a sit-at-home announcement by IPOB concerning the election.

Kenneth Okolie testified as the second witness (DW2) for the 2nd Respondent. He adopted his written deposition on page 131–133 of the 2nd Respondent's Reply as his evidence-in-chief. He tendered his Permanent Voter's Card (PVC) and it was admitted in evidence as Exhibit 'D2'. He stated that he is a registered voter in polling unit 19, Nempi/Eleh Ward, Oru West Local Government Area in the election. He swore that election duly held in his polling unit on 25th February, 2023 and he was duly accredited and voted at the election. The rest of his testimony on the conduct of the election is on all fours with that of PW1. Under cross-examination, he stated that the election held in a peaceful atmosphere devoid of any violence. He maintained that he was duly accredited by 1st Respondent's officials using the BVAS machine and his name was ticked

on the voters' register. He admitted that there was a sit-at-home announcement by IPOB concerning the election but the election still held.

Aladi Silas (DW3) adopted his written statement on oath on page 140–142 of the 2nd Respondent's Reply as his evidence-in-chief. He tendered his Permanent Voter's Card (PVC) and same was admitted in evidence as Exhibit 'D3'. He deposed that he is a registered voter in polling unit 001, Ohakpu Ward, Oru West Local Government Area in the election. That there was election in the polling unit on 25th February, 2023 in which he participated by voting for his choice candidate. The remainder of his testimony on the conduct of the election is same with that of the DW1 and DW2. Under cross-examination, he maintained that he was accredited by poll officials with the BVAS machine and voted thereafter.

Stanley Okwuosha (DW4) adopted his written deposition on page 53–55 of the 2nd Respondent's Reply as his evidence-in-chief. He tendered his Permanent Voter's Card (PVC) and his letter of appointment as the 3rd Respondent's Ward Collation Agent for Egbema A Ward in Ohaji-Egbema Local Government Area in the election. They were admitted in evidence as Exhibits 'D4' and 'D5' respectively. He tendered one Form EC8B(II), Ward Collation Result Sheet, for his Ward and it was admitted in evidence

as Exhibit 'D6'. The witness stated that he functioned as the Ward Collation Agent of the 2nd and 3rd Respondents for his Ward at the election held on 25th February, 2023. That he was present at the Ward Collation Centre in the evening of that day when poll officials and polling unit agents arrived the centre with polling unit results for the Ward Collation exercise. That the polling unit results for the 25 polling units in the ward were collated by INEC officials and entered in the appropriate forms. That as a Ward Collation Agent, he was given a duplicate copy of the Ward Collation Result. That the 2nd Respondent won the election in his Ward. Under cross-examination, he maintained that the polling unit results were submitted by presiding officers of the polling units to the INEC ward collation officers who entered same in Exhibit 'D6'.

Obodoeze Cosmas testified as the 2nd Respondent's fifth witness (DW5). He adopted his written statement on oath on page 155 – 157 of the 2nd Respondent's Reply as his evidence-in-chief. He tendered his Permanent Voter's Card (PVC) and it was admitted in evidence as Exhibit 'D7'. He stated that he is a registered voter in polling unit 006, Ohakpu Ward, Oru West Local Government Area in the election. He deposed that there was election in his polling unit on 25th February, 2023 in which he

participated by voting. The remaining aspect of his testimony on the conduct of the election are in tandem with that of DW1, DW2 and DW3. Under cross-examination, he maintained that the election was held in a peaceful atmosphere and was not marred by any violence or insecurity.

Magnus Chisom (DW6) adopted his written deposition on pages 20 – 22 of the 2nd Respondent's Reply as his evidence-in-chief. He tendered his Permanent Voter's Card (PVC) and letter of appointment as 3rd Respondent's Ward Collation Agent for Nempi/Elem Ward 1, Oru West Local Government Area in the election and they were admitted in evidence as Exhibits 'D8' and 'D9'. He also tendered Form EC8B(II), Ward Collation Form for his ward and same was admitted in evidence as Exhibit 'D10'. He testified that as the Ward collation agent for the 2nd and 3rd Respondents in his ward at the election held on 25th February, 2023, he was present at the collation of the polling unit results of the 19 polling units in the ward at the Ward Collation Centre. His testimony on the collation process is in one accord with the evidence of DW4 and needs no repetition. He stated that at the end of the ward collation exercise, he was given Exhibit '10'. He said the 2nd Respondent won the election in the ward. Under cross-examination, he stated that he is a registered voter in

polling unit 004 in his ward and voted in the election. He said he was duly accredited with the BVAS machine before voting and that there was no deterrence to the conduct of the elections by any sit at home order by IPOB.

Ekwueme Kenneth Emeka testified as the 2nd Respondent's last witness (DW7). He adopted his written deposition on page 50 – 52 of the 2nd Respondent's Reply as his evidence-in-chief. He tendered his Permanent Voter's Card (PVC) and letter of appointment as the 3rd Respondent's Ward collation agent for Awara/Ikwerede Ward, Ohaji-Egbema Local Government Area in the election and they were admitted in evidence as Exhibits 'D11' and 'D12' respectively. He also tendered Form EC8B(II), the Ward collation result for the ward and it was admitted in evidence as Exhibit 'D13'. He deposed that as the 2nd and 3rd Respondents' Ward Collation Agent in the Federal Constituency election of 25th February, 2023, he witnessed the collation of the polling unit results from the eight polling units in his ward. His testimony on the collation process by officials of the 1st Respondent is in harmony with the testimonies of DW4, and DW6 on the matter. He stated that at the end of the ward collation exercise, he was given Exhibit 'D13' and that the 2nd Respondent won the

election in the ward. Under cross-examination, he maintained that the collation exercise was peaceful and not tainted by any incident of violence or insecurity. The 2nd Respondent at this juncture closed his case.

The 3rd Respondent opened her case by tendering Forms EC8D(II), EC8E and INEC official receipt of payment for their certification from the Bar. The documents were admitted in evidence as Exhibits 'D14', 'D15' and 'D16' respectively.

