IN THE NATIONAL AND STATE HOUSES OF ASSEMBLY
ELECTION PETITION TRIBUNAL
HOLDEN AT ASABA, DELTA STATE
PETITION NO: EPT/DL/HR/15/2023

TODAY SATURDAY, 9TH DAY OF SEPTEMBER, 2023

BEFORE THEIR LORDSHIPS:
HON. JUSTICE CATHERINE OGUNSANYA - (CHAIRMAN)
HON. JUSTICE MAS'UD ADEBAYO ONIYE - MEMBER I
HON. JUSTICE BABANGIDA HASSAN - MEMBER II

BETWEEN:

1. EKPOTO EKPOTO EMMANUEL
2. ALL PROGRESSIVE CONGRESS (APC) .....PETITIONERS

AND
1. INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC)
2. PEOPLE DEMOCRATIC PARTY
3. THOMAS EREYITOMI
4. LABOUR PARTY (LP)
5. OMOTSEYE YOUNG PIERO ***RESPONDENTS***

JUDGMENT

Election into the Federal House of Representatives for Warri Federal Constituency took place on 25/02/2023. The 1st Petitioner (Ekpoto Ekpoto Emmanuel) was the candidate of the 2nd Petitioner (APC) in the said election conducted by the 1st Respondent (INEC). The 2nd to 5th Respondents were other political parties and their respective candidates in the said election. At the end of the election, the 1st Respondent *vide* exhibit 5 (Form EC8E) declared the 3rd Respondent (Thomas Ereyitomi) as the winner of the election and the

person entitled to represent the people of Warri Federal Constituency in the National Assembly's House of Representatives.

Dissatisfied by the said declaration and return, the Petitioners lodged this Petition on 20/03/2023. The Petitioners' grounds for the rejection of the result of the election, as declared by the 1st Respondent, are stated in paragraph 13 of the Petition as follows –

a. The election was invalid by reason of corrupt practice(s) and/or non-compliance with the provision of the Electoral Act, 2022 (as amended – sic) – Section 134(1)(b) of the Electoral Act, 2022 (as amended – sic)

ALTERNATIVELY:

b. The 3rd Respondent was not duly elected or returned by the majority of the lawful votes cast at the election – Section 134(1)(c) of the Electoral Act, 2022 (as amended – sic).
c. The 3rd Respondent at the time of the election, was not qualified to contest the election – Section 134(1)(a) of the Electoral Act, 2022 (as amended – sic).

Paragraphs 14 – 28 of the Petition contain the facts upon which the Petition is based according to the Petitioners, while paragraph 29 of the Petition's list the documents the Petitioners intend to rely on in proof of the Petition. The reliefs being sought by the Petitioners are captured in paragraph 30 of the Petition thus –

Whereof the Petitioners pray that it be determined that –

a) A declaration that there being no valid and/or lawful election in most and/or substantial part of the Warri South Local Government Area of Delta State on 25/2/2023 of the Warri Federal Constituency for the House of Representatives election, the election in the Warri South Local Government Area of Delta State in respect of the Warri Federal Constituency ought to have been nullified and/or cancelled.
b) A declaration that the election held on 25/2/2023 in Warri South Local Government Area in respect of the Warri Federal Constituency of Delta State in the areas where election

purported to have held, was conducted in violent breach and non compliance with the provision of Electoral Act 2022, the Constitution of the Federal Republic of Nigeria 1999 (as amended), the Guidelines and Manuel for the Conduct of the 2023 General Elections.

c) An order of this Honourable Tribunal nullifying the purported election held on 25/2/2023 in the Warri South Local Government Area of Delta State in respect of the Warri Federal Constituency election for the House of Representatives position.

d) An order of this Honourable Court disqualifying the 3rd Respondent from being a candidate in the Warri Federal Constituency of the House of Representatives.

e) An order of this Honourable Tribunal cancelling the entire result from Warri South Local Government Area in respect of the election into the Warri Federal Constituency of the House of Representatives conducted on the 25th day of February, 2023 and declaring the Petitioner as the winner of the said election having scored the highest number of lawful and valid votes in the other two Local Government Areas of Warri North and Warri South-East of Warri Federal Constituency.

f) An order directing INEC (1st Respondent) within 90 days to conduct a fresh election in Warri South Local Government Area of Delta State in respect of the House of Representatives seat for the Warri Federal Constituency of Delta State.

Accompanying the Petition are written depositions of witnesses the Petitioners intend to call at the hearing of the Petition.

The 1st, 2nd and 3rd Respondents reacted to the Petition by filing replies and other processes against the grant of the reliefs in the Petition. 1st Respondent's reply to the Petition was filed on 12/04/2023, wherein a notice of preliminary objection to the Petition was embedded in paragraph 1 thereof. Paragraphs 2 – 29 thereof contain the 1st Respondent's response to the Petition, while the

documents to be relied on at the hearing are listed in paragraph 30 thereof.

Paragraph 31 concludes by praying the Tribunal to dismiss the Petition, which among others, is said to be misconceived, frivolous and mere academic, and the Petitioners are not entitled to the reliefs sought. Accompanying the said Reply is the list of witnesses intended to call and their written statements on oath. It is noteworthy that the aforesaid notice of preliminary objection was argued during pre-hearing session and ruling on same was reserved till final judgment in line with Section 285(8) of the 1999 Constitution of the Federal Republic of Nigeria (as amended)

As for the 2nd Respondent, its reply was filed on 6th April, 2023 and similarly filed a notice of preliminary objection incorporated into it, which had also been heard and ruling reserved like the 1st Respondent's preliminary objection. Paragraphs 1 – 35 of the 2nd Respondent's reply to the Petition contain the facts in response to the Petition with the documents to be relied on therein pleaded and concluded that the Petition be dismissed *inter alia* for misconception, incompetence and the reliefs sought therein being contradictory. The said reply is accompanied with written statements on oath of witnesses the 2nd Respondent intended to call at hearing and a list of documents to be relied on in defence.

