

IN THE IMO STATES NATIONAL AND STATE HOUSES OF ASSEMBLY

ELECTION PETITION TRIBUNAL, OWERRI, IMO STATE

HOLDEN AT HIGH COURT 1 & 2 COMPLEX, MARARABA,

NASARAWA STATE

on Thursday the 7th day of September, 2023

BEFORE THEIR LORDSHIPS:

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

PETITION NO.: EPT/IM/HR/11/2023

BETWEEN

OJINIKA GEOFFREY CHIZEE PETITIONER

AND

1. NWACHUKWU CANIC MOORE CHUKWUGOZIE
2. ALL PROGRASSIVES CONGRESS (APC)
3. INDEPENDENT NATIONAL ELECTORAL COMMISSION
(INEC) } **RESPONDENTS**

JUDGMENT

The National Assembly Election for Senatorial and House of Representatives seats was held on the 25th day of February, 2023 across the country.

The Independent Nation Electoral Commission (INEC) declared Nwachukwu Canic Moore Chukwugozie of All Progressives Congress (APC) as the duly elected candidate for Oru East/Orsu/Orlu Federal Constituency.

Ojinika Geoffrey Chizee of Labour Party who was not satisfied with the declaration and return decided to approach the Election Petition Tribunal by filing Petition **No. EPT/IM/HR/11/2023** at the Election Tribunal Registry on the 17th March, 2023 challenging the said declaration and return on the following grounds:-

- a. That the 1st Respondent was not duly elected by majority of lawful votes cast at the said election.
- b. That the said election was invalid by reason of corrupt practices or substantial non-compliance with the provisions of the Electoral Act, 2022 (as amended).

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

- a. An Order of the Honourable Tribunal setting aside the return of the 1st Respondent as the elected member to represent the Oru

East/Orsu/Orlu Federal Constituency of Imo state in the House of Representatives of the National Assembly of Nigeria.

- b. A Declaration of the Honourable Tribunal that the Petitioner won the election held on 25th February, 2023 to elect the member to represent Oru East/Orsu/Orlu Federal Constituency in the House of Representatives of the National Assembly of Nigeria having polled the majority of lawful votes cast at the election.
- c. An Order of the Honourable Tribunal returning the Petitioner as the elected member to represent the Oru East/Orsu/Orlu Federal Constituency in the House of Representatives of the National Assembly of Nigeria.

OR:

- d. An Order of the Honourable Tribunal cancelling or nullifying the elections conducted in the Polling Units where over voting occurred in the Oru East/Orsu/Orlu Federal Constituency held on the 25th February, 2023 to elect the member to represent the Oru East/Orsu/Orlu Federal Constituency of Imo State in the House of Representatives of the National Assembly of Nigeria for over – voting.
- e. An Order of the Honourable Tribunal directing that a fresh election be conducted in the aforesaid Polling Units where over voting occurred.

OR:

- f. An Order of the Honourable Tribunal cancelling or nullifying the elections held on the 25th February, 2023 to elect the member to represent the Oru East/Orsu/Orlu Federal Constituency of Imo State in the House of Representatives of the National Assembly of Nigeria.
- g. An Order of the Honourable Tribunal directing that a fresh election be conducted in Oru East/Orsu/Orlu Federal Constituency of Imo State to elect the member to represent the Oru East/Orsu/Orlu Federal Constituency of Imo State in the House of Representatives of the National Assembly of Nigeria.
- h. An Order setting aside the certificate of Return issued by the 3rd Respondent to the 1st Respondent as the winner of the election held on the 25th February, 2023 in order to elect the member to represent Oru East/Orsu/Orlu Federal Constituency of Imo State in the House of Representative of the National Assembly of Nigeria.

The facts of the Petition as contended by the Petitioner is that the Oru East/Orsu/Orlu Federal Constituency of Imo State is made up of three (3) Local Government Areas which is comprised 34 Registration Areas (Wards) and 517 Polling Units in which elections were scheduled to hold on the said 25th day of February, 2023. The Petitioner pleads that the Wards, Polling Units and the total number of registered voters per Local Government Area where the election was scheduled to hold were as follows:-

S/NO.	LOCAL GOVERNMENT AREA	REGISTRATION AREA/WARD	POLLING UNITS	TOTAL NUMBER OF REGISTERED VOTERS
1	ORU EAST	10	171	85,092
2.	ORSU	11	137	50,565
3.	ORLU	13	209	103,223
4.	TOTAL	34	517	239,690

The Petitioner hereby pleads that valid election only took place at 17 Polling Units in Orlu Local Government Area and 3 Polling Units in Oru East Local Government Area. There was no valid election in all the other Polling Units that comprise the Federal Constituency.

The Petitioner further pleads that he won the majority of the lawful votes cast in the Polling Units of the Federal Constituency where elections were validly conducted. Valid elections were held in the Federal Constituency as follows:

**ORLU LOCAL GOVERNMENT AREA
UMUNA WARD**

S/NO.	POLLING UNIT	NUMBER OF ACCREDITED VOTERS	VOTES SCORED BY 1 ST RESPONDENT	VOTES SCORED BY PETITIONER
1.	CODE 002	67	52	9
2.	CODE 004	43	18	21
3.	CODE 005	35	3	24
4.	CODE 006	41	8	21
5.	CODE 009	40	1	29
6.	CODE 011	10	9	-
7.	CODE 012	3	2	-
8.	CODE 013	23	3	14
		SUB TOTAL	96	118

UMUDIOKA WARD

S/NO.	POLLING UNIT	NUMBER OF ACCREDITED VOTERS	VOTES SCORES BY THE 1 ST RESPONDENT	VOTES SCORED BY THE PETITIONER
1.	CODE 001	40	6	29
2.	CODE 002	55	16	38
3.	CODE 003	64	13	27
4.	CODE 004	41	4	26
5.	CODE 009	58	15	27
6.	Code 010	69	6	9
		SUB TOTAL	60	156

AMAIFEKE WARD

S/NO	POLLING UNIT	NUMBER OF ACCREDITED VOTERS	VOTES SCORED BY THE 1ST RESPONDENT	VOTES SCORED BY PETITIONER
1.	CODE 008	7	6	0
2.	CODE 014	10	2	3
		SUB TOTAL	8	3

ORU EAST LOCAL GOVERNMENT AREA

OMUMA WARD

S/NO.	POLLING UNIT	NUMBER OF ACCREDITED VOTERS	VOTES SCORED BY THE 1ST RESPONDENT	VOTES SCORED BY THE PETITIONER
1.	CODE 005	71	22	30
2.	CODE 011	18	0	4
3.	CODE 034	26	21	0
		SUB TOTAL	43	34

The Petitioner pleads that in Umuna Ward, Polling Unit 009, where the Petitioner scored 27 votes as against 1 vote scored by the 1st Respondent, the result of this Polling Unit was not entered in the relevant Form EC8B(II) used for the Ward. In effect, this result was not added to the final computation of the result of the election. The Petitioner pleads the agent's copy of the said result (Form EC8A(II)) and shall rely upon same at the trial.

The Petitioner further pleads that in same Umuma Ward, Polling Unit 013, the Petitioner scored 14 votes while 1st Respondent scored 3 votes. However, in entering the scores of the candidates/political parties on the relevant Form EC8B(II), the Petitioner's vote scored was deflated and recorded as 3 votes while that of the 1st Respondent was inflated and recorded as 6 votes. The certified true copy of Form EC8A(II) for Polling Unit 013 is hereby pleaded. Also, certified true copy of Form EC8B(II) for Umuma Ward is also pleaded.

In Umudioka Ward, Polling Unit 001, APC, LP and PDP scored the following respective votes: APC – 6, LP – 29 and PDP – 3. However, the result was subsequently altered with the following votes entered for the parties: APC – 6, LP – 29, PDP – 103. The agent’s copy of Form EC8A(II) for Polling Unit 001, Umudioka Ward and the certified true copy of same are together pleaded and shall be founded upon at the trial.

Also, in Umudioka Ward, Polling Unit 002, APC, LP and PDP scored the following votes: APC – 16, LP – 38 and PDP–1, respectively. However, the result was subsequently altered with the following votes entered for the parties: APC – 16, LP – 38, PDP – 101. The agent’s copy of Form EC8A(II) for Polling Unit 002, Umudioka Ward and the certified true copy of same are together pleaded and shall be relied upon at the trial.

The Petitioner pleads that in Umudioka Ward, Polling Unit 009, the Petitioner scored 27 votes as against 16 votes scored by the 1st Respondent. The result of this Polling Unit was not entered on the relevant Form EC8B(II). In effect, this result was not added to the final computation of the result of the election. The Petitioner pleads the agent’s copy of the said Polling Unit Result together with the certified true copy of the relevant Form EC8B(II) and shall rely upon same at the trial.

In Ohaeke/Okporo Registration Area, Polling Unit 003, the number of accredited voters as recorded on the BVAS is zero (0). The total votes cast was recorded as 40 votes. Here, the Petitioner was ascribed no vote while the 1st Respondent was allocated 16 votes. The Petitioner pleads that no

election held in the Polling Unit. Assuming there was an election, the Petitioner pleads that there was over voting in this Polling Unit.

At the end of the election at the various Polling Units in Orlu Local Government Area mentioned immediately above, the agents' (pink/yellow) copy of Form EC8A(II) used for the said election were collected by the agents' of the Petitioner. The said agents' copy of Form EC8A(II) for the aforesaid Polling Units in Orlu Local Government Area is hereby pleaded and shall be relied upon at the trial.

From the total number of valid votes cast across the said Seventeen Polling Units in Orlu Local Government Area, the Petitioner scored 277 votes while the 1st and 2nd Respondents scored 164 votes.

In Orsu Local Government Area with 137 Polling Units, 11 Wards and 50,565 (Fifty thousand, five hundred and sixty-five voters) registered voters, only 50 (fifty) persons purportedly voted.

From the votes at the Orsu Local Government Secretariat where the election for the Polling Units in Orsu Local Government Area took place, the actual votes scored by APC, LP and PDP as recorded on Form EC8A(II) obtained/collected by the Petitioner's agents is as follows: APC – 17 votes, LP – 5 votes and PDP – 2 votes.

The actual votes as obtained by the Political Parties were altered and the vote score of the APC was inflated to now read: APC – 43 votes, LP – 5 votes and PDP – 2 votes.

The Petitioner shall at the hearing of this petition contend and prove that the Petitioner was the person who scored the majority of lawful votes cast at the election and ought to have been declared the winner of the said election.

The Petitioner equally contends that in many Polling Units where the 1st Respondent was purportedly declared the winner, that the election in such Polling Units were marred by irregularities and non-compliance with the Electoral Act, 2023 (as amended).

Above is the grouse of the Petitioner against the Respondents.

Upon service of the Petition on the Respondents, they both filed their respective replies to the petition. 1st and 2nd Respondents similarly filed Motions both dated the 9th May, 2023.

By way of reply to the Petition, 1st Respondent, generally traversed the allegation of the Petitioner, and re-iterated the fact that Petitioner was not the Candidate at the 2023 National Assembly Election and does not have the right to be returned as elected because he was not a member of the Labour Party at the time of the Election.

1st Respondent further contends, Petitioner is not a Registered Voter and had no right to vote or be voted for as he is not a registered member of the Labour Party. The Petitioner is neither a member nor a candidate of the Labour Party in the questioned election. He is not a registered voter. Election held at the Ezi Amihie Village (Code 012) Polling Unit in Orsu-Ihiteukwa Ward, Orsu Local Government Area of Imo State, contrary to the

allegation of the Petitioner. The Petitioner did not present himself to vote at the election. The Petitioner was not qualified to be a candidate in the election and has no locus standi to present the Petition. The Register of Labour Party Members submitted by the Labour Party to Independent National Electoral Commission will be founded upon at the Trial.

1st Respondent however stated he is not the purported winner but winner of the Election.

1st Respondent aver also that The 1st Respondent was duly elected by a majority of lawful votes cast at the said election.

That the said election was valid and there were neither corrupt practices nor substantial non-compliance with the provisions of the Electoral Act, 2022 (as amended), and that valid election took place in all the Polling Units in the Federal Constituency and not in 17 Polling Units only in Orlu Local Government Area and 3 Polling Units only in Oru East Local Government Area as falsely alleged by the Petitioner, and also further admit that elections were validly conducted in the Polling Units pleaded in the tables in Paragraph 4 (c) of the Petition, the 1st Respondent denies that the Petitioner won the elections in those Polling Units. It was the 1st and 2nd Respondents that won the election in all the said Polling Units, for example in Polling Unit No. 004 Umuna Ward where the 1st and 2nd Respondents scored 21 votes as against the Petitioner's 18 votes, the Petitioner falsely claimed that he scored 21 votes and the 1st and 2nd Respondents 18 votes. The Statement of Result of Poll from Polling Unit FORM EC8 A II for the said Polling Unit will be founded upon at the Trial.

In the same manner, the Petitioner distorted the results for the other Polling Units where he knows that the 1st and 2nd Respondents won the election. For example, in Polling Unit No. 011, Umuna Ward where the 1st Respondent scored 9 votes and the Petitioner scored Zero, the Petitioner did not disclose it. FORM EC SA II for the said Polling Unit will be founded upon at the Trial.

In further answer thereto, the 1st Respondent avers that the votes of the Petitioner and the 1 Respondent in Omuma Ward are as follows:

OMUMA WARD, ORU EAST L.G.A.

S/NO.	POLLING UNIT	PETITIONER'S SCORE	1ST RESPONDENT'S SCORE
1.	001 – Umuhu Primary School	21	495
2.	002 – Court Hall Etit	6	300
3.	003 – Amadoum Primary School	20	392
4.	006 – Central School Omuma	0	200
5.	007 – Powerline Primary School	31	139
6.	008 – Ozuh Primary School	4	235
7.	010 – Ozuh Hall	2	315
8.	012 – Omuma Community School	15	208
9.	013 – Okwu-Ozuh Hall	2	192
10.	014 – Ukwu-Uhie Square	5	182
11.	015 – Umuhu Primary School II	2	112
12.	016 – Eke Umuhu	4	261
13.	017 – Capino Sec. Sch. Ugwuala	0	59
14.	018 – Amambie Onuma Junction	4	26
15.	019 – Ihite Umuhu by Jehova Witness	2	110
16.	020 – Ogbo Ewu Mkt. Square	2	60
17.	021 – Amimo Youth Hall	2	54
18.	022 – Umu Omeke Village Hall	0	21
19.	023 – Wisdom Sec. Sch. Ugwuala	0	21
20.	024 – Central Sch. Omuma II	2	93
21.	026 – Oil Mill	3	90
22.	027 – Ama Ajarogu Square	0	36
23.	028 – Ama Ozarigwe	0	17
24.	029 – Ama Ema Sabbath	0	40
25.	030 – Umuogwuala Village Hall	0	9
26.	032 – Ekwenja Okwu-Ozuh	8	15
27.	033 – Ogbo Mkpuruakwu Ozuh	0	99
28.	034 – Umuorie Village Hall	0	21
29.	035 – Health Centre	2	79

30	036 – Umuihiheoke	1	39
31	037 – Ama Rogger	0	15
32.	Ekwenja Imine	0	78
33.	040 – Ama Oghu Okwu-Owere	0	24
34.	043 – Umuta Youth Hall	0	60
35.	044 – Ukwu Udara Square	0	27
36.	045 – Ama Nwagwu	0	15
37.	046 – Ama Luke Abia	2	190
	TOTAL	140	4,395

The above Results were deliberately left out by the Petitioner in the Petition. Form EC SA II - Statement of Result of Poll from Polling Unit for the said Polling Units will be founded upon at the Trial.

The 1st Respondent denies the allegations in Paragraphs 4 (d,) (e), (f), (g), (h), (i), (j), (k), (l), (m), (n), (o), (p), (q), (r), (s), (t), (u), (v), (w), (x), (y), (z), (za), (zb), (zc), (zd), (ze) and (zf) of the Petition. In further reply thereto, the 1st Respondent avers that:

The scores recorded for Umuna Ward Polling Unit 009 in the election Forms were the correct scores and no results or scores were omitted in the final computation.

The Petitioner scored 3 votes while the 1st Respondent scored 6 votes in Umuna Ward Polling Unit 013 and there was neither inflation nor deflation of scores for anybody.

The 1st Respondent did not alter or authorize the alteration of scores in Umudioka Polling Units 001 and 002 or any other Polling Units in favour of either the Peoples Democratic Party or in favour of any other party. If there was any alteration of scores, the 1st and 2nd Respondents did not benefit therefrom.

All valid results from Umudioka Ward were duly computed and none was excluded in the final computation.

In Ohacke/Okporo Registration Area, Polling Unit 003, the number of accredited voters as recorded on the BVAS is equal to the number of accredited voters. Election held in that Polling Unit and there was no over voting thereat. There was neither ascription nor allocation of votes. Valid votes only were recorded.

The 1st Respondent scored more votes than the Petitioner in all the 209 Polling Units in Orlu Local Government Area and not merely in 17 Polling Units.

It is not correct that only 50 persons voted in Orsu Local Government Area with 137 Polling Units and 11 Wards. All the registered voters in Orsu Local Government Area, who presented themselves for voting in accordance with the law actually voted.

There was no alteration or inflation of votes in Orsu Local Government Area. All Progressives Congress (APC) scored 43 votes, Labour Party (LP) scored 5 votes and Peoples Democratic Party (PDP) scored 2 votes. FORM EC 8D II, Summary of Results from Local Government Area Level Collation at Federal Constituency Level will be founded upon at the Trial.

The Petitioner did not score the majority of the lawful votes cast at the election and ought not be declared the winner of the election. It was the 1st Respondent that scored a majority of the lawful votes cast at the election and was rightly declared the winner of the election. It is not

correct that in many Polling Units where the 1st Respondent was declared the winner, that the election in those Polling Units were marred by irregularities and non-compliance with the Electoral Act, 2022 (as amended). There were no irregularities and non-compliance with the Electoral Act in the Polling Units where the 1st Respondent was declared the winner.

The law was complied with in the accreditation of voters with the BVAS. It is not correct that there were cases in which the number of accredited/verified voters across the Polling Units in the Federal Constituency were more than the number of votes. There ought not be any nullification of the votes in any of the Polling Units won by the 1st Respondent. There was no ascription of votes. Rather, the actual votes scored by the respective candidates were recorded for them.

The votes pleaded in the table in Paragraph 4 (u) of the Petition are the actual valid scores of the respective political parties in Oru East Local Government Area. They were not allocated votes or ascribed votes as alleged by the Petitioner. There was no over voting of any s y sort and the number of votes cast did not exceed the number of accredited voters. The Presiding Officers were right in not cancelling the Results itemized in the Table in Paragraph 4 (u) at Pages 12-16 of the Petition. There was no allocation of votes and the votes of the 1st Respondent ought not be deducted at all.

