IN THE NATIONAL AND STATE HOUSES OF ASSEMBLY
ELECTION PETITION TRIBUNAL
HOLDEN AT ASABA, DELTA STATE
PETITION NO: EPT/DL/HR/09/2023

TODAY FRIDAY, 8TH 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. HON. DORIS UBOH ..... PETITIONER

AND

1. HON. VICTOR NWOKOLO ..... RESPONDENTS
2. PEOPLES DEMOCRATIC PARTY (PDP)
3. INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC)

JUDGMENT

The Petitioner filed this petition with No. EPT/DL/HR/09/2023 on the 18/03/2023 on the following grounds:

That the election was invalid by reason of corrupt practices and non-compliance with the provisions of the Electoral Act.

Both the 1st and 2nd Respondents filed their separate replies to the petition on the 10/04/2023 and 8/04/2023 wherein they both raised a preliminary objection challenging the competence of the petition and the jurisdiction of the Tribunal to entertain the petition based on the following grounds:

1. The petitioner Hon. Doris Uboh, who claims to be a candidate that contested the election into Ika Federal Constituency of Delta State (Ika North-East and Ika South Federal Constituency) of the House of Representatives on the platform of the All Progressives Congress (APC), does not have the right or *locus standi* to present and maintain this petition under *Section 133 (1) (a) of the Electoral Act, 2022* by reason of the facts that the petitioner was not a candidate at the election into Ika Federal Constituency of the House of Representatives held on Saturday, 25th day of February, 2023 which election is forming the subject matter of this petition.
2. The petitioner, Hon. Doris Uboh, who claims to be a candidate that contested the election into Ika Federal Constituency of Delta State of the House of Representatives on the platform of the All Progressives Congress (APC) does not have the right or *locus standi* to present and maintain this petition under *Section 133 (2) of the Electoral Act, 2022* by reason of the fact that the 1st Respondent as claimed by the petitioner, who was returned with the highest number of votes, Hon. Victor Nwokolo, in Ika North East and Ika South Federal constituency is not same with the person returned in Form EC8E(II).
3. The instant petition is manifestly incompetent by reason of the facts that at paragraphs 11e(ca), e(cb), e(cc), e(cd), e(ce), e(cf), e(cg), e(ch), e(ci), e(cj) and e(ck) of the petition, the petitioner made serious criminal allegations of various electoral malpractices against various persons like PDP thugs and stalwarts, police officers, military officers, 1st and 2nd Respondents' thugs who are not joined as respondents to this petition in violation of their constitutional right to fair hearing as guaranteed under *Section 36 of the 1999 Constitution (as amended)* and other enabling laws in that behalf.

The counsel to the petitioner raised two issues for determination in this application, to wit:

1. *Whether the Petitioner and the 1st Respondent, "Hon. Doris Uboh" and "Hon. Victor Nwokolo" are candidates in the election subject matter of this petition for the fact that their names in the heading of the petition are "Hon. Doris Uboh" as against "Uboh Doris Olayemi" and "Hon. Victor Nwokolo" as against "Nwokolo Victor Oyemaechi" as it appeared in Form EC8E(II), and whether this robs the Honorable Tribunal of the jurisdiction to hear the petition?*
2. *Whether the Honourable Tribunal has the jurisdiction to entertain the instant petition having regard to the fact that persons on whom serious allegations were leveled against were not joined as respondents to the petition.*

The following issues settled at pre-hearing session call for determination in this preliminary objection:

1. *Whether Hon. Doris Uboh contested the election of 25/02/2023 as shown in the declaration of result?*
2. *Whether Hon. Victor Nwokolo was the person returned as having the highest number of votes as shown in the declaration of result?*
3. *Whether from the totality of the pleadings of the parties especially the petition and evidence led in support of same, the petition is competent, and thus shrouding this Tribunal with the jurisdiction to entertain same?*

Issue No.s 1 and 2 can be taken together. Both parties agreed that the name of the person contained in Form EC8E(II) is Uboh Doris Olayemi who contested under the platform of the All Progressives Congress (APC) in the election held on 25/02/2023. However, the contention of the 1st and 2nd Respondents is that the name on the heading of the petition "Hon. Doris Uboh" does not have the *locus standi* to present and maintain the petition due to the fact that the petitioner was not a candidate at the election into Ika Federal Constituency of the House of Representatives.

As to the appellation and name "Hon. Doris Uboh" used by the petitioner to institute this petition instead of Uboh Doris Olayemi, the contention of the 1st and 2nd Respondents is that from the declaration of result in Form EC8E(II) that the person who contested election into the Ika North East/Ika South Federal Constituency held on the 25th day of February, 2023 is one Uboh Doris Olayemi, while the petitioner in this case is not one and the same with the person who contested the election under the platform of All Progressives Congress (APC). Counsel to the respondents argued that before a petition can be deemed to be competent, the petitioner must first of all establish his right to present the petition, and it is only when such is done that the jurisdiction of the Tribunal can be activated.

He cited the case of **Ezeke *V. Dede & ORS (1999) 5 at NWLR (pt. 601) at 80s and Egolum V. Obasanjo (1999) 7 NWLR (pt. 611) p. 355 at 432, para.*** 8. The counsel also cited the cases of ***Esenowo V. Dr. Ukpong & Anor. (1999) 6 NWLR (PT. 608) p. 600 at 611*** to the effects that the Supreme Court held that there is a world of difference between *J. E. Esenowo* and *E. J. Esenowo* in a professional register sanctioned by law. Thus, it was held that there was the need to furnish some lucid explanation in respect thereof, otherwise it would be unacceptable to accede that the name *Dr. E. J. Esenowo* is the same as *Dr. J. E. Esenowo*.

While it is the contention of the petitioner that she was the candidate that contested the election under the platform of APC and therefore possesses the requisite locus standi to present and maintain this petition, even though her middle name was omitted in the heading of the petition. The petitioner contended that the same argument applies to the 1st Respondent who also was the person that was declared winner in Form EC8E(II) by the 3rd Respondent. It is contended that the names omitted in stating the petitioner and the 1st Respondent in this petition are apparently their middle names and both parties know themselves with the names on the face of the petition.

It is further contended that the 3rd Respondent (INEC) also knows whom the petitioner and the 1st respondent are, as evident in the 3rd respondent's paragraph 2 of the reply to the petition, where the 3rd respondent admitted the candidacy of the petitioner at the election. The petitioner equally contended that the 1st respondent in his reply to the petition filed on 10/04/2023, at the part thereof titled: "Violence that Marred the Polls" specifically averred that the petitioner was not under any form of threat or intimidation on the day of the election as she had some security personnel made up of combined team of Police officers and Military personnel well armed with sophisticated gun.

The petitioner submitted that by the above averment, it is clear that the 1st respondent knew the petitioner as the candidate of APC in the election which is subject matter of this petition and the respondents are therefore not prejudiced or misled by the omission of the middle names of both the petitioner and the 1st respondent on the face of the petition. She maintained that the omission cannot and should affect the competency of the Tribunal to hear the petition on the merit.

The Tribunal having looked at the certified copy of Form EC8E(II), i.e the declaration of Result Form issued by the 3rd Respondent, which is one of the documents accompanying both the petition and the replies of the 1st and 2nd Respondents to the petition; discovered that the name of the candidate who contested under the platform of APC is Uboh Doris Olayemi and not Hon. Doris Uboh, and by this, it can be inferred that the name "Olayemi" and the appellation "Hon." are not included in the name of the petitioner in this petition.

It is pertinent for the Tribunal to look at the pleadings of the parties to see whether despite the omission of the middle names of both the petitioner and the 1st respondent, should have any effect on the petition as presently constituted. A critical looking at the replies to the petition revealed an avalanche of reference to the petitioner by the respondent in minute details as to suggest that they are not in

any doubt or confusion with the name she is being referred to in the petition. See the 1st and 2nd Respondents reply at pages 16, 17, 18. As rightly asked by the Counsel to the petitioner, to who all the references in the averments of the 1st and 2nd respondents' replies, if not to the petitioner. The 3rd Respondent also in paragraph I of his reply to the petition admitted that the petitioner was the candidate of the All Progressives Congress (APC).

The Tribunal therefore can safely infer that by the averments in their replies to the petition, the respondents, especially the 1st and 2nd respondents are referring to the petitioner named in the petition as "Hon. Doris Uboh" who, notwithstanding the omission of her middle name "Olayemi" is the person who contested the election, and also that the 1st and 2nd Respondents knew the petitioner in person.

It is also not on record that the omission of the middle name "Olayemi" was done to mislead or overreach the respondents or to be prejudicial to them. RW5 also corroborated that position when in his evidence on 29/07/2023 referred to the petitioner and the APC candidate at the election as Engineer Doris Uboh. The Tribunal is of the firm view that the petitioner has the right to determine her nomenclature, appellation or designation provided it is not done to perpetuate forgery and altering of documents such as credentials, fraud, impersonation or other nefarious activities. See the case of ***Haske V. Magaji (2009) All FWLR (pt. 461) p. 895 at pp. 906 – 907, paras. F – L*** *per OREDOLA JCA held**:***

> *"It is also to be noted too that the 1st Respondent had answered and has been variously called, known and addressed with the names; Bello Magaji, Mohammed Bello and currently Mohammed Bello Magaji. Unless criminal intent can be established, it is a matter entirely in the realm of personal choice….."*

See also the cases of ***Akinremi & Anor. V. Suleman & Ors. (2022) LPELR – 56903 (CA); and A.D. V. Fayose (2005) 10 NWLR (pt. 932) 151 at 193, paras. B – C.***

Issue of locus standi to present an election petition is statutorily provided for by section 133(1) of the Electoral Act, 2022 and it is clear and unambiguous that a candidate who participated in an election or a political party which participated in the election can present and maintain an election petition. The statutory use of both the words: "one" or more" means a candidate or political party or both of them can present a petition in respect of that election. See the case of ***Olarewaju V. Inec (2011) All FWLR (pt. 559) p. 1142 at 1164, paras. A – C.***

In the instant petition, the petitioner averred in paragraph 1 of the petition that she was the candidate of the All Progressives Congress (APC) in the House of Representatives election in Ika Federal Constituency, Delta State held on the 25/02/2023. To the Tribunal, that averment is enough to establish her right to present this petition. See the case of ***Kamil V. INEC (2010) 1 NWLR (pt. 174) 125 at 142.***

As for the 1st respondent, it is well settled law that parties are bound by their pleadings. See the case of ***Ngige V. Obi (2006) 14 NWLR (Pt. 999) p. 1 at – 236.*** The 1st Respondent is bound by his pleadings and in paragraph 1 of his reply to the petition filed on 10/04/2023, the 1st Respondent admitted to paragraphs 4 – 7 of the petition. Part of what the 1st respondent admitted in those paragraph is that 1st Respondent is "Hon. Victor Nwokolo" and the table drawn by the petitioner showing the name of the candidates at the election which include Nwokolo Victor Onyemaechi who contested under the platform of the Peoples Democratic Party (PDP) and who scored 27,973 votes.

It can therefore also be inferred that the 1st Respondent agreed that both names: "Hon. Victor Nwokolo" and "Nwokolo Victor Onyemaechi" are used interchangeably for him. The are so many other inferences and admission in the said 1st respondent's pleading. The principle of law that admission of facts binds the maker is relevant here. See Section 123 of the Evidence Act, 2011; and the

case of ***Bona V. Textile Ltd V. Asaba Textile Mill Plc. (2012) All FWLR (pt. 669) p. 999 – 1010, paras. G – A.*** All the parties also agreed that the 1st Respondent was the person returned as having the highest number of votes as shown in the declaration of result. Thus, section 133(2) of the Electoral Act, 2022 provides:

"A person whose election is complained of is, in this Act, referred to as the respondent".