The 3rd Respondent (the declared winner) filed his reply to the Petition on 24th April, 2023 and included therein, like the other Respondents, a notice of preliminary objection which had also been taken along with others. Thereafter, paragraphs 1 – 38 of the reply contain the facts in response to the Petition with the documents to be relied on therein pleaded. The list of witnesses, their written statements on oath, list of documents and copies of same, all accompanied the 3rd Respondent's reply to the Petition.

It is pertinent to remark at this juncture that the 4th and 5th Respondents neither filed any reply to the Petition nor participated in the proceedings, despite the numerous evidence in the Tribunal's

record that they were duly served and aware of the Petition and the hearing dates. They are therefore deemed not to contest the Petition.

Arguments in respect of objections raised in 2nd and 3rd Respondents Replies

The 2nd and 3rd Respondents had in their above referred objections contended that the Petition is incompetent since the Petitioners are contemporaneously in the Petition approbating and reprobating, by first contending that the said election did not hold and thereafter seeking to be granted the reliefs in paragraphs 30(a) – (e) and the alternative relief, all earlier set out.

It was observed by learned senior counsel to the 3rd Respondent that the reliefs sought in paragraph 30(a) – (e) are not sought in the alternative. The 1st Respondent's Counsel contended that the implication of the said conflicting reliefs is an allegation that the election, the subject matter of this Petition is not one which could have produced a valid declaration and return, analyzing that reliefs (c), (d) and (e) are consequential reliefs based on the outcome of reliefs (a) and (b), the principal reliefs, which all are praying that the said election be nullified/cancelled, and also seeking an order of fresh conduct of election; yet in relief (e), the Petitioners are seeking that they be declared winners in respect of two out of the three Local Government Area in Warri Federal Constituency of the House of Representatives.

Learned senior counsel to the 3rd Respondent also in the same vein submitted that the reliefs sought are contradictory, incompetent and not grantable; and vests no jurisdiction in this Tribunal, saying the paragraph of the Petition which says the 3rd Respondent was not returned by majority of the votes cast is incompetent, as there are no facts pleaded in support of it. Several authorities were commended to the Tribunal.

In the Petitioners final written address filed on 19/08/2023, at page 34 thereof, learned Petitioners' counsel submitted on the above

objections to the effect that the Petitioners' claims are not contradictory or inconsistent, in that, since the grounds on which the Petition is presented are in the alternatives (a) or (b) and facts are pleaded in support of both alternate prayers. The decision in **MV Caroline Maersk & Ors. Vs. Nokig Investment Ltd. 2002 LPELR 3182 SC** was commended to the Tribunal on the issue that even if Plaintiff pleads inconsistent sets of material facts he will be granted such relief as to the set of facts he established and would entitle him to only one of the two alternative reliefs will be granted.

The Tribunal was urged to do a communal reading of the Petition to see that what the Petitioners are complaining of is an election having not been conducted as known to law, which is evident in the 1st Petitioners evidence.

Resolution of the objections

Paragraph 4(1)(d) & (3)(a) of the First Schedule to the Electoral Act, 2022 provides;

4(1) 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.

.....

(3) The election petition shall –

(a) conclude with a prayer or prayers, as for instance, that the Petitioner or one of the Petitioners be declared validly elected or returned, having polled the highest number of lawful votes cast at the election or that the election may be declared nullified, as the case may be;

In this present Petition, from Reliefs (a), (b), (c) and (e) above, it is crystal clear that the Petitioners' major grouse is with the conduct of the said election in Warri South Local Government Area, one out of the three Local Government Areas of the said federal constituency. In

fact, in the length and breadth of the petition, all the non compliance with the enabling laws hollered about are with regard to the conduct of the election in Warri South Local Government Area. It is only relief (d) that seeks the disqualification of the 3rd Respondents from being a candidate in the said election.

The contradictions which the 2nd and 3rd Respondents complain of in the reliefs sought is n relation to how the reliefs sought are couched. In the opinion of the Tribunal, this has to do more with the inelegance as to how the reliefs are couched, more than the substance of the reliefs sought. They may be unconventionally couched, however, what the Petitioners seek are clear in each relief and concise, and in law, inelegance of this nature cannot vitiate the Petition. Even our appellate courts are also contending with inelegant drafting such as the one at hand. See **Emeka Izejiobi V. Evaristus O. Ebgebu (2016) LPELR – 40307 (CA)**; **Chukwuemeka Ezeuko (alias Dr. Rev. King) Vs. State 2016 LPELR – 40046 SC**.

Now, what is important in an election petition is that in line with paragraph 4(1)(d) of the First Schedule to the Electoral Act 2022, the Petitioner should state clearly the facts in support of the election petition and the ground or grounds upon which the petition is based and the reliefs sought by the Petitioner.

In this Petition, we must also say that parties have joined issues to the hilt, hence the Respondents are not in any doubt as to the reliefs the Petitioners seek and have responded to the Petitioners entitlement to or not to these reliefs. The Respondents have suffered absolutely no prejudice from such inelegance of drafting. In the light of the above, the Tribunal overrules both objections and resolves the issue in question in favour of the Petitioners.

Now, the case for the Petitioners in their pleadings and evidence before the Tribunal, succinctly put, is that the election on the day in question (i.e, 25/02/2023) could not have been said to have taken place in the whole Warri South Local Government Area, as

the results which the 1st Respondent declared at the end of the exercise did not emanate from actual voting, but the product of a rigged electoral process and the contents of the unit results showed clearly that elections were not held in many parts of Warri Federal Constituency, especially Warri South Local Government Area.

At paragraph 19 of the petition, the Petitioners pleaded in tables, the ward by ward and unit by unit account of the particulars of non compliance at each ward and unit in question, the malpractices which they are complaining of e.g.; no BVAS report on number of accredited voters, no Form EC8A(1), no Form EC8B(1), disruption of voting and voters disenfranchised, BVAS accreditation showing well below those who actually voted, some Forms EC8A(1) heavily mutilated and altered to align with BVAS record and some unsigned and others undated Forms EC8A(1). The alleged non compliance occurred in nearly all the wards of Warri South Local Government Area hence the ensuing result of the Local Government Area cannot be relied upon.