There was actual election in the various Polling Units in Orsu Local Government Area. It is not correct that the election for the various Polling

Units and Wards in Orsu Local Government Area was conducted at Awo Idemili, the Local Government Headquarters and results generated and allocated. Actual election took place and nobody including Party Agents was compelled to hold election for the various Polling Units at the Local Government Headquarters.

All the registered voters who turned up for the election in Orsu Local Government Area were accredited and they voted. The Result Sheets were signed by the respective Presiding Officers and not by one person only. It is not correct that there was a Press Release/Media Statement, prior to the questioned election to the effect that election will not hold in Orsu Local Government Area for reason of insecurity.

The collation of votes and declaration of results for Orsu Local Government Area took place in Orsu Local Government Headquarters and not Owerri while the actual voting took place in the respective Polling Units.

The results of the election for the Polling Units were entered into Form EC 8A (II) and collated into Form EC 8B (II), and Form EC 8C (II) used for the election at the various Collation Centres at the Ward Collation Centres and at the Local Government Area Collation Centre as the case may, be.

There were no cases of falsifications, alterations, mutilations, wrong entries and/or miscalculations. There were also no cases of reduction of votes for the Petitioner and the jacking up of votes for the 1st and 2nd Respondents as alleged.

The Petitioner did not apply for a review of the election.

The 1st Respondent hereby pleads all the INEC Forms used during the Election and sought to rely on same.

1. All INEC Results Sheets used for the Oru East/Orsu/Orlu Federal Constituency election held on the 25th February, 2023.
2. Certified True Copies of all Forms EC8 Series (EC8A(II), EC8B(II), EC8C(II), EC8D(II), EC8E(II) and EC40G used in the conduct of the questioned election.
3. 2nd Respondent's All Progressives Congress (APC) Membership Card.
4. Approved Guidelines and Regulations for the Conduct of the Election, 2022.
5. The Voters' Register used in the questioned election.
6. All witnesses' Voters Cards and Party Membership Cards.
7. Appointment Letters and Tags of All Progressives Congress (APC) Agents.
8. Duplicate copies of all Forms EC8A(II) issued to the Party Agents of the All Progressives Congress.
9. Certified True Copy of the Bimodal Voter Accreditation System (BVAS) Record/Reports showing the number of accredited voters in the Presidential/National Assembly Election (relevant to the Oru East/Orsu/Orlu Federal Constituency Election) held on 25th February,

2023, including the relevant certificates of compliance relating to computer generated evidence.

10. Imo State PVC Issuance Status for 2023 General Election.
11. Applications written by the 1st Respondent's Counsel to the 3rd Respondent for certified true copies of election documents and the receipts of payment for the election documents.
12. Certificates of Compliance of all computer generated documents.
13. Every other form or document, whether specifically pleaded or not, used by the 3rd Respondent in the conduct of the Oru East/Orsu/Orlu Federal Constituency election held on the 25th February, 2023.
14. The 3rd Respondent is hereby given **NOTICE TO PRODUCE** all these documents at the hearing of this Petition.
15. Labour Party Membership Register for the Oru East Local Government Area/Orsu Local Government Area/Orlu Local Government Area.

Both the 2nd and 3rd Respondents similarly generally traversed the allegations contained in the Petition and specifically denied the claims of the Petition and put him to the strictest proof of the claims and allegations.

They, as well also stated that Election duly held and that there were no irregularities and or non-compliance with the provision of the Electoral Act. They equally contended that Petitioner deliberately left out the Results of Omuma Ward in Oru East Local Government Area.

They both relied on all the Independent National Electoral Commission (INEC) Forms used at the Election and contend further that the Declaration of Result of Orsu Local Government Area took place in Orsu Local Government Area Headquarter and not Owerri and that voting took place in the respective Polling Units where Results were duly counted, entered in the appropriate Forms and declared.

That there were no cases of falsification, alterations, mutilations, wrong entries and or miscalculations, reduction of votes, and that the Petitioner did not apply for the review of the Election.

Above represents the replies of the 1st, 2nd and 3rd Respondents to the Petition.

At the pre-hearing session, the applications filed by the 1st and 2nd Respondents were moved and ruling reserved Pursuant to Section 285(8) of the 1999 Constitution.

I shall for above reason gravitate to the said rulings before proceeding to deal with the entire Petition on the merit.

The 1st Respondent's Motion seeks the following reliefs.

- a. An Order striking out the Petitioner's reply to 1st Respondent's reply to the Petition, dated 3rd day of May, 2023 and filed on the 4th day of May, 2023;
- b. The 3rd Written deposition of Ojinika Geoffrey Chizee and the written statement on oath of AI sworn on the 4th day of May, 2023; and

- c. The list of additional documents to be relied upon by the Petitioner at trial dated the 3rd day of May, 2023 and filed on the 4th day of May, 2023.
- d. And for such further order or **Orders** as this Honourable Tribunal may deem fit to make in the circumstances.

The application is founded on the following grounds:

1. The Petitioner/Respondent's reply violates judicial authorities and the provisions of Paragraph 16(1)(a) and (b) of the First Schedule to the Electoral Act, 2022.
2. The Reply runs counter to the provisions of paragraph 14(1) of the First Schedule to the Electoral Act, 2022.
3. The Petitioner/Respondent filed the reply to deny the allegations of fact made in the 1st Respondent/Applicant's reply.
4. A reply to merely join issues is not permissible.

Affidavit of 17 paragraphs was filed wherein 1st Respondent/Applicant averred as follows:-

That on the 25th day of February, 2023, the 3rd Respondent conducted elections into the National Assembly (hereinafter called "the election")

That the 1st Respondent won the election.

That on the 17th day of March, 2023, the Petitioner/Respondent filed this Petition, challenging the result of the election.

That the 1st Respondent thereafter filed his reply to the petition.

That the Petitioner/Respondent subsequently filed his Petitioner's reply to 1st Respondent's reply to the petition dated 3rd day of May, 2023 and filed on the 4th day of May, 2023.

That in the Petitioner's reply, the Petitioner/Respondent has brought in new facts, tending to amend his Petition.

That in the Petitioner's reply, the Petitioner/Respondent has also brought in new facts, tending to add to the contents of his petition.

That the new facts introduced by the Petitioner/Respondent, in his reply, were in his possession at the time he filed this petition.

That the 1st Respondent/Applicant does not have the opportunity to respond to the new facts in the Petitioner's replied.

That the Petitioner/Respondent also filed his reply to deny the allegations of facts made in the 1st Respondent/Applicant's replied.

That the 1st Respondent/Applicant will be prejudiced, if this application is refused.

That it is in the interest of justice to grant this application.

Written address of 8 pages was filed wherein 1st Respondent's counsel formulated three issues for determination, to wit:-

- a. **The Petitioner's reply to 1st Respondent's reply to the Petition, dated 3^d day of May, 2023 and filed on the 4th day of May, 2023;**
- b. **The 3^d Respondent written deposition of Ojinika Geoffrey Chizee and the written statement on oath of AI sworn on the 4th day of May, 2023; and**
- c. **The list of additional documents to be relied upon by the Petitioner at trial dated the 3^d day of May, 2023 and filed on the 4th day of May, 2023.**

Relying on the provisions of paragraph 16(1) of the 1st schedule to the Electoral Act 2022, learned counsel urged the Tribunal to strike – out the Petitioner's reply for violation of the law.

Counsel cited the cases of ***ORJI VS. UGOCHUKWU (2001) 14 NWLR (Pt. 1161) 207 at 296 – 297, where the Court of Appeal dealt with what the function of reply is all about.;***

DINGYADI VS. WAMAKO (2008) 17 NWLR (Pt. 1116) 395 equally put rest to the fact that a reply of a Petitioner to the Respondent's reply is not a license for new issues, grounds or prayers to be raked... on the whole, learned counsel urged the Tribunal to strike – out the said new issues contained in the reply..

Petitioner on his part filed a counter affidavit and written address in opposition to the applications.

It is the averment of the Petitioner that it only responded to the issues raised by the 1st Respondent in its reply to the Petition, especially where 1st Respondent contended that there was election in the polling units of Orsu Local Government when actually no such election held and the fact that 1st Respondent denied the fact that Petitioner ought to be returned as the winner at the election as elected member representing the Oru East/Orsu/Orlu Federal Constituency.

1st Respondent similarly contents the Labour Party Membership/Candidate of the Petitioner and the flag bearer.

It is the averment of the Petitioner that the said issues raised by the 1st Respondent are new which needed further response by way of reply hence the said Petitioner reply..

Learned counsel for the Petitioner who filed written address in support of the counter affidavit and in opposition to the application in view contended that the cases cited by the 1st Respondent are inapplicable but that ***DINGYADI VS. WAMAKO*** cited indeed supports their case.

Learned counsel argued further that what Petitioner's counsel has done is in line with the principles of pleadings and urged the court to refuse the argument of the 1st Respondent and proceed to dismiss the said applications.

TRIBUNAL

I have considered the arguments of both counsel touching on the competence of the reply filed by the Petitioner to the Replies by the 1st and 2nd Respondents to the Petition.

Before I proceed to address the motion filed by the 1st Respondent, I will like to observe that the said relief sought by the 1st Respondent in its motion is the same as that of the 2nd Respondent, and therefore the Ruling in the 1st Respondent's motion will abide the 2nd Respondent's application.

It is an established rule of pleading that once fresh issues are/or raised in a defence, the Plaintiff i.e Petitioner in this situation, will have the right to file reply.

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

"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 (5) days from the receipt of the Respondent's reply, a Petitioner's reply in answer to the new issues of facts, 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 contents of the Petition filed by him; and

b. The Petitioner's reply does not run counter to the provisions of Paragraph 14(1)."

The function of a reply therefore is to address the new issues raised in the reply to the petition.

In ***ORJI VS. UGOCHUKWU (2009)14 NWLR (Pt. 1161) 207 at 296 297***, the Court of Appeal held as follows:-

"Furthermore the proper function of a reply is to raise it in answer to the defence of any matter which may be admissible or where because of the defence filed by (sic) the Plaintiff proposes to lead evidence in rebuttal. See ISHOLA VS. S.G. BANK LTD. (1997) 2 SCNJ 1 at 16; (1997) 2 NWLR (Pt. 488) 405. See also the case of OJE VS. BABALOLA (1991) SCNJ 110; (1991) 4 NWLR (Pt. 185) 267 where it was held that a Plaintiff should not raise a new cause of action in the reply and that a reply must not plead facts different from the allegations in the Statement of Claim where this rule is breached. In the case of ADEPOJU VS. AWODUYILEMI (1999) 5 NWLR (Pt. 603) 364 at 382 – 383 it was held that a Petitioner cannot introduce new facts not otherwise contained in his Petition in his reply because at the time of filing his petition, those facts were within his knowledge and if he did not adequately put them in his Petition, the proper thing to do will be to amend the Petition assuming that is possible."

A reply is certainly, however, not an avenue for a Petitioner to raise new fact in aid of his petition, facts which he did not plead in the body of the Petition, and by implication trying to amend his petition. This will not be allowed.

Petitioner who did not talk about recording any scene where Election was allegedly conducted away from the designated Polling Units and or pleaded any Compact Disc (CD) who perhaps had the said video CD in his possession and who did not file same along his Petition, cannot now in his reply attempt to smuggle same in. This is not the time to do it in its reply.

I agree with the Respondents on this point... the said reply of the Petitioner on this point is hereby struck-out.

The gamut of the facts in support of the Petition and grounds touches on the election of the 25th February, 2023 which the petitioner indeed did participate, same having been sponsored by his political party.

It is true that 1st Respondent contends the fact that the Petitioner is not a member of the Labour Party and that there was election on the 25th February, 2023, and also that the said Petitioner was not competent to stand the said Election. I agree with the Petitioner's counsel that the said facts are indeed very weighty and I dare say Petitioner is under an obligation to file reply in rebuttal. What the Petitioner has stated in the said reply aside the issue of the video CD is in tandem with the Rule of Pleading and cannot be fresh. It is indeed in line with fair hearing which is a Fundamental Right provided for under Section 36(1) Chapter IV, of the 1999 Constitution of the Federal Republic of Nigeria.

I am not in agreement with the argument of Counsel for Respondents on the other contents of the Petitioner’s reply... objection succeeds in part.

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

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

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

With the determination of the respective Motions, I now proceed to determine the merits and or otherwise of the Petitioner’s Petition.

It is important to note that the Petitioner’s counsel Imo, Esq., in his attempt to establish the case of the Petitioner, called a total number of 11 witnesses and also tendered a host of certified true copies of documents from the Bar.

Petitioner’s counsel called a total number of 11 witnesses and the Respondents led two (2) witnesses in evidence who gave evidence as DW1 – DW2.

For the purposes of clarity and understanding, I now proceed to reproduce the evidence of the witnesses as filed and adopted before the Tribunal by

the witnesses on the one hand and the ensuing cross-examination and re-examination, where necessary:

PW1 (OGBUJI NGOZI) gave evidence as follows:

That he was a registered and eligible voter, registered to vote at Code 001 Polling Unit, Umudioka Ward, Orlu Local Government Area of Imo State.

That he was the Polling Unit Agent for the Labour Party in the said Polling Unit in the last Presidential and National Assembly Election held on 25th day of February, 2023.

That at the said Polling Unit, APC, LP and PDP scored the following respective votes: APC – 6, LP – 29 and PDP – 3. However, the result was subsequently altered with the following votes entered for the parties: APC – 6, LP – 29, PDP – 103. He was given the agent's copy of Form EC8A(II) for Polling Unit.

Under cross-examination, PW1 stated that he was the polling unit agent and confirmed that his polling unit result was signed. PW1 stated further that the result in evidence was altered but that he does not know who did it.

PW2 (IFEANYI ONWUEGBUCHULEM) gave evidence as follows:

That he was a registered and eligible voter, registered to vote at Code 002 Polling Unit, Umudioka Ward, Orlu Local Government Area of Imo State.

That he was the Polling Unit Agent for the Labour Party in the said Polling Unit in the last Presidential and National Assembly Election held on the 25th day of February, 2023.

That in the said Polling Unit, APC, LP, and PDP scored the following votes: APC – 16, LP – 38 and PDP – 1, respectively. However, the result was subsequently altered with the following votes entered for the parties: APC – 16, LP – 38, PDP – 101. He was given the agent's copy of Form EC8A(II) for Polling Unit.

Under cross-examination, PW2 stated that people went out to vote and that the election in his polling unit was peaceful but that the result was altered in favour of the PDP and that he does not have any problem with the 1st, 2nd and 3rd Respondents but with PDP.

PW3 (SAMUEL CHIBUIKE GODWIN) gave evidence as follows:

That he was a registered and eligible voter, registered to vote at Code 013 Polling Unit, Umuna Ward, Orlu Local Government Area of Imo State.

That he was the Polling Unit Agent for the Labour Party in the said Polling Unit in the last Presidential and National Assembly Election held on the 25th day of February, 2023.

That the Petitioner scored 14 votes while 1st Respondent scored 3 votes at the said election. However, in entering the scores of the Candidates/Political Parties on the relevant Form EC8B(II), the Petitioner's vote scored was deflated and recorded as 3 votes while that of the 1st Respondent was inflated and recorded as 6 votes.

PW3 stated under cross-examination, that he functioned as polling unit agent. He stated in his further evidence that his evidence was what transpired at the ward collation centre but not polling unit.

PW4 (UCHENNA IWUAGWU) gave evidence as follows:

That he was a registered and eligible voter, registered to vote at Code 009 Polling Unit, Umudioka Ward, Orlu Local Government Area of Imo State.

That he was the Polling Unit Agent for the Labour Party in the said Polling Unit in the last Presidential and National Assembly Election held on the 25th day of February, 2023.

That at the election in the said Polling Unit, the Petitioner scored 27 votes as against 16 votes scored by the 1st Respondent. The result of this Polling Unit was not entered on the relevant Form EC8B(II). In effect, this result was not added to the final computation of the result of the election. He was given the agent's copy of the said Polling Unit Result.

Under cross-examination, he stated further that he was given the result by INEC and that he functioned as polling unit agent hence he did not know what transpired at the ward level.

PW5 (CHIGOZIE EZECHUKWU) stated in his evidence that he is a registered and eligible voter, registered to vote at Ihitenasa Secondary School Polling Unit (PU-007) in Ihitenasa. Orsu Local Government Area of Imo State.

That before the general election scheduled to hold on Saturday, the 25th day of February, 2023, he saw on the news that elections will not hold in the entire Orsu Local Government Area of Imo State.

That late into the night on Friday, the 24th day of February, 2023, he learnt that elections will now hold in Orsu Local Government Area of Imo State.

That on Saturday, the 25th day of February, 2023, he went to his polling unit at Ihiteukwa Secondary School Polling Unit (PU-007) in Ihiteukwa, Orsu Local Government Area of Imo State to vote but he did not see any INEC staff on ground.

That while at the polling unit, he got information that the election will now hold at a central point at the Orsu Local Government Area Headquarters at Awo Idemili for all the Polling Units in the Local Government Area.

That on arriving at the Local Government Area Headquarters, he saw a few persons at the Local Government Area Headquarters and a few INEC staff who displayed some ballot boxes on the open field.

That he was not allowed to vote. He saw some of the Party Agents protesting the relocation of the polling units to a single point. He just saw a few INEC staff and APC agents writing figures on some INEC election forms.

Under cross – examination, he stated further that he is a voter but did not have his PVC in court.

He however stated that INEC did not allow him to vote even-though he was a registered voter.

PW6 (ODIKAMNARON PHILIP) gave evidence as follows:

That he is a registered and eligible voter; he has his Permanent Voter's Card (PVC).

That he is the Ward Chairman of Labour Party for Orsu-Ihiteukwa Ward in Orsu Local Government Areas of Imo State.

That he know as a fact that the Petitioner on record is a card carrying member of Labour Party and duly registered with Orsu – Ihiteukwa Ward of the Labour Party at all times material to the election, subject matter of this petition.

That the name of the Petitioner is on the Register of Members of Labour Party in Orsu – Ihiteukwa Ward.

That by virtue of his position afore – said, he has in his custody the said Register of members of Labour Party in Orsu – Ihiteukwa Ward.

Under cross-examination, PW6 stated that Exhibit "14" is the Register of the members of Labour Party for Orsu Ward and that he submitted same to the party official who in-turn submitted to INEC. He though stated that he is not the ward chairman.

