

**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 Monday the 4<sup>th</sup> 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/09/2023**

**BETWEEN**

**1. ONUOHA CHIKWEM CHIJOKE**  
**2. LABOUR PARTY (LP)** } **PETITIONERS**  
/ **RESPONDENTS**

**AND**

**1. INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC)**  
**2. ONUOHA MIRIAM ODINAKA**  
**3. ALL PROGRESSIVES CONGRESS (APC)** } **RESPONDENTS**

## **JUDGMENT**

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

The Independent National Electoral Commission (INEC) declared Onuoha Miriam Odinka of the All Progressives Congress (APC) as the duly elected candidate for Isiala Mbano/Okigwe/Onuimo Federal Constituency.

Onuoha Chikwem Chijioke of the Labour Party who was not satisfied with the declaration and return decided to approach the Election Petition Tribunal by Filing Petition **No. EPT/IM/HR/09/2023** at the Election Tribunal Registry on the 17<sup>th</sup> March, 2023 challenging the said declaration and return on the following grounds:-

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

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

1. That it may be determined that on the basis of the remaining votes, after discountenancing the unlawful votes, fabricated votes and/or altered votes recorded for the 2<sup>nd</sup> Respondent in the said election, the 1<sup>st</sup> Petitioner has the majority of lawful votes cast.

2. That it may be determined that the votes recorded and returned in the 130 Polling Units of Okigwe Local Government Area, namely Aku Ward (7 Polling Units); Umoulolo Ward (15 Polling Units); Ndimoko Ofeimo/Ibinta/Okanachi/Umuowa Ibu Ward (10 Polling Units); Agbobu Ward (10 Polling Units); Amuro Ward (11 Polling Units); Ihube Ward (19 Polling Units); Ogii Ward (7 Polling Units); Okigwe Ward II (30 Polling Units); Ezinach Ward (11 Polling Units) and Umualumoke Ward (10 Polling Units) did not represent lawful votes cast in the said Polling Units in the Okigwe Local Government Area, Imo State in the National Assembly Election held on 25<sup>th</sup> February, 2023 and having been obtained in vitiating circumstances of substantial non-compliance with the mandatory provisions of the Electoral Act, 2022.
3. That it may be determined that the 2<sup>nd</sup> Respondent was not duly elected by majority of lawful votes cast in the National Assembly Election for the Isiala Mbano/Okigwe/Onuimo Federal Constituency Seat held on 25<sup>th</sup> February, 2023, therefore, the declaration and return of the 2<sup>nd</sup> Respondent as the elected member of the Federal House of Representatives representing Isiala Mbano/Okigwe/Onuimo is unlawful, undue, null, void and of no effect.
4. That it may be determined that the 1<sup>st</sup> Petitioner was duly and validly elected and ought to be returned as the winner of the election, having polled the majority of lawful votes cast at the said election.

5. That the 1<sup>st</sup> Petitioner be declared validly elected or returned in the said Election.
6. An Order directing the 1<sup>st</sup> Respondent to issue a Certificate of Return to the 1<sup>st</sup> Petitioner as the duly elected member of the Federal House of Representatives Representing Isiala Mbanjo/Okigwe/Onuimo Federal Constituency.
7. An Order declaring null and void the Certificate of Return wrongly issued to the 2<sup>nd</sup> Respondent by the 1<sup>st</sup> Respondent.

### **IN THE ALTERNATIVE AND ONLY IN THE ALTERNATIVE**

That the said Election was vitiated by substantial non-compliance with the mandatory statutory requirements which substantially affected the validity of the said election, that none of the candidates in the said election can be validly returned as having won the said election.

That the National Assembly Election held on 25<sup>th</sup> February, 2023 for the Isiala Mbanjo/Okigwe/Onuimo Federal Constituency, Imo State is void on the ground that the said Election was vitiated by corrupt practices and same was not conducted substantially in accordance with the provisions of the Electoral Act, 2022.

That the National Assembly Election into the Federal House of Representative Seat for the Isiala Mbanjo/Okigwe/Onuimo Federal Constituency, held on 25<sup>th</sup> February, 2023, be nullified/cancelled and the 1<sup>st</sup> Respondent be directed to conduct a fresh election into Federal House of Representatives seat for the Isiala Mbanjo/Okigwe/Onuimo Federal

Constituency, Imo State within a period to be set by the Honourable Tribunal.

The facts in support of grounds one and two of the Petition are that the Petitioners state that the 1<sup>st</sup> Respondent in the conduct of the election into the Federal House of Representatives seat of the Nigeria National Assembly for Isiala Mbano/Okigwe/Onuimo Federal Constituency, Imo State on 25<sup>th</sup> February, 2003 is mandated by law to be guided by the provisions of the Electoral Act, 2022, and its extant regulations and guidelines for the conduct of elections, and consequent upon which the 1<sup>st</sup> Respondent issued manual for Election Officials.

The Petitioners state that the 1<sup>st</sup> Respondent is bound by the Electoral Act, 2022 and the Provisions of the extant Regulations, Guidelines and Manual for Election officials prior to and in the conduct of the Election.

The Petitioners state that the 1<sup>st</sup> Respondent is obliged to comply with the mandatory provisions of the Electoral Act which provides that for any person to vote, the Presiding Officer shall use Smart Card Reader or any other technological device as may be prescribed by the 1<sup>st</sup> Respondent for the accreditation of voters, to verify, confirm or authenticate the particulars of the intending voter in the manner prescribed by the 1<sup>st</sup> Respondent.

For the purpose of compliance with the above mandatory provision of the Electoral Act, the 1<sup>st</sup> Respondent prescribed the use of Bimodal Voter Accreditation System (BVAS) for the accreditation of voters and makes its use mandatory for the purpose of accreditation, verification, confirmation

or authentication of the intending voter in Regulations and Guidelines for the Conduct of Elections, 2022 issued by the 1<sup>st</sup> Respondent.

In the counting of votes cast at the Polling Unit and the collation of the results of the election, it is the number of accredited voters recorded and transmitted directly from polling units and the votes or results recorded and transmitted directly from polling units that should be taken into account.

In some places at Okigwe Local Government Area of Isiala Mbano/Okigwe/Onulmo Federal Constituency, election did not hold at all due to known security concerns and unsafe environment which was equally acknowledged by the 1<sup>st</sup> Respondent and registered voters inhabiting with in the areas.

The affect Electoral Wards within the Okigwe Local Government Area are: Aku Ward - seven (7) Polling Units; Ndimoko Ofeimo/Obinta/Ibinta/Okanachi/Umuowalbu Ward-Ten (10) Poling Units; Umulolo Ward - Fifteen (15) Polling Units; Ihube Ward - Nineteen (19); Agbobu Ward-Ten (10) Polling Units; Amuro Ward-Eleven (11) Polling Units; and Ogii Ward -Seven (7) Polling Units.

The non-conduct of the election at the aforementioned Electoral Wards and Polling Units was confirmed by the report of the various field officials of the 1<sup>st</sup> Respondent submitted to the 1<sup>st</sup> Respondent office here in Owerri and at Abuja and registered voters who inhabit the affected polling units.

At the hearing of this Petition, reliance will be placed on such report and the 1<sup>st</sup> Respondent is hereby given notice to produce such reports which were submitted Presiding Officers, Collation Officers, Returning Officers and Electoral Officers of the three (3) Local Government Areas that constitute Isiala Mbano/Okigwe/Onuimo Federal Constituency which was submitted between 25<sup>th</sup> February, 2023 to 5<sup>th</sup> March, 2023.

Further, the Petitioners state that partial election was held in Urban Ward II (Okigwe II) of Okigwe LGA, elections were conducted in only eight (8) polling units out of thirty (30) polling units in the electoral ward, leaving out twenty-two (12) polling units in the said Urban Ward 11 (Okigwe 11).

In Ezinachi Ward of Okigwe LGA, election were held in nine (9) polling units in the electoral ward leaving out two (2) polling units in the said Ezinach Ward.

In Umualumoke Ward of Okigwe LGA, election was held in four (4) polling units out of the ten (10) polling units, leaving out six (6) polling units in the said Umualumoke Ward.

The Petitioners also state that the 1<sup>st</sup> Respondent accredited and appointed Collation Officers initially refused to collate results that were fabricated for places where elections did not hold at the various polling units of the aforementioned electoral wards. These unlawfully fabricated results whimsically allotted vote scores to the competing political parties and their sponsored candidates as it pleases the 1<sup>st</sup> Respondent officials who were working in concert with the agents of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents.

The Petitioners state that the Collation Officers who initially refused to collate fabricated results were compelled and forced by the agents of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents and the compromised officials of the 1<sup>st</sup> Respondent to collate the fabricated results in flagrant breach of the provisions of the Electoral Act, 2022, the Regulations and Guidelines for the Conduct of the Elections, 2022.

In addition to the above, these compromised officials of the 1<sup>st</sup> Respondent and the agents of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents were aided by fierce looking armed youths/hoodlums who threatened to snuff the lives out of these collation officers

The Petitioners herein below tabulates the fabricated results from the aforementioned polling units of the affected electoral wards to show and demonstrate the number of unlawful votes whimsically allotted to the competing, political parties and candidates as could be seen in the Certified True Copies (CTC) of Form EC 8A (II) issued to the Petitioners upon application and payment of the requisite fees thereto except for Ojii Ward where the Petitioners were not issued with any Form EC8A(11) by the 1<sup>st</sup> Respondent despite applying for same:

The election of the 2<sup>nd</sup> Respondent pursuant to the National Assembly Election conducted for the Federal House of Representatives Seat for Isiala Mbano/Okigwe/Onuimo Federal Constituency, Imo State on 25<sup>th</sup> February, 2023 is invalid by reason of corrupt practices or non-compliance with the provisions of the Electoral Act, 2022.



The Petitioners state that the 1<sup>st</sup> Respondent in the conduct of the election to the National Assembly for the Federal House of Representatives Seat for Isiala Mbana/Okigwe/Onulmo Federal Constituency, Imo State on 25<sup>th</sup> February, 2023 is guided by the Provisions of the Electoral Act, 2022, its extant regulations for the conduct of the said election and consequent upon which the 1<sup>st</sup> Respondent issued a Manual for Election Officials.

The Petitioners state that the 1<sup>st</sup> Respondent is bound by the Electoral Act, 2022 and the Provisions of the extant Regulations, Guidelines and Manual for Election Officials prior to and in the conduct of the Election, 1<sup>st</sup> Respondent's Regulations and Guidelines for the Conduct of Elections, 2022 provides for the mandatory use of the Bimodal Voter Accreditation System (BVAS) for the accreditation of voters.

The Petitioners state that by law, all Presiding Officers are to use technological device - BVAS prescribed by the 1<sup>st</sup> Respondent for the accreditation of voters, to verify, confirm or authenticate the particulars of the intending voter in such manner prescribed by the 1<sup>st</sup> Respondent.

The Petitioners state that after voting has closed, the Presiding Officer shall cancel all unused ballot papers, sort out the ballot papers by each party and count out loudly the votes scored by each political party in the presence of polling agents. Further, the Presiding Officer is to mark as rejected the rejected ballot papers and then enter the scores of each candidate in both figures and words in appropriate Form EC8 series.

The Petitioners further state that in the election under reference in this Petition, the Presiding Officers did alter result sheets in favour of the 2<sup>nd</sup>

and 3<sup>rd</sup> Respondents in the following Electoral Wards and Polling Units within the Isiala Mbanu/Okigwe/Onuimo Federal Constituency, Imo State during the conduct of the said election on 25<sup>th</sup> February, 2023. The affected electoral wards and polling units are hereinunder set out showing the real figures and the altered figures as shown on the face of the Certified True Copy (CTC) of the results issued to the Petitioner by the 1<sup>st</sup> Respondent:

The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents who were served with the Petition filed their replies to the Petition and challenged the competence of the petition and the Petitioner and other sundry reliefs, respectively.

I shall state clearly the case of the Respondents as contained in their respective replies to the Petition before proceeding to deal with the preliminary objection.

1<sup>st</sup> Respondent generally traversed the claims of the Petitioner and specifically denied allegation made by the Petitioner on the fact that election duly held and that the Petitioner does not deserve to be returned as elected as the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent were duly returned having won the election, and that the election was conducted in compliance with the Electoral Act, 2022.

In further response to paragraphs 55, 56, 57 and 58 of the Petition, the 1<sup>st</sup> Respondent plead that;

- a. The 1<sup>st</sup> Respondent conducted the said election in compliance with the Electoral Act, 2022 and the Regulations and Guidelines for the conduct of the Election 2022.
- b. The 2<sup>nd</sup> Respondent was duly returned as having scored the majority of the lawful votes cast at the election.
- c. The Petitioners are not entitled to the grant of any of the reliefs sought.
- d. The Petition is self-contradictory.

The 1<sup>st</sup> Respondent hereby plead and shall rely on but not limited to the following documents;-

- a. Certified true copies of Forms EC8A (II), EC8B (II), Forms EC8C (II), Forms EC8D (II), Form ECSE (II).
- b. The Appointment Letters of Presiding officers for the Various Polling Units for the Election.
- c. Bimodal Voters' Accreditation System (BVAS) Back End Report
- d. The Voters Register for Isiala Mbano/Okigwe /Onuimo Federal Constituency.
- e. The List of the Permanent Voters Cards issued by the 1<sup>st</sup> Respondent for Isiala Mbano/Okigwe/Onuimo Federal Constituency.

The 1<sup>st</sup> Respondent will urge the Honourable Tribunal to dismiss the Petition because:

- i. The Petitioners did not score a majority of the lawful votes cast at the election. It was the 2<sup>nd</sup> Respondent that scored a majority of the lawful votes cast at the election.
- ii. The election was conducted in compliance with the Electoral Act, 2022, and the Regulations and Guidelines for the Conduct of Elections, 2022 issued by the 1<sup>st</sup> Respondent.
- iii. The Petition is frivolous, vexatious, discloses no reasonable cause of action and is grossly incompetent.

On the part of 2<sup>nd</sup> Respondent, she denied every averment or allegation against her declaration and return at the questioned election as contained in the Petition, as if each and every such averment allegation is set out herein and categorically traversed seriatim.

That Paragraphs 2 and 3 of the Petition are false and are hereby denied.

That 2<sup>nd</sup> Petitioner wrongly sponsored the 1<sup>st</sup> Petitioner as the 1<sup>st</sup> Petitioner is not member of the 2<sup>nd</sup> Petitioner. The 2<sup>nd</sup> Petitioner is hereby given notice to produce the acknowledged copy of the list of its members it submitted to the 1<sup>st</sup> Respondent. The 2<sup>nd</sup> Respondent pleads and relies on the list of members the 2<sup>nd</sup> Petitioner submitted to 1<sup>st</sup> Respondent as used in Suit **No: FHC/CS/OW/125/2022**) she will equally rely on the list as obtained by 3<sup>rd</sup> Respondent from 1<sup>st</sup> Respondent. The 1<sup>st</sup> Respondent is hereby given notice to produce the said document and equally on the Certified True Copy of the list of the members of the 2<sup>nd</sup> Petitioner submitted to 1<sup>st</sup> Respondent and issued to the 3<sup>rd</sup> Respondent by the 1<sup>st</sup>

Respondent. The 2<sup>nd</sup> Respondent shall use the photocopies of the Certified True Copy as the 3<sup>rd</sup> Respondent is using the original copy in other various matters across the Federation. The 2<sup>nd</sup> Respondent is a member of the 3<sup>rd</sup> Respondent and a registered Voter with Permanent Voter's Card.

In further answer to Paragraphs 2 & 3 of the petition the 2<sup>nd</sup> Respondent states as follows:

- i. That the 2<sup>nd</sup> Petitioner has no candidate for the said election as the 1<sup>st</sup> Petitioner was not qualified to run for the National Assembly Election held on the 25<sup>th</sup> day of February, 2023, to represent Isiala 2 Mbanu/Okigwe/Onuimo Federal Constituency not being a member of 2<sup>nd</sup> Petitioner as his name was not among the names of members submitted to the 1<sup>st</sup> Respondent by 2<sup>nd</sup> Petitioner before the 2<sup>nd</sup> Petitioner's primary or before the general election.