It was stated that the votes from Warri South Local Government Area which is 24,220 totally outweighs a combination of the votes from the other Local Government Areas which is 17,234 and both the 3rd and 5th Respondents, it is remarkable got a total of 18,296 from the 24,220 votes cast in Warri South Local Government Area, thus the non compliance, malpractices and irregularities in Warri South Local Government Area substantially affected the outcome of the results of the Constituency and if not for the said irregularities the 1st Respondent would not have declared the 3rd Respondent, candidate of the 2nd Respondent, the winner of the said election. The Petitioners' results were not properly and accurately collated with figures distorted in the collation process and that even in the Delta South Senatorial Election i.e Warri South Local Government Area election results were also cancelled.

It was also averred that the 3rd Respondent had provided a forged Senior Secondary School Certificate to the 1st Respondent,

hence he is not qualified to have contested the said election as he ought to have been disqualified. If this Tribunal disqualifies the 3rd Respondent and the results of Warri South Local Government Area in the election is cancelled, the 1st Petitioner will be the winner of the said election as he would have scored the highest number of valid and lawful votes in the remaining two Local Government Areas of Warri South West and Warri North Local Government Areas, as from the results in both other Local Governments, the 1st Petitioner scored 4,299 votes and 5th Respondent scored 1,972 votes.

The Petitioners in proof of the Petition tendered 91 Exhibits being the INEC Forms EC8A, EC8B, EC8C, EC8D and EC8E series all, with CTC of BVAS report, Voters Register and PVCs collected, all for Warri South Local Government Area.

The Petitioners called six witnesses at the trial. PW1, PW2 and PW3 were ward collation agents of the 2nd Petitioner for Wards 9, 6 and 8 respectively of Warri South Local Government Area. PW1, Mr. Obruche, received reports from polling agents of various polling units in his ward complaining of irregularities. He was accredited with BVAS machine and voted. PW2 on his part, Mr. Emiko Philips, he like PW1, got reports of irregularities and malpractices perpetuated by 1st, 2nd, 3rd Respondents. According to him electoral materials never reached polling units in Ward 6 where there was no election held. PW3 also like PW1 and PW2 also got report of various malpractices by agents of 1st, 2nd and 3rd Respondents and he saw officials of 1st Respondent writing different results at the INEC office in Warri.

PW4 and PW5 are registered voters with PW4, Mr. Omawunmi Sakpoba, complaining that thugs of 2nd and 3rd Respondents caused mayhem in his polling unit at Ward 1 Unit 9 in Warri South Local Government Area. PW5 on his part, testified that election did not hold in his unit and most part of Warri South Local Government.

The star witness for the Petitioners is the 1st Petitioner himself who was PW6 and gave evidence of various electoral malpractices e.g vote disruption, voters disenfranchisement, over voting, allocation of

votes, alterations and cancellations of results and improper collation and distortion of results etc. He also testified that the 3rd Respondent had provided a forged Senior School Certificate to 1st Respondent, hence he is not qualified to contest the said election. Under cross examination, he admitted being accredited by BVAS machine to vote on the day of the election. Under cross examination again, he stated that he came 3rd in the election, however, he ought to have been declared the winner of the election, but for the non compliance complained of.

The 1st Respondent on their part put in evidence Exhibits 11(1) – (11) to 13(1) – (11) being Forms EC8A(1) for the eleven Wards of Warri South Local Government Area and Form EC8B(1), (1) – (11) for the same wards in Warri South Local Government Area.

The only witness for the Respondents RW1, Mr. Ogbore Kingsley, testified that no staff of INEC was invited by the Police in respect of any malpractice in the election nor was prosecuted. His testimony is that election took place in Warri South Local Government Area on 25/2/2023 with election materials distributed to all units and he identified the exhibits tendered as the results of the said election.

The issues for determination settled at pre-hearing session are as follows;

1. Whether from the facts pleaded by the Petitioners *vide* the petition and the totality of evidence led in support of same are sufficient to prove the grounds upon which the petition is brought in view of the provision of Section 134(1) of the Electoral Act, 2022.
2. Who amongst the Petitioner and the 3rd Respondent, from the state of the pleadings of the parties and the totality of the evidence adduced, scored majority of the lawful votes cast at the election in contention.
3. Whether in the light of issues 1 and 2 above being answered and determined one way or the other, the Petitioners are entitled to

the reliefs sought and whether the Tribunal has the power to grant such reliefs.

Learned counsel to the 2nd Respondent at page 17 of 2nd Respondents written address formulated on his own a sole issue for determination, to wit;

> *"Whether considering the circumstances of this case, the applicable laws and admissible evidence adduced, the petition has merit."*

This above issue is of no moment as it can be subsumed into the issues already settled for determination. We submit with due respect, that it was an unnecessary frolic embarked upon by learned counsel. Now, the petition will be determined in line with the said three issues formulated at the pre-hearing session.

Arguments of Parties in respect of Issues 1, 2 and 3

The combined reading of the submissions of learned counsels to the 1st, 2nd and 3rd Respondents in their final written addresses filed on 11/08/2023, 13/08/2023 and 22/08/2023 respectively is that the Petitioners have not led credible evidence as to the non qualification of the 3rd Respondent, arguing that first and foremost, a challenge of qualification based on information on Form EC9 and on an attached forged is a pre-election matter and not one for adjudication by the Tribunal, citing **INEC Vs. ANDP & Ors. LPELR – 50980 AC** where the decision in **Abubakar Vs INEC 2020 17 NWLR Pt. 1754** was referred to.

It was contended that by the provisions of section 29 of the Electoral Act 2022 complaints of falsification of personal particulars can only be adjudicated upon within 14 days of the publication of the personal particulars of the candidate, citing section 285 of the 1999 Constitution (as amended).

On the merit of the complaint of presenting forged certificate, it was submitted that the facts pleaded by the Petitioners are inconsistent, as they also alleged that the Senior Secondary School

Certificate presented belongs to one Otamuemu Thomas Ezekiel but the 3rd Respondent misrepresented it as his, which amounts to blowing hot and cold at the same time, which the Supreme Court had abhorred in **Eyibah Vs. Mujaddi & Ors. 2021 LPELR 57110 SC and Ajide Vs. Kelani 1985 3 NWLR Pt. 12 248 at 269**.

