

**IN THE NATIONAL AND STATE HOUSES OF ASSEMBLY**  
**ELECTION PETITION TRIBUNAL**  
**HOLDEN AT ASABA, DELTA STATE**

**PETITION NO: EPT/DL/SHA/22/2023**

**TODAY WEDNESDAY, 6<sup>TH</sup> 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. ELUAKA SUALEZE PAUL ..... PETITIONERS**  
**2. ALL PROGRESSIVES CONGRESS**

**AND**

**1. INDEPENDENT NATIONAL ELECTORAL  
COMMISSION (INEC) ..... RESPONDENTS**  
**2. PEOPLES DEMOCRATIC PARTY (PDP)**  
**3. ANYAFULU IFECHUKWUKWU BRIDGET**  
**4. LABOUR PARTY**  
**5. ODUKWE CLEMENT CHUKWUDI**

**JUDGMENT**

On the 18<sup>th</sup> of March, 2023, the 1<sup>st</sup> Respondent (INEC) conducted elections into the seat of the House of Assembly for the Oshimili South State Constituency of the Delta State House of Assembly.

The 1<sup>st</sup> Petitioner contested the said seat having been duly sponsored by the 2<sup>nd</sup> Petitioner (APC). The 3<sup>rd</sup> Respondent also contested for the same seat under the platform of the 2<sup>nd</sup> Respondent (PDP). The 5<sup>th</sup> Respondent on his part also contested the same election having been sponsored by the 4<sup>th</sup> Respondent (Labour Party).

At the end of the election, the 1<sup>st</sup> Respondent (INEC) declared the 3<sup>rd</sup> Respondent the winner of the election vide Form EC8E(1) and credited the candidates who contested the election with the following votes;

1. Agu Ogochukwu Princess	01
2. Okoh Chukwuebuka Promise	33
3. Ojeh Emeka	38
4. Eluaka Sualeze Paul	3,118
5. Umana Eugene	225
6. Ogbonna Chidi David	26
7. Agbapuonwu Felicia	08
8. Odukwe Clement Chukwudi	13,342
9. Awodu Joseph Chiagor	17
10. Anyafulu Ifechukwukwu Bridget	21,164
11. Nwosa Emeka	10

The Petitioners however contend in this petition at paragraph 8 thereof that there was no lawful election held in respect of the said seat in Oshimili South Local Government Area, Delta State on 18/03/2023 or any other date thereafter. The grounds upon which petition is found are as contained in subparagraphs (a)(b) and (c) of paragraph 14 of the petition, to wit;

1. The 3<sup>rd</sup> and 5<sup>th</sup> Respondents were at the time of the election not qualified to contest the election. (Section 134(1)(a) of the Electoral Act, 2022 and section 134(3) of the Electoral Act, 2022 (as amended - sic).

ALTERNATIVELY:

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

ALTERNATIVELY:

3. The 3<sup>rd</sup> 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 2023 (as amended - sic).

The facts pleaded upon which the petition is based in relation to the above grounds can be summarized as follows:-

The 3<sup>rd</sup> Respondent at the time of the election was still serving as a Commissioner in the Delta State Executive Council and did not resign her appointment in that regard in accordance with section 84(8) of the Electoral Act 2022, as amended, and in line with the Constitution of the Federal Republic of Nigeria 1999 (as amended). It is the further position of the Petitioners that at the time the 3<sup>rd</sup> Respondent contested the election, it was still a period within the last 10 years preceeding her conviction of an offence having fraud and/or dishonesty as part of its ingredients and the Petitioners intend to rely on a judgment and proceedings in respect of the said criminal charge upon which the 3<sup>rd</sup> Respondent was convicted.

With regard to the 5<sup>th</sup> Respondent, it was contended by the Petitioners that he did not participate in all the stages of the election having not been validly sponsored by the 4<sup>th</sup> Respondent (Labour Party).

On the facts supporting the ground of non compliance, the Petitioners averred that on 18/3/2023 which is the date the purported election was held to fill the seat, there was breach of the provisions of the Electoral Act 2022 and all other enabling laws on that behalf, in all the 11 Wards of the Oshimili South State Constituency of Delta State. The 1<sup>st</sup> Respondent (INEC) employed the use of BVAS Machines for accreditation of voters and in respect of the said election the figures which the BVAS machines accredited in the various 11 Wards are as follows;

1. In Ogbele/Akpako	864
2. Anala-Amakom	929
3. Okwe	1724
4. Umuezei	2326
5. Umuaji	3118
6. Umuonaje	2032
7. Umuagu	2450
8. Ugbomanta Quarters	1614

9. West End	7178
10. Cable Point 1	2157
11. Cable Point II	1899

With a total of 26,289 as the number of accredited voters in BVAS and 39,122 number of voters recorded in Form EC8C. As a result of the above state of affairs, there was over-voting in the said election which reflected in a 12,833 vote difference hence the election was invalid by reason of corrupt practices/or non compliance with the Guidelines and other relevant laws. It was contended that for there to be no rigging or irregularity the following must occurred –

- i. Number of voters verified by BVAS must tally or agree with the number checked in the register of voters;
- ii. Number of used ballot papers cannot be more than the number of accredited voters and/or number of registered voters;
- iii. Number of ballot papers issued to the polling unit must be equal to the addition of used and unused ballot papers;
- iv. Number of total valid votes must be the same as the sum total of all scores by parties in the election;
- v. The number of spoilt ballot papers plus the number of rejected ballot papers and the number of total valid votes scored by all the parties in the election must be equal total number of used ballot papers in the election;
- vi. The number of votes cast must not exceed the number of accredited voters;
- vii. The number of votes cast must not exceed the number of registered voters;
- viii. The number of votes cast must not exceed the number of voters accredited;
- xi. All the columns in the EC8A(1) must be properly filled;
- x. There must be no alterations in any of the entries in the columns of EC8A(1) and if there is, it must be signed or initialized by the Presiding Officer;

xi. Total number of used and unused ballot papers must not exceed the number of ballot papers issued to the polling unit.

25. Total number of registered voters, accredited voters, ballot papers issued and total votes cast must not exceed the total number of Permanent Voter Card (PVC) collected in a particular polling unit.

In the election, it was averred that the officials of 1<sup>st</sup> Respondent (INEC) who conducted the election into the said seat did not comply with the INEC Guidelines and Manual for the Elections 2023 neither did Respondents comply in the following regard to wit; the 1<sup>st</sup> Respondents officials/agents unlawfully and wrongfully computed votes to the advantage of 2<sup>nd</sup> – 5<sup>th</sup> Respondents in respect of wards 2 and 3, with the vote of APC reduced to 11 from 12 votes in Ward 3 unjustifiably. Furthermore the polling unit result sheet for Units 23 and 30 in Ward 7 of the said Local Government were undated and unsigned and do not bear the name of the presiding officer and for polling units 003, 023, 30 respectively votes were entered for APC, Labour Party and PDP but they contain several anomalies as pleaded in paragraph 31 Table 3 at page 12 of the Petition and that the votes of the said Units 3, 23, 30 of Ward 1 ought to be deleted and deducted as unlawful vote wrongly added.

