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

PETITION NO.: EPT/DL/SEN/06/2023

TODAY THURSDAY 7TH 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. KENNEDY ONOCHIE KANMA ..... PETITIONERS
2. LABOUR PARTY (LP)

AND

1. NWOKO CHINEDU MUNIR
2. PEOPLE'S DEMOCRATIC PARTY
3. INDEPENDENT NATIONAL ..... RESPONDENTS
ELECTORAL COMMISSION (INEC)

JUDGMENT

The 1st petitioner *(Kennedy Onochie Kanma)* on the platform of the 2nd petitioner *(Labour Party)* contested at the election held on 25th February, 2023 into the Delta North Senatorial District, which comprised of nine *(9)* Local Government Areas, namely – Oshimili South, Oshimili North, Ndokwa West, Ndokwa East, Ika North-East, Ika South, Aniocha North, Aniocha South and Ukwuani. At the conclusion of the election, the 3rd respondent *(INEC)* declared the 1st respondent *(Nwoko Chinedu Munir)*, the candidate sponsored by the 2nd respondent *(PDP)*, as the winner and the person elected by majority of lawful votes. In Form EC8E(I) dated 27th February, 2023 where the results were declared and announced, the 1st respondent

polled a total of ninety two thousand five hundred and fourteen (92,514) votes.

Aggrieved by the return and declaration, the 1st and 2nd petitioners ignited the present petition on 20/03/2023 on two grounds stated in paragraph 12 of the petition, to wit –

a. *The 1st respondent was not duly elected by majority of lawful votes cast at the election; and*
b. *The election held was invalid by reason of corrupt practices and non-compliance with the provisions of the Electoral Act, 2022.*

Facts in support of the grounds are thereafter pleaded from paragraphs 13 to 38 of the petition, stating the petitioners' grievance local government by local government. Thereafter, paragraph 39 of the petition contains the reliefs being sought by the petitioners before the Tribunal. The six (6) reliefs, which are declaratory in nature, are –

a. *That it may be determined and declared that the 1st respondent, of the Peoples Democratic Party, the 2nd respondent, was not duly elected or returned as the senator representing Delta North Senatorial District of Delta State, not having polled the highest number of lawful votes cast at National Assembly Elections on February 25, 2023.*
b. *That it may be determined and declared that the petitioners polled, scored or received the highest number of lawful and/or valid votes cast at National Assembly Election for Delta North Senatorial District conducted on February 25, 2023 by the 3rd respondent.*
c. *That it may be determined and declared that the 1st petitioner having poled, scored or received the highest number of valid votes cast at the National Assembly Election for Senate conducted on February 25, 2023 by the 3rd respondent is duly, lawfully and validly elected the senator representing Delta North Senatorial District.*

d. That it may be determined and declared that the certificate of return given/issued by the 3rd respondent to the 1st respondent, of the Peoples democratic Party as the winner of the National Assembly Election for Senate, Delta North Senatorial District conducted by the 3rd respondent is null, void and of no effect whatsoever.

e. That it may be determined and declared that the 3rd respondent shall forthwith issue the 1st petitioner, Kennedy Onochie Kanma certificate of return as Senator representing Delta North Senatorial District, Delta State

f. And such other consequential orders that the Honourable Tribunal may deem fit to make in the circumstance of the petition.

The petition was filed along with the list of documents to be tendered, as well as list of witnesses and their written depositions. Each of the respondents filed reply and other processes against the petition.

The reply of the 1st respondent to the petition was filed on 13/04/203. The said reply begins with a notice of preliminary objection seeking the striking out/dismissal of the petition on the grounds of – being statute barred; non-compliance with paragraph 5 of the Election Judicial Proceedings Practice Direction, 2022; the grounds of the petition being incongruous and mutually exclusive; and the petition not being supported with statement on oath of witnesses from the Local Governments that the petitioners have complaint against.

Afterward, paragraphs 1 – 36 and 38 – 41 of the 1st respondent's reply denied the petition paragraph by paragraph but specifically in paragraph 37, the 1st respondent objected to the votes credited to the petitioners in some Local Governments, *namely* – Oshimili North, Oshimili South, Aniocha North and Aniocha South. The

documents to be relied on by the 1st respondent were pleaded in paragraph 42 of his reply and he prayed the Tribunal in paragraph 43 to dismiss the petition which he said is frivolous and vexatious. The reply of the 1st respondent is accompanied with the list of documents to be relied on, the list of witnesses and the statements on oath, followed by three (3) volumes of copies of documents to be relied upon.

A two (2) volume reply was filed by the 2nd respondent against the petition. Like that of the 1st respondent, it also begins with a notice of preliminary objection on two grounds that are the same as grounds 1 and 2 in the 1st respondent's objection. Paragraphs 1 – 46 are thereafter dedicated to denying the averments in the petition and paragraphs 47 – 49 are used to object to the votes received by the petitioners in the same Local Governments objected to by the 1st respondent. The 2nd respondent's reply pleaded the documents to be tendered in paragraph 50 thereof and stated in paragraph 51 that the Tribunal will be urged to dismiss the petition. Lists of witnesses and documents to be relied upon accompanied the reply, together with the witnesses statements on oath. The 2nd volume of the 2nd respondent's reply contained the frontloaded copies of the documents it intends to rely on.

In the reply of the 3rd respondent filed on 16/04/2023, paragraphs 1 – 36 thereof contain facts in denial of the averments in the petition, while the last paragraph 37 concludes that the petitioners are not entitled to the reliefs sought and urge the Tribunal to dismiss the petition for, among others, being incompetent, vexatious, speculative, unmeritorious and frivolous. Like the other respondents, the reply of the 3rd respondent is accompanied with lists of witnesses and documents to be relied upon, as well as a witness statement on oath.

By the Tribunal's record, the petitioners reacted to only the replies filed by the 1st and 2nd respondents *vide* their processes filed on 23/04/2023 and 21/04/2023 respectively. There is a 12-paragraphed petitioners' reply to the 1st respondent, wherein the preliminary objection was reacted to and thereafter again pleaded other facts in reply. The said reply was accompanied with an additional statement on oath of the 1st petitioner and one other witness, as well as an additional lists of documents. A similar petitioners' reply was filed in reaction to the 2nd respondent's reply and preliminary objection, also accompanied with another additional statements of the 1st petitioner and another witness. However, the same additional list of documents as that of the 1st respondent's reply, was repeated for the 2nd respondent.

The averments pleaded in the said petitioner's replies essentially are already contained in the main pleadings, as they are not necessarily reactions to any new facts raised by the respondents, but amplification and/or curing lack of same. Most of the things therein ought ordinarily to be deposed to in the main pleadings. There are however facts on units by wards basis in response to the respondents' objection to the petitioners' votes in Oshimili South, Oshimili North, Aniocha South, Aniocha North and Ika South Local Government Areas.

With the close of pleadings, pre-hearing sessions were held as required by the law at the end of which a report and scheduling order in respect thereof was issued. Among other things, the Tribunal took the following applications during the prehearing and decisions in respect thereof taken as indicated hereunder –

– 2nd respondent's notice of preliminary objection filed on 09/04/2023. The application was opposed, heard and ruling in respect thereof reserved till the final judgment;
– Petitioners' motion on notice filed on 01/05/2023 for amendment of the petition. It was fiercely opposed, heard and decided. The

application for amendment was refused in a ruling delivered by the Tribunal on 22/05/23; and

– Petitioners' motion on notice filed on 17/05/2023 to compel the production of the ballot papers used in the election under reference, for recount of same and to render a report thereon, which was also opposed, heard and decided. The application was refused in a ruling delivered by the Tribunal on 11/07/23;

Therefore, the pending ruling in respect of the preliminary objection will be delivered in the course of this judgment and the outcome will determine whether the Tribunal will go into the merit of the substantive petition or not.

Meanwhile, the petitioners opened their case on 01/08/2023 with the lead senior counsel for the petitioners, *C. O. Erondu, SAN* tendering from the bar some documents, pursuant to the pre-hearing report. The respondents all indicated their objections to the admissibility of the documents but reserved the reasons and argument in respect thereof until the final written addresses. Also, some other exhibits were tendered through the petitioners' witnesses in the box and the reason for objection to their admissibility similarly deferred. Thus in all, the documents, some of which were in bundles, tendered by or through the petitioners were marked as exhibits 1 to 50.

The petitioners fielded a total of five (5) witnesses before the issue came up as to whether the remaining six (6) witnesses, who are proposed to be called *via* subpoena, are competent to give evidence, given the stage of the proceedings at which they were to be subpoenaed and the *sui generis* nature of election petition. The Tribunal then took submissions of counsel in respect thereof and in a well considered ruling, delivered on 08/08/2023, the witnesses where declared incompetent to give evidence and that brought the case of the petitioners to a close.

On the part of the respondents, the senior lead counsel, *A. O. Odum SAN*, for the 1st respondent, called a witness. The 2nd respondent's legal team, led by *Chief I. A. Atikueke*, but proceedings handled by *Dr. Jonathan Ekperusi Esq.*, only tendered a document marked as exhibit 51 and indicated their wish to rely on the evidence already before the Tribunal. *Mrs. E. R. Victor* who held the brief of *Abdullahi Yahaya SAN* for the 3rd respondent, similarly tendered documents, marked as a bundle – exhibit 52(1) – (9) and did not call any witness like the 2nd respondent.

Below is a brief review of the evidence led by the witnesses called by the respective parties.