It was submitted that the two sets of facts are useless as the Tribunal cannot pick and choose which to believe, hence the Petitioners have not proved this allegation of a crime (forgery) beyond reasonable doubt, pursuant to section 135 of the Evidence Act, 2011. More so, as the genuine copy of the forged document is not in evidence in this case. See **Ngadi Vs. FRN 2018 LPELR – 43636 CA** amongst other authorities cited on this point.

It is further submitted that there is also no evidence that the said certificate was forged by 3rd Respondent or he knew about same or expected the forged certificate to be acted upon as genuine. Furthermore, there is no evidence from the issuing institution disclaiming the certificate. Several authorities were also cited in the above regard, including **Mohammed Vs. Wamawo 2018 7 NWLR Pt. 1619 573 at 585**.

The evidence of the 3rd Respondent's witness, it was contended has shown that the 3rd Respondent bears many names, as in his WASC Certificate he is Thomas Ereyitomi and in the NECO results (Exhibit 5) he is cited as Etamuemu Thomas Ezekiel. That the 3rd Respondent on 21/5/2003 had deposed to an affidavit, ie exhibit 18(1) and (2), reconciling all the said names in the Certificates.

Finally, it was contended that the said alleged forged certificate is of no advantage to the 3rd Respondent as he was already qualified to contest with his WAEC Certificate, hence why would he submit a forged NECO Certificate? Again, he has Bachelor of Science and Masters degrees, hence in law, he is not mandated to submit Senior Secondary School Certificate. See **Aghwarianovwe Vs. PDP & 2 Ors.** in Suit No. SC/CV/614/2023 delivered on 7/7/2023.

On the ground as to non compliance with the Electoral Act 2022 and or by reason of corrupt practices, learned counsel to all the Respondent by a combination of their arguments submitted that the allegations of corrupt practices must be proved beyond reasonable doubt, the ground being criminal in nature, which they contended has not been done by the Petitioners in this case.

It was further contended that non compliance in law is to be established polling unit by polling unit, ward by ward and that such non compliance must be substantial enough to affect the result of the election, citing **PDP Vs. INEC 2022 18 NWLR Pt. 1863 Pg. 693 and Ngige Vs. INEC 2015 1 NWLR Pt. 1440 281 at 319**.

It was submitted that the Petitioners in relation to the election in Warri South Local Government Area are contradicting themselves, i.e they allege first, that election never held there and in the same breadth complain of non compliance with the Electoral Act in the conduct of election in the same place they *hitherto* alleged elections never took place. They referred to paragraphs 15, 17, 19 – 21 of the Petitioners pleadings (petition) which contain various alleged malpractices complained of. It was contended that the petition must fail on this inconsistent pleadings, citing **Ipigansi & Anor. VS. INEC & Ors. 2019 LPELR 48907 CA,** which case is on similar facts with this petition.

It was then contended that Exhibits 11(1) – (11) and Exhibits 12(1) – (11) and Exhibit 13 (the election results) have negated the assertions of the Petitioners that election did not take place; more over, the 1st Petitioner (PW6) himself admitted that Exhibits 6, 7 and 18(1) – (11) tendered by the Petitioners are results of the election as declared by INEC.

The only witness for the 3rd Respondent, Mr. Otuedon, confirmed that Exhibits 11(1) – (11), 12(1) – (11) and Exhibit 13 are the results of the Election and also under cross examination, the witness was not challenged over the issue that election did not hold and this it was submitted is fatal to the Petitioners' case.

The Tribunal was urged not to rely on the evidence of the 1st Petitioner (PW6) which was manifestly inconsistent as to whether there was election or not in Warri South Local Government Area having first contended there was no election but later identified Exhibits 6, 7, 8 and 11(1) – (11) as the results of the election declared.

One Mr. Ogboe Kingsley, an Electoral Officer for Warri South Local Government Area identified the election results, Exhibits 11(1) – (11) and 13 as the duly certified results of the election. It was submitted that all the election results enjoy a presumption of regularity and the burden of proof is on who challenges such regularity and must do so with credible evidence, citing **Abubakar Vs. INEC 2020 12 NWLR Pt. 1737 37 at 124 – 125** amongst other authorities.

It was contended that the Petitioners have not proved that over voting occurred having not tendered the BVAS machines, the primary source of accreditation, but put in evidence data from a backend server (Exhibit 3), contrary to the provisions of the law in **Oyetola Vs, INEC 2023 11 NWLR Pt. 1894 125 at Pp. 168 – 175**.

Furthermore, it was submitted that the Petitioners never sought an order of the Tribunal to inspect the said BVAS machine nor did they call eye witnesses i.e polling unit agents who can give evidence of over voting, but only called PW6 (1st Petitioner) who was restricted to his polling unit on the day of the election, by his evidence.

On the issue of alleged altered results, it was submitted that it needs to be proved that such alteration or mutilations exist and they were done dishonestly with a view to falsifying the result, citing **Abdul Malik Vs. Tijani 2012 12 NWLR Pt. 1315 Pt. 461 at 72 – 473**. On the allegation that some polling unit results were unsigned and undated, it was submitted that the fact that party agents signed them negates any notion of ill-will on the part of the Presiding Officers. The decision in **Igbe & Anor. Vs. Ona & Ors 2012 LPELR CA pgs 12-14** was commended on that point.

The learned counsels to the Respondents then argued that the Petitioners dumped the documents (Exhibits) on the Tribunal, as they did not call witnesses who were part of making the entries in the documents to speak to same, hence they are documentary hearsay. It was equally argued that PW6 not being a polling agent, is not the one to identify Exhibit 9 which is the CTC of the record of those who collected PVC in Warri South Local Government Area, citing **Gbenga Vs. APC 2020 14 NWLR Pt. 1744 248, PDP Vs. INEC Supra** and **Okereke Vs. Umahi & Ors. 2016 LPELR 400 35 SC** on that point.

The provisions of section 139(1) of the Electoral Act, 2022 was commended to the Tribunal contending that the election at hand was conducted in substantial compliance with the Act, the Petitioners having not been able to establish that any of the non compliance alleged could have affected the outcome of the election. See **PDP Vs. INEC 2014 17 NWLR Pt. 1437 527**. It was also submitted that elections are not overturned on flimsy excuses of non compliance. They cited **DPP Vs. INEC 2009 4 NWLR Pt. 1130 92 at 114 para G-H**.