By the above quoted provisions of Section 133 (2) of the Electoral Act, and taking into consideration paragraphs 4, 7 and 8 of this petition to which all the respondents admitted, it is the considered view of this Tribunal that the 1st Respondent, notwithstanding the use of the name "Victor Nwokolo" by the petitioner in the heading of the petition, was the person referred to as having the highest number of votes as shown in the declaration of result. The Tribunal so holds

As to issue No. 3, it is the contention of the 1st and 2nd respondents that the instant petition is incompetent by reason of the facts in paragraphs 11e(ca), e(cb), e(cc), e(cd), e(ce), e(cf), e(cg), e(ch), e(ci), e(cj) and e(ck) of the petition. In the mentioned paragraphs, the petitioner made serious criminal allegations of various electoral malpractices against various persons like PDP thugs and stalwarts, police officers, 1st and 2nd Respondents' thugs, military officers who are not joined as respondents to the petition in violation of their constitutional right to fair hearing as guaranteed under section 36 of the 1999 Constitution (as amended) and other enabling laws in that behalf.

In their respective written addresses in support, the counsel to the 1st and 2nd respondents argued that when a petitioner raises criminal allegations against electoral officers, police and other persons as touching on electoral malpractices or corrupt practices, such persons must be joined as parties for the petition to be competent and where such persons are not joined, it automatically robs the Tribunal of the jurisdiction to entertain the petition. They argued further that those persons are necessary parties to the petition and

cited the cases of ***Yamedi & Ors. V. Zarewa & Ors. (2010) II NWLR (pt. 124) 58 at 87, paras. B – C; Olisie V. Okeke & Ors. (1999) 8 NWLR (pt. 613) 165 at 175; Kalamu V. Gurin & Ors. (2003) 16 NWLR (pt. 847) 493; Lamido V. Turaki (1999) 4 NWLR (pt. 600) 518 at 585; Badamasi V. Azeez (1998) 9 NWLR (pt. 566) 471; and Nwoke V. Ebe-Ogu (1999) 6 NWLR (pt. 606) 247 at 258.***

On the other hand, the petitioner contended that the provisions of section 133(3)(a) & (b) of the Electoral Act, 2022 provide for the statutory respondents and does not envisage that such names as thugs, Police Officers, military officers etc should be included in the petition as respondents, referring to the case of ***APC V. PDP & Ors. (2021) LPELR – 54280 (CA).***

In the resolution of this issue, section 133(3) of the Electoral Act, 2022 is imperative. It provides:

> *"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 or on behalf of the officers or such other persons* ."

The Supreme Court gave the interpretation of the above segment of Section 137(3)(a) and (b) of the Electoral Act, 2010 (which is *impari materia* with section 133(3)(a) & (b) of the Electoral Act, 2022) in the case of ***APC V. PDP & Ors. (2015) LPELR – 24458 (SC)*** when it held that the Commission has the duty to answer for the officers or such other persons that by the doctrine of *ejusdem generis*, those referred to as "such other persons" are permanent and temporary staff of the Commission, which exclude non employees of the Commission. Any person or group of persons outside the Commission's officers and such other persons not

employed for the proper conducts of the election getting involved in the election process do so at their own risk. They are on a prolific of their own and the Commission has no duty to answer for their conduct.

Now by the above judicial pronouncement on the extant provision of the law, it stands to reason that the necessary parties to an election petition are the petitioner, who may be the candidate and/or the political party which sponsored the candidate or both; and the statutory respondent, who is the person whose election is complained of; the political party who sponsored him; and the Independent National Electoral Commission (INEC) who conducted the election and who represents any of its officers or any other persons, and those any other persons are the permanent and adhoc staff employed by the Commission for the purpose of the conduct of the election.

It was also held in the case of ***Yusuf V. Obasanjo (2003) 16 NWLR (pt. 847) 554 at 617, paras. E – F*** that where a statute has specifically provided for parties to an action the common law principle of joinder of a necessary party will not apply. This is because the statute by its specific provisions has stopped or blocked parties not mentioned therein. In addition to the above, no relief is sought against the persons whose names were not mentioned as respondents in the petition. See again ***APC V. PDP & Ors. (Supra).***

In the circumstances, the Independent National Electoral Commission (INEC) has been made a party in this petition and it therefore stands for and covers all the election officials used in the conducts of the election and as the Tribunal had held earlier, non joinder of the alleged military officers, police officers, thugs and stalwarts of the 2nd Respondents is not fatal to the petition, because they are neither statutorily contemplated as necessary respondents, nor is there any relief being sought against them, nor are they on trial for the so called criminal allegations.

The Tribunal therefore holds that the petition is competent, notwithstanding the proof or otherwise of the purported averments being objected to in paragraphs 11e(ca), e(cb), e(cc), e(cd), e(ce), e(cf), e(cg), e(ch), e(ci), e(cj) and e(ck) of the petition. At any rate it has equally been held that it is one of the principles of law that a Court cannot dismiss a suit because a party who ought to have been joined was left out. See the case of ***Bello V. Inec (2010) LPELR – 767 (SC).***

In sum, the preliminary objections of the 1st and 2nd Respondents lack merit and are hereby dismissed accordingly. The Tribunal will now proceed to deal with the petition on its merit.

The petitioner herein filed this petition on the ground that the election was invalid by reason of corrupt practices and non-compliance with the provisions of the Electoral Act, 2022 and seeks for the following reliefs:

1. *That the election be nullified in that: the election was invalid by reason of corrupt practices and/or non-compliance with the provisions of the Electoral Act, 2022.*
2. *That a fresh election be ordered through out the Federal Constituency for the election of the member representing Ika North-East/Ika South Federal Constituency, Delta State in accordance with the provisions of the Electoral Act, 2022.*

The facts of the matter are that the petitioner, Hon. Doris Uboh, was the candidate sponsored by the All Progressives Congress (APC) at the House of Representatives election for Ika North-East/Ika South Federal Constituency held on 25/02/2023. At the conclusion, the 3rd respondent declared the 1st respondent, who contested under the platform of the 2nd respondent, as the winner of the election, having scored the highest number of votes of 27,973. Having dissatisfied with the declaration, the petitioner filed this petition on the grounds contained in paragraph 11 of the petition, which we had earlier stated. By the Table contained in the petition, the result of the election as declared by the 3rd respondent are as follows:

1. Chukwuekwu Onyeisi of A - 198.
2. Obiajulu Obi Obiajulu of ADC - 443.
3. Uboh Doris Olayemi of APC - 9,878.
4. Amokwu Jude Omemleamarim of APGA - 351.
5. Akwor Andrew Boji of APM - 394.
6. Nwanne Utomi of LP - 20,437.
7. Ikere Victor of NNPP - 311.
8. Nwokolo Victor Onyemaechi PDP - 27,973.

Thus, the Tribunal states from the on set that where a petitioner alleges that an election or return in an election should be invalidated by reason of corrupt practices or non-compliance, as is the case in the instant petition, the proof must be shown forth:

a. That the corrupt practices or non-compliance took place; and
b. That the corrupt practices or non-compliance substantially affected the result of the election.

See the case of ***Ogboru V. Arthur (2016) All FWLR (pt. 833) p. 1816 at 1855, paras. B-D.*** Instructively too, it is the petitioner that must prove on the balance of probability, and the reliefs sought being always in the nature of declaratory, the petitioner cannot while discharging that proof, rely on the weakness or admission of the respondents. It is when the petitioner have discharge her onus that the respondents have the duty to lead evidence. See the case of ***Madayi V. Laori (2019) All FWLR (pt. 1019) p. 868 at 883, paras. C-G.***

At the hearing, the petitioner called twelve (11) witnesses while the 12th witness was disallowed. The respondents called a total of five (5) witnesses.

PW1 is Peter Osazua. He adopted his statement on oath and his evidence in summary is that he was the ward collation agent for the APC in Ward 2, Ika South in the election held on 25/02/2023 and that he was in constant communication with the polling unit agents of his party to enable him know when the officials from the 3rd Respondent and his party agents would arrive at the ward collation centre and he

waited, but there was no collation at the ward level. He stated that whatever figure being brandied about cannot be trusted as the presiding officers went on their frolic without the process of collation before he left the collation centre. He stated that other ward collation agents of his party confirmed to him that there was no collation in their wards.

PW2, Ebinum Prosper, salso adopted his statement on oath and inter alia gave evidence that he was the polling unit agent for the APC in unit 020 during the election of 25/02/2023 and that he was present in his polling unit from the beginning of the voting till the time the result was counted and winner announced. His evidence is that the presiding officer did not transmit the result of the election electronically to the INEC server and that BVAS machine to upload a scanned copy of Form EC8A to INEC IREV was not used. He stated that the presiding officer did not take the BVAS and the original copy of the form to the ward collation center and thus the other polling unit agents confirmed that there was no ward collation in all the wards.

PW3, Okechukwu Owasi stated in his testimony in the main that he was the Local Government Collation Agent for APC in the election held on 25/02/2023 for Ika North-East Local Government and further stated that an aide of Delta State Governor, one Hillary Ibegbulem and other Peoples Democratic Party (PDP) stalwarts, with the aid of some military and police officers in uniform and touts, violently prevented him from entering the collation centre at Ika North-East Local Government on the said day and that made it impossible for his political party to monitor how collation was done.

PW4, Andrew Okudaye, who also adopted his witness statement on oath stated that he was the ward collation agent for APC in the election held on 25/02/2023 in ward 3, Ika North-East, Delta State, and that he was in constant communication with the polling unit agents of his party so as to enable him know when the officials from INEC and his party polling unit agents would arrive at the ward collation centre. He stated that he waited till very late on the said day,

and there was no collation at ward level, that whatever figure being bandied about cannot be trusted as the presiding officers at the polling units went on their frolic without following the process of collation, and at Agbor other collation agents confirmed that there was no collation in their wards.

PW5, Nduka Erikpume, he too adopted his statement on oath. His evidence is that he was the ward collation agent for APC in the National Assembly election held on 2502/2023 in ward 6 at Ika South Local Government Area, Delta State and that he was in constant communication with the polling unit agents for the said ward of his party at the ward collation centre to enable him know when the officials from INEC and any party agent as well as others would arrive at the collation centre, and till the very late on that day, there was no collation at ward level, so whatever figure being bandied about cannot be trusted as the presiding officers at the polling units went on their frolic without following the process of collation, and at Agbor other ward collation agents from other wards confirmed that there was no collation in their wards.

PW6, Okonta Celestine, equally adopted his statement on oath. It is the witness' evidence that he was the ward collation agent for APC in ward 11 at Ika South L.G.A. of Delta State, and he was in constant communication with the polling unit agents of his party, so as to enable him know when the officials from the INEC and his party agent and officers would arrive and the collation was not done as he waited till late on the said day and there was no collation at ward level, hence whatever figure being bandied about cannot be trusted as the presiding officers at the polling units went in their frolic without following the process of collation. He stated that he left the collation centre without seeing the INEC officials, and at Agbor other ward agents confirmed that there was no collation in other wards.