It was averred that the scores hereunder represent the state of votes of the parties;

- a. APC: 3,118 (final declared score) + 1 (wrongly deducted vote of APC in Ward 3 Unit 3) = 3,119 – 24 (tainted votes) = 3,095
- b. LP: 13,342 (final declared score) – 71 (tainted and wrongly added votes LP in EC8B(1)) = 13,271
- c. PDP: 21,164 (final declared score) – 109 (tainted and wrongly added votes LP in EC8B(1)) = 21,055

it was contended that the 1<sup>st</sup> Respondent ought to have cancelled the election in all polling units where there was overvoting i.e where there were more votes than number of those accredited and that in this case instead of the Ward collation officer to enter

the result as entered in Form EC8A(1) into Form EC8B(1) as it is, he went ahead to alter the figures in Form EC8A (1) which he has no power to do.

There was overvoting in Ward 010, 011, 012, 013 as revealed in the BVAS report.

A total number of 4,363 registered voters in Ward 01 Unit 003, 007, 008, 009, 010, 011, 012, 013 were affected by overvoting.

It was contended that when the total number of accredited voters in a polling unit exceed the total number of voters cast in that polling unit, 1<sup>st</sup> Respondent (INEC) ought to cancel the election in such affected polling units where over voting has occurred and conduct another poll there to determine the winner of the election.

The Petitioners pleaded all the polling Units in Ward 2, Ward 3, Ward 4, Ward 5, Ward 6, Ward 8, Ward 9, Ward 10, Ward 1 which were affected by over voting and which results ought to have been cancelled for over voting by the 1<sup>st</sup> Respondent (INEC) and another poll conducted in the said units. It was stated that all in all there is a difference of 45,372 votes which affected its outcome and as a result the said 45,372 registered voters ought to determine the actual winner of the election in Oshimili South Local Government Area and the number is substantial enough to determine the actual winner of the election. It was further contended that the said election was characterized by act of thuggery, ballot box snatching intimidation of voters by agents and thugs of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents, inflation and reduction of figures in favour of 2<sup>nd</sup> and 5<sup>th</sup> Respondents, assault and battery causing grievous bodily harm to agents of the Petitioners. There was also non use of BVAS for accreditation, alteration and falsification of scores and ballot box stuffing by agents of 2<sup>nd</sup> – 5<sup>th</sup> Respondents all of which the 1<sup>st</sup> Respondent is aware of as the 1<sup>st</sup> petitioner notified the 1<sup>st</sup> respondent in writing of same.

The Petitioners also contended there were no election in three polling units in Okwe Ward 3 as a result of which 2,165 registered voters could not vote.

In all a total of 47,612 registered voters were affected by all the non compliance with the relevant laws, hence the election was inconclusive and was a sham. It was not conducted in line with the Electoral Act and other Laws.

It was also pleaded that there are inconsistencies/falsification of score for the parties in Forms EC8B(1), EC8C(1) and EC8E(1) which does not represent the actual votes scored and recorded in Forms EC8A(1) series in all the said affected units.

It was then stated that the total number of registered voters in the units in the Local Government Area where election did not hold and where elections ought to have been cancelled due to overvoting is in far excess above the number of votes which the 2<sup>nd</sup> and 5<sup>th</sup> Respondent have over the Petitioners. In other words, the margin of lead is less than the number of Registered voters in the affected polling units hence another election ought to have been conducted in all the polling units cancelled and the election ought to have been declared inconclusive until the said new polls were conducted. It was again contended that voters who collected PVCs are more than the margin of lead.

It is against the above background of the grounds upon which the Petition is found and facts pleaded in sustenance of those grounds that the 2<sup>nd</sup> Respondent with their Reply to the Petition filed on 4/5/2023 filed a Notice raising a Preliminary Objection to the Petition seeking a dismissal or striking out of the petition in whole or in part on the following ground;

1. *The three grounds upon which the petition was predicated are incompetent for lacking averments in support of those Grounds which are contradictory, lack of clarity, nebulous, generic, disconnected and unrelated to the said Grounds.*

The 3<sup>rd</sup> Respondent also filed a Notice dated 25/5/2023 by which an Objection was raised to the competence of the Petition and the jurisdiction of the Honourable Tribunal to entertain same seeking a striking out or dismissal of the Petition in its entirety on the following grounds and facts to the effect that since 4<sup>th</sup> and 5<sup>th</sup>

Respondent did not win the election at hand they are not competent parties within the purview of Section 285(1)(b) of the Constitution and that the Petition is defective as joint allegations have been made in the Petition against the 3<sup>rd</sup> and 5<sup>th</sup> Respondents.

A combined reading of the Addresses of counsels on the above reveal the following, to wit; in the written address accompanying the Application it was submitted on the sole issue for determination that the Electoral Act 2022 does not envisage two losers suing each other nor is it lawful to make allegations against two persons whom the Court has no power to surgically separate, citing Section 133 of the Electoral Act as to who statutory Respondents are in a Petition. The decision in **Buhari & Anor. Vs. Yusuf & Anor. 2003 LPELR – 812 SC pgs 29-30 paras B-B and the case of Buhari & Ors. Vs. Obasanjo & Ors. 2003 LPELR – 24859 SC Pgs. 15-16 para B and similarly Ize-Iyamu Vs. ADP & Ors. 2021 LPELR – 54293 CA Pg. 53 Para. D-F** were commenced to the Tribunal in the above regard amongst other authorities.

The Tribunal was urged to strike out the names of the 4<sup>th</sup> and 5<sup>th</sup> Respondents contending that the slightest non compliance with a procedural step in an Election Petition unlike in regular civil proceedings is fatal.

It must be placed on record at this stage that the 4<sup>th</sup> and 5<sup>th</sup> Respondents did not take part in the pre hearing session despite the fact there is proof that their Counsel who prepared their Reply to the Petition was served with hearing notice for pre hearing session held on 1/6/2023.

To this, Learned Petitioners Counsel urged the Tribunal to invoke the provisions of paragraph 18(11)(b) of the 1<sup>st</sup> Schedule to the Electoral Act 2022 and enter judgment against the 4<sup>th</sup> and 5<sup>th</sup> Respondents in favour of the Petitioner. The Tribunal decided to rule thereon in its judgment in this Petition.

It is also imperative to state that the 2<sup>nd</sup> Respondent never moved the Preliminary Objection embedded in their 2<sup>nd</sup> Respondents



Reply to the petition filed on 4/5/2023. In law it is deemed abandoned. See Paragraph 47(1) of the First Schedule to the Electoral Act 2022. See **Union Bank of Nigeria Vs. E.D. Emole (2001) LPELR-3392 SC**.

The response of the Petitioners vide their process filed on 30/5/2023 in response to the 3<sup>rd</sup> Respondent application and Objection filed on 25/5/2023 is that by the provisions of paragraph 49 of the First Schedule to the Electoral Act 2022, two or more candidates may be made Respondents in the same Petition moreso as the Petitioners are making allegations against them in relation to 5<sup>th</sup> Respondent who placed 2<sup>nd</sup> in the Election and if not joined becomes the winner where the petition succeeds, further more the 4<sup>th</sup> and 5<sup>th</sup> Respondents have not complained of being joined. The 3<sup>rd</sup> Respondent is an interloper in this issue.

The above position was also the trend of the Petitioner's arguments in the written address filed with the counter affidavit. The decision in **Jite Vs. Okpolor 2016 2 NWLR Pt. 1497 542** was commended to the Tribunal on the issue that who the Petitioners join as Respondents is not the 3<sup>rd</sup> Respondent's business since he is from another party and that in law where allegation are made against another person the person should be joined, citing **Buhari Vs. Yusuf (supra)** and **Ibrahim vs., Shagari 1983 LPELR – 1412 SC Para 49** and other authorities. Petitioners contended that the 3<sup>rd</sup> Respondent having already taken steps in this Petition cannot now complain.