On the whole, it was contended that the Petitioners are not entitled to the reliefs they seek, having not been able to prove the grounds upon which the Petition is found.

On the part of the Petitioners, it was contended that the Petitioners have proved that the 3rd Respondent flouted the provisions of section 66(1)(i) of the Constitution of 1999 (as amended) as he presented a NECO Certificate in the name of Etamuemu Thomas Ezekiel purporting it to be his, hence he is not qualified to contest the election. The various definitions of forgery and false documents and certificate in **Modigbo Vs. Usman & Ors. 2019 LPELR – 59096 SC, Smart Vs. The State 1974 11 SC 173 at 186** and **Dide Vs. Seleketimibi & Ors. 2009 LPELR 4038 CA** were referred to.

It was submitted that the onus is on the 3rd Respondent who presented the forged NECO certificate, part of Exhibit 4, to authenticate it when it is challenged, citing **Eze Vs. Okoloagu 2010**

3 NWLR (Pt. 1180) at 13. It was contended that the 3rd Respondent did not testify but put in evidence Exhibits 18(1) and (2) through his witness Mr. Martins Otuedor. It was submitted that what section 66(1)(i) of the Constitution penalizes is not the lack of qualification for the office but the presentation of a forged or false certificate, hence it is immaterial whether the party is qualified for the office of House of Representatives or not but the presentation of a forged or false certificate is the issue.

It was submitted that in paragraphs 31 and 32 of the 3rd Respondent's Reply to the Petition, the 3rd Respondent deflected by talking about his WAEC Certificate when it is the NECO certificate that is in contention, hence those paragraphs are of no moment as to whether he presented a certificate that is not his.

On Exhibit 18(1) and (2), it was contended it was never frontloaded or pleaded with 3rd Respondent Reply to the petition in line with paragraphs 12(1) and (3) of the First Schedule to the Electoral Act 2022 and the Tribunal ought to discountenance it, citing **Agu & Ors. Vs. Idu 2021 LPELR 53317 CA**. Moreover, the 3rd Respondent's witness under cross examination admitted Exhibit 18(1) and (2) is not amongst the documents he pleaded in paragraph 49 of his statement on oath, hence Exhibits 18(1) and (2) have been smuggled into this case as a surprise and ambush, citing **Ibe & Anor. V.s Chukwuka 2015 LPELR – 41588 CA** amongst other authorities, again contending that the documents are documentary hearsay, as the 3rd Respondent's witness cannot speak to Exhibits 18(1) and (2).

Learned Petitioner's counsel referred to the Exhibits before the Tribunal and submitted that a study and analysis of same which is contained in his address reveals that a total of 55,215 registered voters in 119 polling units from 10 registration areas (i.e wards) were affected by votes cancellation and non holding of election, with another 8,604 votes from 55 polling units in 11 registeration areas (i.e

wards) in Warri South Local Government Area were affected by irregularities, like over voting, alteration and manipulation of results.

It was submitted on the authority of **Onugwe Vs. Emelimba & Ors (2008) LPELR 4787 CA** that the number of registered voters where election did not hold is higher than the announced votes, hence there is substantial no compliance. It was further contended that the non compliance in this case is so manifest vide the documents, Exhibits 3, 5, 6, 7, 8, 9, 11, 12 and 13. That the Petitioners are not obliged to call witnesses in each polling unit as also the provisions of paragraph 46(4) of the First Schedule to the Electoral Act, 2022 empowers the Tribunal to look at the said documents.

Resolution of the three issues for determination

A convenient approach is to determine whether the pleadings of the Petitioner in the petition are enough to sustain the grounds upon which the election is found and whether the evidence led by the Petitioner is in consonance with the pleadings of the Petitioner vis-à-vis the reliefs they seek. Section 134(1) of the Electoral Act, 2022 provides:

134(1) An election may be questioned on any of the following grounds –

(a) A person whose election is questioned was, at the time of the election, not qualified to contest the election;

(b) The election was invalid by reason of corrupt practices or non-compliance with the provisions of this Act; or

(c) The respondent was not duly elected by majority of lawful votes cast at the election.

In this petition, vide paragraph 13(a),(b) and (c) thereof, the Petitioners pleaded all of the above.

With regard to the grounds, the Petitioners pleaded copiously that there were cancellations and non holding of elections in some units and wards of the Warri South Local Government Area. See paragraphs 14 and 15 of the petition and the table therein. It is also

the complaint of the Petitioners that in many wards and units of Warri South Local Government Area, if not almost all of them, there was non compliance with the provisions of the Electoral Act, 2022 on accredited voters being less than the votes, no Form EC8A, no Form EC8B, disruption of voting, voter disenfranchisement, Form EC8A mutilation, alteration of results, undated result sheets, overvoting, discrepancy between number of ballot papers issued, number of valid votes and number of votes allotted to parties, party agents did not sign some results, some presiding officers did not sign Form EC8A(1) with some being undated, no entry in Form EC8A and EC8B, vote changing, discrepancies between Forms EC8A, EC8B and BVAS etc. See the Table at paragraph 19(a) of the Petition.

The Petitioners tendered in evidence Exhibits 1 – 9 which include CTC of BVAS Report for the said Warri South Local Government Area, CTCs of Forms EC8A(1) – (11), EC8B(I), EC8C (II), CTC of the record of total PVCs collected for Warri South Local Government, CTCs of Form EC8B for Warri South Local Government Area.

PW2, PW3 and PW4 led evidence in line with the pleadings of the Petitioners that in ward 6 and 8, there were gross irregularities and malpractices by the 1st, 2nd and 3rd Respondents agents and in fact, in ward 6 there was no election, while in ward 8 there were irregularities and malpractices and disturbances perpetuated by the thugs of the 1st, 2nd and 3rd Respondents. PW4 in particular, a registered voter in ward 1 Unit 9 of Warri South Local Government Area, testified that election never held in his polling unit. PW 5 is also a registered voter in unit 16 ward 11 who testified that election did not hold in his unit. Several of the irregularities complained of by the Petitioners above amount to corrupt practices and amount to crimes.