PW7, Godwin Ekwuife, stated in his adopted witness statement on oath that he was the polling unit agent of unit 7 ward 4 for the APC in the National Assembly election held on 25/02/2023 in Ika

North-East L.G.A., Delta State, and that he was present in his polling unit from the beginning of voting till the time the result was counted and winner announced at his polling unit. He stated that the presiding officer did not use the BVAS machine to upload a scanned copy of Form EC8A to the INEC IREV, and that no BVAS and the original copy of each of the forms in temper evident envelop was not taken to ward collation officer and even other INEC officials did not proceed to the ward collation after leaving his polling unit, but rather proceeded to the Local Government Area collation centre at Agbor. That he interacted with other polling unit agents of the party and every one confirmed that there was no ward collation in all their wards.

PW8, Comrade Onyeisi Ugbebor, stated in his adopted witness statement on oath that he was the polling unit agent at unit 06, ward 4 for the APC in the National Assembly election for IKA North-East LGA of Delta State held on 25/02/2023 and was present from the beginning of voting till the time the results was counted and winner announced at his polling unit, and the presiding officer did not transmit or transfer the result of the election electronically to the collation centre, and no BVAS machine was used to upload a scanned copy of Form EC8A to the IREV. That the presiding officer did not take the BVAS machine and the original copy of each of the Form on temper envelop to the ward collation centre at Agbor, and he mingled with other polling unit agents of the party and every one confirmed that there was no ward collation in their wards.

PW9, Ebede Moses, stated in his adopted witness statement on oath that he was the Local Government Collation Agent for APC in Ika South L.G.A. in the election of the House of Representatives members held on 25/02/2023 and was present at the collation centre at Agbor, and monumental fracas disrupted the collation when wrong result sheet was used to collate result sheet meant for ward 10 and the result sheet of unit 001 was used for unit 008 and the said sheet was mutilated. That the same scenario arose in wards 11 and 12 of the Local Government Area and same led to outbreak of fight which

stalled the collation, and that he was surprised that results were announced which there was no collation.

PW10, Hon. Doris Uboh, she adopted her statements on oath of 18/03/2023 and 25/04/2023 and replicated all that were set out in the pleadings, that is to say, the witness statement is the replica of the pleadings contained in the petition. Through PW10, several documents were tendered and marked as Exhibits 1 - 34, comprising of Form EC8E for Ika North-East and Ika South Local Governments; letter dated 28/02/2023; statement of results in wards 1 – 14 of Ika North-East; statement of results in wards 1 – 12 of Ika South; Form EC8B for Ika North-East L.G.A; Form EC8B for Ika South; Form EC8C for both Ika North-East and Ika South; Form EC8D for Ika North-East and Ika South Federal Constituency; Form EC40G for Ika North-East; and Certified True Copies of BVAS Report for Ika North-East and Ika South Federal Constituency.

PW11, Omotede Osafile (subpoenaed witness) tendered the copy of the subpoena which was marked as Exh. '35' and testified that she was the returning officer for Ika Federal Constituency, and that she signed Exh. 'I'. She also testified during Examination-in-Chief that she had Form EC8D and EC8E (II) given by INEC, and Form EC8D is the spreadsheet that contained the result of Ika South and Ika North-East. She also testified that as a returning officer did not have but saw the results from polling units, and he tendered Form EC8E(II) and EC8As and were admitted as Exh. '36' and '37' respectively. She also testified that the result of Ika South was cancelled, but she did not know the area to which was cancelled. That she was given Exh. '33' and was asked whether Form EC40G was the cancelled result which she saw, and she answered she did not see it, but it was reported, and the reason for the cancellation was emergency and disruption.

She state that it was not like she said she was not comfortable with the declaration of result, and that she was not aware that the agents of the APC were not allowed to enter into the collation centre,

and that she did not see the result but there was a person who collated the result. She also said that the election was conducted in accordance with the Electoral laws

There was an attempt to call a further witness, PW12, Chika Odogwu, he could not give evidence as there was an objection that he is a member of APC and could not be a subpoenaed witness, having not been listed in the petition and his statement on oath attached to the petition. Counsel on both sides were billed to address the Tribunal as to the propriety of his giving evidence. However, the following day, the counsel to the petitioner told the Tribunal that calling additional witness through a subpoena is surplusage and therefore, they discarded this subpoenaed and any other that was pending, thereby closing the petitioner's case.

Thus, the 1st Respondent put in three (3) witnesses, while the 2nd Respondent put in two (2) witnesses.

RW1, Donald Peterson, in his adopted written witness statement on oath stated that he is a member of the PDP and he voted in unit 2 Ward 2 in Ika South L.G.A. of Delta State and he was the collation agent for Ika South Local Government as well as collation Agent in Ika South/Ika North-East Federal Constituency, Delta State in the National Assembly election on the 25th February, 2023. He stated that at about 7:30am on the 25th February, 2023 he was at the Local Government Collation Centre and that he witnessed the distribution of the electoral materials to the Local Government collation centre at about 7:45am, and the electoral materials were distributed to the presiding officers and all were present.

The witness stated further that he voted at his polling unit after being accredited and he went round the wards in the said Local Government and he observed that the entire voting process from accreditation through casting of vote and declaration/announcement of results was done in a free, fair and peaceful atmosphere and in compliance with the electoral laws. That at the completion of the polls, the presiding officers in their various wards brought the results

sheets for their respective wards and gave to the L.G.A. Collation officers along with the election materials used, and that he witnessed the L.G.A. Collation officer entering the results from the various wards in Ika South Local government into Form EC8C (II) and was signed by the party agents present. It is stated that the Ika South Local government collation officers thereafter moved the result to the Federal Constituency Collation officers who later collated the results in Form EC8C (II) from the Ika South and Ika North L.G.A. and entered same into the result sheet Form EC8D (II) and thereafter announced the results publically and the various agents of political parties were invited to sign, and the 1st Respondent was declared a winner having polled the highest number of lawful and valid votes with a score of 27,973 while the petitioner scored 9,878 votes, and all the party agents signed including the petitioner's agent and the result was entered into Form EC8E (II), and they were issued with copies. He stated that no cancelled result from any of the units or wards was computed into the scores of the 1st Respondent.

RW2, Mathew Okwaji, stated in his adopted witness statement on oath that he is a member of PDP and he voted in unit 4, ward 8 in Ika North-East Local Government, and that he was the collation Agent for Ika North-East Local Government area as well as collation agent in Ika South/Ika North-East Federal Constituency, Delta State. His statement is the replica of the statement of RW1.

RW3, Okorie Keneth, stated in his adopted witness statement on oath that he is a member of PDP and he was the collation Agent for ward 3 in Ika North-East Local Government Area, Delta State in the National Assembly election into the House of Representatives, Ika North-East/Ika South Federal Constituency of Delta State held on the 25th February, 2023. The statement of the RW3 is the replica of the statement of the RW1, and he added that during the casting of votes there were complaint of thuggery and violence introduced by the petitioner's party members who brought thugs to distrupt the election in ward 3, units 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17,

18, 19, 20, 21, 22, 23 and the election in those units were cancelled, and only unit 14 of ward 3 result was brought to the ward Collation Centre and it was computed into Form EC8B (II) in the presence of all party agents, and they signed Form EC8B (II) and a duplicate copy was given to each party agent present, and the collation officer took the result to the Local Government Collation Centre in company of security agents.

RW4, Elegede Friday Godfrey, stated in his adopted witness statement on oath that he is a member of PDP and he voted in unit 4, ward 4 in Ika North-East Local government Area and he was the Collation Agent for ward 4 in Ika North-East Local Government Area in the National Assembly election into the House of Representatives Ika North-East/Ika South Federal Constituency held on the 25th February, 2023. He stated that the accreditation of voters started at about 8:00am with the presiding officer one voter after the other, and every person who voted in ward 4 was accredited through BVAS machine and the Voters' Register, and the exercise was very peaceful as no political party agent was beaten, harmed or driven away from the said ward. The rest of the statement is the replica of the RW1 written statement on oath.

RW5, Hon. Agwaze Andrew Abaye, stated in his adopted witness statement on oath that he is a registered voter in unit 1 ward 3 in Ika South Local Government Area of Delta State and the Director General of the Victor Nwokolo Onyemaechi's campaign organisation for the election in Ika North-East/Ika South Federal Constituency of Delta state held on the 25th February, 2023. That he went to the polling unit at about 7:30am and by 8:00am the presiding officer arrived with electoral materials for the conduct of the election and he was accredited and all other voters before and after he was accredited. He stated that after the election and at polling units levels, the polling units agents of various parties who were available signed and the results transmitted electronically to the collation system to the best of his knowledge, and the BVAS machine was used to upload the

scanned copy of the results from EC8A (II) to the INEC Result IREV, and the collation of results was done in all units, ward, Local Government area and the Federal Constituency levels using Form EC8B (II), Form EC8C (II), Form EC8D (II) and Form EC8E (II).

It is stated that after the election he applied for Certified True Copy of BVAS report, and that no cancelled vote from polling unit Alasi Primary that was collated and used to return the 1st Respondent, and except from unit 14 which was not cancelled, all other units in ward 3 were cancelled and not computed in the summary of the results hence was not collated. That the cancelled results from polling unit 2 Alasi Boji-Boji, unit 4 Alasi Primary School were not collated and used to return the 1st Respondent, and no cancelled votes from ward 3 polling units 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 were collated and used to return the 1st Respondent and except unit 14 which is Otolokpo Hall, all units result in ward 3 were cancelled.

RW5 stated further that the number of accredited voters is equal with the number of voters recorded in the polling units and wards and the BVAS machine and Voters' Register were used in the election.

On the violence, the RW5 in his testimony denied knowing Hillary Ibegbulem and not known to the 1st Respondent and that he is not the 1st Respondent's agent at the unit level where the election took place and at ward Local Government and Federal Constituency Collation Centres in Ika North-East and Ika South Local Government areas result collation Centres, and that there was no gunshots fired on that day by any person, group of persons or security agents as his polling unit is miles away from Ute-Okpu where the supposed crime was alleged to have occurred. The RW5 denied knowing of any SUV car with registration number RSH 926 2A (Abuja) belonging to the petitioner that was burnt, and no any APC member that died and the access to the ward of the petitioner was not blocked with petrol tanker loaded with petroleum products, and no eligible voter in any

unit of ward 5, which is the petitioner's ward, that was prevented and disenfranchised from voting in the said election. That no 3rd Respondent's staff that were dispersed following gunshot by the said Hillary Ibegbunam and the alleged thugs. He stated that no ballot box or ballots snatching and all the electoral materials were returned to the INEC office and the 1st Respondent was declared as the winner of the election and was returned. Several documents were *tendered through RW5, marked as Exhibits 41 -* 70.

At the conclusion of the hearing, the counsel to all the parties were allowed to proffer and file their final written address which they adopted. The counsel to the 1st, 2nd and 3rd Respondents in their final written addresses filed on the 3rd and 4th days of August, 2023 respectively formulated issues for determination, thus:

1. Whether the petitioner, Hon. Doris Uboh, contested the election held on 25th February, 2023 now in contention?
2. Whether there was substantial compliance with the relevant Electoral law, Guidelines and all other enabling laws regulating the 2023 National Assembly Election held on the 25th February, 2023 in regard to the following:
    (i) Uploading of the result of the election in question especially for Ika North-East/Ika South Federal Constituency i.e. from the polling units to the INEC Result Viewing Portal (IREV) Using the Bimodal Voter Accreditation System (BVAS)?
    (ii) Announcement of results.
    (iii) The results in relation to the figures in the IREV tallied with the BVAS Report and final result declared in Form EC8E.
1. Whether the irregularities complained of if any, is materially substantial as to affect the outcome of the election if removed, in favour of the petitioner.
2. Whether the petitioner has proved allegations raised in the petition to such extent as to entitle her to the reliefs sought from this Honourable Tribunal.