Dr. Nwosu Uchechukwu testified as the only witness for the 3rd Respondent (DW8). He adopted his written statement on oath on page 14-20 of the 3rd Respondent's Reply as his evidence-in-chief. He identified Exhibits 'D14' and 'D15' as result of the election for Oguta/Ohaji-Egbema/Oru West Federal Constituency election held on 25th February, 2023 and the result declaration form respectively. He also identified Exhibits 'D16' as the receipt for payment for certification of Exhibit 'D14' and 'D15'. He deposed that he is the State Legal Adviser to the 3rd Respondent. That the 2nd Respondent contested the election on the platform of the 3rd Respondent and won by a majority of lawful votes cast at the Federal Constituency election held on 25th February, 2023. That the election was conducted in polling units across the Federal Constituency

in compliance with the Electoral Act and was not marred by any corrupt practices. That the 2nd Respondent was not credited with any unlawful votes and the lawful votes of the Petitioners were not excluded or omitted. That the votes scored by the Petitioners and 2nd and 3rd Respondents were duly and properly collated at every level of collation and the results announced. He urged the Tribunal to dismiss the Petitioners' petition. When the PW8 was cross-examined, he stated that he is a registered voter and that he voted on the day of the election. He insisted that the votes ascribed to the 2nd Respondent were those cast by duly accredited voters. He maintained that election held in Nempi/Eleh Ward in Oru West Local Government Area. He maintained that the results for Mgbidi Wards I and II were lawfully collated. He admitted that the 2nd Respondent is from Izombe Ward in Nguta Local Government. At this point the 3rd Respondent's Counsel closed her case.

The Tribunal ordered learned Counsel to the Petitioners and the Respondents to file and exchange 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 service of the Petitioners' final written

address, the 2nd Respondent's Counsel filed a Reply on point of law on 28th July, 2023.

It is remarkable that during the pre-hearing session, the 1st Respondent formulated and adopted two issues for determination, the 2nd Respondent donated three issues, while the 3rd Respondent nominated five issues. However, the Respondents in their respective final addresses condensed their multiple issues into just one which they framed as follows:

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

The Petitioners upon receipt of the Respondents' final written addresses filed their own final written address on 25th July, 2023. Therein they formulated three issues for determination viz:

- "a. Whether the 2nd Respondent was not duly elected by a majority of lawful votes cast at the election and therefore the declaration and return of the 2nd Respondent by the 1st Respondent are unlawful, undue, null, void and of no effect.***
- b. Whether the 1st Petitioner polled the highest number of lawful votes cast in the election and ought to have been duly returned as validly elected member of the Federal House of Representatives of Nigeria for Oguta/Ohaji-Egbema/Oru West Federal Constituency.***

c. Whether the number of voters who collected permanent voters' cards in the polling units where election did not hold, disrupted, were voided and/or cancelled far outnumber the purposed margin of lead without conceding of the 2nd Respondent over the 1st Petitioner".

On 28th 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 failed to prove same, while the Petitioners' counsel prayed the Tribunal to grant all the reliefs sought by the Petitioners.

We have carefully examined the facts of this petition and considered the totality of oral and documentary evidence adduced as well as the legal arguments of Counsel in their written addresses. We are convinced that the sole issue for determination as formulated by the Respondents is quite appropriate and covers all issues raised by the Petitioners and the Respondents. We therefore adopt same in determining this petition. For our purposes, the issue for determination is again restated thus:

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

Learned Counsel to the 1st Respondent, A. I. Eytayo, Esq. in arguing the issues submitted that the reliefs sought by the Petitioners are not

grantable by this Tribunal because they are contradictory. He said that the Petitioners are praying the Tribunal for the nullification of the election for alleged corrupt practices, unlawful voting and non-compliance with the Electoral Act and at the same time asking to be declared and returned as the winner of the same election. He argued that such is not allowed in law. He relied on ***ONUIGWE VS. EMELUMBA (2008) 9 NWLR (PT. 1092) 391; RE ONWUBUARIRI (2019) LPELR-49121 (CA)***.

Addressing further, Counsel submitted that it is the bounden duty of the Petitioners to prove their petition on a balance of probabilities to be entitled to the reliefs sought but they failed totally in this regard.

On the Petitioners' first ground in the petition, that the 2nd Respondent did not score the majority of lawful votes cast at the election, Counsel submitted that it is incumbent on the Petitioners to plead the existence of two sets of results emanating from the election and adduce credible evidence to prove the illegal votes credited to the declared winner, which ought to be deducted from his score and then show how it will affect the result of the election. He further submitted that the necessary evidence required in this regard is that of the polling unit agents who witnessed the infractions that birthed the unlawful votes at the polling unit

level. He referred to ***WADA VS. INEC (2022) 1 NWLR (PT. 1841) 307 @ 326 – 327; ANDREW VS. INEC (2018) 9 NWLR (PT. 1625) 507; BUHARI VS. OBASANJO (2005) 13 NWLR (PT. 941) 1.*** He observed that the Petitioners called 29 witnesses altogether out of which only 11 were polling unit agents. He argued that their evidence did not suffice to prove the allegation in respect of the Oguta/Ohaji-Egbema/Oru West Federal Constituency with about 541 polling units and the default of the Petitioners in this wise is fatal to their petition.

Learned Counsel further submitted that the evidence of the polling unit agents, PW5, PW7, PW8, PW9, PW10, PW11 and PW12 are inadmissible. That some of them who testified on oath or affirmation before the Tribunal as females deposed in their adopted written statements on oath that they are males. That they also testified that they made their depositions in vernacular (Igbo language) which were not filed or placed before the Tribunal. Counsel argued that without the vernacular version of the witnesses written depositions in English language the latter is inadmissible hearsay and cannot be relied upon by the Tribunal. He relied on ***SOKOTO VS. INEC (2022) 3 NWLR (PT. 1818) 577 @ 604-605.***

On the documentary evidence adduced by the Petitioners, learned Counsel submitted that most of them were dumped on the Tribunal by tendering them from the Bar while the makers were never called as witnesses to speak to the documents. He also argued that the evidence of the ward collation agents called by the Petitioners, who merely identified duplicate copies of the polling unit results in their wards but admitted that they were not the makers deserves no probative value and should be discountenanced. He relied on ***BELGORE VS. AHMED (2013) 8 NWLR (PT. 1355) 60 @ 100; OLATUNJI VS. WAHEED (2012) 7 NWLR (PT. 1298) 24 @ 47.***