The Petitioners further contended that Learned Counsel who swore to the affidavit in the 3<sup>rd</sup> Respondents application is also in the legal team defending this Petition and by that affidavit containing contentions issues the law does not allow the Counsel Temi Binitie to wear two caps.

Resolution of Issues argued in the application/Preliminary Objection filed on 25/5/2023 and 4/5/2023 respectively.

This Tribunal by its rulings in other Petitions had laid to rest, the position of the law on the propriety where Counsels swear to

affidavit in matters concerning their clients and under what circumstances it is permissible. We restate same now. There is no Rule of Professional Ethics for Legal Practitioners that forbids a Counsel from deposing to an affidavit in matters concerning his clients. However, such conduct has been held to be undesirable given some circumstances. In **Musa Vs. AG Taraba State & Anor. 2014 LPELR – 24183 CA** the Court put it this way:

*"Now while it is not ordinarily wrong for a Counsel to depose to affidavit on behalf of his client in a very routine and non contentious application before the Court. It is in my view not advisable for Counsel to do so in matters of facts which are purely within the personal knowledge of his client....."*

See also **African Timber & Plywood Nig. Ltd. & Ors. Vs. Ojodu & Anor. 2013 LPELR – 21013 CA.**

In this application, the averments in the affidavit in support of this application contain issues of law. The Tribunal finds that the said Counsel who swore to the said affidavit cannot be said to be in any jeopardy of contravening the Rules of professional of the Legal Profession. We so hold.

Now to the issue as to whether the 4<sup>th</sup> and 5<sup>th</sup> Respondents are necessary and competent parties in this Petition.

Section 133(2) and (3) of the Electoral, Act 2022 provides –

133(2) "A person whose election is complained of is, in this Act, referred to as the respondent

(3) If the Petitioner complains of the conduct of an Electoral Officer, a presiding or returning officer, it shall not be necessary to join such officers or persons notwithstanding the nature of the complaint and the Commission shall, in this instance, be –

(a) made a Respondent; and

(b) deemed to be defending the Petition for itself and on behalf of its officers or such other persons.

Paragraph 49 of the First Schedule to the Electoral Act provides –

“Two or more candidates may be made Respondents to the same Petition and their case may, for the sake of convenience be heard at the same time but for all purposes (including the taking of security) the election Petition shall be deemed to be a separate petition against each of the respondents.

The Supreme Court in **APC Vs. Uduji (2020) 2 NWLR (Pt. 1706) 541 Pg 570 - 571 SC** adjudicated on the purpose of joinder in a suit enumerating the various considerations which come into play in joining a party and also stated the different classification of parties as follows;

- a. Proper parties , who are those who, though not interested in the plaintiff’s claims, are made parties for some good reason;
- b. Desirable parties who are those who have an interest or who may be affect by the result;
- c. Necessary parties, who are those who are not only interested in the subject-matter of the proceedings but also who, in their absence, the proceedings could not be fairly dealt with;

The questions which the Court must ask itself are –

- a. Is the cause or matter liable to be defeated by the non-joinder?
- b. Is it possible for the court to adjudicate on the cause of action set up by the plaintiff unless the third party is added as a defendant?
- c. Is the third party a person who ought to have been joined in the first instance?
- d. Is the third party a person whose presence before the court as defendant will be necessary in order to enable the court to effectually and completely adjudicate or settle all the questions involved in the cause or matter?

Umar JCA in **APC Vs. ADP & Ors. (2012) LPELR – 54280 CA** answered the question who can be a Respondent in an election petition thus;

*“..... It is evident that there are two sets of parties statutorily provided for, that may be joined as Respondents to an Election Petition. These parties are (1) An individual, whose election is complained of i.e the winner of the election; (2) The other is the Independent National Electoral Commission i.e the body statutorily empowered with the conduct of the election in Nigeria .....*”

In applying the above provisions of the law and decided authorities to the case at hand, the following must be brought to the fore as can be gleaned from the Petitioners Response explaining the reasons for joining the 4<sup>th</sup> and 5<sup>th</sup> Respondents in this petition as follows;

1. The 5<sup>th</sup> Respondent from the results of the elections declared scored the second highest number of votes cast.
2. Where the Petitioners are granted by this Court the relief disqualifying the 3<sup>rd</sup> Respondent on any of the grounds of the Petition, the 5<sup>th</sup> Respondent shall come into relevance in consideration for whom to be returned as winner of the election in view of 1 above, hence he ought to be made a party.
3. The Petitioner by the Petition also contests the qualification of the 5<sup>th</sup> Respondent to contest the said election.

The rationale of the Petitioners in 1, 2 and 3 bears some consonance with the Law and common sense. The provision of the Electoral Law 2022 which is relevant to the Petitioner’s rationale above in law and in fact is Section 136(2) and (3) of the Electoral Act 2022 which provides;

136(2) Where an Election Tribunal or Court nullifies an election on the ground that the person who obtained the highest votes at the election was not qualified to contest the election, the Election Tribunal or Court shall declare the person with the second highest number of valid votes cast at the

election who satisfied the requirements of the Constitution and this Act as duly elected:

Provided that the person with the second highest number of valid votes cast at the election remains a member of the political party on which platform he contested the election otherwise, the candidate with the next highest number of votes in the election and who satisfied the same conditions shall be declared the winner of the election.

(3) If the Tribunal or the Court determines that a candidate who was returned as elected was not validly elected on the round that he did not score the majority of valid votes cast at the election, the Election Tribunal or the Court, as the case may be, shall declare as elected the candidate who scored the highest number of valid votes cast at the election and satisfied the requirements of the constitution and this Act.

This Tribunal in the above wise revisits the decision in **APC VS. Uduji (supra)** and is of the view that the 5<sup>th</sup> Respondent and his party the 4<sup>th</sup> Respondent to all intents and purpose are desirable parties in this Election Petition because 5<sup>th</sup> Respondent's need to be heard on the issue raised as to his non qualification to contest the Election at hand before the Tribunal can made a finding on this. The "audi alteram partem" rule comes into focus i.e "let the other side be heard". The right to fair hearing in our Constitution as it affects the need for 5<sup>th</sup> Respondent to be heard on whether he was qualified to contest the election out weighs any other Law or Guideline on Electoral matters. See *Kawuwa & Anor Vs. PDP 2016 LPELR – 40344 CA*, *Joe Odey Agi SAN & Anor Vs. PDP & Ors. 2016 LPELR – 42578 SC*.

Moreover the 4<sup>th</sup> and 5<sup>th</sup> Respondents have not complained in this application or anywhere else of being made parties in this Election Petition.

It must quickly be added that the joined defendants may apply to the Court to strike out their names for mis-joinder. See also **Okafor Vs. Nnaife (1978) 1 NMCR 245.**

The Electoral Act, 2022 is silent as the issue of the effect of mis-joinder or non joinder in a Petition i.e even if a mis-joinder has occurred, recourse shall therefore be made to the Federal High Court Civil Procedure Rules of 2019

By Order 14 Rule 1 thereof proceedings are not defeated by mis-joinder or non joinder. The Tribunal finds that the 4<sup>th</sup> and 5<sup>th</sup> Respondents are competent parties in this election.