3. Whether a party to a case can go outside his or her pleading to manufacture evidence or adduce evidence at variance or in conflict with his pleaded facts?

On issue No. 1, the counsel to the 1st and 2nd Respondents adopted their written addresses in support of the preliminary objection earlier on treated in this judgment.

On the issue No. 2, the counsel submitted that there is substantial compliance with the electoral laws in the conduct of the 2023 general election by the 3rd Respondent and the petitioner has the burden that there was non-compliance as is envisaged in Section 137 of the Evidence Act, and the petitioner has not proved that there was no substantial compliance of the electoral laws in the conducts of the National Assembly election on the 25th February, 2023. It is submitted that Section 47 to 71 provide for the procedures and manners in which accreditation, voting, counting of result, declaration of result and other electioneering process be carried out, and the petitioner has not challenged any of the processes, having not complied.

It is submitted that the evidence of the polling units agents is that all the processes involved in the conduct of the election were done in line with the Electoral Act, as there was no complaint from the polling units agents, that the only complaint is that the polling units results was not transmitted by the 3rd Respondent to the IREV through the use of BVAS and they reproduced the evidence of the three polling units agents who testified before this Tribunal wherein the **PW2**, **PW7** and **PW8** stated that the INEC presiding officers and other officials in charge did not transmit or transfer the result of the election electronically to the collation Centre, and they urged the Tribunal to so hold that the complaint of the petitioner is the non transmitting of the results from the units to the collation centre electronically is the basis of the complaints. The counsel also submitted that assuming but not conceding that the results of the election were not electronically transmitted, it would still not render

the results of the election invalid as the Electoral laws made it optional either to transmit electronically or direct transfer. The counsel cited Section 60 (5) of the Electoral Act with respect to INEC's prerogative to prescribe the mode of transfer of results. They also referred to paragraphs 19 - 35 of the Regulation and more particularly paragraph 38 (1) of the said Regulation which provides the options of whether to transmit electronically or through transfer, and that the said paragraph does not support the contention of the petitioner. it is submitted by the counsel that the testimonies of the three witnesses are instructive when they said that the only issue with the process was that of lack of electronic transmission and upload to the IREV of the result through the BVAS.

The counsel tried to draw a distinction between the words "electronically" and "transfer" as captured in paragraphs 38 and 50 of the Regulation, and submitted that the paragraphs created an alternative between electronic transmission and transfer by the use of the word "or", and they argued that the results of the election can either be transmitted electronically or manually transferred as the Commission directs. Reference was also made to paragraphs 92 and 93 of the Regulations and the cases of ***Ucha V. Elechi (2012) 13 NWLR (PT. 1317) at 359 (SC); and Abubakar V. Yar'adua (2009) All FWLR (pt. 457) at 156 (SC)*** to the effect that a complain of non-compliance can be proved polling unit by polling unit, ward by ward and not on a minimal proof but on the balance of probabilities and the non-compliance must be substantial to affect the result, and where it does not affect the result substantially the petition must be dismissed which accords with Section 139 (1) of the Electoral Act, 2022. They also referred to the case of ***Ajiogu V. Irona (2009) 4 NWLR (pt. 1132) at 560 (CA)*** where the Court described vote as vote cast at an election by a registered and duly accredited voter and also the provisions of Section 47 (2), 60 (5) and 62 (1) and (2) of the Electoral Act, 2022. The case of ***Adeboyega Isiaka Oyetola & Anor V. INEC & 2 Ors. (Unreported) Appeal No.***

SC/CR/508/2023 delivered on 9th May, 2023 and now reported as (2023) LPELR-60392 SC where the counsel to the 2nd Respondent gave an excerpt of the judgment of the Supreme Court to the effect that the evidence required to proved that voting was allowed without accreditation or that there was improper accreditation are the Register of voters, BVAS and the poling unit result in Form EC8A, and the evidence that there was over-voting are the record of accredited voters in the BVAS and the polling unit result, and the counsel concluded that the petitioner having failed to tender in evidence the BVAS machine used in the various polling units being challenged on the basis of non-compliance, lack of accreditation and over-voting, the petitioner's claim must fail, they urged the Tribunal to so hold.

The counsel also cited the case of ***Doma V. INEC (2012) 13 NWLR (pt. 1317) at 321, paras. C – F*** to the effect that it is basic that a person who says he only in the poling unit where he voted on the day of the election would not know if malpractices happened in other polling units.

On the issue no. 3, the counsel submitted that it is the duty of a witness to point out the irregularities and demonstrate same through his evidence and not to dump same for the Tribunal to sort, and that this act amounts to dumping of documents. It is confirmed that the petitioner and her witnesses have failed to show to the Tribunal the particular results where over-voting occurred or cancelled which were computed to the advantage of the 1st Respondent, and they relied on the cases of ***Omisore V. Aregbesola & Ors. (2015) 15 NWLR (pt. 1482)*** *at* ***323 para. A; Obasi Brothers Merchant Ltd V. Merchant Bank of Africa Securities Ltd (2005) 9 NWLR (pt. 929)*** *at* ***140. Para. 19; Andrew & Anor. v. Inec & Ors. (2017) LPELR – 48518 (SC),*** and urged the Tribunal to hold that the documents tendered by the petitioner are documentary hearsay and inadmissible as they were merely dumped.

It is also argued by the counsel to the Respondents that it is the law that where petitioner's complaint is centered on irregularities

concerning polling units results, the result sheet/documents containing the said irregularities must be explained in the open Court and not in the address of counsel, as documentary evidence, no matter how relevant, must be linked by evidence through the party presenting same, and they cited the case of ***Apga V. Almakura (2016) 5 NWLR (pt. 1505) at 345, paras. D –*** **H;** and the case of ***Acn V. Nyako & Ors. (2015) 8 NWLR*** **(pt. 1491)** ***at 395, paras. G – C*** to the effect that documentary evidence tendered from the Bar or through an address that is not spoken would remain dormant until it is activated by oral evidence as the Court cannot do clustered justice, they argued that the outcome of the election is in such a manner that if the area affected by non-compliance is removed, the petitioner would win, and they referred to Sections 135 and 137 of the Electoral Act, 2022 and the case of ***Ogboru V. Okowa (2016) 11 NWLR (pt. 1522) at 148, paras. A – C.***

The counsel to the Respondents gave a break down as to how the petitioner becomes the highest beneficiary of the over-voting if proved, as follows:

a. In ward 9 unit 6 Ote-Okpu in page 11 the petitioner claims that APC had 11 votes while nothing was recorded for PDP in paragraph 15 (g) of the petitioner's deposition on oath.
b. In ward 11 Umunede Unit 16, APC scored 91 votes while PDP scored 28 votes in paragraph 15 (i) at page 11.
c. In ward 1 Agbor Town, unit 2 APC scored 91 votes while PDP scored 59 votes in paragraph 15 (i) at page 11.
d. In ward 11 Agbor Town unit 2, APC scored 97 votes while PDP scored 64 votes as in page 12, paragraph 15 (k).
e. In ward 11 Agbor Town unit 10, APC scored 15 votes while PDP scored 4 votes in paragraph 15 (n) at page 12.
f. In ward 2 unit 12, APC scored 55 votes while PDP scored 20 votes in paragraph 15 (o) as in page 12.
g. In ward 3 Ihuozomor unit 3, APC scored 676 votes while PDP scored 61 votes in paragraph 15 (p) at page 13.

h. In ward 6 Ihuyase unit 8, APC scored 26 while PDP scored 61 votes in paragraph 15 (p) at page 13.
i. In ward 6 Ihuyase unit 8, APC scored 26 while PDP scored 26 votes in paragraph 15 (v) at page 17.
j. In ward 8 Boji-Boji unit 9,, APC scored 63 votes while PDP scored 50 votes in paragraph 15 (cc) at page 15.

The counsel urged the Tribunal to hold that most of the irregularities, if proved, enures in favour of the petitioner and if removed, the 1st Respondent would still win the election. The counsel to the Respondents further submitted that the petitioner in her deposition on oath in paragraphs 9 – 17 alleged over-voting in some units in Ika North-East and Ika South and for her to succeed, she must lead evidence of fact from the poling units that the over-voting enures to the 1st Respondent and must do the following:

a. Tender the voters' register.
b. Tender the statement of result in the appropriate form.
c. Relate and demonstrate the documents to specific areas in respect of which the documents are tendered.
d. Must show that if a figure representing over-voting is removed, it would result in victory of the petitioner, and referred to the case of ***APC V. PDP & Ors. (2020) 17 NWLR (pt. 1754) at 436, paras. A – B.***

The counsel cited some judicial authorities in arguing that the BVAS Report cannot be used in isolation of the voters' register and submitted that the petitioner failed to prove over-voting. The counsel also referred to the cases of ***Yahaya & Ors. V. Dankwambo & Ors. (2016) 7 NWLR (pt. 1511) at 313 para. A – B; Ladoja V. Ajimobi & Ors. (2016) 10 NWLR (pt. 1519) at 147 and 148, paras. H – A and Orereke V. Umahi & Ors. (2016) 11 NWLR (pt. 1524) at 492, paras. A – D,*** all in arguing that the three polling unit agents, that is PW2, PW7 and PW8 called by the petitioner from the polling units in Ika North-East Local Government who monitored the election from the receipt of election materials,

distribution of same, accreditation of voters, casting of votes, counting of votes, the declaration of results as well as entering of same into appropriate forms maintained unequivocally in their paragraph 2 of their depositions on oath that they were at their polling units from the beginning of the election to the end, and they could not say there was over-voting, and it is only polling unit agents that are qualified to give credible evidence as to what transpired at a particular polling unit because of the combined effect of Sections 41 (3), (4), (5) and (6), 43 (1) and 47 (1) of the Electoral Act.