He also confirmed the fact that the register of the party is kept with the secretary of the party and that he is not the secretary. He admitted the fact that there is nothing on the face of Exhibits "12" and "13" to show he

was the chairman of Orsu –Ihiteukwa Ward. He also confirmed the fact that the Exhibit “14” did not have a date to show when it was opened.

PW7 (ARTHUR OBINOKWARA) gave evidence as follows:

That he was a registered and eligible voter. He has his permanent voter’s card (PVC).

That he knows as a fact that the Presidential and National Assembly Election held on the 25th day of February, 2023.

That on the said 25/02/2023, the election to elect the member to represent the Oru East/Orsu/Orlu Federal Constituency in the House of Representatives of the National Assembly of Nigeria (hereinafter called the “questioned election”) was held at a central location, that is, Orsu Local Government Area Headquarters, Awo-Idemili, for ALL the Polling Units in Orsu Local Government Area.

That he was physically present at the said central venue of the questioned election, that is, Orsu Local Government Area Headquarters, Awo-Idemili.

That he was at Orsu Local Government Area Headquarters, Awo-Idemili on the said 25th February, 2023 from 8.00am to 6.00pm and did not go anywhere else within the said time.

That INEC officials arrived with the electoral materials around 10.00am that day and left around 2:30pm same day.

That with his phone (handset), he video recorded the proceedings of the holding of the election for the various polling unit in Orsu Local Government

Area, simultaneously, at a singular location, that is, the Orsu Local Government Area Headquarters in Awo Idemili. He has the said video recordings. He also has the relevant certificate of compliance with computer generated evidence.

That immediately after the voting on the said day, all the INEC officials together with party agents left for Owerri, the capital of Imo State, with all the electoral materials.

That the collation of votes and declaration of results for Orsu Local Government Area was not done in Orsu Local Government Headquarters where the voting for ALL the polling units in Orsu Local Government Area took place.

Under cross-examination, he stated that he is the owner of the infinix phone used for the video recording but not the owner of the HP Labtop and does not know when same was purchased.

He stated also that he did not known precisely when he started the recording but it was about 10am – 11am, and that the Petitioner is his brother. He also said he did not go to the Local Government Area to video the election proceedings but that he went there to confirm INEC Officials took away there election materials. He stated that the election held in one place and that is why he did not go to the poling units.

PW8 (FLOBERT TORCHUKWU IHEDIA) gave evidence as follows:

That he was a registered and eligible voter, registered to vote at Code 009 Polling Unit, Umuna Ward, Orlu Local Government Area of Imo State.

That he was the Polling Unit Agent for the Labour Party in the said Polling Unit in the last Presidential and National Assembly Election held on the 25th day of February, 2023.

That in the said Polling Unit the Petitioner scored 27 votes as against 1 vote scored by the 1st Respondent.

That the result of this Polling Unit was not entered in the relevant Form EC8B(II) used for the Ward. In effect, this result was not added to the final computation of the result of the election. He was given the agent's copy of the said result (Form EC8A(II)).

Under cross – examination, PW8 stated that he was the polling unit agent for his polling unit.

PW9 (OJINIKA GEOFFREY CHIZEE) gave evidence as follows:

That the 1st Respondent is the person, purportedly, returned by the 3rd Respondent as the winner of the questioned election while the 2nd Respondent is a registered Political Party under the relevant laws of the Federal Republic of Nigeria and sponsored the 1st Respondent as her candidate for the questioned election.

He further states that the 2nd Respondent is a Political Party registered with the 3rd Respondent and has its National Headquarters/Secretariat at 40 Blantyre Street, Off Adetokunbo Ademola Street, Wuse II, Abuja, FCT, Nigeria. The 2nd Respondent also has a branch office in Owerri, Imo State.

The 3rd Respondent is a body corporate charged with the statutory power and function of undertaking, conducting, organizing, supervising and managing all elections to the Legislative Houses in Nigeria including the National Assembly of Nigeria. It also conducts and undertakes other elections and related duties and functions as provided under the Constitution of the Federal Republic of Nigeria and other relevant Laws. The 3rd Respondent has offices in all the states of Nigeria including Imo State.

The 3rd Respondent conducted the questioned election through its agents/officials, including the Presiding Officers, Assistant Presiding Officers, Poll Clerks, Ward Supervisory Presiding Officers, Ward Collation Officers, Local Government Area Collation Officers, E-Collation Officers, Returning Officer, etc. These persons, amongst others, at all times material to the questioned election, acted as agents of the 3rd Respondent.

The Petitioner pleads that in Umuna Ward, Polling Unit 009, where the Petitioner scored 27 votes as against 1 vote scored by the 1st Respondent, the result of this Polling Unit was not entered in the relevant Form EC8B(II) used for the Ward. In effect, this result was not added to the final computation of the result of the election. The Petitioner pleads the agent's copy of the said result (Form EC8A(II)) and shall rely upon same at the trial.

The Petitioner further pleads that in same Umuma Ward, Polling Unit 013, the Petitioner scored 14 votes while 1st Respondent scored 3 votes. However, in entering the scores of the candidates/political parties on the relevant Form EC8B(II), the Petitioner's vote scored was deflated and

recorded as 3 votes while that of the 1st Respondent was inflated and recorded as 6 votes. The certified true copy of Form EC8A(II) for Polling Unit 013 is hereby pleaded. Also, certified true copy of Form EC8B(II) for Umuma Ward is also pleaded.

In Umudioka Ward, Polling Unit 001, APC, LP and PDP scored the following respective votes: APC – 6, LP – 29 and PDP – 3. However, the result was subsequently altered with the following votes entered for the parties: APC – 6, LP – 29, PDP – 103. The agent's copy of Form EC8A(II) for Polling Unit 001, Umudioka Ward and the certified true copy of same are together pleaded and shall be founded upon at the trial.

Also, in Umudioka Ward, Polling Unit 002, APC, LP and PDP scored the following votes: APC – 16, LP – 38 and PDP–1, respectively. However, the result was subsequently altered with the following votes entered for the parties: APC – 16, LP – 38, PDP – 101. The agent's copy of Form EC8A(II) for Polling Unit 002, Umudioka Ward and the certified true copy of same are together pleaded and shall be relied upon at the trial.

The Petitioner pleads that in Umudioka Ward, Polling Unit 009, the Petitioner scored 27 votes as against 16 votes scored by the 1st Respondent. The result of this Polling Unit was not entered on the relevant Form EC8B(II). In effect, this result was not added to the final computation of the result of the election. The Petitioner pleads the agent's copy of the said Polling Unit Result together with the certified true copy of the relevant Form EC8B(II) and shall rely upon same at the trial.

In Ohaeke/Okporo Registration Area, Polling Unit 003, the number of accredited voters as recorded on the BVAS is zero (0). The total votes cast was recorded as 40 votes. Here, the Petitioner was ascribed no vote while the 1st Respondent was allocated 16 votes. The Petitioner pleads that no election held in this Polling Unit. Assuming there was an election, the Petitioner pleads that there was over voting in this Polling Unit.

At the end of the election at the various Polling Units in Orlu Local Government Area mentioned immediately above, the agents' (pink/yellow) copy of Form EC8A(II) used for the said election were collected by the agents' of the Petitioner. The said agents' copy of Form EC8A(II) for the aforesaid Polling Units in Orlu Local Government Area is hereby pleaded and shall be relied upon at the trial.

From the total number of valid votes cast across the said Seventeen Polling Units in Orlu Local Government Area, the Petitioner scored 277 votes while the 1st and 2nd Respondents scored 164 votes.

It is further his claim that in Orsu Local Government Area with 137 Polling Units, 11 Wards and 50,565 (Fifty thousand, five hundred and sixty-five voters) registered voters, only 50 (fifty) persons purportedly voted.

From the votes at the Orsu Local Government Secretariat where the election for the Polling Units in Orsu Local Government Area took place, the actual votes scored by APC, LP and PDP as recorded on Form EC8A(II) obtained/collected by the Petitioner's agents is as follows: APC – 17 votes, LP – 5 votes and PDP – 2 votes.

The actual votes as obtained by the Political Parties were altered and the vote score by the APC was inflated to now read: APC – 43 votes, LP – 5 votes and PDP – 2 votes.

The Petitioner shall at the hearing of this petition contend and prove that the Petitioner was the person who scored the majority of lawful votes cast at the election and ought to have been declared the winner of the said election.

The Petitioner plead that on the day of the questioned election, three categories of election were simultaneously conducted across all the Polling Units in Nigeria, to wit: Presidential and National Assembly election. The National Assembly election comprises election into the Senate and House of Representatives of the National Assembly of Nigeria. Also, the accreditation process for the said Presidential and National Assembly election was done simultaneously using the BVAS machine afore-pleaded.

The Petitioner also contended that the exact number of voters who presented their Permanent Voters Card for verification at the questioned election were captured by the BVAS used at all the Polling Units that comprise the Oru East/Orsu/Orlu Federal Constituency. The aforesaid data captured by the said BVAS were uploaded/saved in real-time, into the back-end/internet server of the 3rd Respondent. The certified true copy of the list/report of the verified and/or accredited voters as captured by the BVAS machines used across the Polling Units in the questioned election including the Certificate of Compliance relevant to Computer generated evidence were all pleaded, and that a careful study of the records of

accreditation at the questioned election as captured by the BVAS machine, afore-pleaded, clearly shows that there are numerous cases where there are more votes than the number of verified/accredited voters across the Polling Units in the Federal Constituency.

That as a matter of fact, that was the case in most of the Polling Units which the Petitioner is disputing in this petition. The Petitioner hereby states that if the results purportedly declared in the disputed Polling Units of the Federal Constituency are nullified, it will certainly affect the result of the whole election. The Petitioner shall at the hearing of this petition rely on the Imo State PVC Issuance Status for 2023 General Election issued by the 3rd Respondent to show the number of Permanent Voters Card (PVC) collected by the voters in the polling units where over voting occurred.

The Petitioners aver that if the votes, allocated to the 1st Respondent in the affected Polling Units in Oru East Local Government Area, are deducted from their total vote score, the 1st Respondent would be left with a paltry 207 votes from the three Local Government Areas which make up the Federal Constituency in the questioned election. While the total vote score of the Petitioner is 311 votes.

The Petitioner avers that there was no election conducted in any of the 137 Polling Units across the 10 Wards/Registration Areas in Orsu Local Government Area at the question elections. Rather, the 3rd Respondent compelled her officials and Party Agents to, purportedly, hold the elections for the various Polling Units at Awo Idemili, the Orsu Local Government Area Headquarters. It was in the Orsu Local Government Area

Headquarters/Secretariat that figures were generated and allocated to the various Candidates/Political Parties by officials of the 3rd Respondent.

The Petitioner states that there are a total of 50,565 registered voters in Orsu Local Government Area whereas only about 50 voters were purportedly accredited and voted in the purported election. The Petitioner further states that there is NO DESIGNATED POLLING UNIT IN THE ORSU LOCAL GOVERNMENT AREA HEADQUARTERS, AWO IDEMILI

To further show that the purported election for Orsu Local Government Area held at a singular point – Orsu Local Government Secretariat/Headquarters, Awo Idemili, the Petitioner pleads the certified true copies of the relevant Form EC8A(II) for Polling Units 001, 003, 005 and 008 of Orsu Ihiteukwa Registration Area which shows that the said Polling Unit result sheets were filled and/or signed by the same Presiding Officer, one Martins David K.

The 3rd Respondent had in a Press Release/Media Statement, prior to the questioned election, stated that elections will not held in the entire Orsu Local Government Area for reason of insecurity. The aforesaid Press Release/Media Statement issued by the 3rd Respondent is hereto pleaded and shall be relied upon at trial. The 3rd Respondent is hereby put on Notice to Produce same at the trial.

The Petitioner shall at the hearing of this petition contend that the purported holding of the election for all the Polling Units in Orsu Local Government Area at the Local Government Headquarters, Awo Idemili is in

violation of the Electoral Act, 2022 and the Regulations and Guidelines for the Conduct of Elections, 2022 issued by the 3rd Respondent.

The Petitioner further plead that apart from the above pleaded irregularities/malpractices, that the election was also marred by other cases of irregularities, corrupt practices and/or non-compliance with the Electoral Act, 2022 and the Regulations and Guidelines for the Conduct of Elections, 2022, to wit:

The collation of votes and declaration of results for Orsu Local Government Area was not done in Orsu Local Government Headquarters where the voting purportedly took place but in Owerri, the capital of Imo State, where agents of the Petitioner were not allowed near the Collation Centre.

After the election at the various Polling Units, the results generated at the said Polling Units were expected to be entered in the relevant Forms EC8A(II) used for the election. Subsequently, the said results ought to have been collated and entered in the relevant Forms EC8B(II) used at the election by the various Ward Collation Officers. Also, the said results were later to be collated and entered in the relevant Forms EC8C(II) for the election by the various Local Government Collation Officers.

The Petitioner hereby states that a careful perusal of the afore-pleaded Forms clearly shows that they were so many instances of falsification, alterations, mutilations, wrong entries and/or miscalculations. In some cases, the Petitioner's vote scores were reduced while in some other cases, the 1st and 2nd Respondents' vote scores were jacked up. The instances in questions are as pleaded herein.

Under cross-examination, he stated further that he is a registered voter in his polling unit and that there was no election everywhere. He admitted the fact that he had polling unit agent who also reported the happenings to him. He also stated that his figures were deflated and or altered. He also admitted that election took place in his constituency.

He also confirmed the fact that he had polling unit agents in the 517 Polling Units and 34 collation centres totalling 551 Agents in the field. He also said some of the information in his deposition were said to him by his agents.

He confirmed there was valid election in Orlu and Oru – East but said no valid election held in Orsu LGA.

PW10 (OLACHI NWUGO) a subpoenaed witness, gave evidence as follows:

XXX:- It is true that BVAS Machine can only receive information supplied to it?

Ans:- Yes.

XXX:- BVAS can only give out only information supplied?

Ans:- Yes, barring any error i.e if the information has not been hampered by viruses.

XXX:- When you are assessing the BVAS Machines and it reads zero, it means you cannot see anything?

Ans:- It depends. If you put on the BVAS Machine you can only see the information of the recent election. On the report previously stored in the BVAS Machine, you can only assess it when the report has been printed at the back-end server.

XXX:- If a wrong or faulty information is fed into the Machine, it will give you the same information?

Ans:- Yes.

XXX:- You did not operate the BVAS Machine on the day of the election as you were not the presiding Officer?

Ans:- I did not.

XXX:- You did not take in the conduct of the questioned election?

Ans:- I did not.

XXX:- INEC database and Backend server are the same thing?

Ans:- Yes.

XXX:- BVR refers to the information received from the Back-end server or database?

Ans:- Yes.

XXX:- How many BVAS machines are in Court.

Ans:- 120.

XXX:- You are not in ICT Department but Legal Department?

Ans:- Yes.

XXX:- Nil

Re-XX:- Nil.

PW11 (Onyegbule Chibuzor Christian) a subpoenaed witness, gave evidence as follows:

XXX:- Have a look at the subpoena i.e Exhibit "39" on the face of the document, you were not given instruction by the REC to come to the Tribunal?

Ans:- Yes.

XXX:- You have no such instruction to come here today by the REC?

Ans:- I have been authorized.

XXX:- Are you familiar with National Electronic Register of Election result?

Ans:- Yes.

XXX:- This Backend Server is the one used to compute the Election result?

Ans:- Yes.

XXX:- Did you operate these machine on the day of election?

Ans:- Yes.

XXX:- Nil.

Re-XX:- Nil.

1st and 3rd Respondent, called two witnesses (DW1 – DW2)

DW1 (OKAFOR OBIORA) gave evidence as follows:

That he was the Electoral Officer assigned to Orsu Local Government Area of Imo State by the 3rd Respondent for that general election held on the 25th day of February, 2023 for Orlu/Orsu/Oru East Federal Constituency into the National Assembly.

That paragraph 1(b) of the petition is admitted.

That paragraphs 1(e), (f), (g) and (h) of the petition are admitted, except to deny that the 1st Respondent is the person purportedly returned as the winner of the election. In further reply thereto the 3rd Respondent avers that the 1st Respondent is the person duly returned as the winner of the questioned election.

That except to deny that the 1st Respondent is the purported winner of the questioned election, the 3rd Respondent admits paragraphs 2(a), (b), (c) and (d) of the petition. In reply thereto, the 3rd Respondent avers that the 1st Respondent actually won the election and was duly declared the winner thereof.

That paragraphs 3(a) and (b) of the petition are denied. In reply thereto, the 3rd Respondent states that:

- a. The 1st Respondent was duly elected by a majority of lawful votes cast at the said election.
- b. The said election was valid and there were neither corrupt practices nor substantial non-compliance with the provisions of the Electoral Act, 2022 (as amended).
- c. That paragraph 4(a) of the petition is admitted.
- d. That paragraph 4(b) of the petition is denied. The 3rd Respondent avers, that valid elections took place in all the Polling Units in the Federal Constituency and not in 17 Polling Units only in Orlu Local Government Area and 3 Polling Units only in Oru East Local Government Area as falsely alleged by the Petitioner.

That the 3rd Respondent denies the allegation in paragraphs 4(d), (e), (f), (g), (h), (i), (j), (k), (l), (m), (n), (o), (p), (q), (r), (s), (t), (u), (v), (w), (x), (y), (z), (za), (zb), (zc), (zd), (ze) and (zf) of the petition. In further reply thereto, the 3rd Respondent avers that:

- a. It is not correct that only 50 persons voted in Orsu Local Government Area with 137 Polling Units and 11 Wards. All the registered voters in Orsu Local Government Area who presented themselves for voting in accordance with the law actually voted.

- b. There was no alteration or inflation of votes in Orsu Local Government Area. The 2nd Respondent herein (All Progressives Congress (APC)) scored 43 votes, Labour Party (LP) scored 5 votes and Peoples Democratic Party (PDP) scored 2 votes. Form EC8D(II), summary of results from Local Government Area Level Collation at Federal Constituency level will be founded upon at the trial.
- c. The Petitioner did not score the majority of the lawful votes cast at the election and ought not be declared the winner of the election. It was the 1st Respondent that scored a majority of the lawful votes cast at the election and was rightly declared the winner of the election by the 3rd Respondent.
- d. It is not correct that in many Polling Units where the 1st Respondent was declared the winner, that the election in those Polling Units were marred by irregularities and non-compliance with the Electoral Act, 2022 (as amended). There were no irregularities and non-compliance with the Electoral Act in the Polling Units where the 1st Respondent was declared the winner by the 3rd Respondent.
- e. The law was substantially complied with, in the accreditation of voters with the BVAS. It is not correct that there were cases in which the number of accredited/verified voters across the Polling Units in the Federal Constituency were more than the number of votes. There ought not be any nullification of the votes in any of the Polling Units won by the 1st Respondent as declared by the 3rd Respondent. There was no ascription of votes. Rather, the actual votes scored by

the respective candidates were recorded for them by the 3rd Respondent.