In further answer to Paragraphs 1 and 3 of the Petition the 2<sup>nd</sup> Respondent states as follows:

- ii. That the 1<sup>st</sup> Petitioner is still and remains a member of 3<sup>rd</sup> Respondent. He is a card carrying and full registered member of the 3<sup>rd</sup> Respondent at Osu-Owerre Ward II. The 2<sup>nd</sup> Respondent shall rely on the 3 Respondent's register of members for Osu Owerre, and it is hereby pleaded.
- iii. The name of the 1<sup>st</sup> Petitioner is number two on the 3<sup>rd</sup> Respondent's register for Osu- Owerre Ward 11. It is unlawfully for

the 1<sup>st</sup> Petitioner to be member of the 3<sup>rd</sup> Respondent and at the same time be sponsored in an election by 2<sup>nd</sup> Petitioner.

- iv. The 1<sup>st</sup> Petitioner paid and purchased the expression of interest Form of the 3<sup>rd</sup> Respondent to contest the primary election of the 3<sup>rd</sup> Respondent. The said receipt for the purchase is pleaded and shall be relied upon.
- v. That the Ward Chairman of the 3<sup>rd</sup> Respondent at Osu- Owerre Ward II was suspended from the 3<sup>rd</sup> Respondent party for antiparty activities and his suspension was ratified by the State Working Committee of 3<sup>rd</sup> Respondent on the 21<sup>st</sup> September, 2022. The said ratification document is hereby pleaded.
- vi. The 1<sup>st</sup> Petitioner has no right to be returned in the said election having not won same.

It is the further reply of the 2<sup>nd</sup> respondent that election duly held across Isiala – Mbano/Okigwe/Onuimo Federal Constituency of Imo State and that all scores entered for the 2<sup>nd</sup> Respondent are valid scores and that 2<sup>nd</sup> Respondent was elected by majority of votes scores at the election, hence so declared and returned.

2<sup>nd</sup> Respondent contends that there were no fabricated results nor votes allotted to competing Political Parties by agents of the 1<sup>st</sup> Respondent or the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent. No agent of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent or Officer of the 1<sup>st</sup> Respondent forced any Collation Officer to collate fabricated results. No compromised official of the 1<sup>st</sup> Respondent or agent

of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent aided by any fierce looking armed Youths or Youths threatened to snuff life out of the any Collation Officer. That the Islala Mbanu/Onuimo/Okigwe Federal Constituency election was held alongside the Presidential Election in all the Polling Units in Okigwe L.G.A, wherein the Petitioners claims there was no elections. The Presidential results in Form EC8series are hereby pleaded. The 2<sup>nd</sup> Respondent relies on the said results in their claim of winning the presidential election. The 1<sup>st</sup> Respondent is hereby given notice to produce same.

In further answer to Paragraphs 31, 32 and 33 of the Petition the 2<sup>nd</sup> Respondent states that the Paragraphs contain several criminal allegations against unknown persons who are not joined in this Petition. The 2<sup>nd</sup> Respondent objects to the said Paragraphs.

Paragraph 34 is denied and further denies Paragraphs 34.01, 34.02, 34.03, 34.04, 34.05 and 34.06 of the Petition. There are no fabricated votes. All the votes credited to the various candidates in the election are lawful vote and were not allotted by anybody or official of 1<sup>st</sup> Respondent, and that all the tables and figures set out therein are without any foundation or proof. They are false and have no credited value. The Petitioners are put to the strictest proof of all their allegations therein. The total votes credited to the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents are the actual and valid votes scored by them at the said election.

That votes recorded by the 1<sup>st</sup> Respondent are the accurate votes scored by the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents. There are no discrepancies in the entries. The Petitioners are put to the strictest proof of their allegations, and that

the 1<sup>st</sup> Respondent conducted the said election in substantial compliance with the relevant enactments guiding the conduct of the election. The 2<sup>nd</sup> Respondent states that as required by the Electoral Act, 2022 unless the Petitioners can demonstrate that the election was conducted in substantial non-compliance with the Electoral Act, 2022 and the relevant enactments thereunder and that such non-compliance substantially affected the result of the election the result of the election will not be tampered with.

That the said election is valid. There were no corrupt practices or non-compliance with the Electoral Act, 2022 in the conduct of the said election, and that elections were held in all the Polling Units. Alterations were not made in Form EC8B(11) wrong figures were not entered into Form EC8A(II) nor did both Forms not tally. The total number of votes cast did not exceed the total number of accredited votes in Umudiomoke, and that the conduct of the election in the Isiala Mbanu/Okigwe/Onuimo Federal Constituency was done in substantial compliance with the Electoral Act, 2022 and the Regulations and Guidelines made there under. There are no incidents of non-compliance with the said enactments.

The Reply of the 3<sup>rd</sup> Respondent is the same as that of the 2<sup>nd</sup> Respondent, hence needless to reproduce same.

With the incorporation of the Replies of the Respondents, issues clearly have then been joined, and only evidence shall determine where the pendulum shall swing to.. let me however determine the reserved applications earlier mentioned in the preceding part of this judgment.



2<sup>nd</sup> Respondent motion which is dated the 18<sup>th</sup> May, 2023 but filed on the 21<sup>st</sup> May, 2023 sought for the following reliefs:-

- a. An Order striking out/dismissing petition number EPT/IM/HR/09/2023 ONUOHA CHIKWEM CHIJIJOKE & ANOR VS. INDEPENDENT NATIONAL ELECTORAL COMMISSION & ORS for being fundamentally defective, incurably bad and incapable of vesting jurisdiction on the Tribunal to try the Petition on the merit.
- b. An Order striking out paragraphs 18, 31, 44, 47, 49 and 50 of the Petition for being vague and nebulous.
- c. An Order striking out paragraphs 31, 32, 33, 34, 37, 38, 40, 44.04, 44.06 and 44.08 of the petition as they contain allegations of crimes against unnamed persons who are not joined as parties in this petition, which allegations are vague, offensive, nebulous and incompetent.
- d. An Order striking out the alternative relief in the petition on the Q ground that it is in conflict or inconsistent with the primary reliefs in the petition.
- e. An Order striking out the petition on the ground that the petition and the depositions of the 1<sup>st</sup> Petitioner and the witnesses are infested with hearsay, they are parroted, chorused and generic.
- f. An Order striking out paragraph 19(ii) which is ground two of the Petition for lumping two disjunctive grounds in one as same offends section 134(1)(b) of the Electoral Act 2022.

g. And for any other Order or Orders as the Honourable Tribunal may deem fit in the circumstance.

Said applications is predicated on the following grounds:-

- i. That the Petition is defective and incompetent for failure to comply with the provisions of the Electoral Act 2022.
- ii. That paragraphs 18, 31, 44, 47, 49 and 50 of the petition are vague and nebulous.
- iii. That paragraphs 31, 32, 33, 34, 37, 38, 40, 44.04, 44.06 and 44.08 the petition contain allegations of crimes and other untoward activities against unnamed persons who are not joined as parties in this petition, which allegations are vague, offensive, nebulous and incompetent.
- iv. That the alternative relief in the petition is in conflict or inconsistent with the primary reliefs in the petition.
- v. That the petition on the ground that the petition and the depositions of the 1<sup>st</sup> Petitioner and the witnesses are infested with hearsay, they are parroted, chorused and generic.
- vi. That ground two of the petition is incompetent and contrary to section 134(1) of the Electoral Act, 2022.

In support of the Motion is a 4 paragraph affidavit deposed to by one Onyekachi Odike, litigation secretary in the law firm of counsel to the 2<sup>nd</sup> Respondent/Applicant. It is the deposition of the 2<sup>nd</sup> Respondent/Applicant;

That the 2<sup>nd</sup> Respondent/Applicant had earlier stated in her reply that she would raise a preliminary objection to the hearing of the petition on several grounds.

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

That paragraphs 18, 31, 44, 47, 49 and 50 of the petition are vague and nebulous and liable to be struck out.

That paragraphs 31, 32, 33, 34, 37, 38,40,44.04, 44.06 and 44.08 the petition contain allegations of crimes and other untoward activities against unnamed persons who are not joined as parties in this petition, which allegations are vague, offensive, nebulous, incompetent and liable to be struck out.

That the alternative relief in the petition is in conflict or inconsistent with the primary reliefs in the petition.

That the petition is liable to be struck out on the ground that the petition and the depositions of the 1<sup>st</sup> Petitioner and the witnesses are infested with hearsay, they are parroted, chorused and generic.

That ground two of the petition is incompetent and contrary to section 134(1) of the Electoral Act, 2022 in that two disjunctive grounds are lumped together.

That the petition is a total and gross abuse of court and judicial process.

That a defective petition is liable to dismissal as has been held by several judicial authorities that it is in the intent of justice to struck – out or dismiss the petition... written address was filed wherein the issue, **whether the Honourable Tribunal has the jurisdiction to hear and determine this petition,** was formulated

It is the submission of learned counsel, that this sole question should be unequivocally answered in the affirmative.

Learned counsel submits, that Election Petitions are sui generis. **HASSAN VS. ALIYU (2010) 17 NWLR (Pt. 1223) 547 was cited.**

Consequently, the Laws and Rules governing its conduct are specific and strictly applied. **BARR.OKEY EZE & ANOR VS. HON. IFEANYI UGWUANYI & ORS (2015) LPELR – 40644 (CA) was cited.**

Learned counsel submits, that the law is trite that once a petition is defective it becomes bad an incompetent. Such a petition ought to be dismissed. **UZODINMA VS. UDENWA (2004) 1 NWLR (Pt. 804) 303 was cited.**

Learned counsel submits, that in this petition the Petitioners have in paragraphs 31, 32, 33, 34, 37, 38, 40, 44.04, 44.06 and 44.08 of their pleading made allegations of crime and electoral malpractices against persons who are not parties to the petition. Those paragraphs are offensive, vague, and nebulous having not given particulars of such persons. Those persons will not be able to defend themselves against

those allegations nor will they be available for cross – examination by the Applicant.

It is the submission of learned counsel, that failure to join the individuals and unknown persons whom the Petitioners have made wild and diverse allegations of crime in the petition renders those paragraphs incompetent and liable to be struck out. ***INEC VS. IZUOGU (1993) 2 NWLR (Pt. 275) was cited.***

***Paragraph 134(1)(b)(c) of the Electoral Act 2022 states thus;***

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

***b. The election was invalid by reason of corrupt practices or non – compliance with the provisions of the Act.***

***c. The Respondent was not duly elected by majority of lawful votes cast at the election."***

Learned counsel submits, that the Petitioners in the sole ground of this petition have lumped the two alternative grounds contained in paragraphs 134(1)(b)(c) of the Electoral Act 2022. By the above provisions an election may be questioned on the ground that it was invalid by reason of corrupt practices or non – compliance with the provisions of the Act or that the Respondent was not duly elected by majority of lawful votes cast at the election. That is to say, that once an election is questioned on the basis of invalidity such invalidity can be predicated on corrupt practices or non – compliance or that the Respondent was not duly elected by majority of

lawful votes cast at the election. The Petitioners' sole ground in the petition reads thus:

***“The election of the 2<sup>nd</sup> Respondent is invalid by reason of corrupt practices and non – compliance with the provisions of the Electoral Act, 2022 (as amended)”***

Learned counsel also submits, that the word “or” in the said provision connotes an alternative or an option. Consequently, corrupt practices, non – compliance and the Respondent not being duly elected by majority of lawful votes at the election ought not to be joined together in one ground in an election petition. The word “or” is disjunctive and not conjunctive. This position of the law was given judicial approval in the case of ***HON. TIMOTHY SOLOMON GOLU & ANOR VS. HON. YUSUF ADAMU GAGDI (2019) LPELR 55251 (CA)***.

Learned counsel submits, that the provisions of paragraphs 4 (1)(d) of the Rules of Procedure for Election Petitions as contained in the 1<sup>st</sup> Schedule to the Electoral Act 2022 clearly states that; ***“An election petition under this act shall (d) state clearly the facts of the election petition and the ground or grounds on which the petition is based and the relief sought by the Petitioner.”***

Counsel further submits, that paragraphs 18, 31, 44, 47, 49 and 50 of the petition will reveal gross ambiguity and vagueness. They do not clearly state the facts upon which the petition is brought as they do not set out the particulars of the allegation of non – compliance with the Act. The law is trite that in election petitions, the need to plead particulars is mandatory.

The Petitioner must give the adverse party a sufficient outline of the non – compliance he intends to establish. ***BUHARI VS. OBASANJO (2005) 13 NWLR (Pt. 941) 1 at 200*** was cited.

Learned counsel submits, that the depositions of the 1<sup>st</sup> Petitioner and all witnesses to the Petitioners as averred in paragraph 3(vi) are uniform, chorused, parroted and generic and liable to be struck out. In ***MADUABUM VS. NWOSU (2010) 13 NWLR (Pt. 1212) 632 at 656 – 657, A – F*** it was held that where a set of witnesses in their written statements on oath claim to have heard, seen and done exactly the same thing without any discrepancies in their respective evidence it is indicative that the witnesses have been tutored and could not have been telling the truth.

Learned counsel further submits, that the law is trite that in such situation the depositions are liable to be dismissed. Once dismissed, the petition will have no evidence to support it. ***MADUABUM VS. NWOSU (Supra);***

***GUNDIRI VS. NYAKO (2014) 2 NWLR (Pt. 1391) 211 were cited.***

Learned counsel also submits, that the Honourable Tribunal is most respectfully urged to strike out all the witness depositions of the Petitioners.

Learned counsel further submits, that the alternative reliefs sought by the Petitioners is completely inconsistent with the main reliefs. In one breath the 1<sup>st</sup> Petitioner in the main reliefs claimed that he ought to be returned as winner having scored majority of the lawful votes in the election. In the

same breath, he stated in the alternative reliefs that the election was void on grounds that it was vitiated by corrupt practices, hence no candidate could be validly returned as having won the election.

In conclusion, learned counsel urged the court to dismiss this petition for being grossly incompetent and for want of jurisdiction.

Upon service of the motion, the Petitioners filed 8 paragraph counter affidavit deposed to by Isiaka Amodu a Litigation Assistant to counsel to the Petitioners/Respondents. It is the deposition of the Petitioners/Respondents;

That the Petition of the Petitioners is not an abuse of process and is competent and was filed in line with the extant provisions of the Electoral Act.

That no paragraph of the Petition is vague and nebulous.

That the 2<sup>nd</sup> Respondent has already replied to all the paragraphs of the Petition and did not apply for further particulars in line with the first schedule to the Electoral Act.

That the 1<sup>st</sup> Petitioner has no deposition before this Tribunal and there is no deposition of the Petitioners' witnesses that is hearsay, parroted, chorused or generic.

That it is also premature at this stage to tag the depositions of any witness as hearsay; they are yet to be adopted.



In compliance with the law and procedure, written address was filed wherein sole issue was formulated for determination to-wit;

**Whether the Honourable Tribunal has the jurisdiction to hear and determine this petition.**

It is the submission of learned counsel, that this sole question should be unequivocally answered in the affirmative.

Learned counsel submits, that the question raised as issue for determination in the positive and submit that this Honourable Tribunal is fully cloaked with the jurisdiction to hear and determine this Petition.

Learned counsel humbly submits, that the 2<sup>nd</sup> Respondent/Applicant is mistaken in its objection with utmost respect to the Counsel to the Applicant. Section 133(1) of the Elector Act, 2022 specified the persons who may present an election petition, and we humbly submit that the Petitioners fits into the categories of persons allowed by law to present election petition. Section 134 (1) was cited.

Learned counsel submits, that the petition as couched and presented in the manner provided by the law. Paragraphs 1 to 19 of the Petition satisfied the mode and manner of presenting a petition.

Learned counsel further submits, that in paragraphs 20 and 57 of the petition deal with facts in support of the grounds of the petition and each is confined to specific allegation or complaint that informed the petition and paragraph 58 in conclusion set out the reliefs or prayers sought as the petition.

Learned counsel further submits, that the other confirmatory processes such as list of witnesses, list of documents and proposed witnesses statement on oath accompanied the petition, the petition therefore in our humble view is competent and prayed the court to so hold. ***NURUDEEN VS. OYETOLA & ORS. (2023) LPELR – 60093 (CA)*** was cited.