On the allegation of disenfranchisement, the counsel to the Respondents submitted that the petitioner has failed to prove that any member of her party or supporter was disenfranchised from voting on the day of the election, as there is no evidence from the polling unit agents that members of the APC or any other political party were ever disenfranchised as the only evidence from the polling unit agents is that there was manual collation of results and have the original copy of the results in Form EC8A (II) was not scanned and uploaded to the INEC IREV and that the original copies of the unit results were not taken to the ward collation centre but rather were taken to Local Government collation centre. The counsel submitted that a party who claims that his supporters were prevented from voting must lead evidence to show that they were prevented from voting, and those persons alleging disenfranchisement must satisfy the Tribunal that:

(i) They are qualified to vote.
(ii) They must show their voters' cards and also show the voter's register to prove that his name was not ticked as having voted in the day of the election,

and the counsel cited the case of ***Ogboru & Ors. V. Udughan (2011) 2 NWLR (pt. 1232) at 5395 – 5396, para. G – A; and Chime & Ors. V. Onyia (2009) 2 NWLR (pt. 1124) 43 para. A – B.***

On the allegation of corrupt practices and thuggery made by the petitioner in paragraphs 16, the counsel to the respondents submitted

that there is no evidence from the polling unit agents that there was any form of thuggery or corrupt practices on the day of the election at the polling units. It is submitted that the offence of thuggery is criminal and the proof requires is beyond reasonable doubt, and it cannot be transferred from one thug to the other and it has to be proved that the person whose election is being challenged personally committed the offence, that is to say, the agent who committed the offence must have the authority from the person whose election is being challenged to act in such a manner, and they cited the cases of ***Anyawu V. Pdp (2020) NWLR (pt. 1710) at 165 paras. F – H; and Falae V. Obasanjo (1999) 4 NWLR (pt. 15991) at 409, paras. E – G.***

It is also submitted that allegation of corrupt practices can only be established by the polling unit agents also were present at the polling units from the beginning of the election to the end, and they cited the case of ***Abubakar V. INEC (2000) 12 NWLR (pt. 1733) at 150, paras. D,*** and submitted that the PW2, PW7 and PW8 only gave evidence as to manual collation of results instead of electronic collation and did not give evidence as to any corrupt practices, and the evidence of the petitioner (PW10) is hearsay as touching what was told to her by her polling unit agents whom she failed to call as witnesses. They submitted that the only witnesses who testified in Ika North-East out of 407 polling units in Ika North-East and Ika South, and those witnesses gave evidence at variance with that of the petitioner. What the petitioner alleged are that:

(i) *That her supporters were disenfranchised;*
(ii) That election materials were carted away a day before the election, and
(iii) *That people who were not accredited voted and that her agents were driven out from the polling units.*

The counsel submitted that the polling units agents who testified on their own part, never said anything of such ever happened at their various polling units, and submitted that there are material

contradictions in the evidence of the petitioner and that of the polling units agents who were at the polling units from the beginning of the election till the end, and they referred to the case of ***Emeka V. Okoroafor (2017) 11 NWLR (pt. 1577) at 514, para. D – E.***

The counsel to the Respondents submitted that any evidence, whether elicited during Cross-Examination that is at variance with the pleadings goes to no issue and urged the Tribunal to discountenance the evidence of the petitioner and her witnesses that are in conflict or at variance with the pleaded facts, and they cited the cases of ***Agu V. General Oil Ltd. (2015) 17 NWLR (pt. 1488)*** *at* ***pp. 343, para. E; Youth Shall Grow Motors V. Onalaja (2021) 3 NWLR (pt. 1787)*** *at* ***229, para. F; and Ojoh V. Kamulu (2005) 18 NWLR (pt. 958)*** *at* ***548, para. H.*** *The counsel also cited the cases of* ***Gundiri V. Nyako (2014) 2 NWLR (pt. 1391)*** *at* ***245;*** *and* ***Buhari V. Obasanjo (2005) 13 NWLR (pt.941)*** *at* ***317.***

In his final written address, the counsel to the petitioner submitted that there was heavy case of non-compliance to the Electoral law of 2022 and Guideline, and other enabling laws regulating the conduct of 2023 National Assembly elections of 25th February, 2023. He referred to the case of ***Igodo V. Onwulo (1999) 4 LRECN 22*** to the effect that election is concluded where all the acts and the things required to be done under the procedure set under the Act has been done and it is completed where there is collation of all results of the polling units and wards which made up a constituency and declaration of result, and he also referred to the case of ***PDP V. INEC & Ors. (2015) LPELR – 25669 (CA).***

The counsel cited the case of ***Gunn V. Sharpe (1974) 4 B 808*** to the effect that even though the election was so concluded substantially in accordance with the law as to election, nevertheless if there was a beach of the rules or a mistake at the polls and it did affect the results of the election, the election is vitiated. The counsel further submitted that it is the evidence before the Court which is unchallenged that there was no collation of results electronically from

the polling unit to the IREV, and there was also cancellation of results in 24 units and more as shown in Exh. 33 of 1 – 24 as a result of declared emergency disruption, and in that there was substantial non-compliance with the Electoral Act and the Guidelines issued by the 3rd Respondent in the conduct of the 25th February, 2023, and he cited the case of ***Odedo V. Inec & Ors. (2008) LPELR – 2004 (SC)*** to the effect that where a law such as Electoral Act 2006 provides for "A" and a party does "B", a Court is required to hold a party has not complied with the law and the Court has the jurisdiction to decide on the consequences of the non-compliance, and therefore urged the Tribunal to so hold that the 3rd Respondent has failed to comply with the provisions of Electoral Act.

The counsel submitted that the PW1 and PW2, in the course of Cross-examination, stated that there was no collation of result in the polling unit and there was no transmission of result to the IREV by the 3rd Respondent, and that the PW3, being the ward collation agent stated that he was denied access to the collation centre and he had to run for his life by reason of violence perpetrated by the 1st and 2nd Respondents using the Hillary Ibegbulem and other thugs, while the PW4 stated that the results in ward 3 except unit 14 were cancelled and PW5 stated that the result was not collated in ward 11.

It is the submission of the counsel also that PW8 gave evidence that there was violence in the election which gave rise to the 3rd Respondent to issue Exh. 33 (Form EC840G), and the PW7 also affirms that there was no transmission of result to the IREV. That PW10 also stated that there was no collation in various polling units and her car was burnt down in ward 9 and the result was not transmitted to the IREV, and submitted that all there are non-compliance with the Electoral Laws by the 3rd Respondent, and that the evidence was not contradicted by the 3rd Respondent.

The 3rd Respondent did not give evidence to show that there was collation of results and transmission of same to IREV, and it has not debunk that there was no violence on the election day. In totality,

the counsel submitted that there was non-compliance of the electoral laws which will give rise to the nullification of the election.

On the issue as to whether the non-compliance, if sustained as having occurred, is of such a nature to overturn the outcome of the election returned in favour of the 1st Respondent by the 3rd Respondent, the counsel to the petitioner answered that in the affirmative and he referred to the case of ***Okpong & Anor. V. Etuk & Ors. (2011) LPELR – 14270 (CA)*** for the definition of non-compliance, and submitted that the procedure to be adopted in the conduct of the election are;

a. *Accreditation of voters with BVAS;*
b. *Transmission of scanned results of the polling unit with BVAS to IREV; and*
c. *Collation of results from the ward level etc, and*

Submitted further that the above requirements are not complied with, and this was never explained by the 3rd Respondent. The counsel also cited the case of ***Swen V. Dzungwe (1966) LMNR 297*** to the effect that it is not only the breach of the Electoral Act that constitute irregularities or non-compliance, but all acts capable of placing obstacles on the way or obstructing willing voters are considered as non-compliance, and therefore, the incidence of thuggery and ballot boxes snatching were also alleged by the petitioner.

It is submitted that the 3rd Respondent did not give evidence and the petitioner has proved his case on the balance of probabilities, and he cited the case of ***Buhari V. Inec & Ors. (2008) LPELR – 814 (SC)*** and submitted that the 3rd Respondent did not give evidence that there was a compliance to the Electoral Laws, and on the whole the counsel urged the Tribunal to nullify the election.

As said earlier, the Tribunal and the counsel to the parties have agreed as to the issues for determination and having dealt with the rest, the issue at stake is:

Whether in the light of the pleadings of the parties especially in the petition and evidence led, the petitioner is entitled to the reliefs sought?

On the allegation that violence marred the polls the petitioner alleges that a PDP agent and Principal Secretary to the Delta State Governor, one Hillary Ibegbulem, on the day of the election blocked the only access road to Ute-Okpu with a tanker so as to prevent movement of the voters and vehicles. That there were sporadic shooting masterminded by the said Hillary Ibegbulem, and that the said same person directed his group of thugs in the full of glare of people to set a Siena SUV Car with Reg. no. **RSH 926 A2**, belonging to the petitioner, ablaze, and this led to the death of one of the supporters of the APC.

It is also alleged that Hillary Ibegbulem used a lorry which had petroleum product to block the access road to the village of the petitioner preventing her supporters to their poling units and this succeeded in disenfranchising a lot of people who wanted to exercise their franchise.

It is also alleged that the staff of INEC were dispersed because of gunshots from the boys of Hillary Ibegbulem and the said thugs snatched voting materials from INEC staff which were meant for voting, and the materials were later discovered in the bush and some were recovered by the police and taken to Owa police station of Ika North-East.

The petitioner alleges that she is under fear and apprehension for her life following threat to her life from the thugs of the PDP Chieftain, and that 198 polling units were disenfranchised and their right to vote were completely eroded.

It is the criminal allegations of the counsel to the petitioner in his final address that the *PW3* has given evidence that he was denied access to the collation centre and that he had to run for his life by reason of violence perpetrated by the 1st and 2nd respondents, using one Hillary Ibegbulem and other thugs, and that *PW4* gave evidence

that the results were cancelled in ward 3 as a result of violence, which the *PW8* also gave evidence as to existence of violence on the election which led to issuance of EXH. '33' (Form EC40G). The counsel also submitted that the *PW10* gave evidence that her car was burnt in ward 9. He also submitted that INEC officials ran away and the electoral materials were abandoned in ward 3 as a result of the violence, while it is the contention of the counsel to the respondent that the petitioner has failed to prove that any member of her party has been disenfranchised on the day of the election as her polling agents testified that they monitored the election from the beginning till the end and all members of her party were present.

The counsel submitted that a party who claims that her supporters were prevented from voting must lead evidence to show that such voters were actually prevented from voting, and they cited the cases of ***Ogboru & Ors V. Uduaghan (2011) 2 NWLR (pt. 1232) 538, paras. G – A;*** *and* ***Chime & Ors. V. Onyia (2009) 2 NWLR (pt. 1224) 43, paras. A – B.***

The counsel further contended that there was no evidence from the polling unit agents that there was any form of thuggery is criminal in nature and the proof required is that of beyond reasonable doubt, and it cannot be transferred from one person to the other, and it must be proved that the person whose election is being challenged personally committed the acts or gave instruction directly to the thugs to commit the offence, and it must be proved that the agent who committed thuggery and express authority from the person whose election is being challenged to act in such manner, and he cited the cases of ***Anyanwu V. PDP (2020) (supra);*** *and* ***Falae V. Obasanjo (supra).*** It is contended that corrupt practice can only be established by the polling unit agents who were present at the polling units, and he cited the case of ***Abubakar V. INEC (supra),*** and submitted that from the testimony of the three polling unit agents, there was no corrupt practice from the beginning to the end of the election. They submitted that there are material contradictions in the

evidence of the petitioner and that of the polling unit agents, and that it is not the duty of the judge to find explanation to contradictions in the evidence of witnesses, and they cited the case of ***Emeka V. Okoroafor (supra),*** and urged the Tribunal to hold that the petitioner failed to prove all the criminal allegations raised in the petition.

Thus, by the provisions of Sections 135 (1) & (2) of the Evidence Act, 2011, where the Commission of a crime by a party to a proceeding is directly in issue in any proceeding, civil or criminal, it must be proved beyond reasonable doubt, and the burden of proof is on the person who asserts. See the cases of ***Nyesom V. Peterside (2016) All FWLR (pt. 856) p. 222*** at ***260, paras. G – G;*** and ***Action Congress V. Manzo (2010) All FWLR (pt. 503) p. 1354*** at ***1362, paras. G,*** all to the effect that allegations of malpractice and irregularities are criminal in nature and have to be proved beyond reasonable doubt.

The evidence adduced by the petitioner is that of *PW3*, being a Local Government Party Collation Agent, and what he said about Hillary Ibegbulem and other party stalwarts of PDP, the military and police in uniform is that they violently prevented him from entering the collation centre at Ika North-East Local Government Area on the said election day. The *PW3* was asked during Cross-examination whether he reported to the police, and he said he did, and in his statement on oath, he did not say that he reported to the police. He was also asked whether Hillary Ibegbulem held him up, and he answered in the negative.