Petitioners' Witnesses

PW1 adopted his statement on oath at pages 36 to 37 of the petition, which he sworn on 20/03/2023 and used the alphabets O.D. as his name and signature. He gave his real name as Ndude Okolocha, a businessman from Ukwuani L.G.A of Delta State. In his said statement, the witness disclosed in evidence-in-chief that he was the polling agent for the petitioner at Ward 6, unit 8 situate at Ekum Primary School, Umude/Akalibo during the 25/02/2023 Delta North Senatorial election.

He averred that there was proper accreditation and election at the end of which votes were counted and entered in form EC8A(I) by the presiding officer and the scores declared at the polling unit. That all the polling agents were furnished with the duplicate original of the form EC8A(I) and the scores for LP, PDP and APC were 27, 214 and 112 respectively, while other parties had 4 votes and the total votes cast was 412, while accreditation in the BVAS report was 129. He further averred that in the certified copy of form EC8A(I) seen by him, the results were altered to read 21, 80 and 42 for LP, PDP and APC respectively and the total votes cast was 129. He identified Exhibit 23(1) and tendered a duplicate copy, which was marked as exhibit 40.

When the witness was confronted during cross-examination about his real name, he responded that his real name is not Sunday Aniodigwe. He admitted he was the Personal Assistant to the late King of Amai and not his Secretary, and that his voter card got lost two days earlier with his ATM card, except his Labour Party card, which is not with him in court. He disclosed that he has no any instrument of identification with him issued by the Federal Government. He confirmed that 129 is the number of accredited voters in the BVAS report *(exhibit 36)* and the total votes cast in EC8A(I) – i.e exhibit 23(1) is equally 129. He also confirmed he was an agent in just one polling unit and he indeed signed that polling unit's result. A specimen of the witness' signature was taken in court on a paper, tendered, admitted without objection and marked as exhibit 41. The witness admitted he used to sign document in his capacity as PA to the late King of Amai. He denied knowing the person who initialed the alteration in exhibit 23(1).

Further examination showed that prior to his being the agent of Labour Party, the witness was familiar to Ikhide Ehigelua Esq., one of the learned counsel to the 1st respondent and used to visit his chambers and knows the witness very well with the name put to him during cross-examination until he claimed to change the name. He confirmed the score of PDP in exhibit 40 as 219 while the score for Labour Party is 27. He confirmed again that accreditation with BVAS and voter register took place before the election and the duo would be the authentic evidence of accreditation. He responded finally that he has not seen either of the two tendered before the Tribunal.

PW2 is Konye Ojeh, a businessman, resident of Ezionum village, Ukwuani LGA, Delta State and was the polling agent for the petitioners at ward 7, unit 3 during the last election for the Delta North Senatorial District. His adopted statement on oath that was sworn to on 20/03/2023 is at pages 40 to 41 of the petition, where he

used the alphabet O.O. as name and signature. He also tendered a duplicate copy of form EC8A(I) referred to in that statement and same was marked as exhibit 42. He equally indentified exhibit 24(2).

His evidence in the adopted statement is to the effect that there was proper accreditation and election, at the end of which votes were counted and entered in form EC8A(I) by the presiding officer and the scores declared at the polling unit. That all the polling agents were furnished with the duplicate original of the form EC8A(I) and the total votes cast was 120 while the BVAS report had 117 as the number of the accredited voters. He further stated that in the certified copy of form EC8A(I) seen by him, the results have been altered and the BVAS accreditation was also altered to read 121.

Under cross-examination, the witness confirmed that he voted on Election Day after due accreditation with BVAS and voter register, describing how voters queued in his presence for accreditation. The witness confirmed that in exhibit 24(2) – i.e form EC8A(I), the total number of votes cast is 120 and in exhibit 36 *(i.e BVAS report)* total accredited voters is also 120. Also in exhibit 42, tendered through him, PDP has 57 votes and Labour Party has 36 votes. He admitted that, that day, he was not out of hearing of the proceeding before he was invited to give evidence. He concluded that he has not seen any BVAS machine tendered before the Tribunal that day.

PW3 gave his name as Oyem Kenneth, a farmer with other business who lives at Omotu, Ukwuani LGA, Delta State. His statement on oath was deposed to on 20/08/2023 at pages 38 to 39 of the petition, with initials K.O. The document therein identified by the witness is exhibit 21 and he similarly tendered a duplicate copy marked as exhibit 43. The gist of his evidence in the statement is that there was proper accreditation and election, at the end of which votes were counted and entered in form EC8A(I) by the presiding officer and the score declared at the polling unit. That all the polling agents

were furnished with the duplicate original of form EC8A(I) and the scores of the parties were 46, 100 and 96 for LP, PDP and APC. Other political parties had 6 votes altogether and the total votes cast was 248, while the BVAS report has 255 accreditation. He further stated that in the certified copy of form EC8A(I) seen by him, the results have been altered and the number of rejected votes altered to read 7 instead of 8.

Responding to cross-examination questions, the witness confirmed that he voted on Election Day after due accreditation with BVAS and voter register. Ditto for every other voters in the unit where he cast his vote. He confirmed that in exhibit 21 – form EC8A(I), the total number of accredited voters and the votes cast is 255 and in exhibit 36 *(BVAS report)* total accredited voters is also 255. He confirmed his allegation of alteration of the result and said it means cancellation of same. He confirmed that on exhibit 21 the presiding officer signed the alteration. He also confirmed that there are 9 Local Governments in Delta North Senatorial District and that exhibit 43 is the actual result of the election, wherein the votes recorded for Labour Party, PDP and all other political parties is the same with what is recorded for them respectively in exhibit 21. While the witness responded that his only complaint about that unit was that the figure of the rejected votes was changed from 8 to 7, he answered that he has not seen any BVAS and voter register tendered in court that day.

PW4, David Chukwumuike Ndego, has a statement on oath at pages 42 to 76 of the petition, sworn on 20th March, 2023 with the initials D.G. He stated that he is a businessman from IKa Local Government Area, Delta State and also has two (2) other statements; one each in reply to the replies of the 1st and 2nd respondents, respectively deposed to on 23/04/2023 and 21/04/2023.

In the three (3) statements, which he adopted, the witness stated in the main that he was the campaign manager of the

petitioners at the Delta North Senatorial District election held on 25th February, 2023. As contained in the petition, he repeated the names of the nine (9) LGA that constitute the Senatorial District and stated the petitioners' two grounds and facts in support thereof, stating the petitioners' grievance in the Local Governments being complained about, results allegedly affected by over-voting and lack of accreditation, and the analysis of lawful votes of the parties. He thereafter re-stated the six (6) reliefs being sought before the Tribunal by the petitioners, also as contained in the petition.

In reaction to the preliminary objection by the 1st and 2nd respondents, the petitioners averred that their petition was filed within the stipulated time; it conformed substantially with the relevant provisions of the law; the grounds therein are consistent with the reliefs sought; and the ground on "corrupt practices" has been abandoned having not been supported by any facts.

Just like the pleading which is what the witness has reproduced, the averments in the additional statements are essentially second bite at the cherry of what are contained in his main statement on oath, as they are not necessarily reactions to any new facts raised by the respondents, but amplification and/or curing lack of evidence in support of the petition. Most of the things therein ought ordinarily to be deposed to in the main statement. It is however averred that the ground of invalidity of the election due to corrupt practices have been abandoned. There are also facts on units by wards basis in response to the respondents' objection to the petitioners' votes in Oshimili South, Oshimili North, Aniocha South, Aniocha North and Ika South Local Government Areas.

All together, he identified exhibits 1 – 27, 29, 36 – 38, 40, 42 and 43 referred to in various paragraphs thereof. He also tendered duplicate copies of result sheets in unit 2 of ward 5, unit 26 of ward 5, unit 11 of ward 10, and unit 1 of ward 4; respectively marked as

exhibit 44(1) – (4). At some point in his evidence, the Tribunal took arguments from counsel and ruling deferred to final judgment on whether the petitioners can tender through PW4 the marked duplicate copies, allegedly not listed or frontloaded by the petitioners and not being tendered from the bar as contained in the pre-hearing report.

When asked during cross-examination, the witness responded that he did not vote on election but was out monitoring votes and as observer. He confirmed that he neither signed any result or any of the documents he was shown or tendered by him, nor witnessed any of the alleged alterations. That his party had agents in the 1,787 polling units in the constituency and he was not aware that any of the said agents is no longer alive. He equally confirmed that INEC distributed BVAS machines for the election but he never handled any of the INEC materials; he only observed proceedings.

PW5 is the 1st petitioner, a lawyer and the candidate sponsored by the 2nd petitioner at the Delta North Senatorial District election held on 25th February, 2023. He made the main statement on oath, spanning pages 77 to 113 and accompanying the petition, on 20/03/2023. Also on 23/04/2023 he sworn to the 2nd statement in reply to the 1st respondent's response and his 3rd statement was deposed to on 21/03/2023 in reaction to the 2nd respondent. He adopted all the above-mentioned statements and identified the exhibits variously referred to therein, which are marked as exhibits 1 – 38, 40, 42 – 44. He thereafter tendered some duplicate copies marked as exhibit 45(1) – (3) and 46.

In the three (3) statements on oath, PW5's evidence in the main is a repetition of his pleadings in the petition. The 1st petitioner repeated the names of the nine (9) LGAs that constitute the Senatorial District and stated the petitioners' two grounds and facts in support thereof. He stated the petitioners' grievance in the Local Governments being complained about, results allegedly affected by

over-voting and lack of accreditation, and the analysis of lawful votes of the parties and sundry other electoral infractions. He thereafter re-stated the six (6) reliefs being sought before the Tribunal by the petitioners, also as contained in the petition.