Learned counsel also submits, that it is very pre – mature at this stage to brand the witnesses statement on oath when in fact, the witness statement on oaths have not been adopted before the Honourable Tribunal.

***NWALATU VS. NBA & ANOR (2019) LPELR – 46916 (SC) Pages 25 – 27 Paragraph B*** was cited.

Learned counsel further submits, that the 2<sup>nd</sup> Respondent has surreptitiously and falsely mentioned a non – existing deposition of the 1<sup>st</sup> Petitioner. A cursory look at the Petition reveals that the 1<sup>st</sup> Petitioner has no deposition before this Tribunal. The further allegations that the depositions of the Petitioners' witnesses are uniform, chorused, parroted and generic is false, as the evidence of the witnesses are what they experienced in line with the grounds of this Petition.

It is the contention of learned counsel, that paragraphs 18, 31, 44, 47, 49 and 50 of the petition were vague and nebulous is of no moment and with utmost respect is misconceived. It is on record that the Applicant as the 2<sup>nd</sup> Respondent filed its reply to the Petition and responded to the above listed paragraphs of the petition and if indeed these paragraphs were vague and nebulous and that the Applicant did not understand the import of these paragraphs why then did they reply.

Furthermore, the Applicant have not applied for further particulars and having not applied for further particulars, it means that the Applicant for all intent and purposes understood these paragraphs.

Learned counsel further submits, that the reliefs being claimed by the Petitioner as contained at pages of the petition has nothing to do with the set of persons mentioned in the paragraphs complained of as they did not conduct the election under reference.

***OBASANJO VS. BUHARI & ORS (2003) 17 NWLR (Pt. 850) page 510 at 560 – 563 was cited.***

Learned counsel submit that, it is settled law that an election may be questioned in the manner that was done by the Petitioners and all the Petitioners needed to do in that instance is to discharge a heavier burden of proving that the alleged act of corrupt practices or non – compliance is substantial enough to affect the election.

***MAKU VS. AL-MAKURA & ORS (2016) LPELR – 48123 (SC)*** was cited.

Learned counsel submits further, that no party has the right to expand the language or wording of a statute as same is exclusive to the legislature. The Petitioners could not therefore be punished for sticking to the wordings and letters of the provisions of section 134(1) of the Electoral Act, 2022.

***USMAN & ANOR VS. JIBRIN & ORS. (2019) LPELR 48792 (CA) Page 43 – 45 paragraphs F – D was cited.***

In ***DEEN & ANOR VS. INEC & ORS. (2019) LPELR 49041*** the court held thus;

***"It is obvious that the grounds are itemized into four categories, with ground (1)(b) having two legs. It indeed the legislature intended that there are to be five distinctive grounds, they could have been so itemized. In other word, assuming that the intention of the legislature was to provide for two distinctive grounds under section 138 (1) (b) of the Electoral Act, 2010 (as amended), the two grounds could as well been separated like all the other grounds into separate paragraphs.***

***In my view, section 138(1)(b) of the Act gives the Petitioner the option to plead or rely on either the allegation of non-compliance with the Electoral Act or corrupt practices or both. This is why they are in one paragraph under section 138 of the act. It only means that section 138 (1)(b) has two legs of one ground and definitely not two grounds of questioning an election. I do not see anything wrong if a petition relies on any of these or both distinct grounds."***

In conclusion, counsel urge the Honourable Tribunal to overrule the objection of the Applicant and entertain the petition on its merit.

On the part of the 3<sup>rd</sup> Respondent two similar applications dated 9<sup>th</sup> May, 2023 and 19<sup>th</sup> May, 2023 were filed seeking similar reliefs and similar

grounds save for the issue of section 77(2) of the Electoral Act 2022 on the register of Political Party.

The reliefs are as follows:-

1. An Order striking out the ground ii of the Petition on ground that it is alien or contrary to the Electoral Act, 2022 (as amended).
2. An Order striking out Paragraphs 18, 31, 44, 47, 49 and 50 of the Petition for being vague and nebulous.
3. An Order striking out Paragraphs 31, 32, 33, 37, 38 and 40 of the Election Petition for making allegations against unknown persons or group which are criminal in nature and they are not named and made parties to this Petition.
4. An Order striking out alternative relief in the Petition on the ground that it is in conflict or inconsistent with the primary reliefs in the Petition (i.e) that the election was both valid and invalid.
5. An Order striking out the Petition on the ground that the Petition and the statement on oath of the 1<sup>st</sup> Petitioner is infested with hearsay and that the statement on oath of the witnesses is hearsay, chant of evidence.
6. And for such Order, or Orders as this Tribunal may deem fit to make in the circumstances of this matter and in the interest of justice.

The grounds for the application are as follows;

- a. The Petition is presented contrary to the mandatory provisions of Paragraph 4 (1) of the First Schedule to the Electoral Act, 2022 (as amended)
- b. The Petition is incompetent.
- c. Allegations are made against persons not parties to the Petition.
- d. The statements on oaths are Chants of evidence.
- e. The reliefs being sought in the Petition are inconsistent or in conflict with the pleadings, and
  1. An Order dismissing or striking out the instant Petition.
  2. And for such further Order or Orders as this Honourable Tribunal may deem fit to make in the circumstances.

The grounds upon which the application is founded are;

1. Section 77(2) of the Electoral Act, 2022 provides that the 2<sup>nd</sup> Petitioner shall maintain a register of its members in both hard and soft copy.
2. Section 77 (3) of the Electoral Act, 2022 provides that 2<sup>nd</sup> Petitioner shall make such register available to the 1<sup>st</sup> Respondent not later than 30 days before the date fixed for the primary election of the 2<sup>nd</sup> Petitioner.
3. The name of the 1<sup>st</sup> Petitioner was not in the register of members, submitted to the 1<sup>st</sup> Respondent by the 2<sup>nd</sup> Petitioner.

4. The 1<sup>st</sup> Petitioner was, at all material times, not a member of the 2<sup>nd</sup> Petitioner.
5. The 2<sup>nd</sup> Petitioner had no candidate for the election to the House of Representatives for Isialambano/Okigwe/Onuimo Federal Constituency, held on the 25<sup>th</sup> of February, 2023 (hereinafter called “the general election”).
6. The Petitioner was at the time of the general election of 25<sup>th</sup> February, 2023, not qualified to contest the general election, not being a member of the 2<sup>nd</sup> Petitioner.
7. The 1<sup>st</sup> Respondent wrongly included the name of the 1<sup>st</sup> Petitioner, as the candidate of the 2<sup>nd</sup> Petitioner for the election.
8. The 2<sup>nd</sup> Petitioner cannot be declared the winner of the election.

## **TRIBUNAL**

From the said reliefs as enumerated and grounds, the three applications are the same, hook, line and sinker, all geared towards challenging the competence of the 1<sup>st</sup> Petitioner to have even contested the said election on the one hand, the issue of lumping of two grounds in one and the issue of Section 77 of the Electoral Act 2022 touching on Register of all Political Parties and names of their members which ought to be with INEC 30 days before election.

Permit me to further note here that the applications filed by the 2<sup>nd</sup> Respondent/Applicant upon determination shall determine the 3<sup>rd</sup>

Respondent applications dated the 9<sup>th</sup> May, 2023 save for the issue of Section 77 of the Electoral Act, 2022 on the issue of register of Political Parties and her Members contained in the application of 19<sup>th</sup> May, 2023 which shall be dealt with also.. For above reason, the three applications are hereby consolidated.

I now proceed to determine the applications filed by the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents which have been consolidated.

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

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

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

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

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

**SECTION 134(1)(b)**

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



**(b)**

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

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

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

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

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

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

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

The proceedings are distinct from the ordinary civil proceedings... it is such that in certain circumstances, the slightest default in complying with a

procedural step which otherwise could be ignored or waived in other civil proceedings could result in fatal consequences to the grounds or the petition ultimately.

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

Without much ado, I hold that ground "2" contained in paragraph 19(ii) of the Petition which has two (2) grounds which have been lumped, offends Section 137(1)(b) of the Electoral Act, 2022 hence incompetent.

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

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

On the whole, all evidence so led in support of the said ground "2" afore, goes to no issue hence hereby jettisoned.

In the event that I am wrong in striking-out the said ground "2", which I strongly doubt, can the said ground of corrupt practices and allegations of crime which was made against unnamed persons stand in the eyes of the law!

I answer this in the negative for the reason that prove in a criminal allegation is elevated to beyond reasonable doubt and not on preponderance of evidence in view of the Constitutional Presumption of Innocence Pursuant to Section 36(5) of the Constitution of the Federal Republic of Nigeria (FRN) 1999 (as amended).

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

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

Consequently, the said paragraphs **31, 32, 33, 34, 37, 38, 40, 44.04, 44.06 and 44.08** are hereby struck-out.

Next is the issue of competence of 1<sup>st</sup> Petitioner.

On the argument of the competence of the 1<sup>st</sup> Petitioner to have been nominated by the 2<sup>nd</sup> Petitioner touching on noncompliance of the provision of Section 77(1) of the Electoral Act, 2022, it is already settled that such issue can only be raised in a cross-petition which clearly has not been filed by the Respondents in this Petition.

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

This is a post-Election Tribunal.

Petitioners' counsel is on point on this argument... I agree with him.

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

Supposing without conceding that a cross-petition had been filed and the issue of the competence of the 1<sup>st</sup> Petitioner is so raised, it would have amounted to an abuse of Court Process in view of the fact that same had been litigated upon in Suit No. **FHC/OW/CS/125/2022** and by the principle of Estoppel per Res Judicata, this Tribunal cannot re-litigate on the subject matter.

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

I am morethan fortified by the argument of the Petitioners' counsel that the issue of nomination of the 1<sup>st</sup> Petitioner cannot be determined by this Tribunal as it is.

This argument on competence of the 1<sup>st</sup> Petitioner is dismissed.

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

This argument runs through the three (3) applications filed by the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents.

I have juxtaposed the reaction of the 1<sup>st</sup> Petitioner on this issue with the argument of the 1<sup>st</sup> Respondent in the consolidated application.

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

I have considered the grounds of the Petition which have been well reproduced in the preceding part of this Ruling/Judgment.

I am more than satisfied that this ground is well supported by facts hence hereby competent to situate this Petition.

Above facts, I dare say is enough to sustain the lone remaining ground and by implication, the petition. I so hold.

On the alternative relief, I hold that same is incompetent in view of its inconsistency with the principal reliefs... Petitioner cannot be blowing hot and cold at the same time. Petitioner claimed he ought to have been returned as the Winner of the election having scored majority of the lawful votes. In the same breath, Petitioner stated in the alternative relief that the election was void on the ground that it was vitiated by corrupt practices, hence no Candidate could be validly returned as having won the election.

This alternative relief is hereby struck-out for the said reason.

The said application in a nutshell succeeds in part.

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

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

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

What is now left is for the Tribunal to determine the lone ground remaining, i.e **"that the 2<sup>nd</sup> Respondent was not duly elected by majority of lawful votes cast at the Election"**.

Suffices to mention that in an attempt to establish their claims, Petitioners' counsel called a total number of 29 witnesses and tendered nine (9) sets of documents from the Bar, the documents are as follows:-

1. Forms EC 8A(I) series for Okigwe Local Government, Isialambano Local Government and Onuimo Local Government Areas,
2. **Form EC8B(I) series** for the three (3) Local Governments aforementioned,
3. **Form EC 8C series** for the aforementioned Local Government Area,
4. **Forms EC8D, EC8E,** BVAS Report for the Three (3) Local Government Areas with Certificate of Compliance, Application for the Issuance of the BVAS report, PVC Collected from the three (3) Local Government Areas and four (4) letters to INEC from Petitioners' Counsel.

The said Local Government Polling Unit result and Ward results, BVAS report for the three (3) Local Governments, Issuance of certified true copy of documents and INEC Official receipts, one Certificate of Compliance and Four (4) Petitioners' Solicitor's letters to Independent National Electoral Commission (INEC) were admitted together and marked as Exhibits "A", "B", "C", "D" and "E" in that Order.

Petitioner's counsel also tendered from the Bar certified true copy of voters register for Okigwe Local Government Area which was admitted in evidence as Exhibit "Z3".

27 of the witnesses called by Petitioners were voters from their respective Polling Units of the various Wards across three (3) Local Government Areas as stated in evidence and two were subpoenaed witnesses from Independent National Electoral Commission (INEC) and who gave evidence as PW13 and PW23 in that Order.

On the part of the Respondents, only the 2<sup>nd</sup> Respondent led ten (10) witnesses in evidence who gave evidence as DW1 – DW10, whereas the 1<sup>st</sup> and 3<sup>rd</sup> Respondents were content with the elicited evidence under cross-examination and decided not put any in witness on the witness box.

The 10 witnesses fielded by the 2<sup>nd</sup> Respondent's counsel were all voters from their respective polling units across the wards and Local Government Councils.

The respective evidence of witnesses for the Petitioners and the 2<sup>nd</sup> Respondent are herein reproduced:-

**Chidi Chibuike** who gave evidence as PW1 stated that his polling unit is Polling Unit 002, Umurido Square, Okigwe I (Urban Ward 1), that he arrived his Polling Unit at about 7.30am on 25<sup>th</sup> February, 2023. He also stated that the Independent National Electoral Commission (INEC) Officials and security officers were not present when he arrived.

That the INEC Officials arrived at about 12pm with the election materials, wherein both accreditation and voting were done simultaneously, and that the end of the voting, the INEC Officials counted the votes and announced the results for each political party as follows: **APC=2, APGA=2, LP=52, PDP=4 and SDP=18.**

That the INEC Officers thereafter left their Polling Unit.

Under cross – examination, he stated that voters who turned out to vote were accredited and that they voted, and votes were counted.

PW1 was then discharged.

**PW2 (Ashagwara Clinton Onyeaka)** stated in his evidence that, he is a registered voter. He has his voter’s card.,that his polling unit is Polling Unit 013, Nkoto Square II, Ihube Ward.

That on 25<sup>th</sup> February, 2023, he went out to vote at about 8am. That nobody was seen in his Polling Unit because of the high level of insecurity going on, consecutively for about 3 (three) months and even 2 (two) days to the election in his community, where houses of prominent persons in his community, including the houses of Hon. Okey Unam (DG, Chikwem Onuoha Campaign Organization), Hon. Okey Udu (Serving Special Adviser to the present Governor of Imo State), Hon. Mars Ikeokwu (Former Local Government Chairman of Okigwe LGA), Dr. Nnaemeka Obieriri (Labour Party Candidate for Okigwe House of Assembly), Prof. Nnamdi Obieriri (Former Dean Faculty of Law, IMSU and Former commissioner in Imo State), Barr. Chukwuemeka Ngwu (recently retired National Assistant



Director of DSS), Hon. Emeka Okoronkwo (Present Commissioner for Youth and Sports, Imo State), etc., have been burnt.

That also the kidnapping of two traditional rulers, and the killing of one of them, and about 33 other youths, has further increased the risk of insecurity in his community.

That also the killing of Lt. Phoebe Johnson by unknown gunmen which led to the ransacking of his village by military men has further fostered the insecurity in his community as so many people lost their lives and house to inferno. This incident caused people to flee the village and his Polling Unit is at the Centre of over 8 houses burnt.

That he waited around the Polling Unit till about 4.30pm. That no Independent National Electoral Commission (INEC) official or election material or security personnel was at his Polling Unit.

That there was no voting at his Polling Unit.

That he saw voters coming close to the Polling Unit but no one entered because of fear of insecurity.

That he was surprised to hear that his Polling Unit has election result.

Under cross – examination, he stated that he saw masked people shooting guns on election day and also burning houses which made voters not to turn out for the election. He also said that he didn't report the incidence to the police. He however said he reported to INEC on the fact that he did not vote but that he does not have a copy of the report with him.

He contended that election did not hold because of insecurity.

**PW3** (Okechukwu Onam) stated in his evidence that, he is a registered voter. He has his voter's card., that his polling unit is Polling Unit 001, Ogube Primary School, Ihube Ward.

That on 25<sup>th</sup> February, 2023 he went out to vote at his Polling Unit at about 7am.