The *PW9* gave evidence that there was monumental fracas which disrupted the collation. Those two witnesses did not say that the election did not take place at units levels or that there was disruption while voters were voting in their poling units, but rather it was at the point of collation at local Government levels. See ***Ogu V. Ekweremadu (2005) All FWLR (pt. 260) p. 6 at 23, paras D – F*** to the effect that thuggery and violent disruption of election are

criminal acts. There must established nexus between the perpetrators and the person returned as winner by credible evidence. It must be shown that the act adversely affected the conduct of the election and further that the act substantially affected the result of the election. In the instant case, the *PW9* did not link the perpetrators of the monumental fracas with the person returned and his evidence has no probative value. See also the case of ***Ajimobi V. INEC (2009) All FWLR (pt. 477) p. 94 at pp. 103 – 104, paras G – A*** to the effect that incidence of violence is not a sufficient ground to set aside an election when the charge is not fix on any person.

The *PW10* in her witness statement on oath stated that there were sporadic gunshots in the area masterminded by Hillary Ibegbulem and his group of thugs and that Hillary Ibegbulem directed his group of thugs in the full glare of people to set Seina SUV car ablaze and the car was burnt to ashes.

It is instructive to note that the witness did not mention the names of the thugs that set the car ablaze or fire gunshots. She did not say what kind of directives given by Hillary Ibegbulem, whether oral or written instructions, to the thugs and at what point, and the thugs are unknown persons. See ***Ajimobi V. INEC (supra)*** to the effect that an allegation of crime must be fixed on a person. See also ***Muazu V. ANPP (2013) All FWLR (pt. 660) p. 1392 at 1406, paras. B – C*** to the effect that electoral offence or offences alleged in an election petition must have been committed by the respondent or someone authorized by him. In the instant case it was not said by the ***PW10*** that Hillary Ibegbulem was authorized by the person referred to instruct his thugs to commit the criminal acts alleged.

The burnt car was not produced before the Tribunal let alone for the Tribunal to see and inspect, and the Tribunal was not moved to the scene to see things for itself, there is no police report that a car SUV was burnt or one APC supporter was killed, and no any report from anywhere as to the death of any supporter of APC. See ***Idiok V. State (2008) All FWLR (pt. 421) p. 797 at 817*** where the

Supreme Court held that there must be direct evidence of a witness who saw and watch the act in question. In the instant case, no any witness was called to testify that he saw and watch the act of burning the car and killing of APC supporter, therefore, the evidence is bereft of credibility and probative value.

The *PW9* did not say who caused the monumental fracas. There is no evidence that the tanker and the lorry that blocked the road to Otu-Okpu belongs to Hillary Ibegbulem, and no evidence that he was the driver to those vehicles. No any staff of INEC was called as a witness to give accounts as to what happened that made them to disperse. The gun that was used in firing the gunshot was not produced before the Tribunal, and no any security agent either police or any other that was called to give evidence as to the gunshots. The person who fired the gunshot was not named. See ***Ajimobi V. INEC (supra).***

No any person is brought before the Tribunal to testify that he was blocked and prevented from exercising his right to vote. The snatched voting materials discovered and were said to have been taken to the police station Owa were not produced before the Tribunal as exhibits. All the witnesses put in by the petitioner did not give evidence as to violence and disruption except *PW9*, while the *PW3* only told the Tribunal that he was only denied access to the Ward Collation Centre. The *PW5*, *PW6*, *PW4, PW1, PW3* are Ward Collation Agents and Local Government Agents respectively, while *PW2, PW7 and PW8* are the only unit agents and did not say anything regarding violence and thuggery.

Now, the question is: whether with all the above analyses, can it be said that the petitioner has proved violence, thuggery and disenfranchisement? In the cases of ***PDP V. INEC (2020) All FWLR (pt. 1052) p. 1034*** at ***1063, para. A,*** the Supreme Court held that the only witness acceptable in proof of incidents at polling units, in election matters are unit agent and no more. The Court went further and held at page 1060, para. E – G that the Court would be satisfied

on the proof of disenfranchisement of voters when such voters give clear evidence that they are duly registered for the election but were not given the opportunity to cast their votes. In this regard, it is necessary for such voters to tender in evidence their respective voters' cards and register of voters from each attached polling unit to vote, the candidate of the political party of their choice would have won the election. See also the case of ***Emmanuel V. Umana (supra).***

In the instant case, none of the people of Otu-Okpu village that was called to give evidence that he was disenfranchised or was prevented from exercising his right to vote. See the case of ***Udeagha V. Omegara (2010) All FWLR (pt. 542) p. 1791*** at ***1813, para E*** where the Court of Appeal, Owerri held that a party who alleges non-voting should tender voters' cards through registered voters in that constituency who turned up to vote but were not given the opportunity to vote. In the instant case, nobody from the 198 polling units that complained that he was prevented from voting. Even the witnesses the petitioner put did not testify that they were denied to vote.

Certainly the petitioner could not be able to prove that her supporters have been disenfranchised or prevented from exercising their right to vote. See the case of ***Nicoro V. Azuru (2011) All FWLR (pt. 556) pp. 556 – 558, paras. G – D per Garba JCA.***

Thus, allegation of corrupt practice touch in the realm of criminality, and same must be proved beyond reasonable doubt. See the case of ***Omisore V. Aregbesola (2015) All FWLR (pt. 813) p. 1683*** at ***1750, para. F.*** See also the case of ***Kwali V. Dobi (2010) All FWLR (pt. 506) p. 1894*** at ***AP. 1919 – 1920*** where the Court of Appeal, Abuja Division held that where in an election, the allegation is that malpractices or corrupt practices were committed by agents of the person returned as duly elected, the person challenging the election must prove:

a. *That the alleged agent claimed to be the agent of the elected person;*
b. *That the offences were committed in favour of the elected person:*
   (i) With his knowledge or
   (ii) With his knowledge or consent of a person who is acting under the general or special authority of such candidate with respect to the election.

Where the petitioner fails to establish the above, then he cannot attribute any offence committed by the agents to the candidate. See also the case of ***Muazu V. ANPP (2013) All FWLR (pt. 660) p. 1392*** at ***1406, paras. A – D*** where the Court of Appeal, Kaduna Division held that electoral offence or offences alleged in the election petition must have been committed by the respondent or by someone authorized by him. The petitioner owes it a basic duty to that no other individual, other than the respondent, committed the acts or that he authorized his agents to commit the notorious acts on his behalf. Until there is credible evidence in that direction, the respondent cannot be held criminally liable for the alleged criminal acts. See also the case of ***OYebode V. Gabriel (2013) All FWLR (pt. 669) p. 1048 at 1080, paras. A – E*** where the Court of Appeal, Ekiti Division held that where generally corrupt practices or offences is alleged in an election to invalidate the election, the petitioner must prove the alleged practice or offence in addition to the following:

a. *That the 1st respondent personally committed the alleged crime or aided or abetted the commission of the alleged corrupt practice or offence.*
b. *That where the alleged act was committed through an agent, the said agent was authorized by the 1st respondent.*
c. *That the alleged corrupt practices or offences attended the outcome of the election and how it affecded it.*
d. *That but for the corrupt practices or offences, the petitioner would have won the election.*

In the instant case, the petitioner alleged that it was the agent of the PDP Hillary Ibegbulem that instructed his group of thugs to commit corrupt practices and not that the 1st respondent authorized the group of thugs, and the petitioner did not by her evidence proved that if not because of the corrupt practices she would have won the election, See the case of ***Ogu V. Ekweremadu (2005) All FWLR (pt. 260) p. 6 at 23, paras. D – F*** where the Court of Appeal, Enugu Division held that thuggery and violent disruption of election are criminal acts.

There must established nexus between the perpetrators and the person turned as winner by credible evidence. It must be shown that the act adversely affected the conduct of the election and further that the act substantially affected the result of the election. In the instant case, the petitioner did not lead evidence that it was the 1st respondent that authorized the group of thugs, if at all they committed the offence, and this create a doubt in the mind of the Tribunal that there is no corrupt practices or malpractices on the part of the respondents, and to this, it so holds that the petitioner could not prove beyond reasonable doubt that there were corrupt practices or malpractices in the election of 25th February, 2023.

On the cancelled votes used in collation and declaration, the petitioner alleged that several polling units across Ika North-East and Ika South Local Government Areas of Delta State votes were cancelled by the presiding officers, and still the cancelled votes were collated and used to return the 1st respondent. The petitioner pleaded EC40G for each of the polling units and the Form EC40G, that is the incident forms, were part of the documents attached to the *PW10* deposition on oath.

It is noteworthy that the *PW10* attached 25 EC40G Forms, however, the deposition contained only form EC40G of 22 polling units. The petitioner in her pleadings did not specify the units that were cancelled and were collated and computed in the declaration of the 1st respondent as the winner. See ***Ajimobi V. INEC (supra)***

where the Court held that the petitioner who claims that ballot boxes in the election were stuffed must tender before the Court, the stuffed ballot box with ballot papers therein, and failure to do so casts a doubt on the evidence. In the instant case, failure of the petitioner to produce the ballot box and the ballot papers therein casts a doubt as to the evidence and therefore is bereft of probative value. It is the considered view of the Tribunal that the cancelled polling units results was done in bad faith.

Thus, it is the contention of the Respondents in their final written addresses that the petitioner dumped the documents, that is all units results from the 407 polling units in Ika North-East and Ika South Federal Constituency without explaining or demonstrating to the Tribunal the area of the said irregularity and how it affects the results of the election and that the petitioner and her witnesses failed to show to the Court the cancelled results which was computed to the advantage of the 1st Respondent, and the Tribunal is not enjoined to take over the duty of the petitioner by sorting out the documents and attaching explanation to them, and they cited the case of ***Omisore V. Aregubesola & Ors. (supra); and Obasi Brothers Merchant Ltd V. Merchant Bank of Africa Securities Ltd (supra),*** they submitted further that documentary evidence, no matter how relevant, must link by evidence through the party presenting same, and they cited the case of ***All Progressives Grand Alliance (Apga) V. Almakura (supra),*** and that documentary evidence tendered from the Bar or through a witness remain dormant until it is activated by oral evidence as the Court cannot do clustered justice, as a judge is not an investigator, and they referred to the case of ***Action Congress of Nigeria V. Nyako (supra).***

It is further contended that it is not enough for a petitioner to tender bulk documents, the documents must be demonstrated in open Court to show the irregularity through the polling units agents who were physically present at the polling units, and they referred to the case of ***Abubakar V. INEC (supra).*** While the counsel to the

petitioner in the preamble to their final written address only alluded to the facts that the issuance of Form EC40G and reasons giving in the exhibit is the confirmation of evidence in the 24 polling units and more, that is for declared emergency and disruption.

As said earlier, Forms EC40G for 22 polling units were exhibited to show that there were cancellations of results for declared emergency/disruption, and the exhibits were attached to the *PW10's* written deposition on oath which she adopted. The *PW10* tendered Exhibit '33' before the Tribunal on the 5th day of July, 2023, however, did not go further to explain or demonstrate by oral evidence Exh. '33' to which aspect of her case relate.