- f. There was actual election in the various Polling Units in Orsu Local Government Area. It is not correct that the election for the various Polling Units and Wards in Orsu Local Government Area was conducted at Awo Idemili, the Local Government Headquarters and result generated and allocated. Actual election took place and nobody including party agents was compelled to hold election for the various Polling Units at the Local Government Headquarters.
- g. All the registered voters who turned up for the election in Orsu Local Government Area were accredited and they voted. The result sheets were signed by the respective Presiding Officers and not by one person only.
- h. It is not correct that there was a Press Release/Media Statement, prior to the questioned election to the effect that election will not hold in Orsu Local Government Area for reason of insecurity.
- i. The collation of votes and declaration of results for Orsu Local Government Area took place in Orsu Local Government Headquarters and not Owerri while the actual voting took place in the respective Polling Units.
- j. The results of the election for the Polling Units were entered into Form EC8A(II) and collated into Form EC8B(II) and Form EC8C(II) used for the election at the various Collation Centres at the Ward

Collation Centres and at the Local Government Area Collation Centre as the case may be.

- k. There were no cases of falsifications, alterations, mutilations, wrong entries and/or miscalculations by the 3rd Respondents. There were also no cases of reduction of votes for the Petitioner and the jacking up of votes for the 1st and 2nd Respondents as alleged.
- l. The Petitioner did not apply for a review of the election.
- m. The 3rd Respondent hereby pleads and will rely on the following documents at the trial:
 - i. All INEC Results Sheets used for the Oru East/Orsu/Orlu Federal Constituency election held on the 25th day of February, 2023.
 - ii. Certified true copies of all Forms EC8 series (EC8A(II), EC8B(II), EC8C(II), EC8D(II), EC8E(II) and EC40G) used in the conduct of the questioned election.
 - iii. Approved Guidelines and Regulations for the Conduct of the Election, 2022.
 - iv. The Voter's Register used in the questioned election.
 - v. Certified true copy of the Bimodal Voter Accreditation System (BVAS) Record/Reports showing the number of accredited voters in the Presidential/National Assembly Election (relevant to the Oru East Orsu/Orlu Federal Constituency Election) held

on the 25th day of February, 2023, including the relevant certificates of compliance relating to computer generated evidence.

- vi. Imo State PVC Issuance Status for 2023 General election.
- vii. Certificates of Compliance of all computer-generated documents.
- viii. Every other form or documents, whether specifically pleaded or not, used by the 3rd Respondent in the conduct of the Oru East/Orsu/Orlu Federal Constituency election held on the 25th day of February, 2023.

That the 3rd Respondent will at the trial urge this Honourable Tribunal to dismiss the petition for being unreasonable, frivolous, incompetent, speculative and for lacking in merit.

Under cross – examination, he admitted that he was the Electoral Officer for Orsu LGA hence the head of the commission there. He confirmed the fact that he conducted election in Orsu LGA and that election materials were all distributed.

He stated the fact that he visited most of the polling units and debunked the fact that election was conducted at the Local Government Area and not the polling units. He further stated in his evidence that the commission is housed in the Local Government Headquarter and people can easily misunderstand the activities going on there, and that the voters low turn –

out was because Orsu Local Government is the red zone for the unknown gun men but that he had security men with him.

DW2 (NWACHUKWU CANIC MOORE CHUKWUGOZIE) gave evidence as follows:

That he was the 1st Respondent in this petition.

That the 2nd Respondent was a registered political party, under the laws of the Federal Republic of Nigeria. The questioned election took place on Saturday, the 25th day of February, 2023.

That he knows the parties to this petition.

That the Petitioner was not a candidate at the 2023 National Assembly election and does not have a right to be returned at the said election as the elected member representing the Oru East/Orsu/Orlu Federal Constituency in the House of Representatives of the National Assembly of Nigeria in that the Petitioner is not a member of the Labour Party as disclosed in the Register of Members submitted by the Labour Party to the Independent National Electoral Commission (3rd Respondent) pursuant to the Electoral Act, 2022. That if he see a certified true copy of the Register of Labour Party members submitted by the Labour Party to the 3rd Respondent for the Oru East, Orsu and Orlu Local Government Areas before the questioned election, he will recognize it. It is available for this Honourable Tribunal to see and admit in evidence as Exhibit.

The Petitioner is not a registered voter and had no right to vote or be voted for as he is not a registered member of the Labour Party. The Petitioner is

neither a member nor a candidate of the Labour Party in the questioned election. He is not a registered voter. Election held at the Ezi Amihie Village (Code 012) Polling Unit in Orsu-Ihiteukwa Ward, Orsu Local Government Area of Imo State contrary to the allegation of the Petitioner. The Petitioner did not present himself to vote at the election. The Petitioner was not qualified to be a candidate in the election and has no *locus standi* to present the petition. The Register of Labour Party Members submitted by the Labour Party to Independent National Electoral Commission for the said Federal Constituency is available for this Honourable Tribunal to see and admit in evidence as Exhibit.

He was not the person purportedly returned as the winner of the election. Rather, he was the person duly returned as the winner of the questioned election.

That he actually won the election and was duly declared the winner thereof.

That he knows that:

- a. That he was duly elected by a majority of lawful votes cast at the said election.
- b. The said election was valid and there were neither corrupt practices nor substantial non-compliance with the provisions of the Electoral Act, 2022 (as amended).

The Oru East/Orsu/Orlu Federal Constituency is made up of 3 Local Government Areas, namely: Oru East, Orsu and Orlu Local Government Areas.

Valid election took place in all the Polling Units in the Federal Constituency and not in 17 Polling Units only in Orlu Local Government Area and 3 Polling Units only in Oru East Local Government Area as falsely alleged by the Petitioner.

Elections were validly conducted in the Polling Units pleaded in the tables in paragraph 4(c) of the petition, but the Petitioner did not win the elections in those Polling Units. He was the candidate that won the election in all the said Polling Units. For example, in Polling Unit No. 004 Umuna Ward where he scored 21 votes as against the Petitioner's 18 votes, the Petitioner falsely claimed that he scored 21 votes and 1, 18 votes. The Statement of Result of Poll from Polling Unit E Form EC8A(II) for the said Polling Unit is available for this Honourable Tribunal to see and admit in evidence as Exhibit. In the same manner, the Petitioner distorted the results for the other Polling Units where he knows that he won the election. For example, in Polling Unit No. 011, Umuna Ward where he scored 9 votes and the Petitioner scored Zero, the Petitioner did not disclose it. Form EC8A(II) for the said Polling Unit is available for this Honourable Tribunal to see and admit in evidence as Exhibit.

The votes of the Petitioner and the 1st Respondent in Omuma Ward are as follows:

OMUMA WARD, ORU EAST LOCAL GOVERNMENT AREA

S/NO.	POLLING UNIT	PETITIONER'S SCORE	1ST RESPONDENT'S SCORE
1.	001 – UMUHU PRIMARY SCHOOL	21	495
2.	002 – CORUT HALL ETITI	6	300
3.	003 – AMAODUM PRIMARY SCHOOL	20	392
4.	006 – CENTRAL SCHOOL OMUNA	0	200
5.	007 – POWERLINE PRIMARY SCHOOL	31	139
6.	008 – OZUH PRIMARY SCHOOL	4	235
7.	010 – OZUH HALL	2	315
8.	012 – OMUMA COMMUNITY SCHOOL	15	208
9.	013 – OKWU-OZUH HALL	2	192
10.	014 – UKWU-UHIE SQUARE	5	182
11.	015 – UMUHU PRIMARY SCHOOL II	2	112
12.	016 – EKE UMUHU	4	261
13.	017 – CAPINO SECONDARY SCHOOL UGWUALA	0	59
14.	018 – AMAMBIE OMUMA JUNCTION	4	26
15.	019 – IHITE UMUHU BY JEHOVAH WITNESS	2	110
16.	020 – OGBO EWU MARKET SQUARE	2	60
17.	021 – AMIMO YOUTH HALL	2	54
18.	022 – UMU OMEKE VILLAGE HALL	0	87
19.	023 – WISDOM SECONDARY SCHOOL OMUMA	0	21
20.	024 – CENTRAL SCHOOL OMUMA II	2	93
21.	026 – OIL MILL	3	90
22.	027 – AMA AJAROGU SQUARE	0	36
23.	028 – AMA OZARIGWE	0	17
24.	029 – AMA EMA SABBATH	0	40

25.	030 – UMUOGWUALA VILLAGE HALL	0	9
26.	032 – EKWENJA OKWU-OZUH	8	15
27.	033 – OGBO MKPURUAKWU OZUH	0	99
28.	034 – UMUORIE VILLAGE HALL	0	21
29.	035 – HEALTH CENTRE	2	79
30.	036 – UMUIHIHEOKE	1	39
31.	037 - AMA ROGGER	0	15
32.	039 – EKWENJA IMINE	0	78
33.	040 – AMA OGHU OKWU-OWERE	0	24
34.	043 – UMUTA YOUTH HALL	0	60
35.	044 – UKWU UDARA SQUARE	0	27
36.	045 – AMA NWAGWU	0	15
37.	046 – AMA LUKE ABIA	2	190
	TOTAL	140	4,395

The above Results were deliberately left out by the Petitioner in the petition. Form EC8a(II) – Statement of Result of poll from Polling Unit for the said Polling Units are available for this Honourable Tribunal to see and admit in evidence as Exhibits.

That he was aware that:

The scores recorded for Umuna Ward Polling Unit 009 in the election Forms were the correct scores and no results or scores were omitted in the final computation.

The Petitioner scored 3 votes while I score 6 votes in Umuna Ward Polling Unit 013 and there was neither inflation nor deflation of scores for anybody.

The 2nd Respondent did not neither did he alters or authorize the alteration of scores in Umudioka Polling Units 001 and 002 or any other Polling Units in favour of either the People's Democratic Party or in favour of any other party. If there was any alteration of scores, the 2nd Respondent and he did not benefit therefrom.

All valid results from Umudioka Ward were duly computed and none was excluded in the final computation.

In Ohaeke/Okporo Registration Area, Polling Unit 003, the number of accredited voters as recorded on the BVAS is equal to the number of accredited voters. Election held in that Polling Unit and there was no over voting thereat. There was neither ascription nor allocation of votes. Valid votes only were recorded.

I scored more votes than the Petitioner in all the 209 Polling Units in Orlu Local Government Area and not merely in 17 Polling Units.

It is correct that only 50 persons voted in Orsu Local Government Area with 137 Polling Units and 11 Wards. All the registered voters in Orsu Local Government Area who presented themselves for voting in accordance with the law actually voted.

There was no alteration or inflation of votes in Orsu Local Government Area. He scored 43 votes, Labour Party (LP) scored 5 votes and Peoples

Democratic Party (PDP) scored 2 votes. Form EC8D(II), summary of Results from Local Government Area Level Collation at Federal Constituency Level is available for this Honourable Tribunal to see and admit in evidence as Exhibit.

The Petitioner did not score the majority of the lawful votes cast at the election and ought not be declared the winner of the election. He was the candidate that scored a majority of the lawful votes cast at the election and was rightly declared the winner of the election.

It is not correct that in many Polling Units where he was declared the winner, that the election in those Polling Units were marred by irregularities and non-compliance with the Electoral Act, 2022 (as amended). There were no irregularities and non-compliance with the Electoral Act in the Polling Units where he was declared the winner.

The law was complied with in the accreditation of voters with the BVAS. It is not correct that there were cases in which the number of accredited/verified voters across the Polling Units in the Federal Constituency were more than the number of votes. There ought not be any nullification of the votes in any of the Polling Units where he won. There was no ascription of votes. Rather, the actual votes scored by the respective candidates were recorded for them.

The votes stated in the table in paragraph 4 (u) of the petition are the actual valid scores of the respective political parties in Oru East Local Government Area. They were not allocated votes or ascribed votes as alleged by the Petitioner. There was no over voting of any sort and the

number of votes cast did not exceed the number of accredited voters. The Presiding Officers were right in not cancelling the Results itemized in the Table in paragraph 4(u) at pages 12-16 of the petition. There was no allocation of votes and his votes ought not be deducted at all.

There was actual election in the various Polling Units in Orsu Local Government Area. It is not correct that the election for the various Polling Units and Wards in Orsu Local Government Area was conducted at Awo Idemili, the Local Government Headquarters and results generated and allocated. Actual election took place and nobody including Party Agents was compelled to hold election for the various Polling Units at the Local Government Headquarters.

All the registered voters who turned up for the election in Orsu Local Government Area were accredited in accordance with the law and they voted. The Result Sheets were signed by the respective Presiding Officers and not by one person only.

It is not correct that there was a Press Release/Media Statement, prior to the questioned election to the effect that election will not hold in Orsu Local Government Area for reason of insecurity.

The collation of votes and declaration of results for Orsu Local Government Area took place in Orsu Local Government Headquarters and not Owerri while the actual voting took place in the respective Polling Units.

The results of the election for the Polling Units were entered into Forms EC8A(II) and collated into Forms EC8B(II) and EC8C(II) used for the

election at the various Collation Centres at the Ward Collation Centres and at the Local Government Area Collation Centre as the case may be.

There were no cases of falsifications, alterations, mutilations, wrong entries and/or miscalculations. There was also no case of reduction of votes for the Petitioner and the jacking up of votes for him and 2nd Respondent as alleged.

The Petitioner did not apply for a review of the election.

He prayed the Honourable Tribunal to dismiss the petition for being unreasonable, frivolous, incompetent, speculative and for lacking in merit.

Under cross – examination, he stated that there was no irregularities and non – compliance with the Electoral Act, and that election duly held with BVAS deployed for accreditation. He faulted the video tendered in evidence and said election held and he was the winner.

Upon the close of the respective cases of parties, final written addresses were then filed in that order.

Petitioner filed their final address and formulated the following issues for determination to wit:-

- a. **Whether the 1st Respondent was duly elected by majority of the lawful votes cast as the said election?**
- b. **Whether the election was invalid by reason of corrupt practices or substantial non – compliance with the provisions of the Electoral Act, 2022?**

Both issues were with leave argued together.

It is the argument of learned counsel for the Petitioner that non-compliance with the provision of Electoral Act, 2022 infers that Election was not conducted in accordance with law. He cited the case of ***NWOLE VS. IWUAGWU (2004) 15 NWLR (Pt. 895) 61 at 83 was cited.***

It is further the submission of counsel that, in cases of non – compliance resulting from over voting, the proper and appropriate step to be taken by the 3rd Respondent is to nullify the result of the election in the affected Polling Unit and conduct fresh election accordingly. He relied on the provisions of paragraph 56 of the Regulations and Guidelines for the Conduct of Election, 2022 which states thus:

“Where an election is declared null and void in one or more Polling Units for over voting in line with clause 40 of these Regulations and Guidelines, another date shall be fixed for supplementary election in the affected Polling Units and returns for the affected constituencies shall not be made until polls are conducted in the affected Polling Units”

Counsel further submits that, the totality of the Petitioner’s averments at paragraphs (4p.), (q.), (r), (s), (t), (u), (v) and (w) of the petition and his testimony at paragraphs 5 (p.), (q), (r), (s), (t), (u), (v) and (w) of his written deposition is to the effect that the questioned election was marred by several incidents of over voting. In Oru East LGA, the Petitioner pleaded and established the facts of over voting in the following Polling Units.

He similarly cited the case of ***OYETOLA & ANOR VS. INEC & 2ORS*** in ***SC/CV/508/2023*** where it was held per Agim, JSC, that the evidence required

to prove that voting was allowed without accreditation or that there was non – accreditation or improper accreditation or over voting, under the Electoral Act, 2022 are:

- a. The BVAS
- b. The Register of Voters
- c. Polling Unit Result in INEC Form EC8A(ii). See section 47(1)(2) and 51(2) of the Electoral Act, 2022 paragraphs 14, 18, 19 (b) (i-iv), (e) (i-iii) and 48 (a) of INEC Regulations and Guidelines for the conduct of Elections, 2022.

Counsel submits that, the BVAS Machine used in the questions election for Oru East Local Government Area was produced by PW10 before the Honourable Tribunal and tendered in evidence as Exhibit 38. PW11, and ICT staff of the 3rd Defendant confirmed the said BVAS Machines (Exhibit 38) as the ones used in the questioned election for Oru East Local Government Area. PW11 further stated in his evidence for Oru East 38 was used for accreditation during the said election. However, PW11 went on to state that same Exhibit 38 was also used for the State House of Assembly election. When PW11 was asked: “can we see the accreditation for the National Assembly Election inside Exhibit 38 if we open it”, PW11 answered: “No, because we purged it to re-configure it for the State House of Assembly Election.” PW11 testified that before the said “purging”, the data of the other election (National Assembly Election) was exported to INEC server. May we state that the evidence of PW10 and PW11 was not shaken or contradicted in any material particular.

On the report extracted from the BVAS Machine, PW10 testified as follows:

Qst:- Do you have report extracted from the BVAS in question?

Ans:- There is an INEC guidelines on certification and issuance.. the BVAS report is one of the reports obtained from the National Headquarters and not state level because our server is not at the state level but headquarters.

Qst:- See Exhibit 20, i.e., the BVAS report, is that the document you referred to as the BVAS report?

Ans:- Yes.

Petitioner argued that he has laid the foundation for the Honourable Tribunal to place premium evidential value on Exhibit "20" in the sense that PW11 testified to the effect that the primary evidence which is the accreditation data in Exhibit 38 was purged and exported to INEC server. This piece of evidence was neither challenged nor contradicted. What this means is that the primary evidence in Exhibit 38 no longer exists. Reliance can only be had to the certified true copy of the data in Exhibit 38, which in our instant case is Exhibit 20. Secondly, we must distinguish the instant petition from that of ***OYETOLA & ANOR. VS. INEC & 2ORS (Supra)***. In Oyetola's case, not only was the BVAS machine not tendered, there was no evidence that the accreditation data was purged and the BVAS re-configured for another election. Also, in Oyetola's case, two BVAS reports were tendered. In this case, only one BVAS report is before the Tribunal which said report is unchallenged. Assuming the Respondents are contending that Exhibit 20 does not contain the actual accreditation report, they have the evidential burden to produce or tender the alleged BVAS report which they believe to be the right one. Having not done that, their defence must collapse on this score.