That nobody was seen in his Polling Unit because of the high level of insecurity going on, consecutively for about 3 (three) months and even 2 (two) days to the election in his community, where houses of prominent persons in his community, including his personal house in the village and the houses of Hon. Okey Udu (Serving Special Adviser to the present Governor of Imo State), Hon. Mars Ikeokwu (Former Local Government Chairman of Okigwe LGA), Dr. Nnaemeka Obiaraeri (Labour Party Candidate for Okigwe House of Assembly), Prof. Nnamdi Obiaraeri (Former Dean Faculty of Law, IMSU and Former Commissioner in Imo State), Barr. Chukwuemeka Ngwu (recently retired National Assistant Director of DSS), Hon. Emeka Okoronkwo (Present Commissioner for Youth and Sports, Imo State), etc., have been burnt.

That also the kidnapping of two traditional rulers, and the killing of one of them, and about 33 other youths, has further increased the risk of insecurity in his community.

That also the killing of Lt. Phoebe Johnson by unknown gunmen which led to the ransacking of his village by military men has further fostered the

insecurity in his community as so many people lost their lives and house to inferno.

That because his house is close to the Polling Unit, he waited till about 4.30pm.

That no Independent National Electoral Commission (INEC) official or election material or security personnel was at his Polling Unit.

That there was no voting at his Polling Unit.

That he saw voters coming close to the Polling Unit but no one entered because of fear of insecurity.

That he was surprised to hear that his Polling Unit has election result.

Under cross – examination, he stated that no voters came out to vote because of insecurity. He contended that election did not take place in the whole of Ogube.

**PW4 (Udochukwu Enwere)** stated in his evidence, that he is a registered voter. He has his voter's card.

That his polling unit is Polling Unit 005, Ndiohia Community School, Ezinachi Ward.

That he arrived his Polling Unit at about 7am on 25<sup>th</sup> February, 2023.

That the Independent National Electoral Commission (INEC) Officials were not present when he arrived.

That the INEC Officials subsequently arrived at about 11am with the election materials.

That they began voting which was done alongside with accreditation.

That at the end of the voting, the INEC Officials counted the votes and announced the results for each political party as follows: APC=12, LP=3 and PDP=24.

That the INEC Officers thereafter left with the election materials to the Ward Collation centre.

Under cross – examination, he further stated that voters were accredited and voted but said the result declared was not what he saw in court.

PW4 though said he was not an agent of any political party. He also said he did not have the result he said was the genuine in court.

**PW5 (Patience Ogujiofor)** stated in her evidence that, she is a registered voter. She has her voter’s card.

That her polling unit is at Ezinachi Central School I (PU 001), Ezinachi Ward.

That on 25<sup>th</sup> February, 2023 she arrived her polling unit at about 8am.

That when she got to the polling unit, there was no Independent National Electoral Commission (INEC) Officials there.

That she and other voters waited until around 1.30pm when Independent National Electoral Commission (INEC) Officials arrived with the election materials.

That the Independent National Electoral Commission (INEC) Officials showed them the election materials and announced the commencement of elections.

That she exercised her franchise by casting her votes. That accreditation and voting was done.

That the Independent National Electoral Commission (INEC) Officials announced the closing of voting and then proceeded to sort and count the votes and thereafter announced figures for the following political parties in this order; APC = 4, LP = 47, PDP =14 and SDP = 2.

That the Independent National Electoral Commission (INEC) Officials then proceeded to enter the results in the result sheet. That after this she went home.

Under cross – examination, she stated also that election held but that the result in court was not what was declared but that she does not have the copy of what he heard declared in court as the correct result.

**PW6 (Emeka Uregbulem)** stated in his evidence that, he is a registered voter. He has his voter's card.

That his polling unit is Polling Unit 002, Ubaha Village Square, Ezinachi Ward.

That he arrived his Polling Unit at about 8.am on 25<sup>th</sup> February, 2023.

That the Independent National Electoral Commission (INEC) Officials were not present when he arrived.

That the INEC Officials subsequently arrived at about 2pm with the election materials.

That they began voting which was done alongside with accreditation.

That at the end of the voting, the INEC Officials counted the votes and announced the results for each political party as follows: APC=9, LP=22, PDP=8, and SDP=2.

That the INEC Officers thereafter left with the election materials to the Ward Collation centre.

Under cross – examination, PW6 stated further that there was election on election day but that the result declared is not the correct result and that he does not have a copy of the correct result with him in court.

**PW7 (Ariwodo Chukwunyere)** stated in his evidence that, he is a registered voter. He has his voter’s card.

That his polling unit is Polling Unit 008, Ezinachi Community Secondary School, Ezinachi Ward.

That he arrived his Polling Unit at about 7am on 25<sup>th</sup> February, 2023.

That the Independent National Electoral Commission (INEC) Officials were not present when he arrived.

That the INEC Officials subsequently arrived at about 11am with the election materials.

That they began accreditation which was done alongside voting.

That at the end of the voting, the INEC Officials counted the votes and announced the results for each political party as follows: ADC=2, APC=3, BP=1 LP=14, NRM= 2, PDP=49, and SDP=2.

That the INEC Officers thereafter left with the election materials to the Ward Collation centre.

Under cross – examination he stated that election held but that the result tendered in court was not the result declared. He however said he does not have a copy of the correct result in court with him.

**PW8 (Oyinlo Adolphus)** stated in his evidence that, he is a registered voter. He has his voter's card.

That his polling unit is Polling Unit 001, Umualumoke Community School, Umualumoke Ward.

That on 25<sup>th</sup> February, 2023 he arrived his Polling Unit at about 7.30am.

That he met other voters there.

That they waited for the Independent National Electoral Commission (INEC Officials but they were not seen.

That there was no INEC Official, electoral materials or security officer in his Polling Unit.

That he was at his Polling Unit with other voters till 6.30pm when they now left the Polling Unit.

That there was no election in his Polling Unit.

That any result from his Polling Unit is false.

Under cross – examination, PW8 stated that there was no election in his polling unit because of insecurity. He though said he did not report same to anybody.

**PW9 (Kelechukwu Egwu)** stated in his evidence that, he is a registered voter. He has his voter’s card.

That his polling unit is Polling Unit 004, State Primary School, Okigwe II (Okigwe Urban Ward II).

That on 25<sup>th</sup> February, 2023 he arrived his Polling Unit at about 7am.

That he met other voters there.

That they waited for the Independent National Electoral Commission (INEC) Officials but they were not seen.

That there was no INEC Official, electoral materials or security officer in his Polling Unit.

That he was at his Polling Unit with other voters till 5.30pm when they now left the Polling Unit.



That there was no election in his Polling Unit.

That any result from his Polling Unit is false.

Under cross – examination, he stated that election did not hold in his polling unit.

**PW10 (Dike-Offor Nduwueze Nnaemeka)** stated in his evidence that, he is a registered voter. He has his voter’s card.

That his polling unit is Polling Unit 029, Mbara Umueze Junction, Okigwe II (Urban Ward II).

That he arrived his Polling Unit at about 7.30am on 25<sup>th</sup> February, 2023.

That the Independent National Electoral Commission (INEC) Officials were not present when he arrived.

That the INC Officials subsequently arrived at about 12pm with the election materials and security officers.

That they began accreditation which was done alongside voting.

That at the end of the voting, the INEC Officials counted the votes and announced the results for each political party as follows: APC=5, LP=4, and PDP=11.

That the INEC Officers thereafter left their polling unit with the election materials.

Under cross – examination, he stated further that he voted on election day and that there were other party agents who did not protest after the election. He however said that the result declared which he does not have a copy, is not what was tendered in court.

**PW11 (Vincent Ewa)** stated in his evidence, he signed, he did not thumbprint. Thus, it is not his evidence. However, the deposition is as follows:

That he is a registered voter. He has his voter’s card.

That his polling unit is Polling Unit 008, Okigwe Motor Park I, Okigwe II (Urban Ward II).

That he arrived his Polling Unit at about 7am on 25<sup>th</sup> February, 2023.

That the Independent National Electoral Commission (INEC) Officials were not present when he arrived.

That the INEC Officials subsequently arrived at about 11am with the election materials and security officers.

That they began accreditation which was done alongside voting.

That at the end of the voting, the INEC Officials counted the votes and announced the results for each political party as follows: APC=7, LP=75 and PDP=7.

That the INEC Officers thereafter left their polling unit with the election materials.

Under cross – examination, PW11 stated that election held in his polling unit but that the result declared on that day is not what is in evidence, but that he does not have a copy of the correct result with him.

He also admitted the fact that the result in evidence was signed by all the agent in which he was not one of them.

**PW12 (Obumneke Duru)** stated in his evidence that, he is a registered voter. He has his voter’s card.

That his polling unit is Polling Unit 006, Orre Village Square, Umualumoke Ward.

That on 25<sup>th</sup> February, 2023 he arrived his Polling Unit at about 7.30am.

That he met other voters there. That they waited for the Independent National Electoral Commission (INEC) officials but they were not seen.

That there was no INEC Official, electoral materials or security officer in his Polling Unit.

That he was at his Polling Unit with other voters till 6pm when we now left the Polling Unit.

That there was no election in his Polling Unit.

That any result from his Polling Unit is false.

Under cross – examination, he maintained the fact that there was no election in his polling unit.

**PW13 (Olachi Nwugo)** a subpoenaed witness, she stated in her evidence as follows:-

XXX:- Did you print-out Exhibit 'B'?

Ans:- No.

XXX:- Did you play any role in the conduct of the election?

Ans:- I only monitored election in a part of the state i.e. Mbaitoli/ Ikeduru Federal Constituency.

XXX:- You did not play any role in Isiala Mbano/Okigwe/ Onuimo Federal Constituency.

Ans:- No.

XXX:- Confirm to this Court that you are not an ICT expert.

Ans:- I am not.

XXX:- You did not also function in any of the Polling Units in issue.

Ans:- I did not.

XXX:- You were not assigned to work in any ICT Department.

Ans:- No.

XXX:- In who's custody is the BVAS machine.

Ans:- ICT Head.

XXX:- Who issues the report that emanates from the machine?

Ans:- ICT Department.

XXX:- You then agree with me that the CTC of this report ought to come from ICT Department.

Ans:- It depends.

XXX:- Depends on what?

Ans:- Who the REC orders to so certify the documents.

XXX:- One Okunola Dada certified the Exhibit 'B' as the Chief Legal Officer.

Ans:- No.

XXX:- During and after election, report keep coming to Independent National Electoral Commission (INEC).

Ans:- Yes.

XXX:- Did you get any such report from any stakeholders?

Ans:- There were some reports which came from Labour Party candidates.

XXX:- Where there was a result, there was an election.

Ans:- Yes.

XXX:- Payment is made during or before certification of a document.

Ans:- Yes.

XXX:- There was no payment made for the certification of Exhibit 'B'.

Ans:- I cannot see any receipt attached to the document.

XXX:- Nil.

Re – XX:-Nil.

**PW14 (Cordelia Nwakama)** stated in her evidence that, she is a registered voter. She has her voter's card.

That her polling unit is Polling Unit 003, Ugwaku Community Primary School, Umualumoke Ward.

That she arrived her Polling Unit on 25<sup>th</sup> February, 2023 at about 8am.

That the Independent National Electoral Commission (INEC) Officials were not present when she arrived.

That the INEC Officials subsequently arrived at about 12pm with the election materials and security officers.

That they began accreditation which was done alongside voting.

That at the end of the voting, the INEC Officials counted the votes and announced the results for each political party as follows: APC=30, BP=1, PDP=4 and SDP=3.

That the INEC Officers thereafter left their polling unit with the election materials.

Under cross – examination, she stated that election was duly held and she voted but that the result declared in her polling unit is not the same with what is in evidence. She however said she does not have the correct result with her in court.

**PW15 (Orji Ignatius .I)** stated in his evidence that, he is a registered voter. He has his voter’s card.

That his polling unit is Polling Unit 003, Offor Isil/Obulorie, Aku Ward.

That on 25<sup>th</sup> February, 2023 he went to his Polling Unit at about 8am.

That he did not see any Independent National Electoral Commission (INEC) official.

That he also did not see any security personnel.

That he was there from about 8am to about 3.30pm and no Independent National Electoral Commission (INEC) official or security personnel came to my Polling Unit.

That he verily believe that there was no election because of the known insecurity which led to the killing of over 15 secondary school students, over 13 elderly persons, constant shootout between army and bandits, burning of the houses of the following: The Traditional Ruler of his community, the House of Assembly Candidate for SDP, the House of Former State Youth Leader of APC, Ward chairmen of four political parties, The Former Chief Press Secretary of the Former speaker of Imo State House of Assembly, etc.

That there was no voting in his Polling Unit.

That any result emanating from his Polling Unit is false.

Under cross – examination, he stated that election did not take place in his polling unit because of violence.

**PW16 (Dike Osita)** stated in his evidence that, he is a registered voter. He has his voter’s card.

That his polling unit is Poling Unit 002, Isieke Village Square, Asbobu Ward.

That on 25<sup>th</sup> February, 2023 he went to his Polling Unit at about 8.30am.

That he did not see any Independent National Electoral Commission (INEC) official.

That he also did not see any security personnel.

That he was there from about 8.30am to about 4.30pm and no Independent national Electoral Commission (INEC) official or security personnel came to his Polling Unit.

That the only road that leads people into Agbobu from Okigwe Town has been deserted for over 2 years and counting as a result of insecurity.

That he verily believes that there was no election because of the known insecurity which has led to the kidnapping and invasion of the community by armed bandits and constant coming to the houses of their prominent men and women to make demands or ask for their head or that of their family members in the alternative.



That he verily believes that as a result of the above, there was no voting in his Polling Unit.

That any result emanating from his Polling Unit is false.

Under cross – examination, he stated that election did not take place in his polling unit because of insecurity related problems.

**PW17 (Ahabazu John O.)** stated in his evidence that, he is a registered voter. He has his voter’s card.

That his polling unit is Polling Unit 003, Agbobu Secondary School, Agbobu Ward.

That on 25<sup>th</sup> February, 2023 he went to his Polling Unit at about 8.30am.

That he did not see any Independent National Electoral Commission (INEC) Official.

That he also did not see any security personnel.

That he was there from about 8.30am to about 5pm and no Independent National Electoral Commission (INEC) official or security personnel came to his Polling Unit.

That the only road that leads people into Agbobu from Okigwe Town has been deserted for over 2 years and counting as a result of insecurity.

That he verily believes that there was no election because of the known insecurity which has led to the kidnapping and invasion of the community by armed bandits and constant coming to the houses of their prominent

men and women to make demands or ask for their head or that of their family members in the alternative.

That he verily believes that as a result of the above, there was no voting in his Polling Unit.

That any result emanating from his Polling Unit is false.

Under cross – examination, PW17 stated that election did not hold because of insecurity.

**PW18 (Onyewere Prince Amaechi)** stated in his evidence that, he is a registered voter. He has his voter's card.

That his polling unit is Polling Unit 001, Umuchima Primary School, Okigwe I (Urban Ward I).

That he arrived his Polling Unit at about 8am on 25<sup>th</sup> February, 2023.

That the Independent National Electoral Commission (INEC) Officials were not present when he arrived.

That the INEC Officials subsequently arrived at about 10am with the election materials.

That they began accreditation which was done alongside voting.

That at the end of the voting, the INEC Officials counted the votes and announced the results for each political party as follows: APC=16, APGA=1 LP=64, PDP=46, SDP=2, YPP=2 and BOOT=1.

That the INEC Officers thereafter left with the election materials to the ward collation centre.

Under cross – examination, he stated that election held in his polling unit but that the result in evidence was not what was declared; he also said he does not have the correct result with him in court.

**PW19 (Agiriga Felix Onyea’usim)** stated in his evidence that, he is a registered voter. He has his voter’s card.

That his polling unit is Polling Unit 005, Urban Secondary School, Okigwe I (Urban Ward I).

That he arrived his Polling Unit at about 7.30am on 25<sup>th</sup> February, 2023.

That the Independent National Electoral Commission (INEC) Officials were not present when he arrived.

That the INEC Officials subsequently arrived at about 11am with the election materials.

That they began accreditation which was done alongside voting.

That at the end of the voting, the INEC Officials counted the votes and announced the results for each political party as follows: APC=2, APGA=3 LP=67, PDP=1 and SDP=5.