Like PW4, the averments in the additional statements of PW5 are essentially second bite at the cherry of what are contained in his main statement on oath, as they are not necessarily reactions to any new facts raised by the respondents, but amplification and/or curing lack of the evidence already given in support of the petition. Most of the things therein ought ordinarily to be deposed to in the main statement. It is however averred that the ground of invalidity of the election due to corrupt practices have been abandoned. There are also facts on units by wards basis in response to the respondents' objection to the petitioners' votes in Oshimili South, Oshimili North, Aniocha South, Aniocha North and Ika South Local Government Areas.

In answer to cross-examination questions, the witness responded that it is true that his party had polling unit agents some of who are still alive and available; others are out of jurisdiction and he was aware that one is late, but he himself did not serve as polling or collation agent any where during the election. The information on the various allegations he made was derived from the agents. He could not recollect if he made reference in his evidence to the voters register, but he mentioned BVAS. He could also not remember if he mentioned the numbers of PVCs collected in each of the polling units. He confirmed that on the exhibits, the alterations are initialed by the INEC officials and that his grouse was that his agents did not sign the alterations because they were not done with their knowledge. What he said is apparent on the exhibits when compared with the yellow copies. The summaries of the results referred to in his statements were tendered through him by counsel to the 1st respondent and same were marked as exhibit 47(1) – (4).

He answered further that his party did conduct primary election, which took place here in Asaba. He confirmed that he is a member of Labour Party for more than two years now and have his membership card, tendered without objection and marked as exhibit 48 and the notice of Labour Party Primary election dated 19/05/2023 tender also and marked as exhibit 49. He would not know the length of notice his party was required to give to INEC before holding the primaries and would not believe that Labour Party did not give adequate notice. He does not also have the names of the officials who conducted the primaries off head and the scores obtained thereat.

Some units' results for Oshimili South in ward 9, unit 2, ward 3 units 5 - 7, 10 – 13, 17 and 24 were also tendered through him and marked as exhibit 50(1) – (11) and he later identified them as the documents he referred to in some of his paragraphs and that like others, his agents did not countersign the alterations therein. The witness maintained that the Tribunal should accept the results where he won despite the alterations in the results because the alterations were countersigned by the presiding officers. He confirmed not being in any of the units when the alterations took place, but got the information from his agents. He confirmed also that he voted on election day at ward 3 unit 3 of Aniocha Local Government Area, after he was accredited with voters register and BVAS, both of which he has not seen tendered in court.

Respondents' Witness

RW1 is Iyade Nduka Cyril, an entrepreneur, from Ukwuani Local Government of Delta State. He adopted his statement on oath deposed to on 13/04/2023 with the alphabets AQ, at pages 77 to 78 of the 1st respondent's reply to the petition. He stated that he is a member of the 2nd respondent *(PDP)* and its polling unit agent at ward 6 unit 13 on the election day. He gave the different times he and the INEC officers arrived the polling unit with electoral materials

and the accreditation as well as voting. He deposed that he witnessed the accreditation, voting, sorting, counting and recording of votes of the respective political parties, all of which he said were hitch-free and was handed his agent's copy of the result thereafter, which he in turn handed over at the collation centre to his party collation agent.

In response to the 2nd and 3rd respondents' cross-examination, the witness stated that the presiding officer and the available party agents signed the result sheets. It was true that on noticing some errors in the calculation of the votes the presiding officer called the attention of the available agents of the parties to it and on agreement by the agents present, the errors were corrected by the presiding officers, after which he alone countersigned, and the result was then announced. He added that some of the party agents present did not insist that the presiding officer should correct and countersign the copies earlier given to them and none of the agent present protested the correction. The witness confirmed that it was the corrected result that the result was announced.

During cross-examination on the part of the petitioners, the witness said the essence of duplicate copy is to later serve as evidence of the original copy. It is a reflection of the copy in the possession of the presiding officer. He stated that no one objected to the counting of votes and that the change in what was recorded came about when the presiding officer discovered human errors. He also brought out his duplicate copy, which he confirmed is the same with exhibit 45 shown to him. He said it was true that what is entered in exhibit 45 is not a reflection of the result declared. He agreed that the presiding officer did not demand for the return of the duplicate copies in the hands of the agents for correction.

Thus, the close of cross-examination of RW1 marked the closure of hearing of the petition. The parties thereafter filed and exchanged written final addresses pursuant to the provision of paragraph 46 of

the First Schedule to the Electoral Act, 2022. The final addresses of the 1st, 2nd and 3rd respondents were respectively filed on 11/08/2023; 13/08/2023; and the same 13/08/2023. The petitioners filed their final address on 21/08/2023; while reply addresses on point of law by the 1st and 2nd respondents were filed on 21/08/2003 and 24/08/2023 respectively. Counsel to the parties adopted their respective above-mentioned addresses on 24/08/2023 and judgment was reserved.

During adumbration by counsel on both sides of the divide, the only two fresh issues, which are not part of what parties have canvassed argument on already are noteworthy. First, the objection the senior counsel to the petitioners raised on the 2nd respondent's final address, that same is not signed, but only stamped and name of a counsel ticked. Counsel to the petitioners posited that authorities are many and legend that such address is worthless and should not be countenanced. Secondly, he made reference to section 137 of the Electoral Act to the effect that the petitioners need not calling oral evidence of witnesses where the non compliance complained of is manifestly disclosed in the originals or certified copies. Counsel for the 2nd respondent reacted that the petitioners' right to raised objection to its unsigned written final address has been waived, having allowed counsel to adopt the said address and even adumbrated on it, citing ***Mobil Producing (Nig.) Unltd. V. Monokpo (2003) LPELR 1886 SC***.

It must be reiterated that address of counsel are mere guide to the Court, although parties to an action must be given equally opportunity of being heard. See ***Iwuchukwu & Anr. V. A.G of Anambra (2015) LPELR – 4487 (CA)***. However, the authorities are also replete that an unsigned document, like the 2nd respondent's final written address dated the 12th day of August, 2023, is worthless and should not be countenanced in any judicial proceedings. See ***Okolo & Ors. V. Nwafor & Anr. (2016) LPELR – 41534 (CA)***.

Thus in the judgment at hand, the Tribunal will discountenance the eloquent submissions of counsel in the said 2nd respondent's address. We so hold.

Having resolved that, the Tribunal will like to point out that review of the various submissions by the parties in their addresses and appropriate references in respect thereof will be made in the course of this judgment. But before going into the issues in this petition, there is also the need to take a decision on the earlier mentioned pending argument proffered by the parties on *2nd August, 2023* relating to the tendering of duplicate copies of forms EC8A series allegedly not listed or frontloaded. The several duplicate copies were allowed to be tendered and ruling on their admissibility deferred.

It is the submission of the petitioners' counsel that the duplicate yellow copies can be tendered and are admissible having been pleaded and indicated that they will rely on them. He referred to paragraph 20 of the petition where the documents in question were specifically pleaded, contending that the respondents are merely playing on semantics. Counsel also referred to paragraph 20 of the main statement on oath of PW4 *(with code DG)*, paragraph 4(b) of the petitioners' reply to the reply of the 2nd respondent and paragraphs 4(b) of the additional statement of the witness *(PW4)* accompanying the reply of the petitioners to the 2nd respondent's reply. He equally argued that in line with paragraph 4(5) of the First Schedule to the Electoral Act, 2022 in the list of documents the petitioners intend to tender at hearing, forms EC8A series is No.1 though they did not indicate whether the originals or duplicates. The counsel cited decided authorities such as ***Onuora V Onuora***; and ***Okorie Afia V. Agbor***.

The combined effect of the respondents' oppositions to the tendering and admissibility of the duplicate copies of the forms EC8A series is that they are not listed as required by paragraph 4(5) of the

First Schedule to the Electoral Act, 2022 and that their tendering is contrary the report issued at the end of the prehearing session. Their further contention is that, apart from being in the singular form without "s" and that what is written is "*form EC4A(1)"*, what the petitioners pleaded in paragraph 20 of the petition, are not what was shown to the witness through who they seek to tender those duplicate copies. That the reference in the said paragraph 20 is to the original copies which were already tendered and marked as exhibits 1 – 22. Several cases were cited on not to spring surprise on the opposing party. The case of ***Aminu Hamad Chindo V. Sanni Aliyu & 3 Ors.*** was also cited on the fact that documents brought in through the petitioners' reply or additional statement accompanying the reply cannot be relied on, same having been filed out of the stipulated time for the petitioners.

Out rightly, this Tribunal is of the considered legal view that the objections of the respondents in this regard is *much ado about nothing*. There are ample pleadings, especially in the sub-paragraphs of paragraph 20 of the petition that the petitioners shall rely on both the duplicate original of the results and certified copies of the original. Hence, we hold that the duplicate copies are pleaded. The non-use of letter *"s"* to denote plural in paragraph 20 of the petition is not only semantic as submitted by the counsel to the petitioners, but can also be pardoned if the context of the paragraph in focus is put in proper perspective. Similarly, an occasional typographic error of referring in subparagraph 20(iii) to form EC4A(I) instead of EC8A(1) could be regarded as inadvertent, when again the subparagraph is read within the context of the result sheet it is referring to, and also that other subparagraphs therein, like the next subparagraph (iv), stated the title of the form correctly as EC8A(I). There is even no any result sheet form in our electoral process that is called **EC4A(I)** to say that the respondents can be misled. It could also be safely said that the

duplicate copies are covered in item No. 1 of the list of documents to be tendered attached to the petition. See page 30 of the petition. It will therefore amount to sheer technical justice as against substantial justice to limit the listed forms EC8A(I) therein to just the originals, when neither originals nor duplicates nor even both is specified.