It is trite law that the standard of proof where an allegation of crime is made in an election petition is proof beyond reasonable doubt. See **Waziri & Anor Vs. Geidam & Ors. 2016 LPELR – 40660 SC**. It has been held that the Petitioner must lead cogent and

credible evidence to prove the allegation of crimes beyond reasonable doubt.

This Tribunal is abreast of the provisions of sections 46(4) and 137(1) of the Electoral Act, 2022 which provide:

"46(4) Documentary evidence shall be put in and may be read or taken as read by consent, such documentary evidence shall be deemed demonstrated in open court and the parties in the petition shall be entitled to address and urge argument on the content of the document, and the Tribunal or Court shall scrutinize or investigate the content of the documents as part of the process of ascribing probative value to the documents or otherwise."

"137(1) It shall not be necessary for a party who alleges non-compliance with the provisions of this Act for the conduct of elections to call oral evidence if originals or certified true copies manifestly disclose the non-compliance alleged."

It must however be reiterated that in this petition the Petitioners in the pleadings raised an avalanche of the malpractices and breaches of the Electoral Act. What they did not do was this; they did not add up or tally the number of votes involved or affected and their impact on the overall result of the Election against the interest of the Petitioners. Learned Petitioners Counsel in his address did an analysis of those total number of votes. His address is not evidence or pleading and can never metamorphosize into same or take its place. See **Lateef Adegbite & Anor. Vs. Aminu Amosu (2016) LPELR – 40655**. See also **Nwanosike & Anor. Vs. Udenize & Anor. (2016) LPELR – 40505 CA**.

In the case of **Adeyeye Vs. Oduoye & Ors 2010 LPELR 3623 CA**, the Court in the above regard has this to say:

> "*In the instant case, Appellant pleaded malpractices and instances of alleged non compliance with the Electoral Act but no evidence was led at the Tribunal to show the effect on the outcome of the election. The figures given by the Appellant's Counsel in his address at the Tribunal and in his brief cannot be substitute for pleadings and or evidence. See Buhari Vs. Obasanjo (2005) All FWLR Part 258 page 1604 at 1731 para E. The finding of the Tribunal that there is no compelling evidence before it that those breaches are substantial to justify vitiating the election and the result declared in the Senatorial District is therefore not perverse but apt.*"

On the allegations of non compliance with Electoral Act 2022, which the Tribunal had earlier highlighted as pleaded and evidence led by PW2 – PW6 in their evidence in chief and under cross examination, it is trite law that where the ground upon which an election Petition is brought is civil in nature, the standard of proof required is on the preponderance of evidence and/or balance of probabilities. Such a Petitioner must succeed on the strength of his case and not on the weakness of his opponents case. See **Ucha & Anor. Vs. Elechi & Ors. (2012) LPELR – 7823 (SC)**. See also **PDP Vs. El-Sudi & Ors. (2015) LPELR-26036 (CA)**.

All the INEC Forms put in evidence by the Petitioners, which are employed in the election at hand, are CTCs which under section 146(1) enjoy the presumption of genuineness. See also **Udom Vs. Umana (2016) 12 NWLR (Pt. 1526)…… CA**. On the face of them they bear INEC Certification marks,

It has been held that election results declared by INEC enjoy the presumption of regularity, which is not rebuttable by mere presumptions, postulations or rhetorical questions but only by cogent credible and acceptable evidence. See again **Udom Gabriel Emmanuel Vs. Umana Okon Umana 2016 40037 SC**.

In **Nyesom Vs. Peterside & Ors. (2016) LPELR – 40036 (SC)**, the court held that such results declared by INEC are *prima facie* correct, hence the *onus* is on the Petitioners to prove otherwise. Thus, Exhibits 1 – 9 in this case enjoy the presumption of regularity and correctness.

A bit needs to be said about the said documents, Exhibits 11(1) – (11), 12 (1) – (11) and 13 in the wake of the pleadings of the Petitioners with regard to the tables at paragraph 19 of the petition where the various wards and units that the Petitioners have grouse with the conduct of the election are pleaded. A lot of those complaints therein reveal non accreditation with BVAS, accredited voters with BVAS being far less than those who voted, which in law is evidence over voting, are part of the main issue in contention. It is trite that when it comes to accreditation of voters the onus of proving that there was no accreditation of voters is on the party complaining that there was none. See **Martins & Anor Vs. Nicholas & Ors, 2015 LPELR – 52102 CA**. Thus, in this case, it is the Petitioners that carry the weight of proving there was no accreditation and that there was over-voting.

It has also been settled in **Oyetola & Anor. Vs. INEC & Ors 2023 LPELR – 60392 SC** that the BVAS device and the voters register are the veritable tools to prove accreditation and over voting vis-à-vis the results from the polling units in Form EC8A(I). It must be stated right away that none of the PW2, PW3, PW4, PW5 or PW6 (the 1st Petitioner himself) could speak to any of the documents, e.g. Exhibits 2(1) – (12), i.e the voters egister for Warri South Local Government Area, as they were not involved in making any of them or signing them.

Exhibit 3, the BVAS report for the same Local Government Area and Exhibit 11(1) – (11), i.e Form EC8A(1) for the Local Government Area; none of the said witnesses was a polling agent who could give evidence as to what happened in each polling unit in respect of those exhibits. Some of these witnesses were ward agents and one was a

registered voter. The 1st Petitioner himself had no nexus with the documents. They were not polling unit agents who could account for the state of affairs st the polling units which constituted non compliance.

In the case of **Usman & Anor. Vs. Jubrin & Ors 2019 LPELR 48792 CA** the Court held thus:-

> "Where a Petitioner complains of non compliance with the process of the Electoral Act, he has a duty to prove the non compliance polling unit by polling unit……..It is therefore physically impossible for one person to have supervised the election in ten polling units given the fact that witnesses are to be called from each polling unit…….There is no evidence indicating or given reasons why the agents are not called or available……The failure of the appellants to call their polling agents as witnesses was proved detrimental to their case. It left their case bereft of any proof whatsoever."

See also **Emmanuel Vs. Umana supra , Ucha Vs. Elechi 2012 3 SC Pt. 1 Pg. 26**.