That the INEC Officers left thereafter.

Under cross – examination, he stated that election duly held and result declared but that it is not the same with what is in evidence even-though he does not have the correct result with him in court.

**PW20 (Nwachukwu Chidi)** stated in his evidence that, he is a registered voter. He has his voter’s card.

That his polling unit is Polling Unit 011, Ogweogo-Ndiuche Square, Amuro Ward.

That on 25<sup>th</sup> February, 2023 he came out to vote at his Polling Unit at about 7.30am.

That he saw other voters.

That he and other voters waited for the Independent National Electoral Commission

(INEC) and their officials but they did not come because there have been serious cases of insecurity in Amuro where houses of the Ward Chairmen of Labour party and APC Party have been burnt and the wife of the Traditional Ruler of Amuro Autonomous Community, Kidnapped and have not been seen till date, etc. That he also did not see any security personnel because of the known insecurity.

That many dead people cannot be buried, including the House of Assembly Candidate of Labour Party, Hon. Chukwunonye Iruno, his relative, who died a little after their party primaries sometime last year.

That he was there from about 7.30am to about 4.30pm and did not see any Independent National Electoral Commission (INEC) official or security personnel.

That there was no voting in his Poling Unit and he would be shocked to see any result from his polling unit or from Amuro Ward.

Under cross – examination, he stated that election did not hold but that there was no violence. He said insecurity made people not to come out and vote.

**PW21 (Standley Obioha)** stated in his evidence that, he is a registered voter. He has his voter’s card.

That his polling unit is Poling Unit 003, Ibinta Primary School.

That he went out to his Polling at about 8am to on 25<sup>th</sup> February, 2023 to cast his vote.

That he and a few other voters did not see any Independent National Electoral commission (INEC) officials and there were no security personnel there too.

That there was no voting in his Polling Unit as a result of insecurity Which includes the killing of Mr. Ibezim Budu, Sunday Alakwe and over 17 other persons. The kidnapping of over 19 persons by unknown gunmen for over a year now, and who have not been seen till date, and other incidents of insecurity in his community and constant invasion resulting from herdsmen-farmers clashes.

That due to the insecurity challenges, entering and coming out of his community has become a herculean task.

That he was there till about 5pm and did not see any Independent National Electoral commission (INEC) official or security personnel and he had to leave.

That he would be shocked to see any result from his polling unit or from Umololo Ward.

Under cross – examination, he stated that nobody came out to vote on election day.

**PW22 (Charles Price Atuegbu)** stated in his evidence that, he is a registered voter. He has his voter’s card.

That his polling unit is Polling Unit 001, Umuokpara Hall 1, Okigwe I (Urban Ward II).

That he arrived his Polling Unit at about 7am on 25<sup>th</sup> February, 2023.

That the Independent National Electoral Commission (INEC) Officials were not present when he arrived.

That the INC Officials subsequently arrived at about 7am with the election materials and security officers.

That they began accreditation which was done alongside voting.

That at the end of the voting, the INEC Officials counted the votes and announced the results for each political party as follows: APC=5, APGA=4 LP=84 and PDP=90.

That the INEC Officers thereafter left their polling unit with the election materials.

Under cross – examination, he stated further that election held and results declared but that the result in evidence was not what he heard declared but that he does not have the correct version of the result with him in court.

**PW23 (Grace Atawodi)** a subpoenaed witness, she stated in her evidence as follows:-

XXX:- Confirm to this Tribunal whether you worked in any capacity in Imo State?

Ans:- No.

XXX:- Your duty is inside an office in Abuja?

Ans:- Yes and no... I also go to the field.

XXX:- Did you make any of the documents you asked questions on?

Ans:- No.

XXX:- What is used for accreditation during an Election?

Ans:- BIVAS Machine.

XXX:- What if the BIVAS Battery dies?

Ans:- It shall be replaced.

XXX:- Were you in Imo State to know if the death battery on BIVAS were replaced?

Ans:- No.

XXX:- Did you operate any machines in Imo State or supervise its operation in Imo State?

Ans:- No.

XXX:- I will be correct to say that you do not know what transpired with regards to BIVAS machine in Imo State?

Ans:- No.

XXX:- Does a BIVAS Machine ever malfunction?

Ans:- Yes.

XXX:- You would not know if BIVAS Machine malfunctioned in Imo State?

Ans:- I will not know.

XXX:- The Information gathered by someone from a BIVAS Machine constitute the BIVAS report?

Ans:- Yes.



XXX:- Do you now know the someone who gathered the report?

Ans:- No.

XXX:- You did not handle the BIVAS Machine personally?

Ans:- No.

XXX:- Is it not possible to bring the BIVAS Machine to Court and demonstrate what you are saying?

Ans:- It is possible to bring it but the machine has been reconfigured to be used for the Governorship Election.

XXX:- Can you personally work for any look for any document shown to you in Court today?

Ans:- I don't know if it is correct even though it is the certified true copy.

XXX:- Nil.

Re – XX:- Nil.

**PW24 (Esther Chimezie)** stated in her evidence that, she is a registered voter. She has her voter's card.

That her polling unit is Polling Unit 007, Umuokpara Town Hall, Umulolo Ward.

That she went to her Polling Unit at about 9am on 25<sup>th</sup> February, 2023 to cast her vote.

That she and a few other voters did not see any Independent National Electoral commission (INEC) officials and there were no security personnel there too.

That there was no voting in her Polling Unit as a result of insecurity which includes the killing of our foremost leader, Hon. Don Eze by unknown gunmen and about 17 other prominent men who were beheaded; a family that was wiped out; and burning of houses which includes the houses of the House of Assembly Candidate for PDP and that of his father and their vehicles.

That she was there till about 5.30pm and did not see any Independent National Electoral Commission (INEC) official or security personnel and she had to leave.

That she would be shocked to see any result from my polling unit or from Umulolo Ward.

Under cross – examination, PW24 stated that election did not take place because of insecurity fear and that INEC staff did not turn – up for the election.

**PW25 (Umeanyi Emeka Simon)** stated in his evidence that, he is a registered voter. He has his voter’s card.

That his poling unit is Polling Unit 002, Ogube Village Square, Ihube ward.

That on 25<sup>th</sup> February, 2013 he went out to vote at his Polling Unit at about 7am.

That nobody was seen in his Polling Unit because of the high level of insecurity going on, consecutively for about 3 (three) months and even 2 (two) days to the election in his community, where houses of prominent persons in his community, including the houses of Hon. Okey Unam (DG, Chikwem Onuoha Campaign Organization), Hon. Okey Udu (Serving Special Adviser to the present Governor of Imo State), Hon. Mars Ikeokwu (Former Local Government Chairman of Okigwe (GA), Dr. Nnaemeka Obiaraeri (Labour Party Candidate for Okigwe House of Assembly), Prof. Nnamdi Obiaraeri (Former Dean Faculty of Law, IMSU and Former commissioner in Imo State), Barr. Chukwuemeka Ngwu (recently retired National Assistant Director of DSS), Hon. Emeka Okoronkwo (Present Commissioner for Youth and Sports, Imo State), etc., have been burnt.

That also the kidnapping of two traditional rulers, and the killing of one of them, and about 33 other youths, has further increased the risk of insecurity in his community.

That also the killing of Lt. Phoebe Johnson by unknown gunmen which led to the ransacking of my village by military men has further fostered the insecurity in his community as so many people lost their lives and house to inferno.

That he waited till about 5.30pm before leaving the Polling Unit.

That no Independent National Electoral Commission (INEC) Officials or election material or security personnel were at his Polling Unit.

That there was no voting at his Polling Unit.

That he saw voters coming close to the Polling Unit but no one entered because of fear of insecurity.

That he was surprised to hear that his Polling Unit has election result.

Under cross – examination, he stated that election did not hold because of insecurity related problem. That he heard and saw people shooting guns. He however did not report the incidence to the security agencies.

**PW26 (Chukwu Osidimma Demion)** stated in his evidence that, he is a registered voter. He has his voter's card.

That his polling unit is Polling Unit 002, Ekeoha Market Square, Amuro Ward.

That on 25<sup>th</sup> February, 2023 he came out to vote at his Polling Unit at about 7.30am.

That he saw other voters.

That he and other voters waited for the Independent National Electoral Commission (INEC) and their officials but they did not come because there have been serious cases of insecurity in Amuro where houses of the Ward Chairmen of Labour party and APC Party have been burnt and the wife of

the Traditional Ruler of Amuro Autonomous Community, Kidnapped and have not been seen till date, etc.

That he also did not see any security personnel because of the known insecurity.

That many dead people cannot be buried, including the House of Assembly Candidate of Labour Party, Hon. Chukwunone Iruno, who died a little after their party primaries sometime last year.

That he was there from about 7.30am to about 4.30pm and did not see any Independent National Electoral commission (INEC) official or security personnel.

That there was no voting in his Polling Unit and he would be shocked to see any result from his polling unit or from Amuro Ward.

Under cross – examination, he stated that INEC staff did not come out on election day in view of insecurity problem despite the fact that he and other voters came out to vote.

**PW27** (Amaramiro Uzochukwu Smart) stated in his evidence that, he is a registered voter. He has his voter's card.

That his polling unit 001, Umuowa Ibu Central School.

That he came to his polling unit at about 8am on 25<sup>th</sup> February, 2023 to cast his vote.

That he and a few other voters did not see any Independent National Electoral Commission (INEC) Officials and there were no security personnel there too.

That there was no voting in his polling unit as a result of insecurity which includes the killing of Mr. Ibezim Budu, Sunday Alakwe and over 17 other persons. The kidnapping of over 19 persons by unknown gunmen for over a year now, and who have not been seen till date, and other incidents of insecurity in his community and constant invasion resulting from herdsmen – farmers clashes.

That he was there till about 5pm and did not see any Independent National Electoral Commission (INEC) Officials or security personnel and he had to leave.

That he would be shocked to see any result from his polling unit or from Umulolo ward.

Under cross – examination, he stated that there was violence on election day which prevented people from coming out to vote.

**PW28** (Uwakwe Ngozi Blessing) stated in her evidence that, she is a registered voter. She has her voter’s card.

That his polling unit is polling unit 009, Umukele Village Square, Umulolo Ward.

That she came to her polling unit at about 8am on 25<sup>th</sup> February, 2023 to cast her vote.

That she and a few other voters did not see any Independent National Electoral Commission (INEC) Officials and there were no security personnel there too.

That there was no voting in her polling unit as a result of insecurity which includes the killing of their foremost leader, Hon. Don Eze by unknown gun men and about 17 other prominent men who were beheaded; a family that was wiped out; and burning of houses which includes the houses of the House of Assembly Candidate for PDP and that of her father and their vehicles.

That no form of political activity has taken place in her ward since the emergence of the present insurgency.

That she was there till about 5pm and did not see any Independent National Electoral Commission (INEC) Official or security personnel and she had to leave.

That she would be shocked to see any result from her polling unit or from Umulolo Ward.

Under cross- examination, she stated that election did not hold in her polling unit because of insecurity.

**PW29 (Nnadi Chukwudi Henry)** stated in his evidence that, he is a registered voter. He has his voter's card.

That his polling unit is Polling Unit 002, Mbasaa Central School.

That he went to his Polling Unit at about 8am on 25<sup>th</sup> February, 2023 to cast his vote.

That he and a few other voters did not see any Independent National Electoral commission (INEC) officials and there were no security personnel there too.

That there was no voting in his Polling Unit as a result of insecurity which includes the killing of Mr. Ibezim Budu, Sunday Alakwe and over 17 other persons. The kidnapping of over 19 persons by unknown gunmen for over a year now, and who have not been seen till date, and other incidents of insecurity in his community and constant invasion resulting from herdsmen-farmers clashes.

That he was there till about 6pm and did not see any Independent National Electoral commission (INEC) official or security personnel and he had to leave.

That he would be shocked to see any result from his polling unit or from Umulolo Ward.

Under cross – examination, he stated that election did not hold because of insecurity related issues, and that two of his brothers were killed.

On the part of 2<sup>nd</sup> Respondent, he called ten witnesses (DW1 – DW10)

**DW1 (Mbonu Albert Osondu)** stated in his evidence that, he is a registered voter and with his PVC.



That his Polling Unit is Polling Unit 004, State Primary School, Okigwe II.

That on 25<sup>th</sup> February, 2023 he went to his polling unit at about 9am.

That he met other voters there.

That Independent National Electoral Commission (INEC) Officials came to the Polling Unit at about 11am and immediately commenced the election.

They first brought out the materials and addressed the voters.

They commenced accreditation and voting immediately after accreditation.

That at the end the votes were counted loudly by the Independent National Electoral Commission (INEC) Officials and the scores of the parties announced as follows: APC = 542, LP 47 and PDP 13.

Under cross-examination, DW1 stated that election held in his polling unit on election day and that he voted after accreditation, and that ballots were sorted out and counted and results was declared and that 2<sup>nd</sup> Respondent won the election. He further said BVAS Machine was used for accreditation.

**DW2 (Ezeigwe Chikwendu)** stated in her evidence that, she is a registered voter in Polling Unit 001, Ihube Primary School, Ihube Ward. She has her voter's card.

That on 25<sup>th</sup> February, 2023, she went out to vote at her Polling Unit at about 8am

That she saw other people who have come to vote.

That the Independent National Electoral Commission (INEC) Officials arrived at about 9.09am with the election materials and security officers.

That accreditation with BVAS which was done alongside voting.

That at the end of the voting, the Independent National Electoral Commission (INEC) Officials counted the votes and announced the results for each Political Party as follows: APC =609, LP 56 and PDP 50.

That the election was peaceful and smooth.

That the Independent National Electoral Commission (INEC) Officers thereafter left their polling unit with the election materials.

Under cross-examination, DW2 stated that election held in her polling unit and that she voted after BVAS was used for accreditation. She also stated that there was no violence on election day.

**DW3 (Uzor Chidi Andrew)** stated in his evidence that, he is a registered voter. He has his voter's card.

That his polling unit is Polling Unit 001, Umuchima Primary School, Okigwe 1 (Urban Ward 1).

That he arrived his polling unit at about 8:30am on 25<sup>th</sup> February, 2023.

That the Independent National Electoral Commission (INEC) Officials were not present when he arrived.

That the Independent National Electoral Commission (INEC) Officials subsequently arrived at about 10am with the election materials.

That they began accreditation which was done alongside voting, immediately they are accredited they will vote.

That at the end of the voting, the Independent National Electoral Commission (INEC) Officials counted the votes aloud and announced the results for each Political Party. That some of the parties scored as follows: APC = 616, APGA = 1, LP = 64, PDP = 46, SDP = 2, YPP = 2 and BOOT = 1.

That the Independent National Electoral Commission (INEC) Officers thereafter left with the election materials to the Ward Collation Centre.

Under cross-examination, DW3 stated further that there was election in his polling unit.

**DW4 (Nwaigbo Macaulay Uchechukwu)** stated in his evidence that, he is a registered voter with PVC.

That his Polling Unit is 001, Umuokpara Hall 1, Okigwe II.

That he came to his polling unit at about 7am on 25<sup>th</sup> February, 2023.

That the Independent National Electoral Commission (INEC) Officials came at about 10am with the election materials and security officers.

That they began accreditation which was done alongside voting.

That after voting the Independent National Electoral Commission (INEC) Officials counted the votes and announced the results as follows: APC = 1420, LP = 84 AND PDP = 90.

That the Independent National Electoral Commission (INEC) Officers thereafter left the polling unit with their election materials.

Under cross-examination, DW4 stated that there was election in his polling unit and that BVAS was used for accreditation.

**DW5 (Chima Silas Chukwugeme)** stated in his evidence that, he is a registered voter in Polling Unit 003, Agbobu Secondary School, Agbobu Ward. He has his voter's card.

That on 25<sup>th</sup> February, 2023, he went to his polling unit at about 8.48am.

That he saw other people who have come to vote.

That the Independent National Electoral Commission (INEC) Officials arrived at about 8.50am with the election materials and security officers.

That they began accreditation which was done alongside voting.

That at the end of the voting, the Independent National Electoral Commission (INEC) Officials counter the votes and announced the results for each political party as follows: APC = 447, LP 31 and PDP 82.

That election was peaceful and smooth.