Therefore, the Tribunal holds that the objections by the respondents in this regard lacked merit and same cannot be sustained. Objections overruled. However, the Tribunal will determine later the probative value to be attached to the admitted duplicate copies.

Moving forward, the Tribunal observes that there is another pending ruling, which is on the preliminary objection raised and argued by the 2nd respondent during the prehearing session. The preliminary objection was filed on 09/04/2023 seeking only one relief, namely –

"An order dismissing the petition for being statute barred"

The objection is founded on the ground that by *section 285(5)* of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and *section 132(7)* of the Electoral Act 2022 the petitioners are to file their petition within 21 days after the date of declaration of result of the election. That the said result was declared on 27th February, 2023 and their petition was filed on 20th March, 2023 outside the 21 days prescribed by the aforementioned laws and it rendered the petition to be statute barred and the Tribunal without requisite jurisdiction to entertain same.

In the written address in support, the 2nd respondent quoted, just to mention three, the dicta of per Akeju JCA in ***Fredson & Anr. V. Tamuno & Ors. (2019) LPELR – 49510 (CA)***; per Kolawole JCA in ***Uboh V. Nwaoboshi & Ors. (2019) LPELR – 53011 (CA)***; and per Onyemenam JCA in ***Maku & Anr. V. Sule (2023) LPELR 48272 (CA)*** on the interpretation of the law to include the day of the

occurrence of the declaration and urge the Tribunal to hold the petition as being statute barred and to dismiss it.

Per contra, the petitioners vide a written address in opposition filed on 26/04/2023 argued that admittedly against the above undisputed facts stated by the objector, the law is that by the use of *"after"*, the date of declaration of the result is excluded from reckoning when to file a petition on election matters. The petitioners make a comparism of the same section 285 but subsection 9 where *"from"* is used and that it means the date of the occurrence is included. The petitioners distinguished ***Okechukwu V. INEC*** that the Supreme Court did not therein decide on *section 285* of the Constitution or time to file election petition. The words used in that case is not *"after* " but *"within 5 days of service"*, hence the authority is inapplicable. The petitioners concluded that the dictum of Onyemenem quoted in *Maku & Sule* was the minority decision, while the majority decision of Saulawa JCA (as he then was) which has been affirmed by the Supreme Court in ***Maku & Anr. V. Sule & Ors. (2022) NWLR (Pt. 1817) 231***, is that the date of declaration of the result is excluded.

On the vexed issue in this objection, Per Onyemenem JCA at page 95 in ***Maku V. Sule*** under reference puts the issue succinctly thus –

> *"Counsel on both sides have strenuously contended in favour of their clients. I must commend their reasoning. But without rigmarole, I will want to note that although the Court of Appeal has two stands on the interpretation of when time begins to run by virtue of section 285(5) of the Constitution of the FRN as amended; our individual opinions or interpretation no matter how logically sound seem not to be relevant in view of stare decisis."*

The above dictum recognized the facts that there are two views expressed in the decided authorities on *section 285(5)* of the Constitution. However, the Tribunal wishes to say that the preponderant view that holds sway in view of *stare decisis* is the majority view in the same ***Maku V. Sule (supra)*** which the Supreme Court had again placed its apex stamp of authority on. Per Musa Dattijo Muhammad JSC held that –

> *"It is indeed trite that where the words which make up a statute are clear and unambiguous, the courts discharge their interpretative duty of giving effect to the intention of the legislature if they assign to the words their ordinary grammatical meaning. See A.G. V. Atiku Abubakar (supra), Abacha V. F.R.N appositely cited by learned counsel. See also Atuyeye V Ashamu (1987) 1 NWLR (Pt. 49) 267 and James V. INEC & Ors. (2015) LPELR – 24494 (SC), (2015) 12 NWLR (Pt. 1474) 538. Subsections 5 and 9 of section 285 of the 1999 Constitution (as amended) prescribe the time within which the appellants are to file the instant election petition and when, on the other hand, a pre-election suit is to be commenced respectively. Given the clear and unambiguous words that make each of the two subsections, they must mean exactly what their constitutive words ordinarily connote. With the overriding word "after" in the one subsection being different from the dominant word in the other subsection "from", each subsection must have different meaning and import from the other. The two subsections are hereunder reproduced for ease of reference:*
>
> *Section 285 –*

(5) An election petition shall be filled within 21 days after the date of the declaration of the election.

(9) Notwithstanding anything to the contrary in this Constitution, every pre-election matter shall be filed not later than 14 days from the date of the occurrence of the event, decision or action complained on the suit." (Italics mine for emphasis).

A community reading of the two subsections clearly shows that whereas pursuant to subsection (5) of section 285 of the 1999 Constitution (as amended), a competent petition cannot be filed the very day the result of election being contested was declared, by subsection (9) of the same section, a person aggrieved by a political party's conduct of its primary election shall file his suit within 14 days from the date the result of the party's primary election was declared. Thus, whereas under subsection (5) of section 285, in computing the time within which an election petition is to be filed the date the result of the election was declared is excluded, by virtue of subsection (9) of the very section, however, the date of the declaration of the result of the party's primary election which result constitutes the plaintiff's cause of action, is included in the computation of the 14 days within which the suit must be filed.

Flowing from the now settled position of the law, the petition at hand which was filed on 20th March, 2023 after the day election result in respect thereof was declared on 27th February, 2024 was filed 21 days exactly after the declaration of the election result. The Tribunal therefore holds that the petition is not statute barred and the

preliminary objection is accordingly resolved against the 2nd respondent.

Be it noted that as agreed during the prehearing and contained in its report, counsel on both sides objected to virtually all the documents tendered during hearing and indicated that the reasons for the objections will be advanced in their written final addresses. While the Tribunal will resolve along with the issues in this petition objection to documents, if any, contained in the body of the petition, it is observed that only two (2) out of the objections to admissibility of documents during hearing are argued by the parties in their final addresses. One, the petitioners argued an objection on exhibit 49 (i.e, a notice of the holding of primary election by 2nd petitioner, dated 15/05/2025), while the 3rd respondents also argued objection on the additional statements on oath accompanying the petitioner's replies to the replies of the respondents and the documents pleaded or brought in through the said petitioners' replies.

It is the submission of the petitioners that exhibit 49 is inadmissible in law, be rejected and marked as rejected, because it was neither pleaded, listed and frontloaded, nor any fact relating to it pleaded, citing ***Zenon Pet. & Gas V. Idrissiya Ltd.*** and ***Chigbo V. Tonimas & Anr. (Nig.) Ltd***. That the letter is a photocopy of a private document and no foundation has been laid on the where about of the original copy before tendering a photocopy, relying on ***Daggash V. Bulama***. It is also unsigned and that according to the petitioners makes the document to be worthless on the authority of ***Nammagi V. Akote & Ors.*** among others.

Unfortunately, the Tribunal has laboured hard to read the addresses of respondents and see no scintilla of reply to the petitioners' argument in respect of exhibit 49, most especially from the 1st respondent that tendered it. It is therefore deemed that the

respondents have no defence to the petitioners' objection to the admissibility of the said exhibit. The objection is *thus* sustained.

Consideration of the 3rd respondent's objection to additional statements and documents filed by the petitioners along with their replies to the replies of the respondents shall be dealt with in this judgment while treating the issues for determination. But, as for other objections to the other exhibits tendered from both sides, on which addresses as promised have not been proffered, the objection shall be deemed abandoned and the exhibits deemed admitted without objection. However, there is difference between admissibility and weight to be attached to all the documents admitted. The issue of weight or probative value to be attached to them shall be considered *anon* by the Tribunal as the judgment progresses.

Now, it is to be recalled that by the concurrence of the parties and the Tribunal during the pre-hearing session, two issues were settled for determination in this petition. They are –

1. *Whether on the state of the pleadings of the Petitioner and the totality of the evidence adduced before the Tribunal the Petitioners have been able to sustain/prove the grounds upon which the Petition is founded and whether such grounds are not incongruous.*
2. *Whether the issue of the qualification and sponsorship of the 1st Petitioner as a candidate of the 2nd Petitioner is a question which this Hon Tribunal can adjudicate upon and if so, was the 1st petitioner the sponsored candidate of the 2nd Petitioner at the election in focus.*

Both the petitioners and the 1st respondent abided by the above two issues and argued their petition in line with them. However, the 2nd and 3rd respondents formulated their own issues different from those settled at pre-hearing but still within the live issues. While the

2nd respondent argued two issues, the 3rd respondent formulated just one. The lone issue distilled by the 3rd respondent is as follows –

For the 3rd respondent:

> *"Whether having regard to the grounds upon which the petition is predicated, the state of the pleadings and the evidence led, the petitioners have established their right to any or all of the reliefs sought."*

The two issues settled at the prehearing, being all encompassing, will be used by the Tribunal to resolve the issues in this petition.

ISSUE NO. 1

Complaint of incongruity of the grounds of the petition

To the Tribunal's view issue one has two prongs. On one hand, it talks about the pleading and evidence led in proof of the petition, and on the other, the congruity or otherwise of the grounds on which the petition is predicated. The Tribunal will however begin with the incongruity aspect of the issue, the resolution of which may put paid or not to the consideration of the 2nd part of the issue.