On the Petitioners' ground that the 2nd Respondent's election was invalid by reason of corrupt practices, Counsel submitted that the complaints of unlawful voting, suppression of votes and insecurity bothers on allegations of crime which must be proved beyond reasonable doubt. he relied on ***Section 138(1), Evidence Act; FAYEMI VS. ONI (2009) 7 NWLR (PT. 1140) 223; NWOBODO VS. ONOH (1984) 1 SCNLR 1; OMISORE VS. AREGBESOLA (2015) 18 NWLR (PT. 1472) 205.***

He further submitted that to prove the criminal allegations beyond reasonable doubt, the Petitioners must lead concrete evidence showing

that the Respondent personally committed the alleged crimes or aided, abetted, committed or procured the commission of the crime or expressly authorized agent(s) in that regard. He referenced ***APC VS. PDP (2015) 15 NWLR (PT. 1481) 1 @ 73; AUDU VS. INEC (2010) 13 NWLR (PT. 1212) 431.*** Counsel submitted that the allegations of corrupt practices made against the Respondents were not proved beyond reasonable by the evidence adduced by the Petitioners.

On the allegation of unlawful voting, Counsel contended that the onus on the Petitioners to prove same remained undischarged as none of the Petitioners' witnesses gave evidence to establish that invalid votes were cast in favour of the Respondent. He argued that the Petitioners merely dumped forms on the Tribunal and failed to call appropriate and relevant witnesses to speak to them and their case is therefore doomed to fail. He referred to ***YUSUF VS. OBASANJO (2005) 13 NWLR (PT. 956) 96 @ 195; DAUDU VS. HALLIRU (1995) 5 NWR (PT. 601) 94 @ 99; CHIME VS. EZE (2009) 2 NWR (PT. 1125) 263 @ 345.***

As regard the allegation of disenfranchisement by the Petitioners, learned Counsel submitted that the Petitioners failed to adduce sufficient and satisfactory evidence to prove same as they called only 5 registered

voters and 11 polling unit agents in a Federal Constituency with 541 polling units.

Finally, on the ground of alleged non-compliance with the Electoral Act and the complaints thereunder, Counsel submitted that to succeed, the Petitioners must prove the substantial non-compliance, polling unit by polling unit, and also establish that it substantially altered the result of the election. He cited ***GUNDIRI VS. NYAKO (2014) 2 NWLR (PT. 1391) 211 @ 246.*** That again in this respect, the Petitioners did not succeed by the oral and documentary evidence they adduced in support of the ground. On this note, Counsel prayed the Tribunal to dismiss the petition as lacking in merit.

The 2nd Respondent's Counsel, O. O. Okonkwo, Esq. in his argument also submitted that the reliefs sought by the Petitioners to wit: voiding of the election on the one hand, and declaring the Petitioners as duly elected on the other hand are inconsistent, contradictory and not grantable by this Tribunal.

Like the 1st Respondent, Counsel reviewed the oral and documentary evidence adduced by the Petitioners and submitted that they failed to discharge the burden of proof on the Petitioners.

On the Petitioners first ground, that the 2nd Respondent was not duly elected by majority of lawful votes cast at the election, Counsel submitted that the Petitioners needed the evidence of polling unit agents in all the polling units where the alleged invalid or unlawful votes were cast in favour of the 2nd Respondent. He relied on ***WADA VS. BELLO (2010) 17 NWLR (PT. 1542) 374.*** He also argued that the Petitioners failed to call sufficient evidence through polling unit agents to establish this ground.

On the Petitioners second ground bothering on allegation of corrupt practices, learned Counsel submitted that they required proof beyond reasonable doubt, citing in aid: ***OMISORE VS. AREGBESOLA (2015) 15 NWLR (PT. 1420) 205 @ 298; NWOBODO VS. ONOH (1984) 1 SCNLR 5.*** He contended that the Petitioners did not adduce any evidence to prove the allegations beyond reasonable doubt and for this reason, their case must fall.

On the Petitioners' allegation of non-compliance with the provisions of the Electoral Act, learned Counsel again submitted that the Petitioners have a duty to prove this, polling unit by polling unit, and in this regard the evidence of the polling unit agents in all affected polling units is essential. He relied on ***GUNDIRI VS. NYAKO (2014) 2 NWLR (PT.***

1391) 211; MAKU VS. AL MAKURA (2016) NWLR (PT. 1505) 201.

He submitted that the Petitioners only called few polling unit agents as witnesses and their evidence did not suffice to prove the large-scale non-compliance alleged by the Petitioners.

On the Petitioners allegation of over voting, the 2nd Respondent's Counsel posited that to prove this, it is the requirement of the law that the Petitioners must place before the Tribunal the voters' register of all affected polling units, the BVAS machines used to accredit voters in the polling units and its report, and the results sheets (Form EC8A) of the polling units. He referred to **SHINKAFI VS. YARI (2016) 7 NWLR (PT. 1511) 340; APC VS. PDP (2020) 17 NWLR (PT. 1754) 425; OYETOLA VS. INEC (2023) LPELR-60392 (SC).**

Counsel contended that the Petitioners did not tender the BVAS machines used in the accreditation of voters at the election or the voters' register. He submitted that the default is fatal to the Petitioners' case. He further canvassed that the Petitioners failed to prove that the election, the subject matter of this petition was not conducted in substantial compliance with the Electoral Act, 2022. He referred to **OKE VS. MIMIKO (NO. 2)**

(2014) 1 NWLR (PT. 1388) 332; DOMA VS. INEC (2012) 13 NWLR (PT. 1317) 297. He therefore urged the Tribunal to dismiss the petition.

The argument of the 3rd Respondent on the issue formulated for determination herein is on all fours with that of the 2nd Respondent. We consider it needless to repeat same. Her learned Counsel, A. I. Nwachukwu Esq. on the strength of the arguments also prayed the Tribunal to dismiss the petition.

Learned Petitioners' Counsel, V. O. Nwadike, Esq., in arguing the three issues he formulated for determination in this petition, submitted that the Petitioners had by their pleadings and evidence adduced in support, proved that the 2nd Respondent was not duly elected by the majority of lawful votes cast at the election and also proved that the 1st Petitioner polled the highest number of lawful votes cast and ought to have been returned and declared elected.