That the Independent National Electoral Commission (INEC) Officers thereafter left their polling unit with the election materials.

Under cross-examination, DW5 stated that there was election and that BVAS Machine was used for accreditation. He also stated that there was no insecurity problem on the said election day.

**DW6 (Paul Onyi Nwa)** stated in his evidence that, he is a registered voter in Polling Unit 002, Isieke Village Square, Agbobu Ward. He has his voter's card.

That on 25<sup>th</sup> February, 2023, he went to his polling unit at about 8.35am.

That he saw other people who have come to vote.

That the Independent National Electoral Commission (INEC) Officials arrived at about 9.50am with the election materials and security officers.

That they began accreditation which was done alongside voting.

That at the end of voting, the Independent National Electoral Commission (INEC) Officials counted the votes and announced the results for each political party as follows: APC = 345, LP = 23 and PDP 25.

That the election was peaceful and smooth.

That the Independent National Electoral Commission (INEC) Officers thereafter left their polling unit with the election materials.

Under cross-examination, DW6 stated that election held.

**DW7 (Anusionwu Beneth Uzodinma)** stated in his evidence that, he is a registered voter in Polling Unit 002, Ekeoha Market Square, Amuro Ward. He has his voter's card.

That on the 25<sup>th</sup> February, 2023 he came out to vote at his polling unit at about 7:30am.

That he saw other voters.

That the INEC Officials arrived at about 11am with the election materials and security officers.

That they began accreditation which was done alongside voting.

That at the end of the voting, the INEC Officials counted the votes and announced the results for each political party as follows: APC = 43, LP = 17 and PDP = 33.

That the INEC Officers thereafter left their polling unit with the election materials.

Under cross-examination, DW7 stated that election held and all voters who were at the polling unit all voted on the said election day. He also said there was heavy security presence on Election Day. He also said BVAS Machine was used.

**DW8 (Ezejinkeya Okechukwu)** stated in his evidence that, he is a registered voter in Polling Unit 001, Umualumoke Community School, Umualumoke Ward. He has his voter's card.

That on 25<sup>th</sup> February, 2023 he arrived his Polling Unit at about 7:30am.

That he met other voters there.

That the Independent National Electoral Commission (INEC) Officials came at about 12.20pm with the election materials and security officers.

That they began accreditation which was done alongside voting.

That at the end of the voting, the Independent National Electoral Commission (INEC) Officials counted the votes and announced the results for each Political Party as follows: APC = 430, PL = 7 and PDP =25.

That the Independent National Electoral Commission (INEC) Officers thereafter left their polling unit with the election materials.

Under cross-examination, DW8 stated that there was election and results declared after the election. He said BVAS Machine was used.

**DW9 (Uwazuruike Vitalis Ifeanyi)** stated in his evidence that, he is a registered voter in Polling Unit 002, Ekeoha Market Square, Amuro Ward. He has his voter's card.

That on 25<sup>th</sup> February, 2023 he went out to vote at his polling unit at about 7.30am.

That he saw the voters.

That the Independent National Electoral Commission (INEC) Officials arrived at about 11am with the election materials and security officers.

That they began accreditation which was done alongside voting.

That at the end of the voting, the Independent National Electoral Commission (INEC) Officials counted the votes and announced the results for each Political party as follows: APC = 431, LP = 17 and PDP 33.

That the Independent National Electoral Commission (INEC) Officers thereafter left their polling unit with the election materials.

Under cross-examination, DW9 stated further that election held and that he was accredited with other voters and he voted. He said BVAS machine was used and there was no violence.

**DW10 (Akabueze Bathlome)** stated in his evidence that, he is a registered voter in Polling Unit 003, Offer Isii/Obulorie, Aku Ward. He has his voter's card.

That on 25<sup>th</sup> February, 2023 he went to his Polling Unit at about 8am.

That he saw other voters.

That the Independent National Electoral Commission (INEC) Officials arrived at about 10.30am with the election materials and security officers.

That they began accreditation which was done alongside voting.

That at the end of the voting, the Independent National Electoral Commission (INEC) Officials counted the votes and announced the results for each Political Party as follows: APC = 408, LP =12 and PDP 14.

That the election was peaceful and smooth.

That the Independent National Electoral Commission (INEC) Officers thereafter left their polling unit with the election materials.

Under cross – examination, he stated that he voted on election day along other voters, and that he was accredited with the BVAS Machine.

The case of the Petitioners and the Respondents is as captured in the preceding part of this judgment.



At the close of their respective cases, they filed their final written addresses

Petitioners' counsel distilled the following issues for determination, to-wit;-

1. **Whether or not the 1<sup>st</sup> Petitioner was validly sponsored for the 25<sup>th</sup> February, 2023 Election in Dispute in this Petition.**
2. **Considering the state of pleadings and the evidence led by the parties whether the Petitioners are entitled to the grant of the reliefs prayed for in their petition.**

It is the submission of learned counsel, that these questions should be unequivocally answered in the affirmative.

**On issue 1, Whether or not the 1<sup>st</sup> Petitioner was validly sponsored for the 25<sup>th</sup> February, 2023 Election in Dispute in this Petition.**

Learned counsel submits that, with utmost respect that the 1<sup>st</sup> Petitioner was validly sponsored for the 25<sup>th</sup> February, 2023 election by the 2<sup>nd</sup> Petitioner.

It is the submission of counsel that, by paragraph 1 of the 2<sup>nd</sup> Respondent's reply to the Petition the qualification of the 1<sup>st</sup> Petitioner was put in issue on the basis that he (1<sup>st</sup> Petitioner) was not at the time of the election a member of the Labour Party (LP), the 2<sup>nd</sup> Petitioner.

Counsel also submit that, the Respondents did not lead any scintilla of evidence to show that the 1<sup>st</sup> Petitioner was not a member of the 2<sup>nd</sup>

Petitioner or that he was not sponsored by the 2<sup>nd</sup> Petitioner. The implication of this is that this particular leading(s) goes to no issue as no evidence would have been led.

**On Issue Two, *Considering the state of pleadings and the evidence led by the parties whether the Petitioners are entitled to the grant of the reliefs prayed for in their petition.***

Learned counsel submit that, the 1<sup>st</sup> Dependent cannot be said to have made out a defence strong enough to rebut the allegations and the case of the Petitioners to the effect that election were not held in the following registration areas (wards) in Okigwe Local Government Areas of the Federal Constituency:

1. Aku (7 polling units)
2. Ndimoko/Ibiuta/Okananchi/Umuowa-Ibu (10 Polling Units)
3. Agbobu (10 Polling Units)
4. Umulolo (15 Polling Units)
5. Ihube (19 Polling Units)
6. Ogii (7 Polling Units) and
7. Amuro (10 Polling Units).

In support of this allegation, counsel also submit that, the Petitioners called witnesses who testified that election did not hold at these aforementioned Polling Units PW2, PW3, PW15, PW16, PW17, PW20, PW21, PW24, PW25,

PW26, PW27, PW28 and PW29 pieces of testimony lend credence to the fact that election did not hold in these places, and corroborative evidence could be found in Exhibit "B". It should also be noted that staff of the 1<sup>st</sup> Respondent who testified on subpoena did in fact make it clear that Bimodal Accreditation System (BVAS) Machines were deployed and that anywhere or polling units where election did not hold the BVAS report will show zero (0) accreditation and no result is expected from such a unit. This is so because, there can be no voting without accreditation, accreditation, is a condition precedent to a valid voting. The testimonies of PW13 and PW23 are called in aid on this issue.

Learned counsel further submit that the evidence preferred in rebuttal by the Respondents particularly the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents were not only scanty, incoherent but clearly devoid of reasonable probability that could render these testimonies probable. DW2, DW5, DW6, DW7 and DW10 agreed under cross – examination that there were zero (0) accreditation as could be seen in Exhibit "B" with particular reference to their respective polling units and registration areas (Electoral Wards). The Honourable Tribunal is urged to hold that these witnesses have by their testimonies admitted and confirmed allegations of non – holding of election in the contested polling units and wards. ***SYLVS VS. INEC (2018) 18 N.W.L.R (Pt. 1651) Page 310 at 368, Paragraphs A –B was cited.***

Counsel also submit that, the Petitioners equally put on record through credible evidence that results of the elections were altered in favour of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents as the 1<sup>st</sup> Respondent through its officials. The

testimonies of the Petitioners witness both in their written depositions, examination in chief and cross – examination to the effect that figures of votes scored by the parties were altered was credible and reliable. The court is prayed to so hold and urged to act on these pieces of evidence. In aid, may we commend to the Honourable Tribunal the case of ***OMISORE & ANOR. VS. AREGBESOLA & ORS. (2015) LPELR – 24803 (SC) at Page 158*** where the Supreme Court held that the law is well settled that a Court will act only on a written deposition of a witness which is his evidence in chief, if it is found to be, credible and reliable upon proper evaluation.

The following table shows the affected polling units and wants in Okigwe Local Government Area of the Federal Constituency.

It is also on record that election was not held in (1) Okigwe II Registration Area, Polling Units 007, and 012; (2) Ezinachi Ward, Polling units 003, 009, (3) Umualumoke Ward, Polling Unit 004 and 007.

It is the submissions of counsel that, elections is vitiated by the above infractions wish rendered the return of the 2<sup>nd</sup> Respondents to be fundamentally flawed and unlawful.

At this juncture, counsel submit that, the acts of corrupt practices or non – compliance is substantial enough and that the result of the election would not have been what was released by the 1<sup>st</sup> Respondent, if all the Polling Units where these enormous infractions took place were cancelled in line with section 47 (3), Electoral Act, 2022 and Clause 43 of Regulations and Guidelines for the Conducts of Election, 2022.

It is further submission of counsel that it is obvious that a look at Exhibits "A" and "B" will clearly show that there were manifest discrepancies on the figures of accreditations as given by the Exhibits this, counsel humbly submit confirm that the return if liable to be set aside. In spite of the provisions of section 137 of the Electoral Act, 2022 the Petitioners still went ahead to call in aid of their case oral testimonies and thus, the Petitioners have discharged the evidential burden required and thus shift the burden to the Respondents see ***NDUUL VS. WAYO & ORS. (2018) LPELR – 45151 (SC) Pages 51 – 53 Paragraphs A – B.*** the holding of the Supreme Court in this case is called in aid, and the Honourable Tribunal is prayed to hold that the burden of proof have shifted to the Respondents.

It is also the submission of learned counsel in paragraph 5.02 above, the 1<sup>st</sup> Respondent failed to disprove the case of the Petitioners.

On the part of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents, in paragraph 16 of the 3<sup>rd</sup> Respondent's reply it was averred thus:

***"The 3<sup>rd</sup> Respondent areas that the election result declared by the 1<sup>st</sup> Respondent on the 25<sup>th</sup> February, 2023 which is also the replica of the election result transmitted by BVAS Machine on the IREV Portal wherein the Respondent won the majority of lawful votes is the actual and valid result of the election."***

Counsel further submit that, the 3<sup>rd</sup> Respondent did not bring to the Court the IREV portal report to rebut or even contradict the Exhibit "B" which shows that election were not held as there were zero accreditation in many

Polling Units as shown by the evidence of witnesses who testified, this we humbly submit that it is either there is no such report or that the said report did not favour the case of the Respondents and decided to withhold same. We pray that section 167 (d) of the Evidence Act. 2011 are invoked against the Respondents in this instant. In aid, may we humbly rely on the authority of ***LAWRENCE VS. OLUGBEMI & ORS (2018) LPELR - 45966 (CA) pages 54-57 paragraphs B-E.***

See also ***(i) INNOCENT VS. CHRISTIAN & ORS (2023) LPELR 59886 (CA) pages 33-34 and (ii) KWNEV VS. STATE (2022) 13 NWLR (PT1847) page 273 @ page 329*** where the Supreme Court per Augie, JSC emphasized the need not to withhold relevant evidence and that if such evidence is not produced the reasonable presumption is that the content did not favour the withholding party.

It is the contention of counsel that, the 2<sup>nd</sup> Respondent that those who testified to the non-conduct of election in the various polling units are not party or polling unit agents acting for the 2<sup>nd</sup> Petitioner may we submit that non holding of election amounted to disenfranchisement of registered voters. It is trite law that it is only disenfranchised voters, who are capable of testifying to non-holding or conduct of an election, all that matters is that the witness was at the polling unit and saw all that happened. See PDP VS. INEC, 29 (2022) 18 N.W.L.R (Pt. 1863) page 653 @ Page. 684 Paragraph D - where the Supreme Court said. "In giving evidence about polling unit results, it must be shown that the witnesses witnessed the making the result or were signatories to them"

Learned counsel submits that, it is therefore erroneous to contend as herein done by the Respondents on this issue. In the same report, the Apex Court said that a voter who was disenfranchised when his right to vote is denied as in the instant when election was not held, the court would be satisfied when such a voter give a clear evidence that he is registered at the unit but was disenfranchised at the polling unit. See ***PDP VS. INEC (Supra) @ Page 690 was cited.***

Counsel further submitted that, the 2<sup>nd</sup> Respondent in particular did not understand the case of the petitioners, what we are saying is that election was not held and that if election was held, there would be accreditation by BVAS machine and the BVAS report will give figures of accredited voters. If indeed election held, and that where election did not hold, BVAS report will give zero (0) as figures of accreditation because, no one can validly vote without accreditation. Even the authority of ***OYETOLA & ANOR VS. INEC & ORS (2023) LPELR - 6039 (SC)*** the Supreme Court recognized the use of BVAS report. The misconception of the 2<sup>nd</sup> Respondent's Counsel arose because he could not with respect to him differentiate between BVAS machines report (BVAS report) exhibit B in this Petition and the Back end sever of the 1<sup>a</sup> respondent which was referred to the authority as BVR.

The Supreme Court in the passage quoted by the 2<sup>nd</sup> Respondent stated in clear words as follows:

***".....The record on the BVAS machine for each of 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".***

In fact, at pg. 56 of the report, while commenting on whether BVAS machines used for accreditation are primary source of accreditation data, the Supreme Court Stated thus;

***"Based on the provisions of the Electoral Act and the Regulation and Guidelines for the conduct of Elections reproduced earlier as well as the testimonies of witnesses, it is abundantly clear that the BVAS machines used for accreditation at the polls are the primary source of accreditation data. The Appellants failed to tender machines or CTC of the report of accreditation data obtained from the physical inspection of the BVAS machines, but rather chose to rely on the inchoate EXHIBIT BVR"***

It is also the submission of learned counsel that, it is either one prove the accreditation data primarily by producing the machine or in the alternative brings forth the CTC of the report of the BVAS inspection with respect to accreditation data. In the instant, the CTC of the BVAS report was tendered as **EXHIBIT B** and PW13 and PW23 who are staff of INEC confirmed its authenticity. Thus, the admission of these two witnesses that BVAS machines were deployed and used in accrediting voters at the election and that where BVAS report gives accreditation data figure as zero (0) it means that there was no election in that particular unit. This is an admission



against interest. ***See YAKO & ANOR VS. JIBRIN & ORS (2019) LPELR-48971 (CA) pages 56-57 Paragraph C;***

***AKANINWO & ORS VS. NSIRIM & ORS (2008) LPELR - 321 (SC) pages 75-76*** to the effect that an admission against interest is relevant and admissible. We prayed the Tribunal to so hold.

Counsel contended that speaking in one's natural language is not a proof of illiteracy and does not in any way confirm that one cannot speak the language of the Court that is English language. It is on record that Petitioners' witnesses said that they narrated their stories in English language and Igbo language shows clearly that these witnesses understand English language.

Learned counsel further submits that, the Respondents failed or misunderstood our case where they contended that we have not proved the allegation made in the petition. It is beyond dispute that the allegations of non-conduct of election was tactically proved when we showed that accreditation did not hold and these was confirmed by PW13 and PW23 who are agents of the 1<sup>st</sup> Respondent accreditation is required before a voter can cast his or her ballot. Once accreditation reads zero (0) it follows that no voter voted in that polling unit.