Copious arguments permeate the two sides' addresses on the competence of the two (2) grounds upon which the petition is found. By the cumulative submissions of the respondents, the grounds stated in paragraph 12 of the petition are incongruous; contradictory; mutually exclusive and cannot co-exist. That in view of the wordings of *section 134(1)(b) and (c)* of the Electoral Act, 2022 the grounds of invalidity of election and not being duly elected by majority of lawful votes are alternatives that cannot stand together. That it cannot be said that an election is invalid and still talk of winning by majority of lawful votes.

Secondly, that a petitioner is not also allowed to lump the ground of invalidity by reason of corrupt practices with invalidity for

non-compliance with the provisions of the Electoral Act. Also that the petitioners' 2nd ground in *paragraph 12(b)* of the petition cannot support any of the prayers being sought in *paragraph 39(a) – (d)* of the petition. Thus, it is submitted that the two grounds are thereby incompetent and should be struck out. Reliance is placed on among other ***Goyol & Anr. V. INEC & Ors. (2011) LPELR – 9235 (CA) p. 6 – 7 para B***; ***Oji & Anr. V. Ndukwe & Ors. (2019) LPELR – 48955 (CA) P. 35 – 40 para B***.

That even if it is only the ground 2 on invalidity for corrupt practices and for non-compliance with the Electoral Act that is struck out, all the pleadings in support of same are bound to be struck out as well. Also that since the petitioners have not separated the pleadings in respect of each of the grounds, the Tribunal is under no obligation to severe the pleadings, hence the entire pleadings are liable to striking out. The respondents argued further that it is contradiction for the petitioners to be praying the Tribunal to declare them the winner of an election they claimed to be invalid, referring *inter alia* to, ***Re: Onwubuariri (2019) LPELR – 49121 (CA) p. 27 – 29 para B***; ***Abubakar V. Yar'Adua (2009) All FWLR (Pt. 457) 47 at 57***; and ***Emirate Airlines V. Ikem (2023) LPELR – 59968 (CA)***.

In reaction, the petitioners submitted that it is only the 1st respondent that can challenge the grounds of the petition, quoting *paragraph 12(5)* of the First Schedule to the Electoral Act that requires a respondent to state whatever objection he/it has against the petition in the reply for it to be heard along with the substantive petition. That on the said objections to the petitioners' grounds, the case of ***Goyol V. INEC (supra)*** is quoted in support of the fact that the grounds being complained of cannot be taken in isolation but with the facts in support and the reliefs being sought to appreciate the alleged contradiction or conflict. The petitioners contended that they

only prayed to be declared the winner, but never at the same time prayed that the election be declared void as was the case in ***Re: Onwubuariri cited (supra)***.

It is conceded by the petitioners that they have not pleaded facts in support of the ground on "corrupt practices", no evidence proffered, no cross-examination thereon and also there was no consequential reliefs that the election be voided for non-compliance with the Electoral Act or for corrupt practices. That the facts pleaded by the petitioners are in support of ground one and non-compliance with the Electoral Act in the context that there were breaches of a civil nature in some identified polling units of some Local Governments, not the entirety of the election. That in paragraph 2(d) of their reply to 1st respondent's reply, the petitioners had stated that they have abandoned the ground on "corrupt practices" and the ground has become academic and spent. They cited ***Ezenwo V. Festus & Ors. (2020) 16 NWLR (Pt. 1750) 353 at 375 para B – C*** and ***Black Law Dictionary*** on the meaning of "abandon".

The petitioners distinguished the authority of ***Ojo & Anr. V. Ndukwe & Ors. (supra)***, saying there was no abandonment in that case as there is in the case at hand. As to the co-existence of grounds 1 and 2 of the petition, the petitioners submitted that they are complaining in ground 1 that they won the election based on majority of lawful votes, while ground 2 in the main, shorn of the aspect of corrupt practices, is restricted to cases of non-compliance in identified polling units of some Local Governments constituting Delta North senatorial District. That votes from those restricted places are invalid and should be deducted from votes credited to the parties, in order to ascertain who score majority of lawful votes at the election. They referred to ***Hope Democratic Party V. Obi & Ors. (2012) 1 NWLR (Pt. 1282) 464, 487 para G***; and ***Udeagha & Anr.***

Omegara & Ors. (2010) 11 NWLR (Pt. 1204) 168 at 210 – 211 paras H – C.

The 2nd respondent in the signed reply to the petitioners, contended that it is permitted to rely on the pleading of any of the parties in the conduct of his case, so long as an issue is contained therein, commending to the Tribunal the case of ***Mathew V. Otabor & Anr. (2015) LPELR – 24422 (CA)***.

In resolving the issue of congruity of the grounds upon which the petition is predicated, the Tribunal begins by quoting *section 134(1)* of the Electoral Act, 2022 which provides that –

> *"134(1) An election may be questioned on any of the following grounds, that is to say:*
>
> *(a) that a person whose election is questioned was, at the time of the election, not qualified to contest the election;*
>
> *(b) that the election was invalid by reason of corrupt practice or non-compliance with the provisions of the Act; or*
>
> *(c) the respondent was not duly elected by the majority of lawful votes cast at the election."*
>
> *(underlines supplied for emphasis)*

The Tribunal agrees with the respondents that the authorities they cited in respect thereof are good law to the effect that grounds of invalidity of an election cannot stand together with the ground stating that the petitioner should be declared winner of the same election said to be invalid. The reason for the above proposition of the law is not farfetched, as it will amount to speaking from both sides of the mouth, which is forbidden by law, that a petitioner claims to have won an election, which he has also alleged to be invalid. One cannot condemn an act and still expect to benefit from the same act. See ***Re: Onwubuariri (2019) LPELR – 4121 (CA) P. 27 – 29 para B***.

It is also a settled principle of law that the ground of invalidity of an election by reason of corrupt practices is mutually exclusive with

ground of invalidity for non-compliance with the provision of the Electoral Act, hence, the use of the word *"or"* in *section 134(1*) *paragraph (b).* Both corrupt practices ***and*** non-compliance with Electoral Act should not be joined together as one ground. *Plethora* of cases including ***Goyol & Anr. V. INEC & Ors. (supra); Orji & Anr. V. Ndukwe & Ors***. relied on by the respondents are decided on the above stated principles of law.

That is why, for dexterity sake and to be on the safer side, a petitioner is expected to use the language of the law in stating his grounds or use his own language to convey the exact meaning and purpose of the law. But certainly, he cannot go outside the ambit of the law by adding to or subtracting from the provision of the law. The Supreme Court in ***Ojukwu V. Yar'Adua (2009) 12 NWLR (Pt. 1154) 50*** while considering *section 145(1)* of the Electoral Act, which is now *section 134(1)* of the Electoral Act, 2022, advised that –

> *"A petitioner is required to question an election on any of the grounds in section 145(1) of the Act. He is expected to copy the section word for word. I think the petitioner can also use his language to convey the exact meaning and purpose of this subsection. In the alternative situation, a petitioner cannot go outside the ambit of section 145(1) of the Act. In other words, he cannot add to or subtract from the provision of section 145(1). In order to be on the safer side, the ideal thing is to copy the appropriate ground or grounds as in the subsection…..A petitioner who decides not to use the same language has the freedom to do so, but must realize that he is taking a big gamble, if not a big risk."*

Now, the two grounds stated in paragraph 12 of this petition read *thus* –

"a. The 1st respondent was not duly elected by majority of lawful votes cast at the election.

b. The election held was invalid by reason of corrupt practices and non-compliance with the provision of the Electoral Act, 2022" (underline for emphasis)

It is apparent that against the provision of *section 134(1)(b)* of the Electoral Act, 2022 the petitioners have stated ground (b) above in conjunctive, that is, that the election was invalid by reason of corrupt practice **and** also invalid for non-compliance with the provision of the Electoral Act, 2022. The Tribunal however agrees with the petitioners that the defective ground should not be considered in isolation of its facts in support and the relief(s) being sought thereon. It is discovered, as claimed by the petitioners, that throughout the length and breadth of the averments in the petition and even in the replies to the respondents' replies as well as the evidence led during hearing in this petition, no fact is pleaded or proved in support of the invalidity of the election by reason of corrupt practices. Therefore, that part of the petitioners' ground (b) is in law deem abandoned. Even, the petitioners minced no words that they have abandoned that leg of the ground, and that has *thus* obviated the need for the respondent to deal with or react to it, either in their pleadings or evidence.

Equally, there is no relief or prayer at all premised on that leg of the ground. It is also apparent and has rightly submitted by the 3rd respondent that the six (6) reliefs sought by the petitioners are in respect of and flow from ground (a) which complained that the 1st respondent was not duly elected by majority of lawful votes cast at the election, but it was rather the 1st petitioner who had majority of lawful vote, and as such, should be declared and issued with certificate of return.

Again as rightly submitted by the 3rd respondent, from the way the reliefs of the petitioners are worded, there is in fact no relief covering the remaining part of their ground (b), that is, that the election was invalid for non-compliance with the provision of the Electoral Act, 2022. All that the petitioners' reliefs centered on is to get the 1st petitioner declared and returned by majority of lawful votes, although the petitioners also claim that the non-compliance being complained of relates to selected polling units in some of the Local Government that make up the senatorial constituency under review.