He contended that the Petitioners proved the improper collation of results in specified polling unit in the three Local Government making up the Oguta/Ohaji-Egbema/Oru West Federal Constituency of Imo State by tendering the duplicates of polling unit result sheets, Form EC8A(I) and/or the certified true copies of same. He submitted that having tendered the

result sheets from the polling units where improper collation allegedly took place, it was needless for the Petitioners to call polling unit agents to testify in support of the allegation. He relied on ***UZODINMA VS. IHEDIOHA (2020) 5 NWLR (PT. 1718)***.

Learned Counsel further submitted that no documentary exhibit was dumped on the Tribunal and that the Form EC8As from the affected polling units, where the Petitioners' contends improper collations were properly tendered by the ward collation agents, who are by law entitled to receive them from their polling unit agents, and their evidence should be accorded strong probative value.

Still arguing, Counsel submitted that the testimonies of the Ward Collation Agents also established that there was low voters' turn out at the election due to prevalent insecurity and therefore the huge votes collated in favour of the 2nd Respondent were concocted and a farce.

He further contended that the Petitioners having tendered the duplicates and certified true copies of Form EC8A(1) of the affected polling units, the onus shifted to the Respondents to tender the Form EC8As used in collating the figure in the Form EC8Bs, but they failed in this regard. He stated that a simple mathematical calculation would show that in all

the polling units where collated results are being disputed, the proper score of the Petitioners ought to be much more than that of the 2nd Respondent.

Learned Counsel submitted further that the record of accreditation in Exhibit '7' (BVAS Report) agrees with the number of accredited voters in the Form EC8As, the polling unit results tendered but curiously, the collated results differs widely from the accreditation records. He submitted that Exhibit '7' and the Form EC8As tendered align with the oral evidence adduced in proof of improper collation.

On the assertion of non-holding of election in several polling units across the three Local Governments in the Federal Constituency and the announcement of election results from the said polling units, Counsel submitted that the Petitioners proved this allegation of non-compliance through the credible testimonies of polling unit agents and registered voters from the polling units. He argued further that Exhibit '7' (BVAS Report) also grounded the complaint by showing that there was zero accreditation in almost all the polling units listed therein barring a few and extremely wide margins between the number of accredited voters on record and the votes cast.

Learned Counsel posited that the claim of the Petitioners in the main is not that there was over voting but that there was no election conducted in the first place yet results were generated by the 1st Respondent in favour of the 2nd and 3rd Respondents by which they emerged as winners of the election. He submitted that though it was not necessary to tender the Form EC8As and the voters' register in proof of the allegation that election was not conducted, the Petitioners still tendered the voters' register in Electronic Form (Exhibit '10'), which by virtue of Sections 9(2) (a) and 15 of the Electoral Act is properly before the Tribunal.

He submitted that the Petitioners proved the non-holding of election in all the designated polling units through their 29 witnesses and Exhibit '7', the BVAS accreditation report of polling units in the Federal Constituency. He urged the Tribunal to so hold.

Learned Counsel further contended that election also never held in some specified wards in Oru West, Oguta and Ohaji-Egbema Local Government and that the Petitioners proved this by tendering Exhibits '8', '13', '18', '25' and '35'. He submitted that the number of voters who collected their permanent voters' cards in the affected wards where election did not hold far outnumbered the margin of lead between the 1st

Petitioner and 2nd Respondent, albeit without conceding that the 2nd Respondent secured more valid votes than the 1st Petitioner at the election. Counsel urged the Court to hold the petition proved and grant all the reliefs sought.

As a parting shot, Counsel canvassed that Respondents' final written addresses were in violation of the provisions of the Election Judicial Proceedings Practice Direction, 2022 which mandates final written addresses to be in 1.5-line spacing. He urged the Tribunal to discountenance the said written addresses for this infraction. He further urged the Tribunal to disregard the 2nd Respondent's Reply on point of law for being filed out of time.

In his reply on point of law the 2nd Respondent's Counsel submitted that the case of ***UZODINMA VS. IHEDIOHA*** (supra) relied upon by the Petitioners in support of their argument that the duplicate/certified true copies of the results sheets tendered sufficed in proof of improper collation of result in lieu of oral evidence of polling unit agents is not apposite at all as the facts are distinguishable from the facts herein. Counsel further submitted that the Supreme Court has moved away from the ratio in Uzodinma's case in her more recent decisions. He cited ***PDP VS. INEC***

(2022) 18 NWLR (PT. 1803) 653, where the apex Court held that the only witness acceptable in election matters in proof of incident at polling units are polling unit agents. Learned Counsel further made submissions bothering on the legal status of documents tendered by the Petitioners which were not demonstrated before the Tribunal through witnesses. However, we shall not countenance these elaborate submissions as they are not in response to new issues raised in the Petitioners' address but a re-argument of his address and such will not be allowed.

Finally, in response to the submission of Petitioners' Counsel that the Respondent's final written address should be struck out for violating the mandatory provisions of the extant Practice Directions, 2022 on 1.5-line spacing, Counsel to the Respondents submitted that the contention is unfounded as there is no established parameter for proving the 1.5-line spacing before the Tribunal on the alleged infraction. They further submitted that the complaint bother on technicalities taken too far in a bid to defeat or torpedo substantial justice which the Courts have seriously and consistently denounced. Lastly, they submitted that the alleged infraction is at most a mere irregularity or non-compliance, covered by

Paragraph 53(1) of the First Schedule to the Electoral Act and will not nullify or invalidate the said processes filed in defence of this petition.

In resolving the sole issue formulated for determination, it is pertinent to restate that the Petitioners' grounds for challenging the election herein are three-fold, namely:

1. *The 2nd Respondent was not duly elected by majority of lawful votes cast at the election.*
2. *The election of the 2nd Respondent is invalid by reason of non-compliance with the provisions of the Electoral Act, 2022.*
3. *The election of the 2nd Respondent is invalid by reason of corrupt practices.*

It is however necessary to first resolve two threshold issues raised by the Petitioners and the Respondents in their final addresses.

The first is the submission of the Petitioners that the respective final written addresses of the Respondents were written in violation of the mandatory 1.5-line spacing prescribed by the Election Judicial Proceedings Practice Direction 2022 and as such should be discountenanced.