It is the submission of counsel that, a careful examination of the Register of Voters (Exhibit 18) for the questioned Polling Units in Oru East LGA (see paragraph (4 u),(v), pages 12 – 16 of the Petition; paragraph (5 u)(v), pages 34

– 38 of the Petition (evidence of PW9) and paragraph 3 (a-j), pages 1-2 of the Schedule of Documents tendered by the Petitioner will reveal that as against the requirement for ticking the Voters’ Register upon accreditation of any given Voter for the election, Exhibit 18 was not ticked at all. See paragraph 19(b)(iv),(e) (ii – iii) of INEC Regulations and Guidelines for the conduct of election, 2022. This goes to establish non – accreditation or improper accreditation in line with the extant Electoral Laws.

That the total number of registered voters and total number of PVCs collected in the Polling Units affected by over voting in Oru East LGA as can be seen from Exhibit 18 (Voters’ Register for Oru East LGA) Exhibit 19 (Imo State PVC Issuance Status for 2023 General Elections) and Exhibit 21 (EC8A (II) for Oru East LGA) are as demonstrated below; as follows:-

By Exhibits “18” and “19”, which lend credence to the number of registered voters in the Polling Units in Oru East Local Government Area affected by over voting, it is thus established that the total number of registered voters in the said Polling Units in Oru East L.GA are 78,607. By Exhibit 19, the total number of PVCs' collected in the said Polling Units in Oru East L.G.A affected by over voting are 76,204. By Exhibit 25, the purported margin of lead between the 1st Respondent and the Petitioner is 14,329, that is:

1 st Respondent's score on Exhibit 25	=	15977
Petitioner's score on Exhibit 25	=	1648
Margin of Lead: 15977 – 1648	=	14,329

In addition to the provisions of section 51(2) of the Electoral Act, 2022, paragraph 62 of INEC Regulations and Guidelines for the Conduct of Elections, 2022 provides as follows:

62) Where the margin of lead between the two leading candidates in an election is NOT in excess of the total number of voters who collected their Permanent Voters' Card (PVCs) in Polling Units where elections are postponed, voided or not held in line with sections 24(2 & 3), 47(3) and 51(2) of the Electoral Act, 2022, the Returning Officer shall decline to make a return for the constituency until polls have been conducted in the affected Polling Units and the results collated into the relevant forms for declaration and return. This is the Margin of Lead principle and shall apply wherever necessary in making returns for all elections in accordance with these Regulations and Guidelines."

Learned counsel contended, that the margin of lead between 1st Respondent and the Petitioner is NOT in excess of the **total number of voters who collected their Permanent Voters' Card (PVCs)** in the afore-mentioned Polling Units in Oru East L.G.A affected by over voting.

Counsel submit further, that the 3rd Respondent was in breach of section 51 (2) of the Electoral Act, 2022 and paragraph 62 of INEC Regulations and Guidelines for the Conduct of Elections, 2022. Consequently, the Presiding Officers, in these Polling Units itemized in the Tables above,

ought to have cancelled these results for over-voting as the total number of votes cast far exceeded the number of accredited voters. This in itself amounts to substantial non-compliance with the provisions of the Electoral Act. It is now trite law that the acts of non-compliance which may be regarded as sufficient to substantially affect the result of an election need not necessarily be widespread. Such acts may occur in a few places, yet their effects are so significant to the overall result of the election that it cannot be ignored. It is also trite that it is not the number of polling stations/units where or how widespread the non-compliance has occurred that is relevant. It is the effect of the non-compliance on the overall result of the constituency involved. In our instant case, the effect is grave and affects substantially the overall result in the questioned election. ***See NWOLE VS. IWUAGWU (Supra) at 82, paragraphs B-C, ratio 7.***

Learned counsel cited the case of ***AONDOAKAN VS. AJO (1999) 5 NWLR (Pt. 602) 2016 at 225 paragraphs A-B***, where it was held this;

Voting alone or voting in a unit does not constitute the whole election. An election constitutes accreditation voting, counting of votes, collation at wards and Local Government Councils, and the announcement of results. If any of these processes is disturbed, it affects the conclusion of the particular election and a fresh election should be ordered (emphasis supplied).

Learned counsel also submits further, that accreditation is an integral and very essential part of the voting process. Therefore, any vote cast by a

voter who was not accredited to vote is invalid. In the same vein, votes returned in a polling station where there was no accreditation are invalid. See ***OGBORU V. UDUAGHAN (2011)2 NWLR (Pt. 1232) 538 at 589;*** ***INEC VS. Ray (2004) 14 NWLR (Pt. 892) 92 at 123*** were cited.

In ***EJIOGU V. IRONA (2009) 4 NWLR (Pt. 1132) 513 at 560***, it was held by the Court of Appeal as follows:

A valid or lawful vote is a vote cast at an election by a registered and duly accredited voter, which is in compliance with the provisions of the Electoral Act, 2010 (underlining mine for emphasis).

Again, in FAYEMI V. ONI (2010) 17 NWLR (Pt. 1222) 326 at 393-394, the Court of Appeal held thus:

...in the absence of accreditation, the purported results for the various polling units in forms EC8A... are seriously plagued and vitiated. This is so because as it has been held, election is a process... it is not the filling of Form EC8A alone that confers validity on an election. All other processes must be established without which it cannot be said that there was a valid election (emphasis supplied).

It is the argument of learned counsel, that there was no election conducted in any of the 137 Polling Units across the 10 Wards/Registration Areas in Orsu Local Government Area at the questioned election. Rather, the questioned election for the entire Orsu L.G.A held at Awo Idemili, the Orsu

Local Government Headquarters. In proof of this fact, the Petitioner called PW5, PW7 and PW9. The evidence of PW5, PW7 and PW9 on this score was not contradicted nor shaken in any material particular. PW5, PW7 and PW9 gave an eye witness account of what they saw at Orsu Local Government Headquarters. PW7 tendered Exhibit 15, which is a video CD of the recording of the holding of the said election at Orsu Local Government Headquarters. Besides, a careful examination of Exhibit 21 for Polling Units 001, 003, 005 and 008 of Orsu Ihiteukwa Ward/Registration Area shows that the Polling Unit result sheets (for Polling Units 001, 003, 005 and 008 of Orsu Ihiteukwa Ward) were filled and/or signed by the same Presiding Officer, one Martins David K. This goes to further lend credence to the avalanche of evidence that the election for the entire polling units in Orsu L.G.A was held at one central location contrary to the provisions of the Electoral Act, 2022. Again, it must be noted my Lords, that the evidence of PW9 that there is no designated polling unit in the Orsu Local Government Headquarters, Awo Idemili was not contradicted at all.

The provisions of Sections 55 and 56 of the Electoral Act, 2022, were cited by counsel as follows;

55. No voter shall record his or her vote otherwise than by personally attending at the polling unit or voting centres and recording his or her vote in the manner prescribed by the Commission.

56. No person shall be permitted to vote at any polling unit other than the one to which he or she is allotted.

Also, paragraphs 6 and 14 (a) (b) of INEC Regulations and Guidelines for the Conduct of Elections, 2022 provides as follows;

6. Voting in any election to which these regulations and guidelines apply shall take place at Polling Units established by the Commission

14(a) No person shall be allowed to vote at any Polling Unit other than the one at which his/her name appears in the Register of Voters and he/she presents his/her PVC to be verified using the Bimodal Voter Accreditation System (BVAS). or otherwise determined by the Commission.

(b) Each voter shall cast his/her vote in person at the Polling Unit where he/she registered or was assigned, in the manner prescribed by the Commission.

In BUHARI V. INEC & ORS. (2005) LPELR-814 (SC) Page 276 - 277, Paragraphs. E-D, the Supreme Court held as follows:

When the word 'shall' is used in a statute it connotes the intendment of the legislator that what is contained therein must be done or complied with. It does not give room for manoeuvre of some sort, or evasiveness. Whatever the

provision requires to be done must be done, and it is not at all negotiable. (emphasis supplied.)

The cumulative effect of sections 55 and 56 of the Electoral Act, 2022 and paragraphs 6 and 14 (a) (b) of INEC Regulations and Guidelines for the Conduct of Elections, 2022 is that elections must hold at the various designated Polling Units. To do otherwise, as is the case here, is an infraction on the Electoral laws. Counsel urged the Tribunal to so hold.

In proof of its case as it affects Orlu L.G.A, Petitioner called PW1, PW2, PW3, PW4 and PW8 who testified in respect of Polling Units 001, Umudioka Ward; 002, Umudioka Ward; 013, Umuna Ward; 009, Umudioka Ward and 009, Umuna Ward, respectively.

It is Petitioner's counsel argument that the relevant pleadings relating to Polling Unit 001, Umudioka Ward can be found at paragraph f, page 9 of the Petition. PW1 tendered Exhibit 1 (pink/agent copy of Form ECSA (11)). This document was not in any way challenged. The 1st and 2nd Respondents did not produce any agent copy in contradiction of Exhibit 1. A careful examination of Exhibit 1 and the relevant Exhibit 21 (CTC of EC8A (II)) for Polling Unit 001, Umudioka Ward, will show that whereas in Exhibit 1, the Petitioner scored 29 votes as against the 6 votes scored by the APC and 3 votes scored by the PDP, this score was altered with when the following scores was entered on the relevant Exhibit 21: LP = 29, APC = 6 and PDP = 103. We contend the Tribunal that this is another case of irregularity in the questioned election.

That the relevant pleadings relating to Polling Unit 002, Umudioka Ward is contained at paragraph 4 g, page 9 of the Petition. PW2 tendered Exhibit 4 (pink/agent copy of Form EC8A(II)). Also, this document was not materially challenged. Therefore, a juxtaposition of Exhibit 4 and the relevant Exhibit 21 for Polling Unit 002, Umudioka Ward goes to confirm the facts as testified to by PW2. Again, we contend my Lords that this goes to show the irregularity in the questioned election.

Learned counsel contended that a glance at the relevant Exhibit 21 [Form EC8A (II)] for Polling Unit Code 013, Umuna Ward will show clearly that the Petitioner (LP) scored 14 votes while the 1 Respondent (APC) scored 3 votes. In the relevant Exhibit 22 wherein the vote was deflated and recorded as 3 votes while that of the 1st Respondent was inflated and recorded as 6 votes. In other words, 11 votes were deducted from the vote score of the Petitioner in this Polling Unit. This said 11 votes was not included and did not form part of the total vote score of the Petitioner as recorded in Exhibits 22, 23, 24 and 25. Whereas, the unmerited 3 votes that was added to the 1st Respondent's score was entered in the relevant Exhibit 22 and same did form part of the total vote score of the 1st Respondent as recorded on Exhibit 25. This is the summary of the evidence of PW3 and the relevant pleading is found at paragraph 4 (e), page 8 of the Petition.

Counsel submitted the case of the Petitioner in Polling Unit 009, Umudioka Ward is that the Petitioner scored 27 votes while the 1st Respondent scored 16 votes in this booth. However, this result was not entered on the

relevant Exhibit 22 for Umudioka Ward. This was copiously pleaded at paragraph 4(h) of the Petition. To proof this, PW4 tendered Exhibit 9 [pink/agent copy of Form EC8A (II)]. The Respondents did not materially contradict Exhibit 9, a glance at the relevant Exhibit 22 for Umudioka Ward will show that indeed, the Petitioner's 27 votes for Polling Unit 009, Umudioka Ward was not recorded. In effect, this score was not added in Exhibits 22, 23, 24 and 25; same did not form part of the final computation of the result for the questioned election.

Counsel submit also, in Polling Unit 009, Umuna Ward, the Petitioner scored 27 votes as against the 1st Respondent's 1 vote. However, this result was not entered on the relevant **Exhibit 22 for Umuna Ward**. This fact was pleaded at paragraph 4 (d) of the Petition. To proof this, PW8 tendered Exhibit 16 [pink/agent copy of Form EC8A (II)]. The Respondents did not materially contradict **Exhibit 16**, a glance at the relevant **Exhibit 22 for Umuna Ward** will show that indeed, the Petitioner's 27 votes in this Polling Unit were not recorded. In effect, this score was not added in Exhibits 22, 23, 24 and 25; same did not form part of the final computation of the result for the questioned election.

Counsel further contended that the case in this petition is largely documentary. Therefore, relying on the provisions of section 137 of the Electoral Act, 2022, we humbly submit that on the strength of Exhibits 1, 4, 9, 16, 21, 22, 23, 24 and 25, the case of the Petitioner in Polling Units 001, 002, 009 of made out. In effect, we urge your Lordships to add the

following vote score to the Petitioner's result as recorded on Exhibits 22, 23, 24 and 25, to wit: $11+27+27 = 65$ votes.

Additionally counsel contended that the Petitioner pleaded that valid election held in the Polling Units of the Federal Constituency as pleaded at paragraph 4 (c.), pages 6-8 of the Petition. The Respondents admitted this fact in their various Replies to the Petition. The law is trite that facts admitted need no further proof. In any event, a careful examination of the Polling Unit results [EC8A (II)] tendered by the parties in this suit in respect of the said Polling Units where valid election held further supports the Petitioner's case in this regard. By the documentary evidence of the parties, particularly Exhibits 21 and D2, and the evidence of PW9, it is thus proved that valid elections held in the following Polling Units of the Federal Constituency:

Counsel submit therefore that if the votes allocated to the Petitioner and 1st Respondent in the Polling Units in Oru East Local Government Area affected by non – accreditation, improper accreditation and/or over voting and Orsu LGA where no valid election held, are deducted from their total vote score the parties will stand as follows:

1. 1st Respondent would be left with the votes from the said Polling Units where valid election held, to wit:
 - i. Umuna Ward = 96 votes
 - ii. Umudioka Ward = 60 votes
 - iii. Amaifeke Ward = 8 votes

- iv. Omuma Ward = 43 votes
- Total = 207 votes**

2. Whereas, the Petitioner will be left with a total of 311 votes, to wit;

- i. Umuna Ward = 118 votes
- ii. Umudioka Ward = 156 votes
- iii. Amaifeke Ward = 3 votes
- iv. Omuma Ward = 34 votes
- Total = 311 votes**

In the light of the forgoing, counsel urged the Tribunal to resolve issues “a” and “b” in favour of the Petitioner and against the Respondents.

Learned counsel further urge the Tribunal to, inter alia, activate the provisions of section 136(3) of the Electoral Act, 2022, and declare the Petitioner as the person elected in the questioned election, having scored the highest number of valid votes cast at the election and satisfied the requirements of the law. If peradventure the Tribunal considers otherwise, counsel humbly urge for the grant of the appropriate alternative prayer(s) as set out on the face of this petition.

Counsel submits that, the 1st Respondent’s counsel had argued in his Final Written Address that Exhibits 1-33 were dumped on the Tribunal. In like manner, the 2nd Respondent’s counsel argued that most of the documents/Exhibits were dumped on the Tribunal without specifying the

documents alleged so dumped. Ditto for the 3rd Respondent's counsel who argued that several documents were tendered by the Petitioner from the Bar. That those documents were simply dumped on the Tribunal without the Petitioner linking them to specific areas of his petition or with no appropriate witness speaking to the documents, etc. we respectfully submit that the arguments of the learned Respondents' counsel on this score is grossly misconceived, misleading and do not represent the current position of the law and must be discountenanced. The law has shifted. All the authorities cited by the Respondents' counsel thereof, are no longer good law.

It is his argument that the authorities cited by the learned Respondents' counsel relating to dumping, calling witnesses to speak to the documents, etc. were decided on the strength of the Electoral Act, 2006, Electoral Act, 2010 and Electoral Act 2010, (as amended in 2015). None of those authorities was decided based on the relevant provisions of the Electoral Act, 2022. In fact, this is one of the numerous mischiefs that the lawmakers sought to correct when in 2022, a new law was enacted to regulate our electoral Jurisprudence. We shall examine the old law and the new law anon.

Paragraph 46(4) of the First Schedule to the Electoral Act, 2010 (as amended in 2015) provides thus: ***"documentary evidence shall be put in and may be read or taken as read by consent"***. This was the only relevant provision in the Electoral Act, 2010 (as amended in 2015).

Section 137 of the Electoral Act, 2022 provides thus:

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

Further, paragraph 46 (4) of the First Schedule to the Electoral Act, 2022, provides as follows:

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

He further stated that provisions of Section 137 of the Electoral Act, 2022 and paragraph 46(4) of the First Schedule to the Electoral Act, 2022 are new laws found only in the Electoral Act, 2022. We submit that by this ingeniously innovative provisions in the Electoral Act, 2022, the issue of dumping, speaking to or demonstration of documents or calling specific witnesses to speak or demonstrate same has now been obviated. The current state of the law requires parties to address and urge argument on the content of the documents so tendered, and the Tribunal are obligated to scrutinize or investigate the content of the documents and ascribe appropriate probative value to same.

Learned counsel contends, that the operative word used in Sections 137 of the Electoral Act, 2022 and Paragraph 46(4) of the First Schedule to the Electoral Act, 2022 is "SHALL". On the effect of the word "shall" when used in a statute, see ***BUHARI V. INEC & ORS. (Supra);***

AMALGAMATED TRUSTEES LTD V. ASSOCIATED DISCOUNT HOUSE LTD. (2007) LPELR-454 (SC) PP. 23- 26, paragraphs. B-A were cited.

What is more, learned counsel relied on Paragraph 41(3) of the First Schedule to the Electoral Act, 2022 which provides, as follows;

"There shall be no oral examination of a witness during his evidence- in-Chief except to lead the witness to adopt his written deposition and tender in evidence all disputed documents or other exhibits referred to in the deposition."

Counsel argued that by the combined effect of the provisions of Section 137 of the Electoral Act, 2022, paragraphs 41 (3) and 46 (4) of the First Schedule to the Electoral Act, 2022, a witness can no longer testify in chief at the hearing of a petition save to adopt his written deposition and tender in evidence all disputed documents or other exhibits referred to in the deposition. We submit that the Petitioner complied with this provision.

More so, most of the said Exhibits tendered by the Petitioner are certified true copies of documents/materials used by the 3rd Respondent in the questioned election. Petitioner's counsel contends, that the 3rd Respondent did not lead evidence to disown the said documents. No witness was called

by any of the Respondents to contradict/challenge the said documents. The Petitioner need not call INEC to demonstrate certified true copies of its own documents when the said documents enjoys the presumption of genuineness and regularity in the eyes of the law. See section 146 (1) and (2) of the Evidence Act, 2011 (as amended). ***N.B.A VS. KALEJAIYE (2016) 6 NWLR (Pt. 1508) 393 at 423 424, paragraphs G-B,*** and ***OKELOLA VS. ADELEKE (2004) 13 NWLR (Pt. 890) 307*** were cited.

Learned counsel also commended the Supreme Court decision on this score in ***MTN VS. CORPORATE COMMUNICATION INVESTMENT LTD. (2019) LPELR-47042 (SC)*** in urging that the Petitioner's documents/Exhibits be accorded the highest probative value it deserves.