Counsel submitted that it is also erroneous for the Respondents to argue that the 1<sup>st</sup> Petitioner must testify before the petition could be proved. This is a strange legal submission and the Tribunal knows very well that it is not compulsory or mandatory for the 1<sup>st</sup> Petitioner to testify once the Petitioners are able to call witnesses who can proffer cogent, credible and

sufficient evidence in support of the petition the need for the 1<sup>st</sup> Petitioner becomes unnecessary. The Tribunal is prayed to discountenance the argument of the Respondents in this regard.

It is further the submission counsel that, if the polling units affected by electoral malfeasance is factored into the computation of the final result, it would be shown that the 2<sup>nd</sup> Respondent ought not to be declared as the winner of the election in dispute in this petition.

As demonstrated through evidence through oral and documentary, the table below shows the polling units where election did not hold and the result affected by the said non-holding of the election in the various registration areas (Wards) of OKIGWE LGA of the federal constituency.

It is the submission of counsel that if all the results shown in the various tables are put together and the affected votes subtracted from the results announced by the 1<sup>st</sup> Respondent for both the 1<sup>st</sup> Petitioner and the 2<sup>nd</sup> Respondent, it would be seen that the 1<sup>st</sup> Petitioner won the election and ought to be returned as the Representatives elected Member of the Federal House of representing ISIALA MBANO/OKIGWE/ONUIMO Federal constituency, Imo State.

Final Result if affected votes are deducted is as shown below:

	APC	LP
Non conduct of election (Total Votes)	26,849	1197
Altered results	14,086	4,091
<b>Total</b>	<b>40,935</b>	<b>5,288</b>

Finally, we submit that removing the above figures of votes from the final votes credited to the APC and Labour Party, the result I will be as set down below:-

APC	LP
44,689	12,841
40,935	5,288
3,754	7,553

Counsel urge that issue two be resolved against the Respondents.

In Conclusion, counsel humbly and respectfully urge the Honourable Tribunal to resolve all the two issues in favour of the Petitioners and thereupon grant the reliefs and or alternatives reliefs contained in the Petition, for the reasons, inter alia

- a. The Petitioners have proved that the return of the 2<sup>nd</sup> Respondent was invalid by reason of corrupt practices or non-compliance.
- b. The Petitioners have established that the return of the 2<sup>nd</sup> Respondent as the winner of the election of 25<sup>th</sup> February, 2023 was unlawful having not scored majority of the lawful votes cast at the said election.
- c. It has also been established that the 1<sup>st</sup> Petitioner was qualified to contest the said election having been validly sponsored by the 2<sup>nd</sup> Petitioner.

On the part of the 1<sup>st</sup> Respondent two issues were formulated for determination; to wit:-

1. **"Whether the Petition is competent"**
2. **"Whether the Petitioners have proved their entitlement to their reliefs"**

Legal arguments of the issues were raised.

We seek the Indulgence of the Honourable Tribunal to argue the Two Issues nominated for determination together.

On Issue 1, **"Whether the Petition is competent"**

On Issue 2, **"Whether the Petitioners have proved their entitlement to their reliefs"**

Learned counsel submits that, before commencing argument on the issue posited for determination, may we adopt all the arguments earlier canvassed and proffered in the introduction, the statement of relevant facts and the Evaluation of Evidence in this Final Written Address as part of our argument in urging the Tribunal to dismiss this Petition for being grossly incompetent and most unmeritorious.

Counsel also submits that, there is a presumption of correctness, authenticity, genuineness and regularity in favour of the results of election declared by the 1<sup>st</sup> Respondent in the conduct of an election. Except it is disproved or rebutted that such results are not correct, the results are

accepted for all purpose by the Tribunal or Court. The Onus is on the Petitioners to prove the contrary.

Learned counsel respectfully refer the Tribunal to the cases of ***ABUBAKAR VS. INEC (2020) 12 NWLR (Pt. 1737) Page 37;***

In the case of ***UDOM VS. UMANA (No. 1) (2016) 12 NWLR (Pt. 1526) Page 179,*** the Supreme Court held that;

***"The presumption of regularity enjoyed by the INEC results are not rebuttable by presumptuous postulation or rhetorical question but only by cogent, credible and acceptable evidence. This is because the Court cannot go outside the evidence in favour of the parties".***

Where the Petitioner fails to rebut the presumption in favour of the due return, his Petition must fall. See ***OGU VS. EKWEREMADU (2006) 1 NWLR (Pt. 961) Page 255.;***

***REMI VS. SUNDAY (1999) 8 NWLR (Pt. 613) Page 92 were cited.***

Learned counsel submits that, the Petitioners failed to rebut the presumption in favour of the result of the election as declared by the 1<sup>st</sup> Respondent.

It is the submission of counsel that, the Petition of the Petitioners is premised on several allegations of corrupt practices and non-compliance with the Electoral Act 2022 and the Regulations and Guidelines for the conduct of Elections 2022, namely fabrication of results, alteration of

results, non-holding of election, non- accreditation and improper accreditation of votes and many other sundry allegations and complaint.

It is the duty of the Petitioners to prove their Petition. ***See OKOREAFFIA VS. AGWU (2012) 1 NWLR (Pt. 1282) Page 425 at Page 453 paragraphs B was cited.***

Learned counsel also submits that, it is the bounding duty on the Petitioner to prove their Petition on the balance of probabilities even where no pleadings were filed and no evidence adduced by the Respondents. The reason being that pleadings do not constitute evidence, therefore every averment in the pleadings must be proved by credible evidence.

Counsel refers the Tribunal to the cases of ***OSIGWELEM VS. INEC (2011) 9 NWLR (Pt. 1253) Page 452 at Page 456 Paragraphs A - B;***

***ADIGHIJE VS. NWAOGU (2009) 2 NWLR (Pt. 1125) Page 231 were cited.***

It is the submission of counsel that, the Petitioners have the onus to prove the allegations made in the Petition because, he who asserts must prove the assertions. See Section 131, 132, 133 of the Evidence Act.

See ***OBI - ODU VS. DUKE (No. 2) (2005) 10 NWLR (Pt. 932) Page 105 at Page 137 Paragraphs C-D was cited.***

It is further the argument of counsel that, the allegations of Crime and or corrupt practices as complained and stated by the Petitioners touches on

the realm of criminality and therefore must be proved beyond reasonable doubt.

Counsel place reliance on the cases of ***NWOBODO VS. ONOH (1984) 1 SCNLR Pg. 1;***

***OMISORE VS. AREGBESOLA [2015] 15 NWLR (Pt. 1482) Page 205 at Page 298 paragraph G.***

Learned counsel contended that in proving the allegations of corrupt practices beyond reasonable doubt, the Petitioners' must lead cogent and credible evidence.

Counsel submits that there is no vicarious liability in the realm of criminal law, as anyone who contravenes the law should carry his Cross, criminal allegations and corrupt practices must be proved beyond reasonable against the accused. It is persons and cannot be transferred from one person to another.

See ***APC VS. P.D.P (2015) 15 NWLR (Pt. 1481) Page 1 at Page 73 paragraphs G-H was cited.***

At Pages 284 - 285 Paragraphs H-C of the case of ***WAZIRI VS. GETDAM (Supra)***, the Supreme Court held that;

***"Crime is personal. Thus it must be proved as follows: (a) That the respondent whose election is being challenged personally committed the corrupt acts or aided, abetted, consented or procured the commission of the alleged corrupt practices.***

***(b) Where the alleged acts were committed through an agent, that the agent was expressly authorized to act in that capacity or granted authority and***

***(c) That the corrupt practices substantially affected the outcome of the election and how it affected it".***

***OMISORE VS AREGBESOLA (2015) 15 NWLR (Pt. 1482) Page 205;***

***AUDU VS. INEC (No. 1) (2010) 13 NWLR (Pt. 1212) Page 43. were cited.***

Learned counsel submits that, having taken time to state the above principles of the law as it concerns allegations of crime and corrupt practices in an election petition, because a review of the Petition and the evidence of the twenty-nine witnesses called by the Petitioners will reveal and show that the Petitioners made bogus allegations of crime, without linking the respondents and or proved them beyond reasonable doubt. None of the Respondents or any of their known agent or even any person joined in the Petition was mentioned as fabricating the results as alleged by the Petitioners.

It is also the submission of counsel that, not sufficient and enough to allege or show that there has been corrupt practices. The Petitioners must not only show there was corrupt practices and by whom, but that the election is invalid by reason of the corrupt practices.

See ***AUDU VS. INEC (No. 1) (2010) 13 NWLR (Pt. 1212) Page 431;***



***EZEAZODOSIAKO VS. OKEKE (2005) 16 NWLR (Pt. 952) Page 612 at Page 630 Paragraphs E-G, the Appellate Court held that;***

***"To prove allegation of falsification of election result, there should be in existence at least two results one of which ought to be stigmatized as genuine and the other result false".***

At Pages 634 paragraph A; 634 635 paragraphs H - B, In the case of ***EZEAZODOSIAKO VS. OKEKE (Supra)***, the Court held also that;

***"Allegations that election results were forged, fabricated and falsified are allegations of crime, which by operation of law the Party making the allegations is required to prove beyond reasonable doubt before we can succeed. The standard of proof beyond reasonable doubt requires of the Party is made all the more difficult by the generally accepted principle of law that there is a rebuttable presumption of regularity, correctness and genuineness of the official results by the election officer thereby placing further onus on the person who challenge their genuineness to rebut the presumption (NWOBODO VS. ONOH (1984) 1 SCNLR 108;***

***OMOBORIOWO VS. AJASIN (1984) 1 SCNLR 105 REFERRED) were cited."***

In the case of **ADEWALE VS. OLAIFA (2012) 17 NWLR (Pt. 1330) Page 516 paragraphs B - F**, the Appellant Court held on the proof of allegation of falsification of election results that;

***"To prove falsification of results of an election two sets of results- one genuine and the other false must be put in evidence by the Party making the accusation. After putting in evidence, the two sets of results, a witness or witnesses conversant with the entries made in the result sheets must be called by the Party making the accusation of falsification or forgery of the results of the election to prove from the electoral documents containing the results of the election how the results of the election were falsified or made up. In the instant case, the appellant witnesses PW1, PW3, PW4, PW5 and PW8, who were called to testify on the allegation that the results in unit 7 and 13 of Ward 7 were made up had no direct knowledge of the entries in the electoral results sheets to equip themselves with the requisite information to analyze and relate the result sheets to each other to come to the conclusion that they were made up. Consequently, the allegations that the results were made up was not satisfactorily proved. (NWOBODO VS. ONOH (1984) 1 SCNLR 1, SABIYA VS. TUKUR (1983) 11 SC 109, WALI VS. BAFARAWA (2004) 16 NWLR (Pt. 898) 1 AND BUHARI VS. INEC (2009) 19 NWLR (Pt.1120) Page 246 referred to)".***

Counsel respectfully urge the Tribunal to so hold.

Learned counsel submit that, the Petitioners through their witness failed to produce two sets of result, the genuine and the alleged fabricated and or false result. My Lords, it is in the face of the allegations of corrupt practices and non-compliance that the Petitioners are also asking the Honourable Tribunal to declare and return them as the winners of the election.

It was held in ***ONUIGWE VS. EMELUMBA [Supra]***, It is a contradiction in Form, for a Petitioner In an election petition to ask that an election be declared void and at the same time ask that he be declared the winner.

See also ***IN RE: ONWUBUARIRI (2019) LPELR -49121.***

Counsel further submit with respect that the Petitioners failed to discharge the burden of proof on them by virtue of Section 138(1) of the Evidence Act, to prove the allegations of corrupt practices beyond reasonable doubt.

See ***UDUMA VS. ARUNSI (2012) 7 NWLR (Pt. 1298) Page 55.;***

***KAKIH VS. P.D.P (2014) 15 NWLR (Pt. 1430) Page 374 were cited.***

Learned counsel contended that, the Petitioners called in evidence PW1, PW4, PW5, PW6, PW11, PW13, PW18, PW19, PW22, all registered voters, who testified there was election, but Identified the result of their Polling Units as In Form EC8A(II) declared by the 1st Respondent, but said the results were not the one announced by the 1st Respondent's Presiding

Officers for the Polling Unit and failed to produce the result alleged to have announced at the end of the election.

Counsel submitted that their Witnesses were not the Petitioners Polling Unit Agents who can lawfully testify to the results of the polling units and in proof of the results as announced tender the duplicate copy given to them as required by law.

Counsel urge the Tribunal to disbelieve the evidence of the said witness as same are not credible.

Counsel refer the Tribunal to the case of ***DIM VS. ENEMUO (2009) 10 NWLR (Pt. 1149) Page 353 at Page 396 Paragraph G***, wherein the appellate Court held that;

***"Credible evidence is evidence that is worthy of belief and must not only proceed from credible source, it must be credible in itself in the sense that it should be natural, reasonable and probable in view of the entire circumstance"***

Counsel urge the Honourable Tribunal to so hold.

It is further the evidence of PW4, PW5, PW6, PW15, PW16, PW17, PW19, PW20, PW22 are in admissible in evidence. These witnesses testified they made statements in vernacular and the statements translated into English Language, the law requires that both the Vernacular and English Version should be before the Tribunal to be admissible. This was not done by the Petitioners and on the authority of ***SOKOTO VS. INEC (2022) 3 NWLR***

**(Pt. 1818) Page 577 at 604 604 paragraphs G-B**, their evidence is in admissible, counsel respectfully submit.

Learned counsel submits that allegations of inflation of election results with non-existent votes is another way of alleging falsification of result. Any allegation of manipulation or alteration of result is a Criminal Offence and the proof required is high, that is proof beyond reasonable doubt. See **CHIME VS. ONYIA (2009) 2 NWLR (Pt. 1124) Page 1.**

It is also the submission of counsel that, the Petitioners alleged in the Petition, inflation of the results in favour of the 2<sup>nd</sup> Respondent and reduction of their votes. We submit that allegation of inflation of votes is another way of alleging falsification of results, and to prove falsification of result, as earlier stated, there should be in existence at least two results, one of which could be stigmatized as genuine and the other one as false. In the instant Petition, the Petitioners presented only one result, the one declared by the 1st Respondent, INEC.

Consequently, as held in the **case of ADUN VS. OSUNDE (2003) 16 NWLR (Pt. 847) Page 643**, there is therefore no basis of determining whether or not the result declared was false or inflated with non-existent votes.

Learned counsel further submit that, the Petitioners alleged and complained of non-compliance with the provisions of the Electoral Act, 2022. Where a Petitioner complains of non-compliance with the provisions of the Electoral Act, the Petition has the duty to prove the non-compliance alleged based on what happened at each polling unit. This means that the

Petitioner has to call witnesses who were at each polling unit during the election.

***GUNDIRI VS. NYAKO (2014) 2 NWLR (Pt. 1391) Page 211 at Page 246 Paragraphs C - F.***

Counsel also submit that, for a Petitioner to succeed on allegations of non-compliance with the Electoral Act, the Petitioner must prove not only that there was non-compliance with the provisions of the Act, but that same substantially affected the result of the election. That is to say, the Petitioner has two burdens to prove.

(a) That the non-compliance took place; and

(b) That the non-compliance affected the result of the election.

***OMISORE VS.AREGBESOLA (2015) 15 NWLR (Pt. 1482) Page 205 at 280 281 Paragraphs G-A, 298 paragraphs B-F.;***

***UCHA VS. ELECHI (2012) 13 NWLR (Pt. 1317) Pg. 330 were cited.***

It is further the argument of counsel that, the Petitioners made several allegations of non-voting at various polling units, and in proof of same, the Petitioners called in evidence PW2, PW3, PW8, PW12, PW16, PW17, PW19, PW20, PW25, PW26, PW27 and PW28 out of the numerous polling units, the Petitioners alleged election never held in the Federal Constituency.

Learned counsel submits that, in proving that voting did not take place in an election, the Petitioner must lead positive and credible evidence on the alleged non holding of the election in each of the polling booths that voting

did not take place. See ***CHIME VS. ONYIA (2009) 2 NWLR (Pt. 1125) Page 263***, In an Election Petition, where an allegation is made that registered voters did not cast their votes, the allegation must be proved by concrete evidence. See ***AYOGU VS. NNAMANI (2006) 8 NWLR (Pt. 981) Page 160 at Page 341 Paragraphs E-F, 343 Paragraph F was cited.***

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

It is also the submission of counsel that 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.***

Counsel also submit that the 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.