With due respect to the petitioners, their above claim now cannot be supported from the way the obnoxious ground (b) is couched. Shorn of the reason of corrupt practice already deem abandoned, a logical reading of what is left in ground (b) says **the election** is invalid for non-compliance with the provisions of the Electoral Act (underlined for emphasis). Where does it say a part of or some polling units? Part thereof the election is not implied and should not be read into what has been expressed in ordinary plain language. Also, non-compliance as affecting the entire election is replete in the petitioners' pleadings, in their evidence and even in the written address, one example of which is paragraph 4.074 where the petitioners submit that –

> "*This Honourable Court(sic) is urged to grant the petitioners' relief as prayed. It is submitted that the non-compliance pleaded and proved substantially affect the outcome of the election*." *(Underlines for emphasis)*

Even assuming the petitioners are taken as they claim to be complaining of non-compliance not with the entire election but in respect of selected places (though the way their ground (b) is couched and the pleadings do not say so), the entire ground (b) of the petition cannot stand and must still go, in view of its being

infested with the now deemed abandoned complaint of invalidity by reason of corrupt practices lumped conjunctively together with it, with the use of conjunctive "and". It is not the duty of a Tribunal or court to perform surgical or judicial operation of separating the infected ground from the competent ground, as held in several cases, such as ***Obi-Odu V. Duke & Ors. (2004) LPELR – 5335 (CA), Pp. 38 – 39, paras. C – D; Salihu V. Access Bank (2021) LPELR – 55874, P. 12, paras. A – C; Sehinde V. Governor of Lagos (2006) All FWLR (Pt. 3111) 1858 at 1876*** and host of others. For example on the proposition that the Tribunal or court is not a surgeon, the Court of Appeal in ***Ajayi V. Ajayi (2014) LPELR – 22471 (CA) Pp. 13 – 14, paras. F – F*** held as follows –

> *"I therefore agree with the learned counsel for the respondent/objector that this court cannot perform surgical operation (surgery) to sift argument from competent Ground 1 and the incompetent Ground 2."*

Also, in ***Adelakun V. Oruku (2006) LPELR – 7681 (CA)*** the Court of Appeal faced with the same scenario of toxicity of grounds, but of Appeal, had this to say –

> *"The issue is therefore rendered incompetent by relating a competent and incompetent grounds of appeal together. It is more than settled that where an incompetent ground is related with a competent ground to an issue and argument tendered in support, such issue is rendered bad because it is not the function of the Court to separate argument tendered in support of the Good ground related to the issue from those of defective ground. Korede V. Adedokun (2001) 15 NWLR Pt 736) 483; Bereylin & Ors. V. Gbobo (1989) 1 NWLR (Pt. 97) 372, 380 and Nwadike & Ors. V. Ibekwe & Ors.*

(1987) 4 NWLR (Pt. 67) 718; Agbaje V. Younnan (1974) 13 WACA 6."

In the light of all the foregoing, the facts and circumstance of this petition are quite distinguishable from those cases cited by the respondents on the above-espoused settled principles of incongruity or mutual exclusiveness of grounds for questioning an election, such as ***Goyol & Anr. V. INEC (supra); and Oji & Anr. V. Ndukwe*** where there were facts pleaded in support and reliefs sought on those grounds independently and conjunctively. Specifically in those cases there were prayers to declare the election void as well as to declare the petitioners therein the winners, contrary to the present petition.

By the state of pleadings, facts in support, reliefs prayed for and evidence led in this present petition as well as the application of the law, the petitioners are deemed to have completely abandoned ground (b) stated in paragraph 12 of their petition and are left with only ground (a) thereof. Accordingly, there is no case of incongruity, mutual exclusiveness, contradiction and conflict in the only ground (a) the petitioners are left with and upon which their petition is now predicated. The Tribunal so holds.

Proof of the lone ground of the petition

The second prong of issue No.1 for determination relates to the proof of the lone ground left in the petition. Perhaps before delving into the issue of proof, it is convenient here to resolve the contest between the respondents and the petitioners over the additional statements on oath that accompanied the petitioners' reply and the documents tendered through them.

Arguments for and against had earlier being taken during hearing on 02/08/2023 when the tendering of the duplicate yellow copies by the petitioners *via* PW4 and PW5 were objected to by the respondents. Counsel to the 2nd respondent, Dr. Ekperusi, referred the

Tribunal to the case of ***Aminu Hamad Chindo V. Sanni Aliyu & 3 Ors.*** – CA/K/EP/HR/KT/03/2023 delivered on 6th July, 2023 at pgs. 28 – 29, to which the petitioners' counsel, Erondu SAN, then responded that it was late in the day, as such objection, should have come during pre-hearing and that the additional deposition having been adopted and became evidence, the objection is deem waived. Now the 3rd respondent in its final address again raised the issue. It is submitted by the 3rd respondent that the two additional statements of PW4 and PW5 are incompetent on the ground that thr rules of the Tribunal do not allow for same. It cited ***ANDP V. INEC & Ors.*** – CA/A/EPT/406/2020 delivered on 17th July, 2020; and ***Chindo V. Aliyu & Ors. (supra)***.

In response now, the petitioners argued that such contention by the respondent is novel in timing and substance, premised only on the unreported cases of ***ANDP V. INEC*** and ***Chindo V. Aliyu & Ors.*** and that the 3rd respondent is a 'busy-body', not competent to react to a process filed in reaction to a different party other it, on the authority of ***Egbarin V. Agghoghovbia*** and ***Ohakim V. Agbaso***. Also, that the 3rd respondent having not objected at the close of pleading or during pre-hearing, had waived the right to do so in view of *paragraph 53* of the First Schedule to the Electoral Act and cases like ***Hope Democratic Party V. INEC & Ors.*** etc. The petitioners argued further that additional statements on oath were filed in this petition in pursuant of the petitioners' reply and as a counter to the issues raised by the respondents, quoting ***Adebayo V. Christine*** and ***Idris V ANPP & Ors.*** on its propriety, stating that they were filed within the five (5) days timeline allowed for the petitioners to reply the respondents, and are therefore competent.

To start with, the Tribunal sees nothing novel in the issue over which objection has been raised, as authorities on same abound, some of which the petitioners themselves have cited. Also that the

authorities thereon are unreported does not diminish their efficacy if truly they are sound proposition of law established through stare decisis. The Tribunal has taken the pain to read all the cases referred to by both sides and other cases not cited, both reported and the purported unreported. It is the discovery of the Tribunal from case law that the case of ***Hon. Kawuwa Shehu Lamina & Anr V. Hon Garuwa Adamu (2019) LPELR 48404 (CA)*** also says such additional statement on oath, like that of the petitioners in this petition, is a nullity. See also ***Ndah & Anr. V. INEC & Ors. (2019) LPELR 48920***.

From the angle of the statute, paragraph 16(1) of the First Schedule to Electoral Act needs examination on this issue. The paragraph provides –

> *"16(1) If a person in his reply to the election petition raises new issues of facts in defence of his case which the petition has not dealt with, the petitioner shall be entitled to file in the registry, within five days from the receipt of the respondent's reply, a petitioner's reply in answer to the new issue of fact ….." (underline for emphasis)*

It is the above quoted provision that has been periscoped in the alleged 2020 and 2023 decisions of the Court of Appeal *supra*. In ***Chindo V. Aliyu & Ors. (supra)*** the dictum of Ebiowei Tobi JCA who delivered the court's judgment is very instructive on the interpretation of paragraph 16 above referred. His lordship has this to say –

> *"On whether the reply must be accompanied with witness statement on oath and additional list of document, it is my position that if the lawmakers intends for that to be the case they would have specifically*

mentioned it as it did in paragraph 12 for the respondent's reply to the petition."

The point being made by his lordship Tobi JCA is that it is not the intendment of the lawmakers to allow additional statement, list or copies of additional document(s) from the petitioner outside the 21 days window he has to file his petition. If the lawmakers had so wished, provisions on same would have been included, like was done for the petitioner's witnesses on oath and list or copies of documents in *paragraph 4(5)*; and similar things for the respondent in *paragraph 12(3)*, both of the First Schedule to the Electoral Act, 2022.

The above-espoused authorities are not only well grounded and logical but also recent and therefore are preferred to those cited by the petitioners, which are not only older, but additionally have facts and circumstances different from the petition at hand. This issue is therefore resolved against the petitioners and both the additional witnesses' statements on oath of PW4 and PW5, as well as the documents tendered through them are hereby declared incompetent, struck out and shall not be reckoned with in proof of any fact in this petition.

Now to the issue of proof. The Tribunal's starting point on proof of the lone ground of the petition is that by the combined effect of *sections 131, 132, 133 and 134 of the Evidence Act, 2011* the law is firmly settled that in election petitions or any other civil matters, the burden of proof on a balance of probability or preponderance of evidence rests squarely on the petitioners. In fact, by section 135 of the same Act, where the commission of a crime is directly in issue in a petition, the burden on the petitioners is higher to prove beyond reasonable doubt. See the most recent case of ***Oyetola & Anor. V. INEC & Ors (2023) LPELR – 60392 (SC) Pp11 –12, paras. C–B***.

Also, that in election matters which is always seeking declaratory reliefs or reliefs in declaratory form, the petitioners must

succeed on the strength of their case and not on the weakness of the defence. See ***Ucha V. Elechi (2012) 12 NWLR (Pt. 1317) 388***. And even if there is admission by the respondents, the petitioners still have the legal burden to prove the case before their entitlement to the declaratory reliefs sought as held in ***Omisore V. Aregbesola (2015) 15 NWLR (Pt. 1482) 219***.