Counsel contended further that the evidence of DW1 is neither here nor there. DWI admitted under cross-examination, that he was posted to Orsu L.G.A as the Electoral Officer (EO) barely six months to the questioned election. He admitted that he has never been to the entire Orsu L.G.A prior to the said election due to insecurity in the area. It means that DWI does not know the terrain or the situs of the 137 Polling Units in Orsu L.G.A. Funny enough, DWI made a volte face to now state that he visited most of the Polling Units in Orsu L.G.A on the day of the said election. DWI never told this Tribunal who showed him the location of these Polling Units he allegedly visited, having not been to Orsu before. Also, the DWI tried in vain to wish or explain away Exhibit 15 (video disc). However, DWI admitted that INEC's office in Orsu L.G.A was burnt. There is no evidence to show that the said office was repaired prior to the said election.

Accordingly, we urge the Tribunal to disbelieve the evidence of DW1 and accord evidential value to the eye witness accounts of PW5, PW7 and PW8 and Exhibit 15 as it affects the holding of the questioned election for the entire Polling Units in Orsu L.G.A at a central location - Orsu Local Government Headquarters, Awo Idemili.

Counsel further contended that the evidence of DW2 is so watery and hearsay such that same ought not to elicit any probative value. Specifically, DW2 admitted under cross-examination that after voting, he returned to his house and therefore does not know what happened in any of the Polling Units in the Federal Constituency. DW2 also stated that all he told the Honourable Tribunal was what his agents told him. Worst of all, DW2 lied on oath when he stated that he voted in his Polling Unit whereas no election held in his said Polling Unit and no result was generated in his said Polling Unit and none was tendered or included in DW2[s bundle of Exhibit D2.

It is his further argument, that the arguments of the learned Counsel for the Respondents (as found particularly at paragraphs 4.41 - 4.47 of the 1st Respondent's Counsel Final Written Address) are, grossly unfounded and misleading. Exhibits 21-25 and in fact, all the documents/Exhibits tendered by the Petitioner are relevant and were duly pleaded. Tribunal was referred to Paragraph 2(c), Paragraph 4(c) (particularly, facts of specific Polling Units thereat) and paragraphs 4 (d),(e)(f),(g),(h),(i)(j),(m)(q)(r)(s),(u) (particularly, of specific Polling Units thereat),(z), (zd),(ze) of the Petition. Also, paragraphs 5 a), b), c), e), f), g), h), i), j), k), l), m) and n) of the

Petition, paragraphs 2 (a) (i-v) and 3 of the Petitioner's Reply to 1st Respondent's Reply to the Petition, paragraphs 2(a) (i-v) and paragraph 3 of the Petitioner's Joint Reply to 2nd and 3rd Respondents' Reply to the Petition. Petitioner's counsel then contends, that facts pleaded in a given paragraph are not read in isolation or independent of other paragraphs of same petition. It must be read as a whole. Besides, what guides admissibility is relevancy and pleadings. It is trite law that documents in support of facts pleaded need not be specifically pleaded but can be tendered in evidence to support or prove the facts pleaded. Also, documents that are alluded to in the pleadings can be admitted in evidence even if there were not specifically pleaded. ***See F.B.N PIC. V. TSOKWA (2004) 5 NWLR (Pt. 866) 271 at 312, paragraphs A-B; ODUNSI VS. BAMGBALA (1995) 1 NWLR (Pt. 374) 641 at 667, paragraph B.*** The apex Court in ***OJO V. KAMALU (2005) 18 NWLR (Pt. 958) 523*** puts it thus: ***"documents need not be specifically pleaded once the material fact, which the document evidences, is pleaded. Any document in support of a fact pleaded is automatically admissible as evidence of the fact pleaded"***.

On the argument on Exhibit "15", Petitioner's counsel contends, that the gamut of the Petitioner's case is contained in the petition and the Petitioner's Replies to the Replies of the Respondents. That Petitioner had specifically pleaded facts to the effect that no election held at the 137 Polling Units in Orsu L.G.A but that the said election for the entire Polling Units in Orsu L.G.A held at one venue. See paragraphs 4 (x), (y), (z) (zb), (zc) of the Petition. We contend that the material facts upon which Exhibit

15 was tendered were amply pleaded. See ***OJO V. KAMALU (SUPRA)***. Importantly, the Petitioner at paragraph 3 of his Reply to 1st Respondent's Reply to the Petition and paragraph 3 of his Joint Reply to 2nd and 3rd Respondents' Reply to the Petition, pleaded Exhibit 15. Having tendered the certificate of compliance relevant to computer generated evidence alongside the video disc, the Petitioner need not call the person that extracted the said video from PW7's phone and burnt/wrote same into the disc. PW7 need not tender the said phone in evidence. The evidence of PW7 is conclusive on this; that he PW7 recorded the video, took same to one Engr. Calistus (address supplied in the relevant certificate of compliance) who in his (PW7) presence copied same from his phone and burnt/wrote it into a disc. Again, no forensic expert was called by the Respondents' as to canvass that the voice in the said video is not that of PW7. The evidence of PW7 was not materially contradicted at all. We urge the Tribunal therefore to discountenance the arguments urging that Exhibit "15" be expunged.

The argument of counsel that Exhibit "20" is inadmissible for reason of the purported failure to comply with section 84(2) of the Evidence Act, 2011 is mischievous and misplaced. We submit that Exhibit 20 (BVAS Report) was tendered alongside Exhibit 29 (certificate of compliance in respect of the BVAS Report). As such, we submit that same complied with the relevant provisions of the Evidence Act and is therefore admissible. Accordingly, we urge the Honourable Tribunal to discountenance in its entirety, the Respondents' objections to the admissibility of the Petitioner's documents/Exhibits as same were rightly admitted in evidence.

It is Petitioner's counsel argument, that a cursory glance at the reliefs set out in the Petition (pages 20-21 thereof) will show that the prayers consist of three (3) principal reliefs and five (5) alternative reliefs, and that the said relief that the Petitioner be declared the winner forms part of the principal relief, whilst the relief that election be nullified is in the alternative. Counsel contends therefore, that the reliefs are grantable, either in the main or in the alternative. ***See A.N.P.P VS. HARUNA (2003) 14 NWLR (Pt. 841) 546 at 570, paragraphs F-H;***

ABIEC VS. KANU (2013) 13 NWLR (Pt. 1370) 69 at 85, paragraphs. C-D.

In conclusion, learned counsel urge the Honourable Tribunal to resolve the issues herein raised in favour of the Petitioner and against the Respondents and accordingly, hold as follows:

- a. The election, subject matter of this petition, was invalid for reason of substantial non-compliance with the provisions of the Electoral Act, 2022.
- b. The Petitioner scored majority of the lawful votes cast at the said election and is therefore entitled to be declared and returned, accordingly.
- c. The Petitioner has proved his case as required by law. ***See OKEKE VS. EJEZIA (2011) ALL FWLR (Pt. 603) 1811;***

ARISE VS. ADETUNBI (2011) ALL FWLR (Pt. 558) 941. We so urge!

On the part of 1st Respondent, they filed their final written address and formulated the following issues for determination; to wit:-

1. **Whether the petition is competent?**
2. **Whether the petitioner has established that the 1st Respondent was not duly elected by the majority of lawful votes cast at the election?**
3. **Whether the petitioner has established that the election was Invalid by reason of corrupt practices or substantial non-compliance with the provisions of the Electoral Act, 2022, as to affect the outcome?**
4. **Whether the petitioner has proved his entitlement to the reliefs sought in his petition?**

Learned counsel for the 1st Respondent contended that, Orlu/Orsu/Oru East Federal Constituency consists of 3 Local Government Areas of Imo State of Nigeria, to wit: Orlu Local Government Area of Imo State, Orsu Local Government Area of Imo State and Oru East Local Government Area of Imo State.

It is the argument of learned counsel for the 1st Respondent that Petitioner called a total number of 11 persons as witnesses and 5 of them gave evidence with respect to Orlu Local Government Area whereas 3 gave evidence with respect to Orsu Local Government Area.

It is his submission, that none of the witnesses said anything with respect to Oru East Local Government Area.

Counsel stated that PW1 (Ogbuji Ngozi) testified in chief, claiming to be a polling unit agent of the Labour Party in polling unit 001, Umudioka Ward in Orlu Local Government Area. She tendered 3 documents in evidence (statement of results for Orlu/Orsu/Oru East Federal Constituency) which was marked Exhibit 1. She also tendered her agent tag, marked as Exhibit 2, and her voter's card, marked Exhibit "3".

Counsel submitted that under cross examination, the PW1 (a female) admitted that the written deposition she adopted was deposed to by a man. She further stated that she signed Exhibit "1" (the statement of results for Orlu/Orsu/Oru East Federal Constituency) in court. She also stated that she does not know who altered Exhibit 1 (the election result for polling unit 001) Umudioka Ward in Orlu Local Government Area.

Counsel also stated that PW2 (Ifeyanyi Onwuegbuchulem) testified in chief, claiming to be a polling unit agent of the Labour Party in polling unit 002, Umudloka Ward in Orlu Local Government Area. He tendered 3 documents in evidence (polling unit result) which was marked Exhibit "4". He also tendered his agent tag, marked as Exhibit 5 and his voter's card, marked Exhibit "6".

It is his argument that under further cross - examination, the PW2 admitted that the polling unit result of boot 002, Umudioka Ward in Orlu Local Government Areas was altered in favour of PDP and not in favour of

the 1st and 2nd Respondents. He further admitted that he does not have any complaint against the Respondents.

On the part of PW3 (Samuel Chubuike Godwin) testified in chief, claiming to be a polling unit agent of Labour Party in boot 013 in Umuna Ward of Orlu Local Government Area. He tendered 2 documents in evidence (his agent tag) marked as Exhibit 7 and his voter's card, marked Exhibit 8.

Learned counsel submits that under cross- examination, PW3 contradicted himself when he stated that his polling unit code is 012, but voted at polling unit 013. He further admitted that he could only cast his vote in a polling unit where he registered.

Under further cross - examination, PW3 admitted that his evidence before the Tribunal is on what happened at the collation center, whilst he was expected to at the polling unit. He further contradicted his evidence in chief when he claimed that he was a ward collation agent.

PW4 (Uchenna Iwuagwu) testified in chief, claiming to be a polling unit agent of Labour Party in polling unit 009, Umudloka Ward in Orlu Local Government Area, but his evidence as contained in his deposition, relates to what happened at the Ward Result. He tendered 3 documents in evidence (polling unit result) which was marked Exhibit 9, his voter's card, marked Exhibit 10. He also tendered his agent tag, marked as Exhibit 11.

Counsel contended that under cross -examination, PW4 stated that he did not know what happened at the ward collation centre.

PW5 (Chigozie Ezechukwu) testified in chief, claiming to be a registered voter in polling unit 007, Ihitenansa Ward in Orsu Local Government Area, but did not tender in evidence, his voter's card.

Counsel stated that PW6 (Odikamnorom Philip) testified in chief, claiming to be the Ward Chairman of Labour Party in Orsu Ihiteukwa Ward, Orsu Local Government Area. He tendered his voter's card (Exhibit 12), Labour Party (Exhibit 13) and Orsu Ihiteukwa Ward Membership Register (Exhibit 14).

Under cross - examination, PW6 denied being the chairman of Labour Party in Orsu Ihiteukwa Ward. The PW6 also confirmed that register of members of political party is kept with the secretary of the Party and that he is not the secretary of the Labour Party. He further confirmed that there is nothing on the face of Exhibits 12 and 13 to show that he is the Chairman of Labour Party in Orsu-Ihiteukwa Ward, and that Exhibit 14 (Orsu Ihiteukwa Ward Membership Register) is not dated. PW6 admitted that the party register of member was not deposited with the 3rd Respondent.

Counsel submits that PW7 (Arthur Obinokwara) testified in chief, claims to be a registered and eligible voter, but did not tender voter's card in proof of what he claimed. He tendered Video CD disc, and certificate of compliance which was not filed at the registry of the Honourable Tribunal, same was admitted in evidence as Exhibit 15.

Learned counsel submits that under cross -examination, PW7 stated that he recorded Exhibit 15 and took it to the engineer for production. He also

confirmed that he is not the owner of the HP laptop used to produce Exhibit 15.

PW8 (Flobert Tochukwu Ihedia) testified in chief, claiming to be a polling unit agent of Labour Part in polling unit 009 in Umuna Ward. He tendered polling unit result (exhibit 16) and agent tag (Exhibit 17).

PW9 (Ojinika Geoffrey Chizee) who is the Petitioner. He testified in chief and tendered documents, marked exhibits 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35 and 36.

Under further cross -examination, PW9 who claimed to be at his polling unit on the date of the election, when confronted with question, said that he needed to look at his diary to know his where- about on the day of the election. In another breather, PW9 who said that there was no election on the 25th day of February, 2023, claimed that figures on the result of the election was altered.

Counsel submits that PW10 (Olachi Nwugo), a subpoenaed witness from the 3rd Respondent. She tendered subpoena marked Exhibit 37. She tendered 120 BVAS machines (Exhibit 38).

Counsel stated under further cross examination, PW10 stated that she is in the legal department of the 3rd Respondent. She said that operation of BVAS machine is responsibility of the officers of the 3rd Respondent in the ICT Department. According to the PW10, she did not participate in the conduct of the election.

PW11 (Onyegbule Chibuzor Christian), a subpoenaed witness from the 3rd Respondent. He tendered subpoena marked Exhibit 39. He further stated that data of the 1st National Assembly Election inside Exhibit 38 was purged to configure it for the State Election.

On the part of the Respondents, the 3rd Respondent first fielded the DW1, one Obiora Okefor, a public servant, currently serving with the 3rd Respondent, who identified and adopted his written statement on oath, as his evidence in-chief. He also tendered forms EC8A (11), EC8B(11) and EC8C(11) series for Orsu Local Government, which forms were admitted and marked Exhibit D1 series.

Under cross - examination, DW1 stated inter alla, that he was the electoral officer for Orsu Local Government Area, in respect of Orlu/Orsu/Oru East Federal Constituency election, by reason of which facts, he headed the 3rd Respondent's office in Orsu Local Government Area. DW1 further stated that it was his function to receive electoral materials from the Resident Electoral Commissioner, distribute same to Supervisory Presiding Officers who in turn, distributes the materials to presiding officers at the polling units. DW1 admitted under further cross examination that he performed all his duties as stipulated by law, in respect of the election in Orsu Local Government Area, and that he coordinated and supervised the election held on the 25th day of February, 2023, in Orsu Local Government Area by visiting the polling units in Orsu Local Government and that the turn out for the election was low because of insecurity in the Orsu Local Government Area.

According to him, he ensured that the presiding officers did their job very well. He denied that votes were generated in the Orsu Local Government Headquarters in favour of 1st Respondent. He also denied that elections were not held in the various polling units.

1st Respondent testified as DW2 and tendered Forms EC8A (II) and EC8B (II) for Orlu and Oru East Local Government Areas. He also tendered Forms EC8C for Orlu and Orsu Local Government Areas. He further tendered Forms EC8D(II) and EC8E(II). The documents were received in evidence and marked Exhibits "D2" – "D7", together with payment receipt issued to him by the 3rd Respondent for the payment of the said Exhibits.

It is the submission of counsel that in an election petition, pleaded facts must have nexus with the ground(s) upon which the petition is predicated and the relief(s) sought from the Honourable Tribunal. Your Petitioner should be consistent in stating his case and consistent in proving it. See ***AJIDE VS. KELANI (1985) 3 NWLR (Pt. 12) 251***. Where your Petitioner clearly states the ground(s) upon which he questioned the election vis-a-vis the evidence adduced, it would amount to making a case for Your Petitioner if the Tribunal goes outside the scope of the grounds relied upon and evidence adduced by your Petitioner to question the said election. ***See OSHIOMHOLE VS. AIRHIAVBERE (2013) 7 NWLR (Pt. 1353), 376, 397, D-G.***

Counsel submits that, the burden of establishing a case lies on the Petitioner who asserts the existence of certain facts. He must discharge the burden by adducing cogent and credible evidence to prove same. The case

crumbles and remains unproven where he fails to so do. A petitioner succeeds on the strength of his case and not on the weakness of the case of the respondent case. **ANDREW VS. INEC (2018) 9 NWLR (Pt. 1625) 507 was cited.**

By virtue of Sections 131(1), 133(1), and (2) of the Evidence Act, 2011, generally the burden of establishing a case lies on the Petitioner who asserts the existence of certain facts. He must discharge the burden by adducing cogent and credible evidence to prove same. His case crumbles and remains unproven where he fails to do so. A Petitioner is expected to succeed on the strength of his own case and not on the weakness of the case of the Respondent. **See OYETOLA VS. INEC (2023) LPELR 60392 SC; ANDREW VS. I.N.E.C. (Supra) were cited.**

Counsel stated that in the instant petition, the Petitioner dumped Exhibits 1-33 on the Tribunal, as there is no nexus between the evidence of PW1 - PW11 and Exhibits 1-33. The Petitioner merely dumped Exhibits 1-33 on the Honourable Tribunal, without tying same to his pleadings and evidence. The Petitioner never called any witness to speak life to Exhibits 1-33.

Learned counsel submits that, the essence of tendering documents in bulk in election petition is to ensure speedy trial and hearing of election petitions within the time stipulated by statute. But that does not exclude or stop proper evidence to prop such dormant documents. It is not the duty of a court or tribunal to embark on cloistered justice by making enquiry into the case outside the open court, not even by examination of documents which were in evidence but not examined in the open court. A

judge is an adjudicator and not an investigator. ***See ANDREW VS. INEC (2018) 9 NWLR (Pt. 1625) Page 507*** was cited.

Learned counsel argued that it is trite that documentary evidence tendered and admitted in proof of a party's case remains dormant and useless, unless and until, activated by oral evidence to allow the Honourable Tribunal use to them. Where a party dumps documents on the tribunal, without relating them to the averments in his petition, the Honourable Tribunal will not discern and decide what document is made to prove which particular averment in the petition. See ***A.C.N. VS. NYAKO (2012) 11 NJSC 1, 66***. Documentary evidence, no matter its reliance, cannot, on its own, speak for itself without the aid of an explanation, relating to its existence. It is not the duty of the tribunal to speculate or work out either mathematically or scientifically, a method of arriving at an answer on an issue which could only be elicited by credible and tested evidence at the trial.

Counsel cited the case of ***OMISORE VS. AREGBESOLA (2015) 15 NWLR Pt. 1482, 205, 323***, *It was held thus:*

"The mischief behind the principle of dumping documents on the Court was to avoid a witness dumping documents he tendered in evidence on the court. Thus, a witness must breathe life into the documents he is bringing to the Court. Mere identification of the dumped documents does not cure the defect. In other words, the witness must have spoken about the document he seeks to tender in evidence for the

Court to consider the document. Thus, a witness must while giving evidence in open court, produce, tender, and demonstrate the purpose and worth of the document he is tendering by linking it to specific area of his case.