It is our observation that paragraph 5(c) of the Practice Direction prescribed at least 1.5-line spacing. Therefore, it could be more. The Petitioners have not placed any yardstick or standard proof before this Tribunal to ascertain or verify that the line-spacing of Respondents' written

addresses flouted the requirements of the Practice Direction 2022. The submissions of Petitioners' Counsel thereon without more therefore do not suffice to prove the allegation.

Furthermore, the Respondents' right to filing final written addresses in an election petition is in consonance with their fundamental right to fair hearing in any legal proceedings as enshrined in Section 36 of the Constitution of the Federal Republic of Nigeria 1999 (as amended). It may not be derogated from under any guise and the provisions of the Election Judicial Proceedings Practice Direction, 2022, even if mandatory, cannot supersede the provisions of the Electoral Act, 2022 and the Constitution on the Respondents' vested right to file final addresses in their defence.

Lastly, the Petitioners have not shown or demonstrated how the alleged non-adherence of the Respondents to the mandatory 1.5-line spacing in the written addresses has prejudiced their case or occasioned a miscarriage of justice. Indeed, we can see none. The complaint in our opinion is rooted in mere technicality at the expense of substantial justice which the Courts now frown at. It lacks substance. We therefore reject the submissions of the Petitioners on this issue.

The second issue is the submission of the Respondents that the reliefs sought by the Petitioners are not grantable because the Petitioners allegedly prayed for the nullification of the election in one breath and asked to be returned as the winner of the election in another.

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 the election. See ***NEKA VS. KUNINI (2015) LPELR-26031 (CA)***. This is because the invalidation or nullification of an election by the Tribunal sweeps away all the votes 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 perused the reliefs sought by the Petitioners. Their prayer in the main is that they be declared the winner of the election of the Federal Constituency instead of the 2nd Respondent who was declared and returned as the winner and in the alternative, that the election be nullified and fresh elections be conducted by the Order of this Tribunal.

To our minds, there is no contradiction or conflict in the prayers or reliefs sought by the Petitioners. The 1st and 2nd Respondents would have

made a valid point if the Petitioners' prayer for declaration and return as the validly elected candidate was lumped together with the prayer for nullification. It was perfectly in order for the Petitioners to seek the reliefs and the alternative relief in case the main relief fails. The Tribunal has vires to grant the main reliefs or the alternative relief, if the Petitioners are able to establish a case for them by cogent and credible evidence. Therefore, the submissions of the Respondents on this issue is lacking in substance and is hereby rejected.

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 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 fall. See ***OMOBORIOWO VS. AJASIN (1984) LPELR-2645 (SC) 41; BUHARI VS. OBASANJO (2003) LPELR-813 (SC) 37-38.***

In this case, the petitioners' pleadings in support of their ground that the 2nd Respondent was not duly elected by majority of lawful votes cast at the election are contained in paragraph D20-26 of the petition. In brief,

the first allegation under the ground is that there was wrongful collation of the results of polling units by the 1st Respondent in four (4) Wards of Oru West Local Government, namely Otulu, Ozara, Mgbidi I and Mgbidi II; two (2) Wards in Oguta Local Government Area, namely Oguta A and Oguta B Wards; eight (8) Wards in Ohaji-Egbema Local Government Area, namely Assa/Obile, Egbema A Egbema B, Egbema C, Egbema E, Ekwuato, Obitti-Mgbishi and Umuapu Wards. The second allegation is that the 1st Respondent announced results for candidates at the election and in favour of the 2nd Respondent in polling units in three (3) Wards of Oru West Local Government Area, namely Nempi/Eleh, Ohakpu and Mgbidi Wards and three (3) Wards in Ohaji-Egbema Local Government, namely Assa Obile, Egbema B and Egbema C Wards where no election was conducted.

It is settled law that in election petition, a ground that the Respondent was not duly elected by majority of lawful votes cast at the election is a challenge of the election for errors of collation, miscalculation or exclusion of lawful votes to the disadvantage of the Petitioner. Therefore, for the Petitioner to succeed on this ground, he must plead and prove the necessary facts to show that there was wrongful computation of votes to his prejudice and in favour of the candidate who was 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 essential requirements that must be met by a Petitioner challenging the outcome of an election have been succinctly put by the Supreme Court in ***BUHARI VS. INEC (2008) LPELR-814 (SC) 172-173*** where it stated thus:

"A Petitioner who contests the legality or lawfulness of votes cast in an election and the subsequent result must tender in evidence all the necessary documents by way of forms and other documents used at the election. He should not stop there. He must call witnesses to testify that the illegality or unlawfulness substantially affected the result of the election. The documents are amongst those in which the results of the votes are recorded. The witnesses are those who saw it all on the day of the election, not those who picked the evidence from an eye witness. No, they must be eye witnesses too. Both forms and witnesses are vital for contesting the legality or lawfulness of the votes cast and the subsequent result of the election. One cannot be a substitute for the other. It is not enough for the Petitioner to tender only the documents. It is incumbent on him to lead evidence in respect of the wrong doings or irregularities both in the conduct of the election and the recording of the votes, the wrong doings and irregularities which affected substantially, the result of the election".

In their bid to prove the first allegation, the Petitioners called the oral evidence of PW1, PW2, PW3, PW4, PW18, PW19, PW25 and PW27, their

ward collation agents for Otulu, Mgbidi I, Ozara, Mgbidi II Wards in Oru West Local Government Area; Umuapu, and Obitti/Mgbisi Wards in Ohaji-Egbema Local Government Area and Oguta B and Oguta A wards in Oguta Local Government Areas respectively. The PW1, PW2, PW3 and PW4 tendered the duplicate originals of the election results of polling units in the wards as Exhibits '2', '4', '6' and '115' respectively. They deposed that in their capacity as ward collation agents, they received the results from their polling unit agents and upon perusal they discovered the lawful votes scored in the polling units by the 2nd Respondent. The PW18, PW25 and PW27 tendered the duplicate originals of election result of one polling unit each in their wards as Exhibits '134', '147' and '151' respectively. They also testified that they received the results from their polling unit agents and upon scrutiny, they discovered that lawful votes cast and recorded for the Petitioners in the polling unit results were omitted by the 1st Respondent in the collation/computation of results in the ward collation result, Form EC8B. The PW19 also testified that he received a polling unit result from his polling unit agent which he examined, and found out that lawful votes cast for the Petitioners were omitted by the 1st Respondent in the collated results. He however did not tender the polling unit result.