The Tribunal therefore agree with the counsel to the respondents that a party whose document has been admitted in evidence should not just rest on the facts that such document has been admitted in evidence but should go further to adduce evidence of its contents as the Tribunal has no duty to embark on an investigation of the contents of the document to arrive at a decision. See the case of ***Action Congress of Nigeria V. Lamido (2012) 8 NWLR (pt. 1303) 560*** at ***592 (SC); O.b.m.l. Ltd V. m. b. a. s. Ltd (2005) All FNWR (pt. 261) SC.***

The Tribunal has painstakingly looked at exhibits 1 – 34 and could not see the polling units results Form EC8A (II) of the cancelled units results Exhibit 33, even though it was pleaded by the petitioner in her petition that the said cancelled votes were collated and used to return the 1st Respondent. In essence the petitioner (*PW10*) did not attach and refer to the cancelled polling unit results, which she alleged were collated and used to return the 1st Respondent as the winner of the election, among the documents she tendered in bulk. The documents which the *PW10* attached to her deposition on oath are:

It can be seen that no polling unit results that were cancelled frontloaded, and nor were they tendered in evidence. In the circumstances, the Tribunal has fallen back on the authorities *of*

Action congress of Nigeria V. Lamido (supra); and O. B. M. C. Ltd V. M. B. A. S. Ltd (supra) to the effect that the petitioner did not go further to explain or demonstrate by oral evidence, and has not also put the documentary evidence to show that the cancelled results were collated and computed in returning the 1st Respondent as the winner of the election or dumping.

The counsel to the Respondents contended that the petitioner has failed to prove that the non-compliance or irregularities complained of is materially substantial as to affect the outcome of the election in such a manner that if the area affected by non-compliance is removed, the petitioner would win and they cited Section 135 and 137 of the Electoral Act, 2022 and the case of ***Ogboru V. Okowa (2016) (supra).***

In the instant case, the petitioner did not exhibit the polling unit results cancelled with a view to show the affected area which were used or collated to return the 1st Respondent, and the Tribunal is of the firm view that the petitioner failed to prove any irregularity regarding the cancelled votes. See the case of ***Maku V. Almakura (2016) All FWLR (pt. 832) p. 1609 at 1618, paras. A – C*** where the Supreme Court held that a petitioner who contests the legality or lawfulness of votes cast at an election and subsequent return, must tender in evidence all necessary evidence by way of forms and other documents used at the election. He must call witnesses, the documents are among those in which the results of the votes are recorded.

It is the contention of the petitioner that after the election at the polling units levels at the entire Ika North-East and Ika South Federal Constituency, Delta State, the presiding officers did not transmit or transfer the results of the election electronically to the collation system and did not use the BVAS machine to upload the scanned copy of the result for Form EC8A to the INEC Result View Portal (IReV) and therefore the collation was not in accordance with

the requirements of Section 38 of the Regulations and Guidelines for the Conducts of the Election issued by INEC.

Thus, the counsel to the petitioner contends that election is concluded where there is collation of all results of the polling units and wards which made up a constituency, and a declaration of result and the system has to go through as required by the Act, and he referred to the case of ***PDP V. INEC & Ors. (supra)***. It is also contended by the counsel to the petitioner that is the evidence before the Court which is unchallenged that there was no collation of results in various wards and there was also a case of non transmission of results electronically from the polling units to the IREV, and there was a cancellation of results of about 24 units and more, and therefore there was substantial non-compliance with the Electoral Act and Guidelines by the 3rd Respondent in the conduct of 25th February, 2023 election, and he cited the case of ***Odedo V. Inec & Ors. (2008) LPELR 204 (SC); and PDP V. INEC & Ors (supra) (CA).***

While it is the contention of the counsel to the Respondents, and more particularly counsel to the 3rd Respondent, that in order to establish issue of non-compliance as would lead to disturbing the result of an election, it must be shown by credible evidence led by the petitioner that the alleged non-compliance with the provisions of the Act had substantially affected the result of the election being challenged, he cited the case of ***Abubakar V. INEC (supra).***

The counsel contended further that the petitioner tendered the BVAS report which shows that there was accreditation of voters in all polling units by the 3rd Respondent except those that were cancelled; tendered the polling units results form EC8A for Ika North-East/Ika South Federal Constituency which is a proof that election were duly conducted by the 3rd Respondent, tendered Form EC8A for Ika North-East while some polling units were cancelled for irregularity, called three witnesses as polling units agents, the persons of Ebinum Prosper, Godwin Ekuife and Onyeisi Ugbebor, and those three witnesses told the Tribunal that they monitored the election from the

beginning to the end, only that there was no uploading of the results. He submitted that under Cross-examination, they admitted that they do not know how to operate the BVAS machine in order to conclude that it was safely uploaded or not to the IREV, and he cited the case of ***Ogbotu V. Okowa (supra)*** to the effect that it is impossible to have perfect and faultless election anywhere in the world. He further contended that even if there was non-compliance such is not substantial as to affect the results of the said election, and he cited the case of ***Omisore V. Aregbesola (supra).***

On the collation, it starts from the ward level and the Form to be used is Form EC8B(II), then to Local Government level Form EC8C, then put together the two Local Government that made up the constituency From EC8D, and the Declaration of result Form EC8E(II). The petitioner pleaded all the certified true copies of all the Forms, and the question that agitates in the mind of this Tribunal is: If the results at various levels were not collated, how did the petitioner get the certified true copies as to which she wanted to make case with them?

Some of the petitioner's witnesses said they were not allowed access to the Ward Collation Center, and some said that they were at the collation centres and they could not see the officials of INEC. Regulations 38(iii) provides:

> *"The polling Agents may accompany the Presiding Officer to the RA/Ward Collation Centre"*

By the above quoted provision, it can be inferred that the Regulation did not make it mandatory for the polling Agents to accompany the Presiding Officer to the Registration Area Collation Office while delivering the BVAS and the original copies of Form EC8A(III), and it is the considered view of the Tribunal that the polling agents particularly *PW2, PW7* and *PW8,* being polling unit agents, would not have been necessary present before the results in Form EC8A can be valid.

At the ward level, the provisions of Regulations 50(xiii) and (iv) of the Regulation and Guidelines of INEC provides:

> *"Enter the votes in both figures and words in the appropriate spaces in Form EC8B, EC8B(I) and EC8B(II) as the case may be; Complete the Forms as required, date and sign and request the Polling Agents to countersign."*

The area of concern in the above regulation is "request the Polling Unit Agents to countersign" which means the presiding officers shall request the polling unit agents to countersign Form EC8B(II) at the ward level of the collation and by the deposition on oath, which is the evidence in chief of the *PW2*, *PW7* and *PW8* who were the polling unit agents, they were not at the ward collation centre but rather at the Federal Constituency Headquarters. Now the question is how can the presiding officer request the poling unit agents that were not available at the collation centres to countersign? Certainly the presiding officers would not have the opportunity to request the polling agents to countersign, and where they could not be reached to ask them to counter sign, their non countersigning will not affect the results as there is no law which provides that the non countersigning of the polling unit agent at the collation centres of Form EC8B vitiates the result. See the case of ***Ikpeazu V. Otti (2016) All FWLR (pt. 833) p. 1985, paras. E – G per Galadima JSC.***

Looking at the depositions of *PW2, PW7* and *PW8*, it can be seen that they are identical to each other ward by ward and paragraph by paragraph, that is to say, no discrepancy in the depositions of the *PW2*, *PW7* and *PW8*, and it is the considered view of the Tribunal that the depositions of the *PW2, PW7* and *PW8* have no probative value and no credence will be attached to the pieces of evidence, and to this, the Tribunal so holds. See the case of ***Orji V. INEC (2021) All FWLR (pt. 1105) p. 601 at 649, para. H. See also the case of Omisore V. Aregbesola (2015) All FWLR (pt. 813) p. 1694 at 1773, para. H*** to the effect that a Court will act on

only written deposition of a witness which is found to be, credible and reliable upon proper evaluation.

The petitioner did not call polling agents of all the units she is challenging the non collation of results and therefore the evidence of the ward collation agents and Local Government collation agents is not given probative value since Regulations 38(iii) 50(xiv), 73(vi) and 74(vii) of the Regulations and Guidelines for the Conduct of Election, 2022 refer to Polling Agents as to who would be requested by the collation officers to countersign, and therefore the evidence of *PW1, PW2, PW3, PW4, PW5 PW6, PW10* have no probative value while the polling unit agents, *PW2, PW7* and *PW8* who did not accompany the presiding officers to the ward collation centre, and therefore their presence was not mandatory but rather discretionally by the provision of Regulation 38 of the Regulations and Guidelines.

The petitioner collected the certified true copies of results produced by INEC, and there is that presumption that the results were collated and are genuine as there is that presumption of correctness and regularity in favour of the results of election declared by INEC in the conduct of an election. See the case of ***Abubakar V. INEC (2020) All FWLR (pt. 1052) p. 915 at pp. 988, paras. G – A.*** In the instant case, the petitioner failed to prove, on balance of probabilities, that there was no collation of results.

On the non-scanning of polling unit results by the presiding officers to INEC IREV which the petitioner claimed in her petition, one of the items that are required to prove such is BVAS machine. It is very apparent that the petitioner did not produce BVAS machine before the Tribunal with a view to find out whether the results were scanned into the INEC IREV, this is in violation of Regulation 38 of the Regulations and Guidelines which the petitioner heavily relied upon, and there is no way the claim would have been established. See the case of ***Oyetola & Anor. V. INEC & Ors. (2023) LPELR-60392 (SC).*** Equally, the provisions of regulations 92 and 93 of the

Regulations and Guidelines for the Conduct of Elections, 2022 put to rest the issue of collation or otherwise.

Another thing is that the provisions of the Regulations and Guidelines for the Conduct of Election, 2023 gave an alternative to electronic transmission of election results into the INEC IREV, and it does not matter if it was done by way of transfer directly, this is because the Regulations in regulation 38 used the word "or" which means disjunctive. So where INEC decided to leave the electronic transmission of the results by way of scanning and opted for direct transfer to the collation system, it cannot be questioned by the petitioner, and thus, the Tribunal so holds. In the instant case, for the fact that there are the results which were pleaded by the petitioner, there is that presumption of correctness and regularity in favour of the results of election declared by INEC, and the Tribunal so holds. See the case of ***Abubakar V. INEC (supra).*** See also ***Oyetola & Anor. V. INEC & Ors (supra).***

In this circumstance, recourse has to be had to the provision Regulation 101 of the Regulations and Guidelines 2022 which provides:

> *"The following shall be allowed access to the electoral material distribution centres, polling unit, polling stations and collation centres, provided that they are properly documented or identified:*
>
> *(iv) One polling Agent per political party or candidate. Candidate who choose to serve as their own agents should inform the Commission in good time for proper documentation and identification"*

The area of concern in the above quoted provision of Regulation 101 is the proviso to the effect that until the polling agents are properly documented and identified before gaining access to the collation centres, and therefore the proviso negated the compulsory nature of the provision. In the course of cross-examination, *PW2*, *PW7* and *PW8*, who claimed to be polling agents, did not show any

evidence that they were polling agents by way showing their polling agent cards, therefore, for the fact that the polling agents were not allowed into the collation centres does not vitiate the election, because the provision of the regulation 101 of the Regulations and Guidelines is permissive and not mandatory, and the Tribunal so holds. It is the Tribunal's position that the only witnesses acceptable in proof of incidents at polling units, in election matters are units agents and no more. See the case of ***PDP V. INEC & Ors. (2020) All FWLR (pt. 1052) p. 1034 at 1062, paras. A.*** this is because where a petitioner complain of non-compliance with provisions of Electoral Act, he has the duty of proving polling unit by polling unit, ward by ward. He must also prove that the non-compliance is substantial, that it affected the result of the election. In the instant case, all that the witnesses said was that there was no collation of results, but they did not point out as to how it affected the results.