The next issue for consideration is the non participation of the 4<sup>th</sup> and 5<sup>th</sup> Respondents in pre-hearing session and the applicability of the Provisions of paragraph 18(11)(b) of the First Schedule to Electoral Act, 2022 to their non participation.

Paragraph 18(11) (b) of the 1<sup>st</sup> Schedule to the Electoral Law provides;

“If a party or his Legal Practitioner fails to attend the pre-hearing sessions or obey a scheduling or pre-hearing order or is substantially unprepared to participate in the session or fails to participate in good faith, the Tribunal or Court shall in the case of –

(b) a respondent enter judgment against him.

In this petition, the reliefs sought against the 5<sup>th</sup> Respondent is at paragraph 97(c) of the petition filed on 8/4/2023 to wit:

C) AN ORDER disqualifying the 3<sup>rd</sup> and 5<sup>th</sup> Respondents from the election into the Delta State House of Assembly for Oshimili South State Constituency of Delta State in respect of the election which held on 18/3/2023.

In Election matters the issue of non qualification of a candidate can be a matter of law and of facts. The caliber of relief sought by the Petitioners against the 5<sup>th</sup> Respondent is declaratory. It is trite law that the burden of proof is on the Petitioner who seeks a declaratory relief. Such reliefs are not granted as a matter of

course and on a platter of gold. They are only granted when credible evidence has been led by the plaintiff or the person seeking the declaratory relief of his entitlement to it. See **Nyesom Vs. Peterside 2010 LPELR 40036 SC.**

Declaratory reliefs are never granted on the basis of admission weakness or even absence of defence from the adverse party, without evidence adduced to establish entitlement to same. See **Tarzoor Vs. Ioraer & Ors. 2015 LPELR – 25975 EA.**

Thus, this relief sought against the 5<sup>th</sup> Respondent by the petitioner cannot be pronounced upon at this time and this Tribunal cannot at this time invoke the said provision of paragraph 18(11)(b) of the 1<sup>st</sup> Schedule to the Electoral Act 2022 at this time without evidence of their entitlement to it. The Tribunal will pronounce subsequently on it.

For the purpose of qualification of the 5<sup>th</sup> Respondent to contest the election, he is a desirable party, for needs to be heard we stress, the petition is competent and not defeated for any form of mis-joinder.

Now to the petition proper, parties having exchanged pleadings and the pre-hearing session held where the following issues were settled for determination to wit;

1. *Whether Petitioners have been able to prove the grounds of the Petition.*
2. *Whether in the light of issue 1 being determined by the Tribunal whether the 1<sup>st</sup> Petitioner is entitled to the returned winner.*
3. *Whether in the light of issue 1 and 2 above, the Petition itself is competent.*

After which the parties presented their respective cases, some calling witnesses and tendering exhibits, while others exercising other options.

The live processes in this petition are as follows:-

1. The petition filed on 8/4/2023
2. The 1<sup>st</sup> Respondent Reply to the petition filed 4/5/2023.

3. 2<sup>nd</sup> Respondents Reply to the Petition filed 4/5/2023.
4. 3<sup>rd</sup> Respondent Reply to the Petition filed 29/4/2023.
5. Petitioners' Reply to 1<sup>st</sup> Respondent reply to Petition filed 12/5/2023
6. Petitioners' Reply to 2<sup>nd</sup> Respondent Reply to Petitioner filed on 12/5/2023
7. Petitioners' Reply to 3<sup>rd</sup> Respondent Reply to Petition filed 17/5/2023.

The 1<sup>st</sup> and 2<sup>nd</sup> Respondents did not call any witness in sustenance of their pleadings but relied on other evidence adduced in this case.

In law, their pleadings cannot metamorphosize in any dimension into evidence. See **Udo Vs. Ekpo & Anor. 2016 LPELR – 41383 CA, Enem Chukwu Vs. Okoye & Anor. 2016 LPELR 40027 CA** and thus the Tribunal need not set same out.

The 3<sup>rd</sup> Respondent's case as presented in her pleadings and evidence in support of same before the Tribunal can be summarized as follows –

The 3<sup>rd</sup> Respondent was the candidate of the 2<sup>nd</sup> Respondent (PDP) at the 18/03/2023 election into the Oshimili South State Constituency having been validly and duly sponsored by the 2<sup>nd</sup> Respondent. The said election was lawfully conducted in substantial compliance with the Electoral Act of 2022 and the Regulations and Guidelines for the Conduct of Election 2022.

At the end of the conduct of the election, the 3<sup>rd</sup> Respondent scored the majority of the votes cast in the election and was duly returned the winner of the said election.

The 1<sup>st</sup> Petitioner and the 5<sup>th</sup> Respondent also contested the said election on the platform of the 2<sup>nd</sup> and 4<sup>th</sup> Respondent respectively. The 3<sup>rd</sup> Respondent denies ever being convicted for any offence involving fraud or dishonesty in the last 10 years preceding the date of the election or any other period. It was further averred that the 3<sup>rd</sup> Respondent had on 01/03/2022, more than 30



days before the said election resigned her appointment as a Commissioner in the Delta State Executive Council.

During the election, BVAS machines were employed for accreditation. It was contended that the table the Petitioners had pleaded at paragraph 22 of the petition is faulty and wrong and do not represent or reflect the correct state of the election since INEC has the discretion to use other alternative means or device for accreditation, including manual registers which must be reconciled with the BVAS machine and names of voters ticked on the said register with accreditation done at the polling unit level.

The result of the election was not affected by any non compliance with the Electoral Act. It was denied as untrue as contended in paragraph 30 of the Petition that votes were added to PDP (2<sup>nd</sup> Respondents) scores in Form EC8B(1) and if this ever occurred, it was due to genuine human error, though not conceded. It was further contended that the correction to polling Units 3 and 30 of Ward 7 in Table 3 was a correction to human error, which was duly authenticated and the agents of the 2<sup>nd</sup> Petitioner duly signed and that all votes recorded were the actual votes scored at the said election.

In denial of paragraph 33 of the Petition, it was stated that at the point of collation the Ward collation officer has the power to request presiding officers to correct obvious errors in the polling units results Form EC8A(1) in the presence of party agents. It was further stated that the contents of even Table 4 pleaded by the Petitioners vide paragraph 37 and 3C of the Petition are wrong and fictitious and not based on figures in Form EC8A(1).

The Petitioners did not plead the total number of voters who collected PVC so they are not entitled to a fresh election being conducted or cancellation of results. There was no over voting in the polling unit the Petitioners alleged and the accreditation figures in Table 6 and 7 pleaded therein are not correct and do not tally with the Voters Register.

It was contended that there was no over voting in Unit 17 and 18 Ward 3 where the Labour Party won election and the correction to the Form EC8A(I) for the said unit was countersigned by the Presiding Officer in the presence of 2<sup>nd</sup> Petitioners polling agent who witnessed the correction and duly signed same without any protest hence there is no basis to cancel the said results.

It was stated that all the contents of Table 10 pleaded in paragraph 48 of the Petition are also wrong as there was no over voting and all corrections in Form EC8A(1) for polling units 11, 12, 13, 14, 30, 31, 32, 34 of Ward 4 were due to human errors therein and which were duly counter signed by Presiding Officers.

The same goes for all the other polling units pleaded by the Petitioners in paragraphs 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63 which are being contested for being corrected due to human error or over voted alleged.