We have carefully considered the testimonies of the Petitioners' ward collation agents and the documents tendered in proof of the complaint of inflation of the votes score of the 2nd Respondent in the collation process at the ward collation level.

The law is settled that only polling unit agents, security agents and other ad-hoc staff of the 1st Respondent can validly give eye witness account of what transpired when a presiding officer made entries in the result sheet at the polling unit level. Supervisory and Ward agents have no role to play at this point as they did not participate in the making of the polling unit results and did not witness the making. Therefore, any evidence by ward collation agents on the making of polling unit results and the content thereof constitute hearsay which is inadmissible. See ***FIJABI VS. INEC (2019) LPELR-48660 (CA); JOHNSON VS. INEC (2019) LPELR-49442 (CA) 23-28.***

In this case, the Petitioners did not call the oral evidence of any of the polling unit agents who were privy to the making of Exhibits '2', '4', '6' and '115' at the polling units level. Rather, they called PW1, PW2, PW3 and PW4, the ward collation agents, who tendered the result sheets and testified on the votes score of the 2nd Respondent contained therein. The

testimonies of the Petitioners' witnesses in this regard are inadmissible hearsay and are therefore discountenanced.

Furthermore, Exhibits '2', '4', '6' and '115', tendered by persons other than the makers or polling unit agents who were privy to their making, cannot attract any probative value. They are hereby discarded. See ***BELGORE VS. AHMED (2013) 8 NWLR (PT. 1315) 60.***

As regard the testimonies of PW18, PW19, PW25 and PW27, it is not in doubt that as ward collation agents, they are qualified and competent to testify on any error of commission or omission in the collation of election results at the ward collation level. Furthermore, as privies to the making of Form EC8B, the ward collation result that Form EC8As, the polling unit results are imputed by the election officials at the ward collation level, they are also competent to testify on any error of commission or omission in the collation of election results at the ward collation level. Furthermore, as privies to the making of Form EC8B, the Ward Collation Result, into which the polling unit results are imputed by the electoral officials at the ward collation level, they are also competent to tender same in evidence and testify on it as deemed necessary. See ***PDP VS. INEC (2019) LPELR-48101 (CA) 106-109.***

In proving the exclusion of lawful votes from collated results at the ward collation level, it is necessary for the Petitioners to call the evidence of the polling unit agents who witnessed the entries of the legitimate scores of the parties at the polling unit level and tender the results through them. It is equally necessary to call the evidence of the ward collation agents and tender the ward collation results through them. It is by the combined evidence of the polling unit agents and ward collation agents and the result forms at both levels that the Petitioners can successfully demonstrate and prove the lawful votes score which were excluded in the collation process.

It is our observation that PW18, PW19, PW25 and PW27 only tendered Exhibits '134', '137' and '151', the polling unit results which they were not privy to and on which they were not competent to testify, and stated that upon examination of same, they realised that lawful votes score of the Petitioners therein were omitted by the 1st Respondent in the ward collation result, Form EC8B. The witnesses however did not tender the Form EC8B of the wards wherein the votes score of the Petitioners were allegedly excluded.

In our humble view, it is imperative for the Petitioners to tender the polling unit results, Form EC8A and the ward collation results Form EC8B

in evidence and properly relate them to the allegation of exclusion of their lawful votes in the collated results through the testimonies of the ward collation agents to prove their allegations. See ***UZODINMA VS. IHEDIOHA (2020) LPELR-50260 (SC); UDUMA VS. ARUNSI (2010) LPELR-9133 (CA)***. However, they failed in this regard and the default is fatal to their complaint.

It is noteworthy that the Petitioners tendered certified true copies (CTC) of the ward collation results, (Form EC8B) of several wards from the Bar, including those of Otulu, Ozara, Mgbidi I, Mgbidi II, Obitti/Mgbishi, Oguta A and Oguta B wards, which were admitted in evidence as Exhibits '20', '22', '23', '24', '34', '38' and '40'. However, the documents were dumped on the Tribunal as none of the Petitioners' ward collation agents who testified as witnesses identified or confirmed the Exhibits or related them in their testimonies to the allegation of wrongful collation of results. It is settled law that documents that are dumped on a Court in this manner are undeserving of any probative value and are liable to be disregarded. See ***ANDREW VS. INEC (2017) LPELR-48518 (SC) 63-66***. Consequently, the ward collation results, though tendered in evidence but

never activated by the Petitioners through their witnesses are therefore devoid of any value in this proceedings.

The implication of all we have said in the foregoing is that the Petitioners have not adduced any reliable evidence in proving that there was wrongful collation of results in any of the polling units and wards in Oru West, Oguta and Ohaji-Egbema Local Government Areas of the Federal Constituency as alleged. We therefore hold that the Petitioners' first allegation is unproved.

In their effort to prove the second allegation, the Petitioners called the oral evidence of PW5, PW7, PW8, PW9, PW10, PW11, PW12, PW24, PW26, PW28 and PW29, who were their polling unit agents in Nempi/Eleh, Ohakpu and Mgbidi II Wards in Oru West Local Government. The witnesses testified that no election was conducted in their respective polling units on 25th February, 2023. They also called the evidence of PW13, PW15, PW16, PW17, PW21, PW22 and PW23, who were registered voters in polling units in Nempi/Eleh and Ohakpu Wards, who also testified that election did not hold in their respective polling units on the day of the election and that they were disenfranchised.

The law is now well settled that a Petitioner who asserts that there was no voting in polling units or that the voters were disenfranchised 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. The voters must tender their voters' cards 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; OMAJALI VS. DAVID (2019) 14 NWLR (PT. 1702) 438 @ 461.***

We have carefully considered the evidence of the Petitioners' eleven polling unit agents herein. Although they tendered their letters of appointment and or agent tags in evidence as proof of their status as the Petitioners' polling unit agents in their respective wards at the election, none of them was proved to be a registered voter with a permanent voter's card in their polling units in their respective wards at the election.