This issue becomes a reality when the document is tendered from the bar or tendered without opposition or tendered as a bundle. The corollary to the above proposition is that documentary evidence, even if it is a certified true copy of a public document cannot speak for itself without the aid of witness explanation relating its existence. Therefore, it is an infraction of fair hearing principle for the court to do in its chambers, what a witness to the party in a case had not himself done in open court to advance or protect the interest of the party. Besides, linking a document to specific area of a party's case confirms to the principle of law that a court can only use a document properly admitted in evidence."

It is the argument of counsel that the essence of the above principle is to shield the Tribunal from the error of abandoning its role of impartial arbiter, to descend into the arena of conflict, trying to make a case for a party. ***See NWANKWO VS. AGWO (2016) 40808; NOBIS ELENDU VS. INEC (2015) LPELR-25127.***

It is further argument of learned counsel, that Petitioner merely dumped Exhibits "1" – "33" on the Honourable Tribunal. The Petitioner never called any witness to speak life to Exhibits 1-33. Thus, Exhibits "1" – "33" remain

dormant and useless. I urge the Honourable Tribunal to so hold. The fact that PW9 (the Petitioner) purportedly identified some of the documents, does not, ipso facto amount to speaking life to the documents. Consequently, Exhibits 1-33, having been dumped, cannot be said to have any probative value as to render them relevant for consideration and use by the Honourable Tribunal. I urge the Honourable Tribunal to so hold.

It is also his argument that Exhibits "21" – "25" series, consisting of the results of the polling units, wards and local government area, constituting the Orlu/Orsu/Oru East Federal Constituency, as tendered by your Petitioner, are not admissible in evidence by reason that the polling units, wards and Local Government Areas, which they relate to, were not specifically pleaded in the petition. Consequently, the results of the polling units, wards and Local Government Areas, cannot be tied to specific polling units, wards and Local Government Areas, and it is not the duty of the Honourable Tribunal to attempt to tie the results in forms EC8A(11), EC8B(11) and EC8C(11) to specific polling units, wards and Local Government Areas in Oru East Federal Constituency.

It is further his argument, that Exhibit "15" (Compact Disc (CD), with certificate of compliance), the video recording demonstrated by the Petitioner at the trial by the PW7, and received in evidence as Exhibit "15", by the Honourable Tribunal, which video recording, the Petitioner claimed was an event that happened at the Orsu Local Government Headquarters, Awo Idemili, was not pleaded in the petition, and that it is now beyond controversy that evidence of any facts not pleaded in a given case is not

admissible and go to no issue. ***See OJIOJU VS. OJIOJU (2010) 8 NWLR (Pt. 1198) 1 at 28.***

That in the Instant Petition, Exhibit "15" i.e Compact Disc (CD) was tendered by PW7. Under cross - examination admitted he was not the one that put the document in disc. He (the PW7) also did not state in evidence the whereabouts of the producer of Exhibit "15", so as to speak life to the said Exhibit. It is submitted that Exhibit "15" does not have any probative value, thus, it is as good as a mere paper. I urge the Honourable Tribunal to so hold.

It is also his argument, that Exhibit "15" is therefore patently inadmissible and having been wrongly admitted, ought to be expunged. We submit that the Honourable Tribunal is vested with vires to expunge any document that was wrongly admitted at the stage of trial. See ***OGUNDE VS. OJONU (1972) 4 SC, 105.***

That Exhibit "20" (BVAS report) being computer generated evidence, must comply with the provisions of the law before the tribunal can admit such. That been the case, we object to the admissibility of the said document on the ground that no certificate of authentication in compliance with Section 84(2) of the Evidence Act, 2011, was produced at the point of tendering the said document. We submit that the conditions spelt out therein are mandatory and cannot be waived.

It is his submission, that the Federal Constituency, subject of the instant petition, consists of 3 Local Government Areas, to wit: Orlu, Orsu and Oru

East Local Government Areas, and the Petitioner, in his pleadings, treated the 3 Local Government Areas separately and distinctly.

In relation to Oru East Local Government Area, Petitioner pleaded that valid election was held in only 17 polling units of Orlu Local Government Area and 3 polling units of Orsu Local Government Area. Thus, the contention of your Petitioner is that no valid election was held in all the 137 polling units of Orsu Local Government Area; 168 polling units of Oru East Local Government Area and 192 polling units of Orlu Local Government Area.

That Petitioner failed to plead the particulars of the Polling Units in Orlu, Orsu and Oru East Local Government Areas, where election did not hold. Furthermore, the particulars of 17 Polling Units of Orlu Local Government Area and 3 Polling Units of Orsu Local Government Area were not pleaded

That the table shown at Paragraph 4(c) of the petition and the figures discussed in paragraph 4(d) of the said petition, relates to the Petitioner's contention that he polled majority of lawful votes, which has been adequately discussed in the written address.

That 1st Respondent in Paragraphs 10, 11 and 12 of his Reply, pleaded that there was compliance with the provisions of the Electoral Act, 2022, in respect of the election in the polling units of the wards In Orlu/Orsu/Oru East Local Government Areas.

Issues having been joined on the point, it behooves Petitioners to discharge that initial burden placed on them by the provisions of Section

133(1) of the Evidence Act, 2011, and that the Petitioner's attempt to discharge the initial burden placed on him by Section 133(1) of the Evidence Act, 2011, failed woefully. None of the Petitioner's witnesses mentioned Oru East Local Government Area in their evidence. The Petitioner failed to give any direct oral evidence relating to any polling unit or any ward in Oru East L.G.A., where the Petitioner alleged that election known to law was not conducted thereat, neither did he testify in respect of Oru- East Local Government Area. I refer the Honourable Tribunal to Section 126 of the Evidence Act, 2011, and submit that there is no evidence that the witnesses ever saw, heard and/or perceived any lack of non-compliance in Oru East Local Government Area.

He also stated the settled law that where a party pleads facts but fails to lead evidence in support thereof, such facts are deemed abandoned. ***See ALAO VS. KURE (2000) FWLR (Pt. 6) 889 at 896.*** I urge the Honourable Tribunal to hold that the Petitioner failed woefully to prove his case in respect of Oru-East Local Government Area, and that as it relates to Orlu and Orsu Local Government Areas, Petitioner in paragraph 4(x)-4(Z) of the Petition, pleaded that there was substantial non-compliance with the provisions of the Electoral Act, 2022, in respect of the election, held in Orlu and Orsu Local Government Areas, and that the 3rd Respondent failed to abide by the accreditation procedures stipulated by law. He also contended that election did not hold in the polling units of the wards enumerated in the said paragraphs. His case is on non-substantial compliance.

Counsel stated earlier in this written address, that Orlu/Orsu/Oru East Federal Constituency, consists of 3 Local Government Areas. Petitioner's evidence in respect of Orsu and Orlu Local Government Areas, whereat, the 8 witnesses, fielded by him failed to tilt the burden of proof, such as would require the Respondents to lead credible evidence in rebuttal. Be that as it may and out of abundance of caution, the DW1 (the electoral officer) denied the allegation, insisting that due election was held, not at Orsu Local Government Headquarters, Awo Idemill, as alleged by the Petitioner, but at the various polling units in Orsu Local Government Area. See **Section 133(2) of the Evidence Act, 2011. See also UNION BANK VS. AJAGU (LEPLR-42013)**

1st Respondent's counsel contended the fact that 1st Respondent in Paragraphs 12(a)- 12(r) of his Reply, denied the allegation and pleaded that election was held in the polling units in the wards in Orlu Local Government Area that make up the Federal Constituency. He specifically pleaded that election took place in (1) Ebenese/Umuezenachi Ward (12 Polling Units), (2) Ihite Owerri Ward (14 Polling Units), (3) Ogberuru/Obibi Ward (16 Polling Units), (4) Ohafor/Okporo/Umutanze Ward (19 Polling Units), (5) Okwuabala/Ihioma Ward (14 Polling Units), (6) Orlu/Mgbee/Government Station Ward (24 Polling Units) (7) Owerri- Ebeiri Ward (12 Polling Units) and (8) Umuzike/Umuowa Ward (16 Polling Units) of Orlu Local Government Area.

Counsel submits that parties having joined issues on the point, it behoves the Petitioner to discharge that initial burden placed on him by the

provisions of Section 133 (1) of the Evidence Act, 2011. The Petitioner failed to call evidence in proof of the case that election was not held in the polling units of the wards in Orlu Local Government Area, enumerated in paragraph of the petition, stated above, and thus did not discharge the Initial burden of proof, requiring the 2nd Respondent to call evidence in rebuttal. Section 133 (1) of the Evidence Act, 2011.

That in respect of Orsu Local Government Area, the Petitioner in an attempt to prove non-compliance with the provisions of the Electoral Act, 2022, pleaded that election was not conducted across the 10 Wards/Registration areas in Orsu Local Government Area, consisting of 137 polling units, and that 3rd Respondent compelled her officials and party agents to hold election for the various polling units at the Local Government Headquarters, Awo Idemill, and that figures were allegedly generated and allocated to the various contestants by officials of the 3rd Respondent. Petitioner further pleaded that the holding of the election at Local Government Headquarters was a violation of the provisions of the Electoral Act.

It is the submission of counsel, that on the Petitioner's claim that the questioned Election was held at the Orsu Local Government Headquarters, Awo Idemill, Petitioner tendered Exhibit "21" series, consisting of Polling Units results of Orsu Local Government Area, but that the 1st Respondent in Paragraph 9 of his reply to the petition, denied the allegation, contending that election was conducted in the various polling across of the 10 wards/registration areas and 137 polling units in Orsu Local Government

Area, at the questioned election. The figures pleaded by the 1st Respondent are valid votes cast at the election and are not, generated or allocated votes.

That the contradictory evidence of PW1 - PW11 and the unexplained situations arising from their evidence, do not call for the 1st Respondent's response, as there is nothing to place on the Imaginary scale of justice. The 1st Respondent considers it unnecessary, to call rebuttal evidence, the petitioner having failed to discharge that initial burden of proof. See ***OLUJINLE VS ADEAGBO (1988) 2 NWLR (Pt. 75) 238-254.***

It is his further contention, that where the evidence of witnesses in court is materially in conflict with documents tendered by witnesses, the Court/Tribunal cannot pick and choose any of such conflicting evidence. Rather, the Court/Tribunal ought to discountenance and expunge such evidence for being in material contradictions with each other. ***See OLUJINLE VS. ADEAGBO (Supra); ONUBEOGU VS. STATE (1974) 9 SC 1 were cited.***

Learned counsel further submits that, no oral evidence can be admitted to contradict, add to or vary the content of documentary evidence before the Court. See Section 128 (1) of the Evidence Act, 2011. The Petitioner evidence in respect Orsu Local Government Areas, is that the election for the said Local Government was conducted at the Local Government Headquarters, Awo Idemill, and in proof thereof tendered 15 copies of acclaimed copies of polling unit results, claiming that the results were issued to them.

Counsel stated that however, each copy of the polling unit results series states on the face of it that it was made at the polling unit where election took place and not at the Local Government Headquarter, as alleged by the Petitioner in their evidence, and urged the Honourable Tribunal to so hold.

On the next ground upon which the petition is predicated is that the 1st Respondent was not elected by majority of lawful votes cast at the election. The facts in support of the ground maybe gleaned from paragraphs 4 (a)-4 (zf) of the petition.

It is his argument, that 1st Respondent in Paragraphs 9-12 of his reply denied the allegation, pleading that from the genuine and lawful votes cast at the election, he (the 1st Respondent) polled majority of lawful votes cast at the polling units, wards and local governments levels. By virtue of the provision of Section 133(1) of the Evidence Act, 2011:

"133(1) In civil case, the burden of first proving existence or non-existence of a fact lies on the party against whom the judgment of the court would be given if no evidence were produced on either side.."

It is also his argument, that the Petitioner failed woefully to discharge the initial burden of proof placed on him and thus, failed to succeed on the strength of his case.

He relied on the case of ***OMEGA BANK PLC VS. OBS LTD. (2005) 8 NWLR (Pt. 928) 547 the Supreme Court, per Niki Tobi (of the blessed memory)*** whilst considering the provisions of Section 91(1) of

the Evidence Act, 2004, which is *impari materia* with Section 83(1) of the Evidence Act, 2011, said:

"It is the general principle of law that a maker of a document is expected to tender it in evidence. There are two basic exceptions to this principle of law; (1) the maker is dead. (2) the maker can only be procured by involving the party in so much expense that could be outrageous in the circumstances of the case. The rationale behind this principle of law is that while a maker of a document is in a position to answer questions on it, the non-maker of it is not in such a position. In the later situation, a court of law will not attach any probative value to the document and a document that a court does not attach any probative value is as good as the mere paper on which it is made..."

Counsel submit that the above is in consonance with the decision of the Supreme Court in ***ABUBAKAR VS INEC [2020] 12 NWLR (Pt. 1737) 37 at 110-111 Paragraphs G-A***, where it was held that:

"Whenever documents are tendered from the Bar in election matters, the purport is to speed up the trial in view of time limitation in election matters. Such tendering is not the end itself but a means to an end. The makers of such tendered documents must be called to speak to those documents. The law is trite that a Party who did not make a document is not competent to give evidence on it. It is also the tested

position of the law that where the maker of the document is not called to testify, the document would not be accorded probative value by the Court. That is indeed the fate of Exhibits P80 and P24. See EMMANUEL UDOM VS. UMANA UMANA [2016] 12 NWLR (Pt. 1526) 179; NYESOM VS. PETERSIDE [2016] 7 NWLR (1512) 452 were cited"

Learned counsel contends, that the fate of the said Exhibits "20" and "38" are sealed by the decision above, since the makers of both documents never testified. The vain efforts of PW11 to acknowledge the said documents, is no more than window dressing and came to naught. Exhibits "20" and "38" did not contribute anything to the case of the Petitioner and should be ignored entirely. In the same manner, the Honourable Tribunal is hereby urged to ignore the questions and answers by the Petitioner to the DW1 and DW2 on the said Exhibit "20", because document lack any probative value and cannot be of any assistance to the Tribunal or to Counsel for the Petitioner.

He argued that the Election of the 1st Respondent substantially complied with the provisions of the Electoral Act, 2022.

Learned counsel submit that where declaratory reliefs are claimed in an election petition, as in the instant case, and assuming without conceding that the 1st Respondent did not call evidence to challenge the Petitioner's case, the failure by the 1st Respondent to call evidence would not relieve the petitioner of the burden of satisfying the Honourable Tribunal, by cogent and reliable proof or evidence he the (Petitioner) is entitled to the

reliefs sought in the petition. ***See AGBAJE VS. FASHOLA (2008) 6 NWLR, (Pt. 1082), 90, 113-134; JUSTICE PARTY VS. INEC (2006) ALL FWLR, (Pt.339), 907, 944*** were cited.

Counsel stated that, Petitioner failed to prove that the 1st Respondent did not poll majority of lawful votes cast at election for purposes of electing member representing Orlu/Orsu/Oru East Federal Constituency in the National Assembly, and consequently, the Honourable Tribunal cannot, upon the evidence before it, set aside the return of the 1st Respondent, as member representing Orlu/Orsu/Oru East Federal Constituency In the National Assembly.

It is his further argument that any such results of Election declared by the 3rd Respondent is presumed correct, authentic and genuine. ***See NGIGE VS. OBI (2006) 14 NWLR, (Pt. 999), 1, Section 168 of the Evidence Act, 2011.***

Counsel also argued that a complaint that a candidate did not score majority of lawful votes cast at the election is an invitation to compare and contrast figures. In the instant case, the Petitioner merely dumped upon the tribunal one set of results only, and there has not been any invitation by your Petitioner for any comparison of results, necessitating an order that Petitioner and not the 1st Respondent, polled the majority of lawful votes cast in respect of the questioned Election.

It is his submission, that there is no evidence that the Petitioner or any of his witnesses saw the final recording of the votes cast at the election, and that it is not in doubt that the 1st Respondent scored majority of lawful

votes cast at the election, particularly as there is no direct oral evidence to the contrary.

He also argued that where a Petitioner is seeking for cancellation of result, he must prove same by adducing cogent, credible evidence and tender in evidence, the register of voters of the questioned areas. ***See BUHARI VS. OBASANJO (Supra).***

Counsel submits that, in the instant petition, Petitioner merely sought for cancellation/nullification of the election results for Orlu/Orsu/Oru East Federal Constituency in the National Assembly, by reason of over- voting and substantial non-compliance, without adducing cogent and reliable evidence to prove that they are entitled to such reliefs. Thus, it is submitted that the said reliefs are bound to fail.

In conclusion, counsel stated that in the result, Petitioner having failed to prove the grounds upon which the petition is predicated, it is therefore submitted that:

1. That the 1st Respondent was duly elected by majority of lawful votes cast at the said election.
2. The said election was valid by reason that there was not case of corrupt practices or substantial non-compliance with the provisions of the Electoral Act, 2022.
3. That the Petitioner has not proved his entitlement to the reliefs sought in the petition. Counsel urged the Honourable Tribunal to so hold.

2nd and 3rd Respondents equally submitted one issue each as their issues for determination.

The both issues are same at the 4th issue submitted by the 1st Respondent.. the issue is;

“Whether the Petitioner has proved his entitlement to the reliefs sought in his Petition”.

This issue is the same and has already been discussed in extensively by the 1st Respondent’s counsel in its address and needless to say, therefore, that it will add little or no value discussing the said issue here again. It is hereby deemed discussed.

TRIBUNAL

Now, from the issues afore-formulated and discussed by the Petitioner on the one hand, and the Respondents on the other hand, the 4th issue formulated by the 1st Respondent which is same as that of the 2nd and 3rd Respondents is hereby adopted as that of the Tribunal for the determination of this Petition.

The issue is;

“Whether the Petitioner has proved his entitlement to the reliefs sought in his Petition.”

In civil cases, election Petition inclusive, the onus of proof shifts from the Petitioner to the Respondent and vice versa from time to time as the case progresses. The onus rests heavily on the Party who will fail if no evidence

at all, or more, as the case may be, were given on either side. Sections 131, 132 and 133 of the Evidence Act, 2011 and the authority of ***EJOGU VS. ONYEAGUOCHA (2006) ALL FWLR (Pt. 317) 467*** are instructive on this point.

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

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

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

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

Petitioner challenged this petition on the grounds that 1st Respondent was not elected by majority of lawful votes cast at the said election and that the said election was invalid by reason of corrupt practices or substantial non – compliance with the provision of the Electoral Act, 2022.