Related to the above is the presumption of regularity of the result declared and the return made by the 3rd respondent (INEC). Though the presumption is rebuttable, it sort of also places the burden on the petitioners to first discharge the primary legal burden of proving the existence of those facts alleged in their petition on over voting and the non-compliance that has affected the votes in those areas complained of, which make the votes therefrom to be unlawful. Furthermore, it is trite that it is only after the petitioners have discharged that evidential burden that the Tribunal will then consider the evidence produced by the respondent to find out if the evidence disproved the case established by the petitioners. Otherwise, the respondents may not be under an obligation to give evidence. Again, see the recent Supreme Court decision in ***Oyetola & Anor. V. INEC & Ors (supra); NNaji V. Agbo (2006) 2 EPR 896***.

It is the petitioners' submission that they admitted that the legal propositions canvassed on rebuttable presumption of the correctness of the results declared by INEC (3rd respondent) and the principles on dumping of documents from the bar without speaking to them *vide* calling oral evidence of their makers, are settled law. They admitted also that a petitioner in an election petition is bound to succeed on the strength of his case on preponderance of evidence or balance of probability, relying on ***Buhari V. Obasanjo; Buhai V. INEC***.

It could be observed that in the bid to discharge the onerous *onus* of proving the allegations in their petition, the petitioners have relied on oral evidence of the witnesses they called and essentially on

the documentary evidence of the results and other electoral documents used during the election under reference, as well as the fact that the respondents did not lead evidence in defence. It is submitted that the petitioners proved over-voting and computed the scores of parties arising from non-compliance, deducted the invalid votes from the scores credited to the parties and arrived at the chart in their paragraph 24, which the respondents are alleging is a self admission by the petitioners that the 1st respondent won with majority of lawful votes. It is argued that the respondents consciously took that paragraph in isolation of paragraphs 25 – 39 of the petition where the petition contended that the election in identified polling units in Ika North East, Ndokwa East and Ndokwa West LGs were tainted with non deployment of statutory forms for the election, such as, EC40A (ballot papers account and verification statement), EC40B (statement of rejected and spoilt ballots), EC40C (statement of used and unused ballot papers); and EC25B (Election materials receipt/ reverse logistic). That by paragraphs 38 – 39, after deducting the votes from the aforesaid places, the petitioners had unqualified victory.

The petitioners submitted that there was non-compliance in identified polling units in Ika North East, Ndokwa East, Ndokwa West, Ukwuani and Aniocha North Local Governments where there were over-voting and failure to use statutory forms EC40A, EC40B, EC40C and EC25(A) in the course of the election. It is submitted that all INEC results, their relevant duplicate yellow copies of the originals and other electoral documents were all tendered, submitting further that it is misconception by the respondents to alleged that the documents are merely dumped, as by paragraph 41(3) of the First Schedule to the Electoral Act, a witness's evidence is the adoption of his written deposition.

It is the petitioners' case that the five (5) witnesses they called gave copious evidence in their said adopted written depositions on the issues in the petition and documents referred thereto, demonstrating the issue of over voting and miscalculation of votes particularly in Ndokwa East Local Government where votes of 2151 for the petitioners was whittled down to 215. That the contents of those documents are already stated in the witnesses' adopted depositions, including the alteration complained of, the entries in the BVAS report, and the number of votes cast to prove over voting, all were attested to during cross examination. That as pronounced in ***Chukwukere V. INEC & Ors.*** the petitioners through the said witnesses' depositions, have discharged the burden of identifying and linking the documents to their case and that the authorities cited by the respondents are inapplicable because they relate to documents tendered from the bar without any witness' articulation thereon, and the courts were left with the arduous burden to sort out the documents which are inadmissible.

As stated above, the Tribunal agrees with the respondents who in unison contended that all the documents which are certified true copies currently before the Tribunal unequivocally showed that the 1st respondent won the election by majority of lawful vote. Those documents enjoy the rebuttable presumption of regularity until the contrary is proved by the petitioner. See ***Audu V. INEC (2010) 13 NWLR (Pt. 1212) 431 at 522*** where the court held that –

> *"There is a presumption that the result of any election as declared by the electoral body is correct and authentic, and the onus lies on the person who denies the correctness and authenticity to rebut the presumption with credible evidence."*

See also ***Nyesom V. Peterside (2016) 7 NWLR (Pt. 1512) 452 at 522 – 533 paras. H – A; Tallen & Ors V. Jang & Ors. LPELR***

– 9231 (CA); Zodoziako V. Okere (2005) 16 NWLR (Pt. 952) 612; Mohammed V. Mohammed (208) 6 NWLR (Pt. 1082) 73; Ojo & Anr. V. PDP & Ors. (2015) LPELR – 4180 (CA). It must be added that mere speculation, conjecture, supposition, postulation, rhetoric and the like, cannot and should not be used to rebut the said presumption of regularity. See ***Emmanuel V. Umana & Ors (2016) LPELR – 40037 (SC) Pp. 37 – 39 paras. C – A***.

By sundry paragraphs of the petition such as paragraphs 16, 17, 18, 19, 20 and 21 of the petition, the petitioners have alleged over-voting, non-accreditation with BVAS, wrong calculations, non-use of statutory forms among other electoral infractions in over eighty (80) polling units of five (5) out of the nine (9) Local Government Areas that make the Delta North Senatorial District. The five Local Government complained about are – Ika North, Aniocha North, Ukwuani, Ndokwa West and Ndokwa East. How then have the petitioners discharged the onus on them to prove the allegations in those Local Governments.

The petitioners called a total of five (5) witnesses which included the 1st petitioner (PW5) and his Campaign manager (PW4). The remaining three (3) witnesses (PW1 – PW3) are polling unit agents but all from Ukwuani, one out of the five (5) Local Governments complained about. Not even a single witness who is a direct witness from the other four (4) Local Government was called. Suffice to say that from the earlier review in this judgment of the evidence of the said three (3) witnesses, it could be seen that there is nothing credible or convincing on the allegation of over-voting and non accreditation with BVAS at their just insignificant three (3) polling units out of the multitude units in that Local Government alone.

The three witnesses confirmed that there were accreditations with BVAS and Voters Register; they and other voters cast their votes and the votes were sorted, counted and recorded. For instance, PW1

confirmed during cross examination *inter alia* that the number of accredited voters in the BVAS report of his unit (exhibit 36) is 129 while the total number of vote cast in form EC8A(I) for his unit (exhibit 23(1) is also 129.

Ditto for PW2 who gave similar evidence and that total number of votes cast in his unit is 120 in exhibit 24(2) i.e form EC8A(1) while the number is the same 120 for the voters accredited in the BVAS report exhibit 36. The third petitioners' witness confirmed the same thing, save for the figure in his own unit for both BVAS report and the result, which is 255 at peace. Where then lies over voting and/or refusal to use BVAS when the votes cast are equal to the numbers of accredited voters in the BVAS. In ***IKeazu V. Otti (2016) LPELR – 40055 (SC)*** the Supreme Court says over voting occurs when the total number of accredited voters/register voter in a polling unit is less than the total number of votes cast or where the votes cast exceed the number of accredited voters. None is the case here!

It is interesting to note that PW4 admitted that he was going round during the election and neither voted at any polling unit nor witnessed the alleged alterations of results anywhere. On his part, PW5, the 1st petitioner, admitted he got information about the allegations of over-voting, non-accreditation with BVAS and other non-compliance from his agents on the field. He did not witness any except at the polling unit where he voted. Even at that he admitted he was accredited with BVAS and Voters Register and he voted.

The above short review, again at the expense of being repetitive, show clearly that the allegation of over-voting, non use of BVAS for accreditation and other non compliance with the provision of the Electoral Act made by the petitioners were bereft of the requisite proofs even in the only Local Government of Ukwuani, how much more, in the other four (4) Local Governments where there is total dearth of evidence in respect thereof.

It must be reiterated that legal authorities have crystallized that where the petitioners, as in the present case, are alleging over-voting, non accreditation with BVAS, improper accreditation, allocation of votes, miscalculation or wrong calculation of votes, all of these can only take place at the polling units, thus, evidence of polling unit agents in **all** the polling units challenged must be called in order to prove the allegation(s). See ***Buhari V. INEc & Ors. (2008) 19 NWLR (Pt. 1120) 246 at 424, paras. D – F***; ***Buhari V. Obasanjo (2005) 13 NWLR (Pt. 941) 1 at 315, paras C - D***. The Court has held in ***Andrew V. INEC (2018) 9 NWLR (Pt. 1625) 507 at 560 paras. G – H*** that –

> *"In view of all I have said above, it is my well considered view and I so hold that the lower Court was right to hold that the appellants ought to call polling unit agents in all the polling units challenged in order to prove lack of improper accreditation, over-voting and improper accounting of ballot papers. I agree with Prince L.O. Fagbemi SAN, counsel for the 3rd Respondent that the Appellants seem to have the impression that the need to call polling unit agents in proof of their case is dispensed with simply because in their view and as stated in this issue in their brief of argument, 'the proof of the allegation is documentary', as it turns out, this does not represent the position of the law."*

Also on non compliance and inaccurate accounting of ballot papers as alleged by the petitioners herein, in same **Andrew's** case, hear the Supreme Court again –

> *"It is now settled law that where a petitioner alleges non-compliance with the provisions of the Electoral Act, he has the onus of presenting credible evidence from*

> *eye witnesses at the various polling units who can testify directly in proof of the alleged non compliance ….*
>
> *On the issue of inaccurate accounting of ballot papers at the polling units, I state emphatically that only the agents who were present at the polling units whre the appellants allege the non compliance took place, that can give testimony of such ballot paper inaccurate accounting."*

The petitioners did not call any polling unit agent in four (4) of the Local Governments being challenged and the only one Local Government they have called just insignificant three (3) out of the many polling units therein, they could not establish their allegations.