It is our view that without proof of being registered voters and without the supportive evidence of a registered voter(s) from their polling units their evidence lacks sufficient traction in proof of the allegation that

there was no election in their polling units on 25th February, 2023 as alleged.

We further observed that the PW9, PW10, PW11, PW12, PW15, PW16 and PW17, when they were cross-examined on their adopted written statements on oath, admitted that they narrated the facts in their depositions to Petitioners' Counsel in Igbo language and not in English language. It is trite law that where a witness makes his deposition in vernacular or a language other than English, both the deposition in vernacular and its translation into English language must be filed and adopted in Court. Where this is not done, the deposition in English language will be treated as inadmissible hearsay and discountenanced. See ***YAHAYA VS. DAKWAMBO (2016) LPELR-48364 (SC) 34-35.***

In this case, only the deposition of the Petitioners aforementioned polling unit agents in English language were filed and adopted before the Tribunal as their evidence-in-chief. The vernacular versions were never filed and adopted. We therefore hold that the witnesses adopted written statements on oath which was their evidence-in-chief before the Tribunal are hearsay and same are inadmissible and are hereby expunged.

We have also examined the evidence of the seven registered voters who testified for the Petitioners as PW13, PW15, PW16, PW17, PW21, PW22 and PW23. Although they tendered their Permanent Voters' Cards in evidence as proof that they were registered voters who were disenfranchised at the election, their identities as registered voters in their respective polling units were never established before this Tribunal as required by the law. Although the Petitioners tendered the register of voters in electronic form (flash drive) from the Bar as Exhibit '10', the document was never demonstrated or related by the evidence of any of the witnesses before the Tribunal. It was merely dumped on the Tribunal. It was never opened. The Tribunal could not look into or examine it outside the Court to link or relate it to the Petitioners' case on its own. That is clearly outside the duty of this Tribunal. Exhibit '10' is therefore lacking in any evidential value. See **OMISORE VS. AREGBESOLA (2015) LPELR-24803 (SC) 67-68.**

Consequent upon the default of the PW13, PW15, PW16, PW17, PW21, PW22 and PW23 to properly identify themselves as registered voters in the polling units where they were allegedly disenfranchised by verifying or confirming their names in the voters' register, we find them

lacking in credibility and their testimonies as undeserving of any serious probative value in establishing that no election was conducted in Nempi/Eleh, Ohakpu and Mgbidi II wards on the day of the election.

Furthermore, the PW15, PW16, PW17, PW21, PW22, and PW23 all admitted under cross-examination that they narrated the facts in their adopted written statements on oath to the Petitioners' lawyer in Igbo language and not in English language. However, the vernacular versions of the depositions were never filed or adopted along with the English versions before the Tribunal. In law, their depositions in English without the vernacular versions are inadmissible hearsay. See ***SOKOTO VS. INEC (2022) 2 NWLR (PT. 1818) 872 @ 604-605.*** It is liable to be expunged and it is hereby expunged.

The Petitioners did not call the oral evidence of any witnesses to prove the alleged non-holding of election in the specified polling units of Assa/Obile, Egbema B and C Wards of Ohaji-Egbema Local Government. Although they tendered the polling unit results and ward collation results from the Bar, no competent witness was called to relate these to the allegation. They were dumped on the Tribunal. Therefore, they lack any probative value.

The effect of the foregoing is that the petitioners have not adduced any sufficient, credible and admissible oral evidence in proof of the allegation of disenfranchisement in polling units in Nempi/Eleh, Ohakpu and Mgbidi II Wards in Oru West Local Government or in any polling unit in Ohaji-Egbema and Oguta Local Governments, where they did not call any polling unit agent or registered voter as a witness.

The Petitioners further assayed to rely on the testimonies of PW6 and P14 who were subpoenaed witnesses from the 1st Respondent's Imo State and FCT, Abuja, Headquarters offices respectively.

The PW6, a Chief Legal Officer, testified on the deployment and functioning of the Bimodal Voters Accreditation System (BVAS) machine in the election. She however admitted that she did not play any particular role in the election of the Federal Constituency. In our view, her testimony is a mixture of opinion and hearsay evidence. It did not further the cause of the Petitioners in any way.

The PW14, a staff of the ICT Department of INEC Headquarters, also testified on the deployment of the BVAS machines for accreditation of voters and uploading of election results on the IReV Portal after the election. She confirmed Exhibits '7' and '8' tendered from the Bar by the

Petitioners as the BVAS Report of accredited voters in the election. She however admitted that she was not present in any polling unit in the Federal Constituency during the election, did not operate any BVAS machine, and did not make or sign Exhibit '8'. Now, Exhibit '7' is the BVAS Report for the entire Federal Constituency, Polling Unit by Polling Unit. It was made on 24th March, 2023 by one Grace Atawodi, a Principal Programme Analyst of the 1st Respondent in Abuja. Exhibit '7' being a computer-generated document was supported with a certificate of compliance, Exhibit '8', also made by Grace Atawodi to make it admissible pursuant to Section 84 of the Evidence Act, 2011.

The said maker of the documents, Grace Atawodi, was never called to give evidence. It is our view that the PW14 not being the maker of Exhibits '7' and '8' was not competent to testify on the content thereof and her testimony on same cannot be accorded any probative value. It is hereby discountenanced. See ***NYESOM VS. PETERSIDE (2016) LPELR-40036 (SC) 55; MOMOH VS. FRANCIS (2019) LPELR-49000 (CA) 36; RABIU VS. BABANGIDA (2019) LPELR-49450 (CA) 18.***

It is also remarkable that the Petitioners, in addition to the testimonies of their witnesses, relied heavily on Exhibit '7', the certified true copy (CTC) of the BVAS Record of accredited voters in the polling units of the Federal Constituency, issued on 24th March, 2023 and tendered from the Bar. The Petitioners claimed that the BVAS Report showed zero accreditation in all polling units, barring a few in Nempi/Eleh and Ohakpu Wards, Oru West Local Government. They further complained that even in polling units with accreditation records in Exhibit '7', the accreditation figures were far less than the votes credited by the 1st Respondent as lawful votes. They further contended that the accreditation records, which are in conflict with the votes ascribed to the 2nd Respondent are confirmatory of the testimonies of witnesses who deposed that election did not hold in their polling units in the wards and constitute concrete and reliable evidence in proof of the allegation that there was no election in Nempi/Eleh and Ohakpu Wards.