In consequence thereof, Petitioner sought for the following Orders:-

- a. An Order of the Honourable Tribunal setting aside the return of the 1st Respondent as the elected member to represent the Oru East/Orsu/Orlu Federal Constituency of Imo state in the House of Representatives of the National Assembly of Nigeria.
- b. A Declaration of the Honourable Tribunal that the Petitioner won the election held on 25th February, 2023 to elect the member to

represent Oru East/Orsu/Orlu Federal Constituency in the House of Representatives of the National Assembly of Nigeria having polled the majority of lawful votes cast at the election.

- c. An Order of the Honourable Tribunal returning the Petitioner as the elected member to represent the Oru East/Orsu/Orlu Federal Constituency in the House of Representatives of the National Assembly of Nigeria.

OR:

- d. An Order of the Honourable Tribunal cancelling or nullifying the elections conducted in the Polling Units where over voting occurred in the Oru East/Orsu/Orlu Federal Constituency held on the 25th February, 2023 to elect the member to represent the Oru East/Orsu/Orlu Federal Constituency of Imo State in the House of Representatives of the National Assembly of Nigeria for over – voting.
- e. An Order of the Honourable Tribunal directing that a fresh election be conducted in the aforesaid Polling Units where over voting occurred.

OR:

- f. An Order of the Honourable Tribunal cancelling or nullifying the elections held on the 25th February, 2023 to elect the member to represent the Oru East/Orsu/Orlu Federal Constituency of Imo State in the House of Representatives of the National Assembly of Nigeria.

- g. An Order of the Honourable Tribunal directing that a fresh election be conducted in Oru East/Orsu/Orlu Federal Constituency of Imo State to elect the member to represent the Oru East/Orsu/Orlu Federal Constituency of Imo State in the House of Representatives of the National Assembly of Nigeria.
- h. An Order setting aside the certificate of Return issued by the 3rd Respondent to the 1st Respondent as the winner of the election held on the 25th February, 2023 in order to elect the member to represent Oru East/Orsu/Orlu Federal Constituency of Imo State in the House of Representative of the National Assembly of Nigeria.

Prayer No. 2 sought for by the Petitioner is declaratory in nature, and the law in this area of our jurisprudence is settled peradventure.

The law with relation to Declaratory Relief is settled.

Declaratory reliefs are not granted in a matter of course. Hard evidence must be led if a court must grant such a relief.. It is not granted even upon admission by the adverse party. Admission on the part of Respondents, similarly, cannot be the basis for granting same.

The case of ***AGBAJE VS. FASHOLA & ORS. (2008) 6 NWLR (Pt. 1082)*** is apt on this point...

With the principle of law on the issue of declaratory relief stated, I shall equally lay bare the already established position of law on what a Petitioner who alleges either that there was no election, over voting, alteration of polling unit result, etcetera etcetera shall do.

For a case of over voting to be established, the presentation of voter register, voters from the polling unit who must identify their names from the voters register is most necessary.

In the recent case of ***OYETOLA & ANOR VS. INEC & 2ORS. SC/CV/508/2023 Supreme Court*** on what a Petitioner shall do has been put to rest.

It was captured in the following words;

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

election in the 744 polling units. The BVAS devices for each of the 744 polling units which the appellants solely relied on as the basis for grounds 2 and 3 of their petition were not produced and tendered by them as evidence in support of their case. Rather they sought to prove the record of accredited voters in the BVAS devices for each of the 744 polling units by means of a report of the examination of the INEC data base or back end server (Exhibit "BVR") said to contain the information on the number of accredited voters and number of votes cast in a polling unit transmitted by the BVAS to the said INEC data base during the election on election day. The record in the BVAS machine for each polling unit is the direct and primary record of the number of voters accredited in that polling unit on Election day in the process of the election.

It important to mention that Oru East, Orsu and Orlu Local Government Areas make up the Federal Constituency with 517 Polling Units across the wards of the Local Government Areas.

It is equally instructive to note that of the 11 witnesses called by the Petitioner and who gave evidence as PW1 – PW11, PW10, PW11 were INEC Staff while PW9 was the Petitioner himself.

PW1, PW2, PW3, PW4 and PW8 gave evidence as polling unit agents and tendered their polling unit results.

PW5 merely adopted his statement on oath.

PW7 gave evidence of the fact that he made the video i.e Exhibit "15", while PW6 gave evidence and tendered the party's register but admitted he is not the secretary of the party.

With the ruling striking-out that paragraph of Petitioner's reply to the Petition, the evidence of PW7 and Exhibit "15" tendered and admitted is similarly hereby struck-out.

It is very clear from the available evidence of the witnesses that non mentioned anything with respect to what transpired in any of the polling units in Oru East Local Government Area as Agents.

Facts therefore pleaded with respect to the election that held or not in Oru East LGA where evidence is not led are hereby deemed abandoned.

I need observe here that PW1, PW2, PW3, PW4 and PW8 though tendered polling unit results of their respective polling units, they stated in their evidence that election did not take place in the said polling units but at the Local Government Headquarters. I have looked at the said Form EC8A(I) in issue. They relates to Polling Units in Orsu Local Government Area where Petitioner is contending that Election held at the Orsu Local Government Area Headquarters and not the respective Polling Units.

A perusal of the said polling unit results will show that they all bore the code and names of the respective Polling Units. I will revisit this part of the evidence.

Now, Petitioner's Counsel, Imo, Esq. tendered certified true copies of the following documents from the Bar;-

1. Voters Register for Oru East Local Government Area
2. Imo State PVC Issuance Status for 2023 General Elections (15 pages)
3. BVAS Accreditation Report, Polling Unit by Polling Unit for Orlu/Orsu/Oru East Federal Constituency (18 pages)
4. Form EC8A(II)
5. Form EC8B(II)
6. Form EC8C(II) for Orlu, Oru East and Orsu Local Government Areas.
7. Form EC8D(II)
8. Form EC8E(II)
9. List of Presiding Officers for Presidential/National Assembly for Oru East Local Government Area.
10. List of Presiding Officers for Presidential/National Assembly for Orlu Local Government Area
11. List of Presiding Officers for Presidential/National Assembly for Orsu Local Government Area
12. Certificate of compliance by INEC for the computer generated BVAS Report dated 6th May, 2023
13. Federal High Court Judgment delivered on the 17th November, 2022 in ***Suit No. FHC/OW/CS/155/2022 – PDP & ANOR VS. INEC & 2 ORS.***

14. Court of Appeal Judgment delivered in Appeal No. **CA/OW/479/2022** in the same Suit.

They were admitted in evidence and marked Exhibits "18", "19", "20", "21", "22", "23", "24", "25", "26", "27", "28", "29", "30" and "31".

I need observe frontally at this point that Petitioner's counsel who tendered BVAS Accreditation Report Polling Units by Polling Unit for Orlu/Orsu/Oru East Federal Constituency (18 pages), Form EC8A(II), EC8B(II), EC8C(II), EC8D(II) and EC8E(II) did not get the said documents to be identified by their makers only that he argued that the provisions of Section 137 of the Electoral Act, 2022 and Paragraph 46(4) of the First Schedule to the Electoral Act, 2022 made his work easy.

On the other hand, learned counsel for the Respondents are of the firm legal opinion that having not gotten witnesses who made the said documents to speak to them, the said documents are deemed dumped on the Tribunal.

For the avoidance of doubt, I shall reproduce the said provisions;

I shall reproduce the provision...

Section 137 of the Electoral Act, 2022:

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

certified true copies manifestly disclose the non-compliance alleged.”

And

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

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

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

“If anything be certain it is this, that where there are general words in a later Act capable of reasonable and sensible application without extending them to subjects specifically dealt with by earlier legislation, you are not to hold that earlier and special legislation indirectly repealed, altered or derogated from merely by force of such general words, without any indication of a particular intention to do so.”

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

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

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

Respondents' counsel who argued that the said documents were dumped on the Tribunal have indeed made-out a valid point. Having not gotten the makers of the documents aforementioned to tender or speak to same, the documents clearly would have been dumped on the Tribunal.

The argument of the Respondents' counsel on this issue is sustained. Any such evidence deduced from the said dumped documents amounts to documentary hearsay. See **Section 37 of the Evidence Act, 2011**, and ***ALADE VS. ADEKANYE & ORS (2021) LPELR – 52710 (CA)***.

Clearly, from the documents aforementioned tendered by the Petitioner's counsel no witness who participated in making the documents spoke to the documents. These documents have clearly been dumped on the Tribunal, and no value, therefore, can be ascribed to same.

The Learned counsel has tendered BVAS Accreditation Report Polling unit by Polling Unit for the three (3) Local Government Areas that make up the Federal Constituency.

Eventhough BVAS Machines were brought before the Court and admitted in evidence, they were not demonstrated alongside the BVAS Accreditation Report tendered in evidence.

How is the Tribunal expected to know the numbers of those accredited for the Election?

This question has been put to rest in the locus classicus case as it relates to importance of BVAS Machine in the case of **ADEGBOYEGA ISIAKA OYETOLA & ANOR VS. INEC & 2 ORS. Appeal No: SC/CV/508/2023** in the following words;-

"It is glaring from the above reproduced provisions of the Electoral Act and the INEC Regulations and Guidelines that the evidence required to prove that there was over voting are the record of accredited voters in the BVAS and the Polling Unit result in Form EC8A. Having determined the evidence required to prove the assertions of non - accreditation, improper accreditation and over-voting, let me now consider what evidence the appellants produced in the Tribunal to prove their above assertions. The evidence relied on and tendered by the petitioners to prove grounds 2 and 3 of the Petition include the testimonies of their two witnesses, PW1 and PW2, polling units results in INEC Form

EC8A for each of the 744 polling units and the report of the examination of the content of the INEC database or back end (Exhibit "BVR") The BVR issued on 27th July, 2022 is said to contain information on the number of accredited voters and results transmitted from BVAS used in the 16th July, 2022 election in the 744 polling units. The BVAS devices for each of the 744 polling units which the appellants solely relied on as the basis for grounds 2 and 3 of their petition were not produced and tendered by them as evidence in support of their case. Rather they sought to prove the record of accredited voters in the BVAS devices for each of the 744 polling units by means of a report of the examination of the INEC data base or back end server (Exhibit "BVR") said to contain the information on the number of accredited voters and number of votes cast in a polling unit transmitted by the BVAS to the said INEC data base during the election on election day. The record in the BVAS machine for each polling unit is the direct and primary record of the number of voters accredited in that polling unit on Election day in the process of the election. It is not in dispute that the disputed Polling Units results were collated in their respective wards by their Ward Collation Officers. The Collation by virtue of Regulation 48(a) of INEC Regulations and Guidelines, a presumption arises from the collation of the polling units results that the number of accredited voters recorded in the

result in Form EC8A agrees with the record of the accredited voters in the BVAS. The Petitioners cannot rebut this presumption without producing the BVAS machines in evidence.... Exhibit "BVR", the report of the examination of the content of the INEC database or back end server containing the number of accredited voters and number of votes cast transmitted by the BVAS for each polling unit to the data base or back end server does not qualify as the BVAS provided for in the Regulation 48(a) and the number recorded therein as extracted from the INEC data base is not the "the number recorded in the BVAS" as provided in Regulation 48(a). There is no part of the Electoral Act or INEC Regulations and Guidelines for the conduct of Elections, 2022 that makes INEC data base or back end server a part of the accreditation process or record of accredited voters... in the light of the foregoing, I hold that the INEC data base or National Electronic Register of Election Results is not relevant evidence in the determination of whether there was non-accreditation or over-voting or not in an election in a Polling Unit and cannot be relied on to prove over voting". (Underlining for Emphasis).

The implication therefore, of not demonstrating the said BVAS Accreditation Report leaves us with no option than to hold that no probative value can be ascribed to the said BVAS Accreditation Report

tendered in evidence. Accordingly, the said BVAS Report is hereby jettisoned.

PW4 who gave evidence as the Polling Unit Agent in Polling Unit 009, Umodioka Ward in Orlu Local Government Area, made his evidence unreliable on grounds of relevancy in view of the fact that he was making reference to what happened at the Ward Collation Centre and not Polling Unit. Accordingly, his evidence is hereby jettisoned.

Similarly, PW5 who gave evidence as a Voter in Polling Unit 007, Ihitenensa Ward, Orsu Local Government had no Permanent Voter's Card to support his claim.

How is the Tribunal expected to determine the authenticity of his evidence.. Any person could have then come to claim being a Voter. His evidence is equally hereby discountenanced for being unreliable.

Next is the evidence of PW6 who came before the Tribunal and tendered the Register of Members of Labour Party (LP) and who under cross-examination admitted that he is not the Secretary of the Party who indeed is the custodian of the Register of the Political Party.

Clearly, this register did not come from proper custody moreso that the date it was opened is not clearly stated. The evidence of PW6 is equally inadmissible in law.

I need to mention that there are 517 Polling Units in the three (3) Local Governments that makeup the Federal Constituency in issue.

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

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

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

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

The Polling Unit Results which the Agents tendered showed Election duly held in the respective Polling Units and not the Local Government Headquarters as alleged. This is clearly admission against interest which indeed is the best form of admission in law.

Section 24 of Evidence Act, 2011 and the case of **MOHAMMED VS. APC & ORS (2019) LPELR 48061 (CA)**

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

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

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

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

On the issue of BVAS Machine, Petitioner's counsel who tendered same, did not demonstrate same to show non-voting, non-accreditation and or improper accreditation in the said Oru East Local Government Area.

The plight of the Petitioner has been made very precarious by the 3rd Respondent who is the umpire (INEC) when their counsel, O. O. Okonkwo, Esq., tendered certified true copies of Forms EC8A, EC8B, EC8C for Oru and Orlu Local Government Areas and EC8D and EC8E for the Federal Constituency which were admitted in evidence and marked Exhibits "D2", "D3", "D4", "D5" and "D6" respectively.

The evidence of DW1 who also gave evidence as the Electoral Officer for Orsu Local Government that Election duly held in all the Polling Unit of his Local Government.

This is so because, any such declaration made by the 3rd Respondent in exercise of its official function enjoys presumption of regularity.

There is a presumption of regularity of the election as declared by INEC. See the cases of ***INEC VS. ANTHONY (2010) LPELR 12183 (CA)*** and ***EMESIANI VS. EMESIANI (2013) LPELR 21360 (CA)***.

By the declaration made by the Independent National Electoral Commission (INEC) which was in favour of the 1st and 2nd Respondents, the Petitioner is under an obligation to lead credible evidence to rebut it in view of the fact that such declaration enjoys a presumption of regularity.

As stated in the preceding part of this Judgment, out of the **517** Polling Units that makeup the Federal Constituency in question, Petitioner decided to call only 10 witnesses with himself making the number 11. Two of the witnesses are INEC Staff who came by way of subpoena. The evidence of DW10 i.e **INEC (Olachi)** subpoenaed Staff did not help Petitioner as same

is a mixture of hearsay. The number is clearly most inadequate to show that either Election did not take place and or that there was no accreditation in the respective Polling Units that makeup the Federal Constituency or that there was disenfranchisement.

This, the Petitioner I must say has failed in his responsibility to puncture the evidence of the 3rd Respondent.. I so hold.

The next argument of the Petitioner is that he ought to have been declared the winner of the Election and not the 1st Respondent in view of the fact that he polled the majority of the lawful votes cast at the Election.

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

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

infractions at the various polling units. Failure to call polling units agents to testify is detrimental to the Petition.

WADA VS. INEC (2012) 11 NWLR (Pt. 1841) Page 293 at Pages 326 – 327 Paragraphs D – C is instructive on this point.

Can the Petitioner say that he has done enough to sway this Tribunal into giving him judgment!

I answer this question in the negative without any hesitation.

Where then lies the faith of the Petitioner's case?

The 1st Respondent was on the strength of the votes polled at the Election and in compliance with the provisions of the Electoral Act, 2022 and Guidelines for the conduct of the said Election declared the winner for Oru East/Orsu/Orlu Federal Constituency by INEC.

With what has played out, can anyone by any strength of imagination say that the Petitioner has established his case to warrant any declaration to be made in his favour bearing in mind the fact that he has to win on the strength of his case and not on the weakness of the Respondents' case?

I answer this in the negative.

I say this with every sense of responsibility that the Petitioner under this circumstance, has failed to lead credible evidence in the Prosecution of his Petition.

It is not enough to make allegation of facts but you must lead evidence in support of such facts.

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

Instead of leading credible evidence in aid of their petition, Petitioners merely offloaded their documents and relied on the provision of Section 137 of the Electoral Act, 2022, to do the magic. There is no such room in Court.

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

"The Court of Appeal cannot collect evidence from the market overt; for example from the Balogun market, Lagos; Dugbe market, Ibadan; main market, Jos; Central market, Kaduna; Central market (former Gwari market), Minna; Wuse market, Abuja. On the contrary, the Court of Appeal, has to wait for evidence, as the court did, in the court building duly constituted as a court qua adjudicatory body. Courts of law being legal and sacred institutions do not go on

a frolic or on a journey to collect inculpatory or exculpatory evidence. On the contrary, they deal only with evidence before them which is procedurally built on arid legalism. For the avoidance of doubt, I am not saying by this judgment that all was well with the conduct of the Presidential Election conducted in 2007. What I am saying is that there was no evidence before the Court of Appeal to dislodge section 146(1) of the Electoral Act.”

Was Petitioner expecting this Tribunal to embark on discovery of evidence by visiting all the Polling Units in the Local Governments of Orsu, Oru East and Orlu Local Government Areas that makeup the Federal Constituency to fish for evidence?

That clearly is not the duty of the Tribunal...

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

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

Fabiyi, JCA (as he then was) in ***NWOLE VS. IWUAGWU [2005] 16 NWLR (PT. 952) 543 AT 571 A-C*** thus:-

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

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

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

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

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

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

Eventhough the declaration made by INEC is in line with their official function and which enjoys the presumption of regularity pursuant to Section 146(1) and (2) of the Evidence Act, 2011, only credible evidence so led can dislodge such presumption. This, I must say, the Petitioner has failed to do.

The declaration and return of the 1st Respondent as the winner of the February, 25th, 2023 Election as Member representing Oru East/Orsu/Orlu Federal Constituency is most deservedly earned by the 1st and 2nd Respondents.

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

The petition of the Petitioners bereft of all necessary qualities is certainly exposed to predatory attacks hence the debilitating attack by the Respondents.

There is no refuge for the Petitioner in this Tribunal.

Petitioner shall be dismissed with an Order that same be allowed to die and rest in peace.

On the whole, Petition No. **EPT/IM/HR/11/2023** is hereby dismissed.

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

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

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