The 3<sup>rd</sup> Respondent denied incidence of multiple thumb printing or falsification of scores or ballot stuffing by 2<sup>nd</sup> and 3<sup>rd</sup> Respondent agents at the election. It was contended that it was the 3<sup>rd</sup> Respondent who scored the majority of the votes cast at the election with 21,164 votes with 5<sup>th</sup> Respondent coming second and the 1<sup>st</sup> Petitioner 3<sup>rd</sup> with just 3,118 votes.

The Petitioners having not stated the number of Registered voters who collected PVC's and number of PVC's collected, the paragraphs 74, 75 and 76 of the Petition are of no moment. Falsification or inconsistency in the scores of the political parties in Form EC8B(1), EC8C(1) and EC8E(1) were denied stating if the elections cancelled on the day of the election they are a minute fraction and far less than the number of votes which the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents scored over the Petitioners who scored 3,118.

It was contended that the margin of lead principle would not apply in this case and the difference between 3<sup>rd</sup> Respondents score and that of 2<sup>nd</sup> Respondent is a lot and cannot be made up for. The Respondent also contended the Petition is defective as the allegation against 3<sup>rd</sup> and 5<sup>th</sup> Respondents were lumped together.

The 3<sup>rd</sup> Respondent in her Reply to the petition denied all the state of affairs pleaded by the Petitioners in all the paragraphs and tables in the petition as to allegations of alterations of Results, over voting, non-voting, cancellation of results, change of scores, addition of votes etc. the 3<sup>rd</sup> Respondent averred it was the 3<sup>rd</sup> Respondent who won the election and the Petitioner came a distant third.

It was averred that it was the 5<sup>th</sup> Respondent who won the election and should had been declared the winner of the election. It must stated that they did not lead evidence to back up their pleading. The effect in law of this will be considered in due course.

The Petitioners called 13 witnesses and tendered exhibits in proof of the averments in their Petition, sustenance of the grounds upon which the Petition is founded and their entitlement to the reliefs they seek.

PW1 – PW11 gave evidence in line with the Petitioners pleadings as to the various misconducts amounting to non compliance with provision of the Electoral Act 2022 e.g. PW 1 stated the Petitioners votes were reduced from 12 to 11 in Ward 3. PW 4 and PW7 testified none of the polling units agents signed the results in their units and going round there was experience of alterations to the results, some results inflated in favour of PDP and Labour Party. PW8 gave evidence of the chaos, which occurred on the day of the election and that agents could not do their job. These witnesses identified individually the polling unit results for their respective wards which are part of Exhibits 1 – 20. The PW12 testified he was a victim of the mayhem that ensued on the day of the election i.e 18/3/2023 with him sustaining multiple injuries.

The PW13 was the 1<sup>st</sup> Petitioner himself his evidence in chief is on all fours with the averments in the Petition earlier summarized. He insisted the results declared did not reflect the will of the people and gave evidence of his experience of multiple voting by the 3<sup>rd</sup> Respondent's loyalists and carting away voting materials to Dubbin Hotel where election Results were entered with the 3<sup>rd</sup> Respondent there also.

Under Cross Examination, PW1, PW3, PW4, PW5, PW6, PW7, PW8, PW9, PW10 and PW11 testified they voted after accreditation with BVAS machine and Voters Register. They also as ward agents got reports from the polling unit agents under their wards. The 1<sup>st</sup> Petitioner (PW13) also testified he was accredited to vote on the day of the election and he voted.

The only witness for the 3<sup>rd</sup> Respondent was RW1 with the other Respondents exercising their option not to call witnesses.

The said RW1 gave evidence. He identified Exhibits 13 and 14 as part of the documents he relied upon. It is his evidence under cross examination that he voted on the date of the said election after accreditation with BVAS machines and voters register. He testified there was no incidence of violence on the day of the election which was conducted in substantial compliance with the Electoral Act, however under cross examination by Counsel to Petitioner he testified that it is true that in most polling units in Ward 1 the number of voters accredited by the BVAS machine is far less than the number of voters, he is also not a polling unit agent but much of his evidence is based on what the polling unit agents told him. The Respondents tendered no documents.

The Issues for Determination settled at Pre hearing Session are as follows;

1. Whether on the state of the Petitioners pleadings and totality of evidence adduced in proof of the Petition as it relates to the 3<sup>rd</sup> and 5<sup>th</sup> Respondents, the Petitioners vide the Petition have succeeded in sustaining/proving each or any ground upon which the petition is founded
2. Whether in the light of issue (i) above being determined by the Tribunal, the Petitioner is entitled to all the reliefs sought vide the Petition against all the Respondents.
3. Whether in the light of issue 1 and 2 above having been considered the Petition is competent.

Legal Arguments on Issues 1, 2 and 3

A communed reading of Learned Counsels representing the Respondents submissions on the above can be succinctly put as follows:-

It was submitted that the Petitioners have failed to present evidence to sustain their pleadings that the 3<sup>rd</sup> Respondent in the last 10 years preceding the election had been convicted of an offence with fraud or dishonesty as one of its elements hence Petitioners have not discharged their burden of proof.

The decisions in **Maihaja Vs. Gaidam 2018 4 NWLR Pt. 1610 Pg. 496** and **Eya Vs. Olapode 2021 11 NWLR 1259 at 505** were commended to the Tribunal submitting also that the Petitioner have abandoned the ground of qualification. See also **UBN Plc. Vs Emolt 2001 LPELR 3392 SC.**

On the issue of the qualification of the 3<sup>rd</sup> Respondent, it was the response of the Petitioners that since the 3<sup>rd</sup> Respondent had joined issues with the Petitioners by pleading that she indeed resigned as Commissioner more than 30 days before she contested the election it behoves on her to lead evidence in that regard having admitted she is a Commissioner and resigned on 01/03/2022 as has been pleaded. The provisions of Section 84(12) and (13) of the Electoral Act 2022 on the issue was commended to the Tribunal together with the decision in **Imena Vs. Robinson 1979 LPELR 1498 SC.**

In this case, petitioner submitted that the purported letter of resignation for the 3<sup>rd</sup> Respondent was frontloaded but was not put in evidence before the Court hence it is not evidence, citing **Unical Vs. Effong 2019 LPELR – 47976** and **Afor Lucky Vs. State 2016 LPELR – 40541 SC** where it was submitted that the Court was faced with a similar situation as in this case. It was contended that there being no evidence of resignation from her, she was not qualified to contest the election which is a post election matter also citing **Dangana Vs. Usman 2012 LPELR – 28012 SC** and **Girede Vs. INEC 2014 18 NWLR Pt. 143856.**

With respect to the 5<sup>th</sup> Respondent, it was contended that since 4<sup>th</sup> and 5<sup>th</sup> Respondents did not lead evidence as to 5<sup>th</sup> Respondents qualification to contest the election despite pleading same and 4<sup>th</sup> and 5<sup>th</sup> Respondents did not participate in this trial even pre hearing the Tribunal ought to invoke Paragraph 18(11)(b) of the First Schedule to the Electoral Act 2022.

It was contended that the burden is on 5<sup>th</sup> Respondent on the principle in law that he who alleges the positive must prove it to establish he was qualified, since it is the 5<sup>th</sup> Respondent alleging he was duly sponsored by 4<sup>th</sup> Respondent to run in the election citing **Zenith Bank Vs. Ato Properties Ltd 2019 LPELR – 47183 CA** amongst others and also citing the case of **Ogboru Vs. Uduaghem** that the above principle is applicable in election matters.