It is now cast in stone that for non compliance of the Electoral Act in an election to torpedo the outcome of such an election such non compliance must change substantially the result. See **Yusuff & Anor. Vs. George & Ors. (2019) LPELR – 48662 CA, Yahaya & Anor. Vs. Dankuranbo (2016) LPELR – 48364 SC**

In Adeyeye's case (supra), Fasanimi JCA, similarly had the following to say:

> *"A party relying on documents in proof of his case must specifically relate each of such documents to that part of his case in respect of which the documents is being tendered. Tendering exhibits alone without issue is not sufficient for the Court to ascribe evidential value to exhibits. Appellant failed to plead and prove by credible*

> *evidence the particulars of the inflated votes and show that if the inflated figures were deducted from the votes credited to their opponent the result will change in his favour"*

The Petitioners in this case failed in the above regard.

On the issue of who scored the majority of votes cast at the election, it is trite that where a Petitioner is contesting that the person declared by INEC as winner of an election did not win with the majority of the votes cast, he must plead the particulars of the result of polling stations which he would want the Tribunal to nullify out of the votes attributed to the winner that has been declared.

In **Nadabo Vs. Dubai 2011 7 NWLR Pt. 1245 155, 177**, the Court of Appeal put it most succinctly this way when it held:

> "*when a Petitioner is alleging that the respondent was not elected by the majority of lawful votes, he ought to plead and prove that the votes cast at the various polling stations, the votes illegally credited to the "winner", the votes which ought to have been credited to him and also in order to see if it will affect the result of the election. When this is not done, it will be difficult for the Court to effectively address the issue*".

This Tribunal adopts *intoto* the above decision and further adopts its consideration, reasoning and finding just reproduced when dealing with the lack of proof by the Petitioners of the ground of non compliance with the provisions of the Electoral Act, 2022 in this petition. The petitioners' counsel's study and analysis of votes credited in his address is of no consequence,/not amounting to evidence.

On the issue of the presentation of forged, NECO certificate which Petitioners alleged bear a name which is not that of the 3rd Respondent which certificate the 3rd Respondent presented to INEC with his personal particulars Form EC9. The Petitioners at paragraph 26 of the petition aver as follows:

26. The Petitioners also state that the 1st Respondent, as at the time of the said election was not qualified to have contested the said election and ought to have been disqualified for providing a forged Senior Secondary School Certificate result to the 1st Respondent.

In paragraph 13(c) of the petition, the Petitioner pleaded as follows:

13(c) The 3rd Respondent, at the time of the election, was not qualified to contest the election - Section 134(1)(a) of the Electoral Act 2022 (as amended).

The Petitioners claim the 3rd Respondent presented a forged certificate in violation of section 66(1)(i) of the Constitution of 1999 (as amended).

Section 66(1)(i) of the Constitution provides;

(1) "*No person shall be qualified for election to the Senate or the House of Representatives if -*

.....

(i) has presented a forged certificate to the Independence National Electoral Commission."

We reiterate at this stage, that the language in the averment in paragraph 26 of the petition is the phrase "*provided a forged Senior Secondary School Certificate Result to the 1st Respondent*."

The further assertion of the Petitioners is that the 3rd Respondent's Form EC9, i.e Exhibit 4, submitted to INEC in 2022 upon his nomination as the candidate of the 2nd Respondent bore false information in the Form EC9. Learned senior counsel's submission, we repeat, is that this is a pre-election matter being a challenge to the entries in Form EC9 which ought to have been litigated within 14 days of when the complaint arose and is caught by the statute of limitation, citing section 285(a) of the 1999 Constitution (as amended) and also citing section 29 of the Electoral Act which provides –

"29(5) Any aspirant who participated in the primaries of his political party who have reasonable grounds

> to believe that any information given by his political party's candidate in the affidavit or any document submitted by that candidate in relation to his constitutional requirements to contest the election is false, may file a suit at the Federal High Court against that candidate seeking a declaration that the information contained in the affidavit is false.

The Court of Appeal in the case of **Udeagha V Omegara (2010) 11 NWLR** distinguished the differences between the provisions of the now section 29(5) of the Electoral Act 2022 (then section 32(5) of the Electoral Act 2006) and the provisions of section 66 and 106 of the 1999 Constitution. The Court held –

> "*It is clear that the Electoral Act 2006 provides that a candidate is given the opportunity to scrutinize the personal particulars of an opponent as soon as it is received and published by INEC. After the scrutiny, an opponent who has grounds to believe that any information given to INEC is false may file a suit at the State or Federal High Court against a candidate seeking a declaration that the information in the affidavit is false. That should be done before the election is held. I agree with the respondents that the provision is different from the incidents of non-qualification provided for by S. 66 and S. 106 of the 1999 Constitution which should be tried by Election Petition Tribunal…. The Truth of the matter is that the issue of false declaration in nomination forms arises before the election and the Electoral Act says the State High Court or Federal High Court has jurisdiction. This was actually to prevent a situation in which an obvious perjurer is allowed to contest the election. The person may not have fallen under any of the incidents of non-qualification provided by the Constitution but may have given false information*

i.e regarding extent of educational qualification, false local government origin, extent of financial interest etc. all these are supposed to be determined before the election actually takes place. This is different from the circumstances which can enable a party present a petition on the ground provided under S. 145(1) of the electoral Act."

It must also be observed that litigation pursuant to section 29(5) of the Electoral Act 2022 is only open to an aspirant who is of the same party as the candidate. In this case, what the Petitioners are challenging on this issue is not just the false information in Form EC9 but they are alleging that the said NECO certificate presented is a forgery for bearing the name of another person, not being the name of the 3rd Respondent who presented same to INEC.

The Tribunal is of the view that the Petitioners have well situated this ground under section 66(1)(i) of the Constitution. Thus, this has jurisdiction to adjudicate on the matter and with due respect to the learned senior counsel to 3rd Respondent, his objection on that issue is overruled.

Now to the nitty gritty of the issue, what exactly is this NECO certificate complained about? What are the features therein which make it a forgery? What is the implication of the 3rd Respondent presenting same to INEC within the circumstances of this matter as can be gleaned from the facts in issue.