It is settled law that the results of election as declared by the 1st Respondent enjoys the presumption of regularity which can only be rebutted by stronger and more credible contrary evidence. See ***CPC VS. INEC (2011) LPELR-8257 (SC); NYESOM VS. PETERSIDE (2016)***

LPELR-40036 (SC) 76-77. The pertinent question calling for an answer in this context is whether Exhibit '7' suffices to rebut the presumption of regularity in favour of the results of the election credited to the 2nd Respondent in Nempi/Eleh and Ohakpu Wards.

In the recent case of ***OYETOLA VS. INEC (2023) LPELR-60392 (SC) 23-24***, the Supreme Court held that the BVAS Report that is required to prove non-accreditation improper accreditation or over voting in a vexed election is not the accreditation records contained and extracted from INEC's backend server or database but the actual figures of the accreditation contained in the BVAS machines, confirmable by a certificate of the records issued by INEC.

In this case, the Petitioners did not tender the BVAS machines used for accreditation of voters at the election. They also did not tender any certificate of the BVAS accreditation records issued by INEC. Exhibit '7' issued on 24th March, 2023 is the backend server report of the BVAS accreditation records. It is secondary evidence of the accreditation records on the BVAS made after the election. It is not the BVAS report that must be compared with the polling unit results to prove non-accreditation, improper accreditation and over voting in an election. In this vein, we

opine that Exhibit '7' and its content deserves no probative value and incapable of rebutting the presumption that there was accreditation and voting in polling units in Nempi/Eleh, Ohakpu Wards and Mgbidi II Wards in Oru West Local Government Area and in Ohaji- Egbema Local Government Area.

The Petitioners called the evidence of PW20, the Oru West Local Government Area Collation Agent who claimed to have doubled as the Federal Constituency Collation Agent. His testimony is virtually a restatement of the pleading of the Petitioners. He deposed that there was wrongful collation of results in favour of the 2nd Respondent in polling units in Oguta, Ohaji-Egbema and Oru West Local Governments, exclusion of Petitioners' lawful votes in collation in polling units in Oguta and Ohaji-Egbema Local Governments and non-holding of election in polling units in Oru West Local Government. However, he did not function as a polling unit agent or ward collation agent and he did not witness the electoral activities and happenings at those levels in the election. His evidence on what transpired at any level other than the Oru West Local Government collation level and the Federal Constituency collation level is inadmissible hearsay. In law, he is not a competent witness to testify on the non-

holding of election and wrongful collation of result that allegedly occurred at the polling unit and ward collation levels. His evidence clearly lacks probative value and same is hereby discountenanced. See ***APC VS. PDP (2019) LPELR-49499 (CA) 118.***

Therefore, upon a thorough and holistic evaluation of the Petitioners' evidence in the foregoing, it is our conclusion that they are grossly deficient to prove the Petitioners' first ground in this petition.

The Petitioner's pleadings in support of the second ground, that the 2nd Respondent's election is invalid by reason of non-compliance with the Electoral Act, 2022 is in paragraphs 50 - 54 of their petition. Therein they complained of inconsistency in the accreditation records and voting records in polling units across the Federal Constituency.

The Petitioners relied on the oral and documentary evidence adduced in proof of their first ground in the petition and the legal argument canvassed in support, which we have painstaking reviewed and evaluated in the foregoing. It is also our finding that the Petitioners' evidence fell grossly short of proving the allegation under this ground for reasons earlier stated and we hold that the ground is not proved.

The Petitioner's pleadings in support of their third ground, that the 2nd Respondent's election is invalid by reason of corrupt practices is in paragraph 55 of their petition. It is trite law that allegations of corrupt practices in an election have the imputation of the commission of crimes and must therefore be proved beyond reasonable doubt. See ***OMISORE VS. AREGBESOLA (2015) 15 NWLR (PT. 1482) 205 @ 334-335.***

However, the Petitioners did not adduce any shred of evidence to substantiate any of the grave allegations made against the Respondents under this ground. It is trite that pleadings without evidence in support are deemed as abandoned. See ***AMAECHE VS. INEC (2008) LPELR-446 (SC) 220.***

Therefore, the Petitioners having abandoned this pleaded ground by failing to adduce any evidence in support, we find and hold that the third ground of their petition is unproved.

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 established by the Petitioners. Thus,

Petitioners who have not led concrete and credible evidence in support of their case are not entitled to have it placed on the imaginary scale of justice since it would be illogical to place nothing on something. See **ANDREW VS. INEC (2017) LPELR-47518 (SC) 30-41.**

In this case, the 1st Respondent called no witnesses and tendered no documentary evidence in her defence. The 2nd and 3rd Respondents called witnesses and tendered documentary evidence in their defence. 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 with a view to weighting it against the evidence proffered by the Petitioners to determine which one preponderates will be a useless venture.

It is our conclusion, upon a careful and painstaking evaluation of the Petitioners' case herein, that they failed to prove any of the 3 grounds of their petition to warrant the consideration of any evidence adduced by the Respondent in rebuttal.

The Petitioners prayed this Tribunal for five (5) reliefs and one alternative relief. The first, second and third reliefs are declaratory in nature. 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 must strive to succeed on the strength of his case and not on the weakness of the case of his adversary. If he fails, his case crumbles and his cause is lost. Where the Petitioner fails to establish a case for the reliefs sought, the Respondent is not obliged to call any evidence. See ***EMENIKE VS. PDP (2012) LPELR-443 (SC) 27; OKEREKE VS. UMAHI (2016) 11 NWLR (PT. 1724) 438 @ 489; NWABUEZE VS. AMADI (2015) LPELR-41762 (CA).***

Arising from the foregoing, it is our considered view that the Petitioners have failed to make a case for the declaratory and other reliefs sought before this Tribunal. We therefore adjudge this petition as unmeritorious and liable to dismissal. It is hereby dismissed. The sole issue is thus resolved against the Petitioners.

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 Oguta\Ohaji-Egbema\Oru West Federal Constituency
of Imo State.

**HON. JUSTICE Y. HALILU
CHAIRMAN**

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

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