On the non compliance with the Provisions of the Electoral Act Counsel to 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents individually in the main submitted the Petitioners failed to lead credible evidence of such massive non compliance of a widespread nature which is capable of substantially altering the outcome of the election. Citing several authorities on this first including **Andrew & Anor. Vs. INEC & Ors. 2017 LPELR – 48518 SC, Buhari Vs. INEC & Ors. 2008 LPELR – 814 SC** amongst other.

It was also contended that polling unit agents who directly experienced the non compliance were not called as witnesses. See **Andrew Vs. INEC supra**. It was stressed that the Petitioners have the duty to rebut the presumption of genuineness of the election declared citing **Udom Vs. Umana & Ors. 2016 12 NWLR Pt. 1526 179 at 227-228 and PDP Vs. Oyetola & Ors.**

It was submitted that the 11 collation agents for Oshimili South Local Government Area PW12 and PW13 did not establish the above not being polling agents who can be the eye witnesses as all the Petitioners witnesses admitted they were not under cross examination. It was also observed that all Petitioners Witness (PWs) were fully accredited with BVAS and Voting Register before they voted. The Petitioners, it was submitted did not call registered votes

to testify of cancelled election in some voting unit or no voting at all citing **Maihaja Vs. Gaidam 2018 4 NWLR 1910 Pg. 454** nor were polling agents called to substantiate disputed results, citing **CPC Vs. INEC.**

It was contended that the Petitioners did not lead and establish evidence as to the number of their voters who were disenfranchised by the non compliance and did not state or prove the number of votes they could have secured but for the non compliance and how many votes were deducted.

It was also submitted that Exhibits 1 – 20 were dumped on the Tribunal having not been identified by witnesses who are their authors or signatories, hence the relevance of same are not established citing **Okereke Vs, Umah 2016 LPELR 400 34 SC** and it is not the Tribunal's work to do so, citing **Ahmed Vs. Risadon & Ors. 2012 LPELR – 58971** and **Oyetola & Anor. Vs, INEC & Ors.** It was submitted that the Petitioners had not proved over voting by production of BVAS devises, Register of Voters and Polling Unit results and in this instant case the BVAS report from the BVAS machines inspected were not put in evidence for each polling unit where over-voting is alleged or that such overvoting was done in the favour of 2<sup>nd</sup> and 3<sup>rd</sup> Respondents.

It was also contended that though some of the election results Form EC8A(1) are unsigned by the presiding officers and some undated, there has been no ill will shown on the side of INEC as the party agents signed them citing **Igbe & Anor & Ona & Ors, 2012 LPELR – 858 CA** and Section 136(3) of Electoral Act 2022 and it has not been shown they had any effect on the overall result.

### **Resolutions of Issues 1, 2 and 3 for determination.**

It is expedient for this Tribunal to begin the resolution of the issues for determination in this Petition with Issue 3.

The reason for this approach cannot be far fetched in view of the fact that the issues raised ab initio as to the competent of the Petition are the same issues which were the subject of the

Applications/Preliminary Objections moved at Pre hearing session and which this Tribunal has already adjudicated upon earlier in this judgment.

The Tribunal in resolution of same adopts its consideration, reasoning's and holdings in the above regard in the Applications/Objections in question and resolves Issue 3 in favour of the Petitioners, and reinforces its holding that this petition is competent.

Issues 2 and 3 pertains to the sustainability of the ground upon which the Petition is founded from the totality of the evidence led and the Petitioners entitlement to the reliefs sought.

Paragraph 14(1),(b) and (c) of the petition filed on 8<sup>th</sup> of April, 2023 avers;

- a. The 3<sup>rd</sup> and 5<sup>th</sup> Respondents were at the time of the election not qualified to contest the election. (Section 134(1)(a) of the Electoral Act, 2022 and Section 134(3) of the Electoral Act, 2022 (as amended).

ALTERNATIVELY

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

ALTERNATIVELY

- c. The 3<sup>rd</sup> Respondent was not duly elected or returned by the majority or the lawful votes cast as the election. Section 134(1)(c) of the Electoral Act 2023 (as amended).

The next logical step is to determine if the Petitioners have led credible evidence to line up with their pleadings in sustenance of the above grounds. First and foremost, by the provisions of section 134(1)(a)(b) and (c) of the Electoral Act, 2022 the grounds upon which this petition is predicated are valid and lawful in line with the above provisions as they are grounds upon which a petition challenging the undue election and undue return of a winner at the election can be presented.



The evidence in chief of the PW1, Mr. Sunday Onedibe vide his statement on oath at pages 110-115 of the petition which he adopted as his evidence is that he is an APC (2<sup>nd</sup> Respondent/Ward agent) for Ward 3 and he testified that the votes of the 1<sup>st</sup> Petitioner was reduced in polling unit 3 from 12 votes in Form EC8A for that unit to 11 votes in Form EC8B at the ward level.

In paragraph 6 of his statement on oath which forms part of his evidence in chief, he averred thus;

*"That in the aforesaid polling units, the total votes cast exceeded the number of accredited voters and I received results and complaints from polling unit agents about the none use of BVAS for accreditation and voting by officials of INEC in collaboration with agents of 2<sup>nd</sup> – 5<sup>th</sup> Respondents, that while the BVAS Machine accredited 1724 voters, as against 1633 that voted."*

Incredibly, the number of accredited voters tower well above the votes cast. How can this amount to over-voting? However it is the evidence of PW1!!!

See **Yahaya Vs. Dankwanbo & Ors 2016 LPELR 48364 SC** where the Supreme Coury stated that ove votered where accredited voters exceeds votes casrt

The above deposition of PW1 at paragraph 6 of his statement on oath in the petition is highly contradictory as on one hand this witness is saying the total number of votes cast exceeded the number of accredited votes but on the other hand, he received results and complaints from polling unit agents about none use of BVAS for accreditation and voting by officials of INEC in collaboration with agents of 2<sup>nd</sup> – 5<sup>th</sup> Respondents. The Tribunal cannot but ask which was it? Was there accreditation by BVAS machines or not in the polling units in Ward 3? This witness is approbating and reprobating. His evidence is unreliable.

It is trite law that a party must be consistent in the presentation of his case. He is not allowed to aprobate and repropagate on an issue. See also **Asusuno & Anor. Vs. Pan Ocean**

**Oil Corporation Nig. Ltd & Anor. 2017 LPELR – 415358 SC.**

Furthermore, this witness is not a polling unit agent but a ward agent. He cannot give an on the spot assessment of what took place in the polling units to reveal any non compliance of the provisions of the Electoral Act as it relates to the Results which emanating from the polling units in Forms EC8A(1) tendered by petitioners; whether it is as to why some of such Forms were unsigned or undated, mutilated and other complaints.

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.... These are 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 has 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.**

This witness also like PW2, PW3 and PW4 identified polling units results Exhibits 3(1) – (2), (4) and Exhibit 4(1) to (5), Exhibits 10, 1-34, and Exhibits 6 (1-25), all Forms EC8A(1) for polling units in their ward which they had no nexus with having not signed same or making them nor being polling agents assigned to the said units where the various elections were held. They are not in the light of an avalanche of authorities, the relevant persons to give the evidence they have given especially PW1 who testified the elections were truncated as a result of chaos and his agents did not sign the Form EC8A. The Tribunal cannot but ask where are these polling unit agents in this Petition who witnessed all the mayhem alleged,

e.g stuffing of ballot boxes, mutilations of result sheet etc since their absence to give first hand information as to the state of affairs at each of the polling units they were assigned to on the day of the election in this Petition is crucial. The testimonies of PW5 – PW13 i.e the 1<sup>st</sup> Petitioner himself suffer the same fate i.e they all identified EC8A(1) polling unit results but alas they had no nexus or synergy with them.