Forgery is defined to mean – "*the act of making a false document or altering a genuine one for same to be used*." See Blacks Law Dictionary 8th Edition. See also **Joe Odey Agi SAN Vs. PDP & Ors. 2016 LPELR – 42578 SC**.

The burden of proof in cases of this nature rests squarely on the shoulder of the person who alleges same upon the evergreen principle of law that he who asserts must prove. See **Senator Ali Modu Sheriff & Anor. Vs. PDP 2017 LPELR – 41805 CA**.

In the case of **Maihaja Vs. Daidam 2017 LPELR 42 474 SC** the Supreme Court held that in a case of allegation of certificate forgery, it is crucial to prove – (1) the existence of a document in writing; (2) that the document or writing was forged; (3) that the forgery was by the person being accused; (4) that the party who made it knew that the document or writing was false; (5) the party allegedly intended the forged document to be acted upon as genuine.

Certain facts at this point need to be brought into the fore with respect to the documents in question and the surrounding evidence –

1. The only grouse the Petitioners have with this document is that the name thereon does not tally completely with all the names the 3rd Respondent filled in his Form EC9 submitted to INEC vis-à-vis the said forged NECO certificate.
2. With the said Form EC9, the 3rd Respondent also submitted to INEC Bachelors and Masters Degree Certificates.
3. The National Examination Council, (NECO), the issuing body of this result have not in this petition said the genuineness or authenticity of the said certificate is in doubt or confirmed.
4. There is no other person apart from the 3rd Respondent who has shown up in this petition to lay claim to the said certificate as his/hers.

Exhibits 18(1) and (2) being affidavit sworn to by the 3rd Respondent seeking to claim he bears all the names in the NECO certificate truly and his other names was not frontloaded with the 3rd Respondents Reply to the petition. Election matters are *sui generis*, arguments that they were pleaded do not fly in election petition matters being in contravention of paragraph 4(5) of the First Schedule to the Electoral Act. This Tribunal discountenances it.

The 3rd Respondent's position that the said certificate belongs to him and that he also bears all the names in the said certificate have been pleaded and evidence so led outside Exhibits 18(10 and (2) and has not been contradicted or controverted by an iota of evidence in this Petition. The issuing body who issued the certificate have not said it was a forgery or that the 3rd Respondent is not the person they issued it to. It has been

held that the issuing institution must have disclaimed the said certificate. See **Muhammed V. Wamako (2018) 3 NWLR (Pt. 1619) 54**.

The Petitioners' counsel had contended that once there is a challenge to the genuineness of the certificate, it behoves on the person i.e 3rd Respondent in this petition to provide evidence of his genuineness. This with respect is not how allegations are proved. The pleadings of the Petitioner that the NECO certificate presented in Exhibit 4 is a forgery can never crystallize into evidence. The Petitioners who assert it is a forgery must lead credible evidence that it is. See **Maihaja's case (supra)**. The Petitioners have not done that! Even if the 3rd Respondent was completely silent on the said NECO certificate, the burden of proof by evidence of it being a forgery still is on the Petitioners In this case, there is neither evidence from the Petitioners establishing the said certificate is a forgery nor that the 3rd Respondent presented same to INEC knowing or believing so to secure an advantage.

Learned senior counsel to the 3rd Respondent had addressed the Tribunal contending that since the 3rd Respondent had Bachelors and Masters Certificate, the NECO Certificate is of no consequence and the 3rd Respondent did not need to forge any NECO Certificate when he also had his WAEC Certificate. To this, the Petitioner's Counsel submitted that the above is of no moment as what the law frowns at is its presentation at all, it need not have benefitted the presenter of the certificate.

It is the position of the law that every offence committed (every crime) is constituted with the physical element (actus reus) and the mental element (mens rea). In this case, the Tribunal cannot see any mental element why a candidate with a University certificate would decided to forge a NECO Certificate. It truly makes no sense! Indeed, the mental element for the 3rd Respondent to commit forgery or present a forged NECO certificate knowing it to be forged is negated on the above circumstances.

The Petitioners have made fair weather with respect to the names on the said NECO certificate which carry some names not in the 3rd Respondent Form EC9. In the absent of any adverse claim to the names on the said certificate or the certificate itself, what then in law is the import of the said name.

In the case of **Olokun Vs. Aiyelabegan 2004 2 NWLR, Pt. 888 504 at 520**, Onnoghen JCA (later CJN as then was) held:

> *"To me a name is what one is known by or one calls himself/herself and can even be changed. It can be a pet name etc:."*

At the risk of being repetitive, in this petition there is no adverse claim to this NECO certificate or the said names that the 3rd Respondent has owned as his. The Tribunal finds that not only is it not proved that the said NECO certificate is a forgery, it has also not been proved that when it was presented it was a forgery or sought to be passed off for benefit as such.

In the light of all of the foregoing, the Tribunal finds that the Petitioners have not been able to prove their entitlement to any of the relief sought in this petition. The Tribunal adopts all its above consideration and findings with respect to all other issues for determination, which has been resolved in favour of the Respondents.

With regard to the reliefs sought in the final analysis, in the light of all of the foregoing, the Petitioners, the Tribunal reiterates, have not been able to establish their entitlement to any of the reliefs they seek. They are dismissed as the petition itself is dismissed in its entirety.

Cost assessed at ₦500,000.00 against the Petitioners and in favour of each of the 2nd and 3rd Respondents only.

Hon. Justice Catherine Ogunsanya
(Chairman)
09/09/2023

Hon. Justice Mas'ud Adebayo Oniye
Member I
09/09/2023

Hon. Justice Babangida Hassan
Member II
09/09/2023

APPEARANCES

Chief Ogbhenero Okoro with him A. M. Eruotor Esq., M. D. Ekpekurede Esq., O. Obriki Esq. for the Petitioners.

P. E. Benin Esq 1st Respondent.

Chief Robinson Ariyo Esq. with him P. O. Uguru Esq., D. J. Atotuomah Esq., B. M. Alabi Esq., Moses Otaru Esq. for the 2nd Respondent.

E. Ohwovoriole SAN with him O. S. Onoriose Esq., C. O. Okonkwo Esq., N. S. Akumazi Esq. for the 3rd Respondent.