See ***CHIME VS. ONYIA (2009) 2 NWLR (Pt. 1125) Page 1; SC/CV/508/2023;***

***OYETOLA VS. INEC were cited.***

Counsel also submit that, non-voting is akin to disenfranchisement of voters, which is denial of right to vote. The Tribunal or Court would be satisfied on the proof of disenfranchisement of voters when such voters gave clear evidence that they were duly registered for election but were not given opportunity to cast their votes. It will therefore be necessary for such voters to tender in evidence their respective voters card and register of voters from each of the affected polling units to confirm the allegation of non-voting. The most important issue is the need for such disenfranchised voters to give evidence to show that if they had been given opportunity to vote, the Candidate of the Political Party of their choice would have won the election. The omission of the Petitioners to establish and prove this is fatal to the Petition. We place reliance on the cases of ***P.D.P VS. INEC (2022) 18 NWLR (Pt. 1863) Page 653;***

***UDOM VS. UMANA (No. 1) [2016] 12 NWLR (Pt. 1526) Page 179 were cited.*** We respectfully urge the Tribunal to so hold.

See also ***ADEWALE VS. OLAIFA (2012) 17 NWLR (Pt. 1330) Page 478.***

At Pages 298 paragraphs B-F, this brings us to the Exhibits tendered by the Petitioners. The Petitioners' Counsel on the 2<sup>nd</sup> day of June, 2023 tendered



the following documents from the Bar, which were admitted as: (a) Certified True Copies (CTC) of Polling Units and Ward results for 3

LGAS marked as Exhibit A.

(b) BVAS Reports marked as Exhibit B.

(c) Application for Issuance of CTC of documents and INEC official Receipts marked as Exhibit C.

(d) Certificate of Compliance Marked as Exhibit D.

(e) 6 solicitor's Letters on different subjects Marked Exhibit E.

On the 6<sup>th</sup> day of July, 2023, the Petitioners further tendered from the Bar the following documents; (1) Certified True Copies (CTC) of Voters Register for Okigwe LGA – 11 Wards marked as Exhibit Z3.

Learned counsel further submits that, the Petitioners failed to bring Witnesses to speak and or demonstrate and link the exhibits to relevant aspects of their case. Counsel submit that 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.***

Counsel also contended that none of the documents and Exhibits were tendered by their makers. The proper person to tender a document is its maker, who alone can be Cross - examined on it and where a Person who did not make it tenders it, the Court ought not to attach probative value to it, since the witness cannot be cross-examined. This with respect was what

was decided in the cases of ***BELGORE VS. AHMED (2013) 8 NWLR (Pt. 1355) Page 60 at 100 paragraphs E-F;***

***OLATUNJI VS. WAHEED (2012) 7 NWLR (Pt. 1298) Page 24 at Pg. 47 paragraphs E-H.***

It was held in ***UCHA VS. ELECHI (2012) 13 NWLR (Pt. 1317) Pg. 330 at Page 367-368 paragraphs H - A that:-***

***"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".***

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

See ***SOKOTO VS. INEC (Supra)*** at Page 596 paragraph B.

Counsel urge the Tribunal to give and or attach no probative value to the exhibits tendered by the Petitioners in proof of their Petition as such exhibits amounts to documentary hearsay. See Section 37 of the Evidence Act.

***PDP & ANOR VS. INEC & ORS (2019) LPELR-48101 (CA);***

***OKEREKE VS. UMAHI (2016) 11 NWLR (Pt. 1524) Page 438 at Page 489 paragraphs D-F, 490 paragraphs C-D.***

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

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

Counsel respectfully urge the Tribunal to so hold.

It is also the contention of counsel that, the failure of the Petitioners to tender the above documents or meet the required evidence to proper non-accreditation, improper accreditation and over-voting as alleged by them in the Petition is very fatal to the Petition.

Counsel submit with the greatest respect that the Petitioners failed to prove the allegation that the 2<sup>nd</sup> Respondent did not score the majority of the lawful votes cast. 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.

It is further the submission of counsel that, the 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 led in prove of such allegation is those of the polling unit agents who witnessed the infractions at the various polling units. Failure to call polling units agents to testify is detrimental to the Petition.

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

Counsel further submitted that, the Petitioners failed to call any Polling Unit Agents and called only twenty -nine registered voters out of which about

eight said election held. This is in a Federal Constituency that has over 447 Polling Units.

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

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

On the part of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents, they have similarly submitted issues for determination which are the same with those of the 1<sup>st</sup> Respondent. I will certainly not put any value to the argument hence needless to reproduce same.

They therefore deemed considered.

## **TRIBUNAL:-**

Above is the respective legal representations of the parties before the Tribunal as it relates to their respective cases.

From the respective issues formulated by the Petitioners and Respondents, the issue on the competence of the 1<sup>st</sup> Petitioner to contest the said election and whether Petitioners are entitled to the reliefs sought and or have proved their case has featured prominently in the issues formulated by the parties. The issue therefore,

**"Whether considering the state of pleadings and the evidence led by the parties, the Petitioners are entitled to the grant of their reliefs prayed for in the Petition, as formulated by the Petitioners"** seem most apt and all encompassing, hence adopted as the sole issue for determination by the Tribunal.

Suffices to mention that having held that the 1<sup>st</sup> Petitioner and the petition are competent, all argument submitted by the Respondents shall not be re-considered at this final stage.

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

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

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

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

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

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

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

Election petition in particular has no such luxury of time unlike the conventional civil matters in view of its sui generis nature.

For the records, again, Emma Nwosu, Esq., learned counsel for the Petitioners tendered the following; **certified true copies of documents from the Bar, Polling Unit Results (EC 8A(I)) for Okigwe LGA, Isialambano LGA and Onuimo LGA, Ward Collation Result (EC 8B), Local Government Collation Centre (EC 8C), Constituency Collation Centre (EC 8D) and the Declaration of Result Form (EC 8E), BVAS Report for the three (3) Local Government Areas with Certificate of Compliance, Permanent Voters Cards collected for the three (3) Local Government Areas.**

It is similarly in evidence that Petitioners' counsel who called 29 Witnesses out of whom 27 were Voters from the various Polling Units, got the said witnesses to identify the said Polling Unit Results from their Polling Units.

The one aspect of the evidence of the said Voters i.e the 27 Witnesses Petitioners fielded is that upon being shown their respective Polling Unit Results which their counsel tendered from the Bar, they denied the fact that the Results as declared at their Polling Units is not as reflected in the

said Exhibit "A" i.e Form EC 8A(I), but that they do not also have the said correct result carrying the scores as stated in their evidence.

They said witnesses also confirmed the fact that they were not the Polling Unit Agents for the Party on the said Election Day.

On the other hand, some of the Petitioners' Witnesses insisted Election did not take place in their Polling Units arising from insecurity but that such case of insecurity was not reported to the Security Agencies and or INEC and where such reports were made, there was no such evidence.

For instance, PW1, PW4, PW5, PW6, PW7, PW10, PW11, PW14, PW16, PW18, PW19 and PW22 all said Election held but that the scores on the respective EC 8A(I) i.e Polling Unit Results for their Polling Units is not a reflection of the result but that they do not have the said correct Result.

On the part of PW2, PW3, PW8, PW9, PW12, PW15, PW16, PW17, PW20, PW21, PW24, PW25, PW26, PW27, PW28 and PW29, they all have said that Election did not take place arising from insecurity in their respective Polling Units and or Wards.

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

The law is established by an unending line of judicial authorities that it is only a Polling Unit Agent or a person who was present at a Polling Unit during Poll that can give admissible evidence of what transpired during Poll



at the Unit. Equally, it is only the Ward Collation Agent or a person who was present during Collation of Polling Units Results in a Ward Collation Centre that give admissible evidence of what transpired at such centre. Only a Local Government Collation Agent or a person present during Collation of Ward Results at the Centre can give admissible evidence of what happened there. PW1 to PW27 were not competent in law to give evidence with respect to Exhibit "A" i.e Form EC8A(I) (Polling Unit Results).

They were not polling unit agents for their party at the election. Needless to say that they were not the makers of Form EC8A(I) i.e Exhibit "A".

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

I dare say that the said Voters called as Witnesses by the Petitioners can only give evidence on whether they voted or not and on what happened on Election Day and not to mention scores of Candidates in their witness statements on oath as the result they heard declared at their Polling Units and failed to produce the alleged result announced at the end of the Election. Not being the Polling Unit Agents who necessarily would have participated in making Exhibit "A" i.e Form EC 8A(I), the set of Petitioners'

Witnesses mentioned in the preceding part of this Judgment who claimed the results in Exhibit "A" aren't the correct results without more, are most incompetent to give such evidence. Their evidence, which is not reasonable, probable and credible falls within the domain of hearsay evidence, which is inadmissible in law.

See ***DIM VS. ENEMKO (2009)10 NWLR (Pt. 1149) Page 353***, where it was held thus; in our view, Agents are in the most vantage position to give evidence of wrong doings in a Polling Unit or Polling Booth. Can the Appellant say in reality that he proved his case without calling any Agent?

In ***BUHARI & ANOR VS. OBASANJO & ORS (2006) EPR 295 at 559 – 560***, the Apex Court again held thus: **"On the question whether the evidence led in support is sufficient to warrant the decision reached on the point by the Court below, it is necessary to examine the said evidence led. The position of the law regarding the type of evidence which must be led in support at an election being challenged should come direct from the Officers who were on the field where the votes were counted and/or collated.**

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

See ***DOMA & ANOR VS. INEC***. Anything outside this, will be a black market evidence and most inadmissible.

On the other hand, Petitioners who are laying claim to the fact that Election did not take place in some specific Polling Units and that results were conjured in favour of the 1<sup>st</sup> Respondent, are under an obligation to call Voters from the affected Polling Units who must come to the Tribunal with evidence of their being from the affected Polling Units i.e PVC and who must also identify their names from their respective Voters Registers across the Polling Units and state whether or not they were accredited to vote, and voted or not, and also compare same with the BVAS report.

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

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

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

DW1 – DW10 all gave evidence that election held and that BVAS Machine was used for accreditation.. the declaration made by INEC enjoys presumption of regularity. Petitioners are under an obligation to establish their case. See ***OYEDELE VS. ODUMOSU (2016) LPELT – 4144 (CA)*** and section 168(1) of the Evidence Act, 2011.

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

INEC having returned the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents as the winners of the said election, there is certainly a presumption of regularity in favour of the said declaration and only the evidence in rebuttal, can affect the said declaration.

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

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

What is the effect of such!

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

***"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 27<sup>th</sup> July, 2022 is said to contain information on the number of accredited voters and results transmitted from BVAS used in the 16<sup>th</sup> 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).**"

I now proceed to consider the allegation of inflation of Election Results.

The allegations of inflation of election results with non-existent votes is another way of alleging falsification of result. Any allegation of manipulation or alteration of result is a Criminal Offence and the proof required is high, that is proof beyond reasonable doubt. See **CHIME VS. ONYIA (2009) 2 NWLR (Pt. 1124) Page 1.**

The allegation of inflation of votes is another way of alleging falsification of results, and to prove falsification of result, as earlier stated, there should be in existence at least two results, one of which could be stigmatized as genuine and the other one as false. In the instant Petition, the Petitioners presented only one result, the one declared by the 1st Respondent, INEC.

Consequently, as held in the case of **ADUN VS. OSUNDE (2003) 16 NWLR (Pt. 847) Page 643**, there is therefore no basis of determining whether or not the result declared was false or inflated with non-existent votes.

Where a Petitioner complains of non-compliance with the provisions of the Electoral Act, the Petitioner has the duty to prove the non-compliance alleged based on what happened at each polling unit. This means that the Petitioner has to call witnesses who were at each polling unit during the election.

The said witnesses who were fielded by Petitioners' counsel from the said polling units merely identified the respective Form EC8A(1) of the polling units and denied the entries therein without having with them the correct Form EC8A(1) with the scores in their statements on oath therein reflected. This is not helpful to the Petitioners.

***GUNDIRI VS. NYAKO (2014) 2 NWLR (Pt. 1391) Page 211 at Page 246 Paragraphs C – F*** was cited.

For a Petitioner to succeed on allegations of non-compliance with the Electoral Act, the Petitioner must prove not only that there was non-compliance with the provisions of the Act, but that same substantially affected the result of the election. That is to say, the Petitioner has two burdens to prove.

(a) That the non-compliance took place; and

(b) That the non-compliance affected the result of the election.

***OMISORE VS.AREGBESOLA (2015) 15 NWLR (Pt. 1482) Page 205 at 280 281 Paragraphs G-A, 298 paragraphs B-F*** was cited.

Petitioners made several allegations of non-voting at various polling units, and in proof of same, the Petitioners called in evidence PW2, PW3, PW8, PW12, PW16, PW17, PW19, PW20, PW25, PW26, PW27 and PW28 out of the numerous polling units, the Petitioners alleged election never held in the Federal Constituency.



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

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

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

Lack of evidence to show that the names of those disenfranchised voters were not actually ticked as having voted in the voters' register and the failure to tender the BVAS Machine to show non- accreditation of voters Is fatal to the Petition.

See ***OYETOLA VS. INEC (Supra)***.

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

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

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

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

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

Documents cannot be dumped on the Court or Tribunal as the Petitioners did in the instant case, as it is not the duty of the Court or Tribunal to

process through documents tendered by the parties, which were not demonstrated in open Court.

No probative value can be ascribed to the document tendered as such Exhibits amounts to documentary hearsay. See Section 37 of the Evidence Act, 2011.

The case of ***PDP & ANOR VS. INEC & ORS (2019) LPELR-48101 (CA)*** is most instructive on this issue.

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

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

Failure of the Petitioners to tender the above documents or meet the required evidence to establish non-accreditation, improper accreditation and over-voting as alleged by them in the Petition is very fatal to the Petition.

Learned counsel for the Petitioner, albeit in error, misconstrued the law when he hung unto the provision of section 137 of the Electoral Act, 2022 and paragraph 46(4) of the 1<sup>st</sup> schedule to the Electoral Act to say that he need not call oral evidence where there are documents in evidence to show non – compliance.

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

Section 137 of the Electoral Act, 2022:

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

And

Section 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.

What then shall be the faith of the said documents tendered from the Bar by the Petitioners' counsel?

I ask this question in view of the fact that the said witnesses who were fielded by Petitioners' counsel were the not makers of the said documents and therefore could not have been competent in the eyes of the law to have giving any such reliable, swaying and or convening evidence.

The argument of learned counsel for the Respondents that the said document were dumped on the Tribunal is founded and therefore upheld.

The implication of this decision is that no evidence has been led to explain the contents of the said Exhibits.

What more, the said witnesses never came to this tribunal with the correct version of the polling unit result which they mentioned in their respective witness statement on oaths. This is not to how to go about establishing a ground founded on non – compliance with the Electoral Act, 2022.

Petitioners failed to prove the allegation that the 2<sup>nd</sup> Respondent did not score the majority of the lawful votes cast. The position of the law on the allegation that a respondent did not score a majority of the lawful votes cast in an election subject of an election petition is that, when a Petitioner alleges that a Respondent has not won by majority of the lawful votes in an election, as in this Petition, to succeed in the claim/action/petition, the law enjoins the Petitioner firstly to specifically plead the existence of two sets of results emanating from the election, and thereafter, the Petitioners

must adduce credible evidence that the Respondents did not score the majority of lawful votes cast at the election.

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

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

Petitioners failed to call any Polling Unit Agents but decided to call only twenty -nine registered voters out of which about eight said election held. This is in a Federal Constituency that has over 447 Polling Units. The law has not change on what a Petitioner who alleges that election did not hold or that votes were inflated, ought to do.

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

Having failed to establish its case against the Respondents, 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, has not been shaken by the Petitioners' witnesses.

The lone issue formulated by this Tribunal is therefore resolved against the Petitioners.

Fabiyi, JCA (as he then was) in ***NWOLE VS. IWUAGWU [2005] 16 NWLR (Pt. 952) 543 at 571 A-C***, has this to say:-

***"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".***

Bereft of any substance, the result declared by the 1<sup>st</sup> Respondent (INEC) which enjoys presumption of regularity stands tall and unfazed. This petition is clearly academic and is bound to be dismissed. It is so hereby dismissed.

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

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

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