The above was well hammered upon by the Senior Counsel to the 3<sup>rd</sup> Respondent especially in his submissions to the Tribunal.

From the facts/tables pleaded by the Petitioner at Paragraphs 22 – 23, 30-31, 37, 39, 42, 44, 45, 47, 48, 49, 50, 52, 54, 56, 58, 61, 72 of the Petition it is crystal clear that most over whelmingly the crux of the non compliance the Petitioners complain about is in respect of over-voting and they are contending that the Forms EC8A(1) results of the polling units cited therein above which according to their Tables/Charts referred to in their petition show the number of those accredited being a far cry less from those votes cast in each unit cited in the tables.

The decision in **Oyetola Vs. INEC 2023 LPELR 60392 SC** has settled that the three documents by which a Petitioner can prove over-voting are ; The BVAS Machine, Voters Register and the Form EC8A(1).

The knowhow of proving overvoting in an Election Petition has been established in a long line of legal authorities.

In the case of **Yusuf & Anor. Vs. George & Ors. 2019 LPELR-41661 CA** Ojo JCA stated

“it is settled law that it is not enough for a Petitioner in an election Petition to allege over voting. He has the duty to prove same. To discharge that responsibility, the law requires the Petitioner to do the following: (1). Tender the voters register (2). Tender the statement of results in the appropriate forms which would show the number of accredited voters and number of actual votes. (3) Relate each of the documents to the specific area of

his case in respect of which the documents are tendered  
(4) Show the figure representing the over voting, if removed would result in victory for the Petitioner. See Haruna Vs. Modibbo (2004) FWLR (Pt. 238) Pg. 740 (2004) 16 NWLR (Pt. 900) Pg. 487, Kalgo Vs. Kalgo (1999) 6 NWLR Pt. 608, Pg. 639; Ladoja Vs. Ajimobi (2016) 10 NWLR (Pt. 1519) Pg. 87 at 148, Para. B-E; Shinkafi Vs. Yari (2016) 7 NWLR (Pt. 1511) Pg. 340 and Iniam Vs. Akpabio (2008) 17 NWLR (Pt. 1116) Pg. 225.”

See also **Yushau & Anor. Vs. INEC 2019 LPELR – 49629 CA pg. 17-18 Para E-D Wombo & Anor Vs. Gbande & Ors. 2019 LPELR – 48748 CA**

It is also settled beyond peradventure that such over voting must be shown to have been in favour of the winner of the election. See **Yusuff & Anor. Vs. George & Ors. (supra)**.

It is again now trite that the over voting complained of must also show that the figure representing the alleged over voting if subtracted from the total votes will result in the victory of the Petitioners – See **Tanko & Anor. Vs. Shahalafia & Ors. 2019 LPELR – 50954** and **INEC & Anor. Vs. Umana & Ors. 2016 LPELR – 40039 SC**.

It is also recondite that the Petitioners need to prove the over voting affected the election. See **Adewunmi & Anor. Vs. Akinloye & Ors. LPELR 50417 CA**.

There is no doubt that the Petitioners in this Petition in their pleadings did a great job in pleadings in the tables earlier referred to, pleading ward by ward, unit by unit where over voting took place and other anomalies alleged in the election. The Tribunal has highlighted above several authorities which have laid down the various hurdles the Petitioners must jump over before over voting as alleged can affect the result of an election.

As painstakingly as the Petitioners have endeavoured in this Petition to aver in pleadings all the differences in the votes, from over voting and all other purported misconducts as pleaded,

however, the caliber of witnesses who testified on their behalf in this Petition, not being polling unit agents, is crucial in the swim or sink of the case for the Petitioner, as it is their evidence which gives life to the pleadings in the Petition with regard to the issues they have pleading on non compliance, especially the over voting alleged.

Again, on the ground of non compliance with the Electoral Act, it is established beyond a shadow of doubt that it is the duty of a party who alleges non compliance;g with the Electoral Act and Regulation laid down for the Conduct of an election that must not only prove the non compliance but must go further to show how the non compliance was substantial in that it affected the outcome of the election. See **Abbas Vs. Mustapha & Ors. 2023 LPELR – 598814 CA Pp. 122 – 123**

The litmus test for such a party is to meet the threshold of such proof which must be through credible, cogent and compelling evidence that the said non-compliance did affect the result to his own disadvantage. See **Ezeanua Vs. Onyema & Ors 2010 LPELR – 11612CA Pp 44 para C – E.**

See also **Adams & Anor. Vs. Onawo & Ors 2015 LPELR 41771 CA, Adenugba & Ors Vs. Omoworare & Ors 2015 LPELR 40531 CA Adesina and Anor Vs, INEC & Ors 2019 LPELR 48662 CA pgs 16-17.**

This Tribunal is not unmindful and abreast of the provisions of Section 46(4) of the Electoral Act 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.”

The Tribunal strongly believes that it is a misunderstanding and a misapplication of the above provisions of the said law to believe that a Petitioner can just dump Forms EC8(1) on the Tribunal without presenting witnesses who made them or some nexus with them or who truly were eye witnesses to the anomalies alleged and under what circumstances such misconducts occurred and expect the Tribunal to do the hard lift of helping them prove the over voting and other non compliance they allege. Most of this alleged or perceived a atrocities in this case occurred at the polling unit level yet the polling unit agents are nowhere to be found in this case having not been put forward by the Petitioners. It is this polling agents evidence the Forms EC8A will reinforce. This is patently absent and fatal in this Petition. We so hold.

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 case 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 in toto the above decision and further adopts its considerations, reasoning and findings just made with regard to lack of proof by the Petitioners on the ground of non compliance with the provisions of the Electoral Act, 2022 in this Petition. The Tribunal reiterates that the Petitioners must still lead

credible evidence to substantiate the facts in their pleadings which they have not done with respect in the above regard. The evidence of all their witnesses is lacking in this regard and the petitioners' pleading cannot crystallize into evidence.

On the issue of the 3<sup>rd</sup> and 5<sup>th</sup> Respondents not being qualified to contest the said election, the Tribunal agrees intoto with all the submissions of the 3<sup>rd</sup> Respondent's counsel in the above regard. All the Petitioners pleadings in the above regard cannot again metamorphose into evidence. They have asserted, they must prove especially in Election Petition matters. They bear the burden of proof. See **Sheriff & Anor. Vs. PDP & Ors. 2017 LPELR – 41805 CA.**

We must add that the issue as to whether the 5<sup>th</sup> Respondent went through all the necessary process before he emerged as candidate for the 4<sup>th</sup> Respondent, Labour Party, that issue is a pre-election matter and not the business of the Petitioners who are not of the same party with him. It is not justiciable before this tribunal. Petitioners in this regard are nousey parkers and not entitled to the reliefs they seek against the 4<sup>th</sup> and 5<sup>th</sup> respondent, inspite of the fact that they did not defend the petition. See **PDP V. inec & Ors. (2023) 60457 SC** and section 285(14)(a)(b) & (c) Of the 1999 Constitution (as amended).