On the non-scanning of result into the IREV in this regard is to consider the provision of Regulation 38 of the Regulation & Guidelines for the Conduct of the Election, 2022 issued by the 3rd Respondent which provides:

> *"On completion of all the polling unit voting and results procedures, the presiding officer shall:*
> *(i) Electronically Transmit or transfer the result of the polling unit, direct to the collation system as prescribed by the Commission.*
> *(ii) Use the BVAS to upload a scanned copy of the EC8A to the INEC Result Viewing Portal (IREV), as prescribed by the Commission.*
> *(iii) Take the BVAS and the original copy of each of the forms in temper-evidence envelope to the Registration Area/Ward collation officer in the company of security agents. The Polling Agents may accompany the presiding officer to the RA/Ward collation Centre".*

Now, the area of concern in the above quoted provisions are the expressions "Electronically transmit" or "transfer the result of the polling unit, direct to the collation system as prescribed by the Commission". Therefore, the Regulation made use of the ward "or", which means, alternatively the result can be electronically transmitted, or be transferred to the collation system directly.

The petitioner *(PW10)* in the course of the trial tendered bundle of Form EC8A of the polling units mentioned above, and no explanation was offered to relate each of the polling unit results, in prove of her case. Therefore, it is the contention of the Respondents that the documents should not be examined, and they cited the case of ***Andrew & Anor. V. Inec & Ors. (supra)*** to the effect that the documents must be subjected to the test of veracity and credibility and where it involves mathematical calculations, how the figures were arrived at must be demonstrated in the open Court and finally, the correctness of the final figure must also be shown in the open Court.

The counsel to the Respondents contended that all the documents tendered from the bar by the petitioner's counsel, and they were neither demonstrated through their maker under examination in chief to speak to the documents nor were they related and tied to the relevant portions of the petitioner's case, and it is not the duty of the Tribunal to embark on clustered justice by making enquiry into the case outside the open Court not even examination of the documents, thus, they contended that the documents are hearsay documents, and urged the Tribunal not examine same, while it is the contention of the petitioner that the issue of dumping of documents has been taken care of by paragraph 46(4) of the 1st Schedule to the Electoral Act, and therefore, even though the documents were demonstrated by the petitioner, still the Tribunal can examine same.

The Tribunal agree with the counsel to the petitioner on the provision of paragraph 46(4) of the 1st Schedule to the Electoral Act, 2022 in that it behoves upon the counsel in his address to point out the areas on the results Form EC8A (Exh. '3' to '29') tendered by the

petitioner ***(PW10)*** the irregularity therein, or to show that the results were not collated or transferred directly to IREV.

The Tribunal also looked at the final written address of counsel to the petitioner in response to the 2nd Respondent's address and could not see where the counsel arrived at any correctness of any figure, and did not point at the documents Forms EC8A (Results of the polling units) or to show that the results were not collated, looking at the faces of the documents. Yet the petitioner relied upon the documents in prove of her case, also looking at the documents Form EC8A (II) of the polling units results, there are signatures of the presiding officers and the results were duly stamped by same. There is no provision for the polling units agents of a political to sign before it can be deemed to have been collated. See ***Ikpeazu V. Otti (2016) All FWLR (pt. 833) p. 1985, paras. E – G*** where the Court held that there is no law that non-signing of result will vitiate the result of an election. The Certified True Copies were produced by the 3rd Respondent, and there is the presumption of authenticity of the Certified True Copy. See the case of ***Aregbesola V. Oyinlola (2009) All FWLR (pt. 472) p. 1160 at 1181, paras. A – C.***

How could the Ward Agents say that there was no collation at the ward level, and by mere looking at their written depositions, the witnesses have virtually said the same thing that there was no collation, and no any discrepancies in their witness statements on oath on the same issue that there was no collation. To the Tribunal, this is usual accompaniment of a concocted story, and imperfection and different personal expressions in human reflections are quite normal, and therefore, to our minds, the statements of the witnesses of the petitioner that there was no collation represent prepared statements, and this Tribunal will not rely on the deposition of the witnesses called by the petitioner. See the case of ***Orji V. Inec (2021) All FWLR (pt. 1105) p. 601 at 649, paras. D – E.***

It is the Tribunal stance that, notwithstanding the provisions of paragraph 46(4) of the First Schedule to the Electoral Act, 2022, the

petitioner, having dumped on the Tribunal the bundle of documents without relating them with the specific areas to which she is relying, such documents cannot be ascribed any probative value this is because the said paragraph does not obviate the need for petitioner or any of her witnesses to speak to the documents or to relate the documents so tendered to the specific aspect of her case, and the Tribunal so holds. See the case of ***APC V. Adeleke & Ors. (2019) LPELR-47736 (CA).***

The Tribunal observed that the petitioner called three polling units agents, Comrade Onyeisi Igbebor of unit 06, ward 4, Ika North Local Government; Godwin Ekwuife of unit 07, ward 4 of Ika North Local Government; Ebinum Proper of unit 020, ward 3, Ika North Local Government; other witnesses called by the petitioner are two Local Government Party Collation Agents and four Ward Collation Agents. It is the Tribunal's position that the only witnesses acceptable in proof of incidents at polling units, in election matters are units agents and no more. See the case of ***PDP V. INEC & Ors. (2020) All FWLR (pt. 1052) p. 1034 at 1062, paras. A,*** this is because where a petitioner complain of non-compliance with the provisions of Electoral Act, he has the duty of proving polling unit by polling unit, ward by ward. He must also prove that the non-compliance is substantial, that it affected the result of the election. In the instant case, all that the witnesses said was that there was no collation of results, but they did not point out as to how it affected the results.

So, it is the contention of the Respondents that the petitioner did not prove to the Tribunal, through credible evidence, as to how the non-collation affected the results which were admitted and marked as Exhibit '3' to '29'. Even the petitioner ***(PW10)*** in her depositions which she adopted only alluded to the fact that the infractions against the Electoral Laws, Regulation and Guidelines in the course of the conduct of the Ika North-East/Ika South Federal Constituency was to the extent that such was noticeable in the face of some purported results and the said purported results were not

collated across board at all in the various polling units that make up Ika North-East/Ika South Federal Constituency. The ***PW10*** did not go further to pinpoint the infractions in the results which she tendered in evidence.

The ***PW10*** and other witnesses did not pinpoint how the non-collation of the result, it proved, would affect the entire results of the polling units. She did not even tender the BVAS Device to confirm that there was no scanning of result and consequent transmission of results to the IREV. See ***Oyetola & Anor. V. INEC & 2 Ors. (2023) LPELR-60392 (SC).***

It is the considered view of the Tribunal that there was collation of results, hence the production of the Certified True Copies of same Form EC8A (II) which was tendered by the petitioner ***(PW10),*** and the petitioner did not show how the non-compliance or the infractions would affect the results, and to this the Tribunal so holds.

The petitioner ***(PW10)*** in the course of Cross-examination told the Tribunal that she was at her polling unit throughout the day of the election, and that it was only reported to her by polling unit agents. Only three of the polling unit agents that testified before the Tribunal. It is on record that Ika North-East/Ika South Federal Constituency has 407 polling units, therefore, assuming but not deciding that the petitioner proved the infractions in three units and 24 units are also affected by cancellation, how could the infractions and cancellation affects the entire results of the constituency? Certainly it would not affect, and the petitioner has not proved with preponderance of evidence that the infractions affected the results and to this, the Tribunal so holds.

And it is only when the petitioner has been able to prove that the infractions affected the results, that is when the burden would shift to the Respondents to prove that the results were not affected. See the case of ***Pdp V. Inec (supra); and Bowale V. Adekiya (2017) All FWLR (pt. 916) p. 1400 at P. 1431 – 1432, paras. A – C.***

It is also the contention of the petitioner that the number of accredited voters from BVAS Report for Ika North-East/Ika South Local government Area is 80,783 voters whereas Form EC8C (II) shows the total number of accredited voters in both Local Governments is 95,108 accredited voters, and further contended that the number of accredited voters from Form EC8C (II) should be equal with the number of accredited voters as contained in the BVAS, and that the petitioner relies upon the copy of BVAS Report for the constituency, and Form EC8E dated 26th day of February, 2023.

The counsel to the petitioner did not proffer any address on the issue of over-voting, while it is the contention of counsel to the Respondents that to prove over-voting, the petitioner must do the following;

a. *Must tender the voters register used in the process of accreditation of voters on the day of the election.*

b. *Must tender the statements of results in the appropriate form in which would show the number of accredited voters.*

c. *Must relate and demonstrate the document to the specific areas of his case in respect of which the documents are tendered.*

d. *Must show that if the figures representing over-voting is removed, it would result in victory for the petitioner.*

They cited the case of ***APC V. PDP & Ors. (2020) 17 NWLR (pt. 1254) 436 at 437 – 438 paras. A – B.*** In the instant case, what the petitioner intended to rely on are only the copy of BVAS Report for the constituency and Form EC8E dated the 26th February, 2023. These do not include the voter's Register. See the case of ***Abubakar V. INEC (2020) All FWLR (pt. 1052) p. 919 at P. 992 – 993, paras. F – H*** where the Supreme Court held that voters' register is the foundation of any competent election in any society. Without the voters' register, it will be difficult if not impossible to determine the actual number of voters in an election. And if the

number of registered voters is not known, how can a Court determine whether the number of votes cast at the election are more than the voters registered to vote. To prove over-voting, the petitioner must tender voters' register and Forms EC8As so as to work out the difference of excess votes easily. See. the case of ***Ogboru V. Arthur (2016) All FWLR (pt.833) p. 1805; (SC) Okereke V. Umahi (2016) All FWLR (pt. 833) p.1902; (SC) Ikpeazu V. Otti (2016) All FWLR (pt. 833) p.56 (SC); and Emerhor V. Okowa (2017) All FWLR (pt. 896) p. 1884 at 19927, paras. D – F (SC)*** where the Supreme Court held that proof of over-voting can only be made with the tendering of the voters' register without which the petitioner has not started the journey of proving over-voting. On the meaning of over-voting See the case of ***Modibo V. Haruna (2004) All FWLR (pt. 238) p. 742 at 750, para. C.*** where the Court of Appeal, Jos Division held that over-voting, put simply means recording of more votes at a polling unit than those on the list of Register of voters.

It is noteworthy that voters' register is not one of the documents that were pleaded, or that the 3rd Respondent is giving notice to produce at the trial. To cap it all, the Supreme Court held in the case of ***Oyetola V. INEC & Ors (supra)*** that whenever it is alleged that there was over-voting in an election, the documents needed to prove over-voting are the voters' register to show the number of registered voters, the BVAS to show the number of accredited voters and the Forms EC8A to show the number of votes cast at the polling unit. These three documents will show exactly what transpired at the polling units, failure to tender these documents and BVAS machine must be fatal to any effort to prove over-voting. Based upon the catalogue of judicial authorities cited above, and for the facts that the petitioner did not plead and rely on the voters' register, how can it be determined that there was over-voting? The Tribunal is of the view that this is fatal to the petitioner's case as she is unable to put evidence before the Tribunal to prove over-voting, and it so holds.

On the whole, the petitioner has not proved beyond reasonable doubt that there was corrupt practices or malpractices, and has not proved with preponderance of evidence that there was substantial non-compliance with the Electoral Act and Regulations and Guidelines for the Conduct of Elections, 2022 in the election in Ika North-East/Ika South Federal Constituency of Delta State, and the petition is hereby dismissed.

Cost assessed at N500,000.00 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

Prince Orji Nwafor-Orizu Esq. with him Fintan Ilika Esq. for the Petitioner.

Ikechukwu *Kalikwu Esq. for the 1st Respondent.*

John Okoriko Esq. for the 2nd Respondent.

O. S. Efewengbe Esq. for the 3rd Respondent.