The Tribunal cannot invoke the provision of paragraph 18(11)(b) of the First Schedule to the Electoral Act, 2022.

On the ground of corrupt practices, it must be observed that it is the law that allegations of corrupt practices are prima facie allegations of crime.

The standard of proof of same is proof beyond reasonable doubt. See 138 Evidence Act. See **Waziri & Anor. Vs. Alhaji Geidam & Ors. 2016 LPELR – 40660 SC, Maihaja Vs. Gaidam 2017 SC.; Emmanuel Vs. Umana & Ors. 2016 LPELR-40037 SC.**

The burden of proof of Corrupt Practices lies on the Petitioners. See **Shinkafi & Anor. Vs. Yari & Ors. 2016 LPELR 26050 SC.**

While the Electoral Act does not define the term "Corrupt Practices, the provisions of sections 121 and 127 of the Electoral 2022 beam enough light on the kinds of misconducts which are criminal e.g. bribery undue influence, acts of impersonation and kindred offences which constitute and amount to Corrupt Practices.

In this petition, the facts/allegations pleaded most copiously include rigging (para 25 of Petition) inflation and reduction of votes (para. 31 of Petition) alteration of election results (Para. 33 of Petition) violent disruption of the Election, Acts of thuggery, ballot box snatching, intimidation of votes by agents and thugs of Respondents, falsification of results, ballot stuffing by agents of 2<sup>nd</sup> – 5<sup>th</sup> Respondents (paras. 68 and 69 of the Petition).

However, the eye witnesses i.e polling agents of Petitioners who witnessed these alleged atrocities have not been named or brought before the Tribunal to testify to them. Apart from the PW6 (1<sup>st</sup> Respondent) who testified under cross examination that he saw the 3<sup>rd</sup> Respondent with thugs going into Dublin Hotel where election results were written, however this particular fact was not pleaded in the Petition. It is only eye witness(es) who can give such kind of evidence. See *Adewale & Ors. V. Adeola and Ors.* (2015) LPELR 25972 CA; *Vangye & Anr. V. Kalat & Ors.* (2019) LPELR 50948 CA.

Furthermore this alleged culprits remain faceless. Thus the Petitioners have not been able to discharge the burden of proof placed on their shoulders in proof of Corrupt Practices.

The Tribunal must however in passing observe that the 4<sup>th</sup> and 5<sup>th</sup> Respondents in their pleadings apart, from aver as to the 5<sup>th</sup> Respondent's lawful sponsorship and nomination to run the election at hand sought to attack the election and return of the 3<sup>rd</sup> Respondent as the winner of the election stating several acts of misconduct and non compliance with Electoral Act in all polling units and wards of the Constituency where 4<sup>th</sup> and 5<sup>th</sup> Respondents did not win the election, as it were, putting a mini petition in this petition. It is the view of the Tribunal that if they have issues with the said election, they are to file their own petition, which they actually did in Petition No. EPT/DL/SHA/14/2023 but later withdrew.

In the case of **APC Vs. ADP & Ors. 2021 LPELR – 54280** the Court of Appeal, Per Umar JCA, answered the question whether a Respondent in an election Petition can challenge the outcome of an election without filing a Petition of its own thus;

*"while the 1<sup>st</sup> and 2<sup>nd</sup> Respondents as Petitioners at the Tribunal, prayed for an order disqualifying the 5<sup>th</sup>*



*Respondent and nullifying the votes cast for him in the said Governorship election held in Edo State on 19/9/2020 and ordering the 3<sup>rd</sup> Respondent to conduct a fresh election between all other qualified candidates excluding 4<sup>th</sup> and 5<sup>th</sup> Respondents, the Appellant herein prayed the Tribunal to declare its candidate as winner of the election. This procedure employed by the Appellant who was supposed to file its Election Petition is rather confusing and appalling. The Appellant had the right as to institute its own petition against the outcome of the election held on the 19<sup>th</sup> of September, 2020 but failed to do so. From the Appellant's prayers, it is clear as rightly submitted by learned senior counsel for the 3<sup>rd</sup> Respondent that the Appellant is camouflaging itself as Respondent when in actual fact, it is a Petitioner who is dissatisfied with the outcome of the election. My opinion in this regard is same as the position taken by the Tribunal at pages 3272 – 3273 of Vol. 5 of the record of appeal wherein the tribunal held that: "In our view, the 4<sup>th</sup> and 5<sup>th</sup> Respondents in their reply to the Petition have raised what can be regarded as a miniature Petition. It is encapsulated within a reply which itself is making prayers that run counter to the prayers contained in the substantive Petition. We agree in totality with the submission of counsel for the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents that this is novel to election jurisprudence and we so hold, it is our further view, contrary to the submission of the 4<sup>th</sup> Respondent, that paragraph 49 of the 1<sup>st</sup> Schedule to the Electoral Act does not sanction the joining of the 4<sup>th</sup> and 5<sup>th</sup> Respondents. There is, in our view no apparent conflict between Section 137(2) of the Electoral Act and paragraph 49 of the 1<sup>st</sup> Schedule of the Electoral Act." I agree with Counsel for the 3<sup>rd</sup> Respondent that the Appellant's pleadings and seeking of such relief as a Respondent to the Petition amounts to complaining of the election in a manner other than by filing an Election*

*Petition and such, runs contrary to Section 133(1) of the Electoral Act (supra) which provides that: "No election and return at an election under this Act shall be questioned in any manner other than by a Petition complaining of an undue election or undue return (in this act referred to as an "election petition"), presented to the competent Tribunal or Court in accordance with the provisions of the Constitution or of this Act, and in which, the person elected or returned is joined as a party."*

In this instant case, the 4<sup>th</sup> and 5<sup>th</sup> Respondents attack on the election and return of the 3<sup>rd</sup> Respondent as winner of the said election in the 4<sup>th</sup> and 5<sup>th</sup> Respondents Reply to the Petition is a non starter and alien to Section 134 (1)(a)(b) and (c) of the Electoral Act 2022. If they have issues with the said election, they are to file their own petition which they did in Petition No EPT/DL/SHA/14/2023.

Having said that, the Petitioners have not been able to prove any of the grounds upon which the petition is based or their entitlement to the reliefs sought.

The issues for determination are resolved in favour of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents and the petition is dismissed. Cost assessed at N500,000.00 against the petitioners and in favour of each of the 2<sup>nd</sup> and 3<sup>rd</sup> respondents only.

***Hon. Justice Catherine Ogunsanya***

(Chairman)

09/09/2023

***Hon. Justice Mas'ud Adebayo Oniye    Hon. Justice Babangida Hassan***

Member I  
09/09/2023

Member II  
09/09/2023

## **APPEARANCES**

*Ikhide Ehighelua Esq. with him O. J. Obodaya Esq., J. A. Agbo Esq., K. K. Akpule Esq., C. W. Martins for the Petitioners/Cross Respondent.*

*C. H. Nwaubani for the 1<sup>st</sup> Respondent.*

*Ayo Asala SAN with him V. O. Eze Esq., T. F. Doigbagha Esq. for the 2<sup>nd</sup> Respondent.*

*A. O. Odum SAN with him Terhemba Gbashima Esq, T. O. Binitie Esq., Anyafulu I. Bridget Esq., Francis Okoye Esq., S. E. Ogameh Esq., P. A. Isoh Esq. for the 3<sup>rd</sup> Respondent.*