The later portion of the above proposition of the law in the above ***Andrew***'s case brings the Tribunal to the claim of the petitioners that, just like Andrew's case, the proof of their case is documentary; the case on over-voting is predicated on the results and BVAS report tendered, which are documentary evidence and the computation thereof has been done *via* PW4 and PW5. So, oral evidence, being canvassed by the respondents, is irrelevant because it could add to or vary the documentary evidence already tendered which speaks for themselves. The petitioners have commended ***Gbenga V. APC & Ors.; Ibrahim V. Abdullah & Ors.; Ahmed V. CBN*** and other cases.

The petitioners noted that documentary evidence is the best to proof allegation of alteration. They asked what is the use of oral evidence of polling agents to prove miscalculation of votes, particularly in Ndokwa East Local Government where votes of 2,151 scored by the petitioners were whittled down to 215 and to prove non use of statutory forms earlier mentioned, that documentary evidence suffices for both.

The petitioners also argued that they alleged that the statutory forms where not use and it impugned the integrity of the election and the respondents vehemently deny this allegation and insist that the forms were used. As alluded to earlier, counsel to the petitioners, Erondu SAN during adumbration of the petitioners' final address equally craved in aid section 137 of the Electoral Act on the purport of the tendered document without calling their makers. The petitioners pray the Tribunal to hold that they have discharged the burden of proving over voting and non-compliance with the provision of the Electoral Act.

The cumulative contention of the respondents in their various final addresses is that the gamut of documents tendered by the petitioners and admitted by the Tribunal as exhibits were simply dumped on the Tribunal without any attempt to link them to the petitioners' claims as required by the law, by calling the makers or those witnesses from the polling units who witnessed their making. It is the case of the respondents in unison that those witnesses called by the petitioners were neither the makers of the documents nor persons who witnessed the making of same and could give direct evidence on them. The respondents further argued that the purported reliance the petitioners are placing on section 137 of the Electoral Act, 2022 holds no water has both the Court of Appeal and the Supreme Court has interpreted the section as not obviating the need to still call the necessary oral evidence to speak to those documents.

The respondents are equally unanimous that it is misconception for the petitioners to assume that documents tendered at the bar and deemed as read need not be demonstrated in open court by oral evidence of the maker of such documents or persons that participated in making them, by linking them to various aspect of the petitioners' case, even though documents speaks for themselves. Authorities relied on include – ***Omisore V. Aregbesola (2015) 15 NWLR (Pt.***

1382) 205; Udom Emmanuel V. Umana & Ors. (2016) LPELR – 40659 (SC) Pp. 12 – 13, paras. F - E; Congress For Progressive Change V. INEC (2012) 13 NWLR (Pt. 1317) 260; ***Maku V. Al Makura (2016) 5 NWLR (Pt. 1505) 201 at 228, paras. A – D***. the respondent all submitted that the documents tendered through the petitioners' witnesses who are neither the maker nor present when they were made amount to documentary hearsay for which no probative value should be attached to. ***APC V.& Ors. V. Obaseki & Ors. (2021) LPELR – 53538 (CA)***.

Now this issue of proving with documentary evidence is to be resolved in this petition starting from the above quoted portion from the case of ***Adrew*** (supra). At the prolix of being repetitive, the court re-stated therein as follows –

> "*I agree with Prince L.O. Fagbemi SAN, counsel for the 3rd Respondent that the Appellants seem to have the impression that the need to call polling unit agents in proof of their case is dispensed with simply because in their view and as stated in this issue in their brief of argument, 'the proof of the allegation is documentary', as it turns out, this does not represent the position of the law'.*" (underline ours)

It could be seen that the court is so emphatic in the underlined portion above, that it is not the position of the law to say the documents speak for themselves. There is a galore of authorities to the effect that nothing, we repeat, obviate the requirement of calling not just oral evidence on any document tendered before the Tribunal, but also calling the required oral witnesses, i.e the maker or person who participated in the making, even with the advent of the much touted section 137 of the Electoral Act as shall soon be demonstrated. Few quotations below will certainly drive home this recondite principle. In ***APC V. Adeleke & Ors. (2019) LPELR – 47736 (CA) Pp. 37 – 38, paras. C – D***, a case with issue of tendering pink

duplicate copies of the original results, i.e on all four with this petition, it was held that –

> *When documents are tendered from the bar, they serve to avoid lengthy processes that may take up the time of the court, especially in election cases, where time is of essence. Some of the documents are therefore normally tender from the bar. But even at that, the makers of the documents need to be called as witnesses, so that the documents can be examined in their contents and the witnesses cross examined. That is the only way, that proof in their respect will be discharged and the court or Tribunal have jurisdiction to see for itself and assess same to accord probative value or not. If the document is only tendered, without explanation in court by the maker, it would be deemed to have been "dumped" and the court will lack the jurisdiction to assess them privately and reach any conclusion in respect of them. See also* ***Belgore V. Ahmed (2013) 8 NWLR 60 at 100, D - G****. (Underlines ours)*

Also in ***Maku V. Al Makura (2016) 5 NWLR (Pt. 1505) 201 at 228, paras. A – D***, the court held that –

> *"Where a petitioner pleads thousands of documents in an election petition, such as ballot papers, used in an election which is usually in that bulk without linking them individually to the case being made, such as over voting, wrong cancellation, inflation of results etc that is clearly a case of dumping of documents on the court. It is not the duty of the court to sort out the exhibits and relate them to the heads of the claim or case of the petitioner."*

Also, in ***Abubakar V. INEC (2020) 12 NWLR (Pt. 1737) 37 at 129 – 130*** the court equally held that –

> *"However if the intention is just to tender the documents, of course, it can be done without the maker as was done in this case where tons of documents were tendered from the bar. But if the intention is for the court to act on those documents, the makers must be called to speak to those documents and be cross-examined appropriately. It is then and only that a court can attach probative value to it…."*

Similarly, in ***Pastor Ize-Iyamu Osagie Andrew & Anr. V. INEC & Ors. (2018) 9 NWLR (Pt. 1625) 507 at 577*** it is also held that –

> *"It is settled law that a person who did not make a document is not in position to give evidence on it because the veracity and credibility of that document cannot be treated through a person who has no nexus with the document. Only a maker of a document can tender and be cross-examined on same. Any exhibits tendered from the bar without calling the maker thereof will not attract any probative value."*

There is a fierce argument that section 137 of the present Electoral Act, 2022 has obviated the calling of oral evidence in election matters under the circumstance mentioned therein. With due respect, the Court of Appeal interpreting the section and paragraph 46 of the First Schedule to the Electoral Act, 2022 has restated the position of the law, and the apex court of the land, the Supreme Court has not disturbed that decision. In ***PDP V. Oyetola & Ors. (2023) LPELR – 60291 (CA) Pp. 92 – 93*** the Court of Appeal held thus –

"Now let's take a look at what section 137 of the Electoral Act, 2022 and paragraph 46(4) of the First Schedule to the Electoral act state –

Section 137 of the Electoral Act, 2022.

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

Paragraph 46(4)b of the First Schedule to the Electoral Act:

"Documentary evidence shall be put in and may be read or taken as read by consent…..

Both of these provisions only deal with the figures entered into the forms. How do the figures get into the forms? Do they get there on their own or some people inputted the figures? It is also true that the BVAS are operated by the INEC staff posted to the polling units. My view is that there should also be evidence of how the BVAS were operated. This cannot be manifested on the forms, how well and how long you search…..That is why the court need mor than the mere figures in the electoral forms and the BVAS reports to satisfy itself that the petitioner either successfully proved his case of non compliance or not. <u>In other words, there must be the eye witnesses at the polling units to testify before the court as to how the accreditation and voting took place. These people are usually the presiding officers and the polling agents…</u>"

The Supreme Court affirmed the above unanimous judgment of the Court of Appeal without upturning or revising any part thereof in Oyetola & Anr. V. INEC & 2 Ors. (2023) LPELR, which invariably means the above restatement of the law has been stamped with the Apex court final authority. Finally, again on the issue of the documents tendered in this petition, in ***Andrew & Anor. V. INEC & Ors. (2017) LPELR – 48518 (SC)***, Per Aka'ah JSC at Pp. 109 – 113 stated the law that –

> *"Only a maker of a document can tender and be cross examined on same. Any exhibits tendered from the bar without calling the maker thereof will not attract any probative value. See Omisore V. Aregbesola (2015) 15 NWLR (Pt. 1482) 205; Udom Gabriel Emmanuel V. Umana & Ors. (2016) 2 SC (pt. 1) 1, (2016) 12 NWLR (Pt. 1526) 179."*

There is no doubt that PW1, PW2, PW3, PW4 and PW5 were not the makers of all the documents (electoral or otherwise) tendered herein in purported proof of the petitioners' case. None of them could have been cross-examined on the veracity and credibility of the documents. The documents are therefore nothing but documentary hearsay. Therefore, from all that have been said, the Tribunal is safe to hold that the petitioners have dumped tons of documents marked as exhibits 1 to 46 on it, to which no probative value will be attached by this Tribunal. In fact, the Tribunal lacks the jurisdiction to countenance them, having not called their makers or those that participated in their making or directly witnessed their making. The Tribunal so holds.

Another angle of importance is that the law is firmly settled that in order to prove over voting in an election, a petitioner must produce the material(s) used for accreditation and the ballot papers or the results thereof, so as to know which is less or more between the

number of accredited voters and the total number of votes cast. At the risk of repetition, over-voting is said to occurs when the total number of accredited voters/register voter in a polling unit is less than the total number of votes cast or where the votes cast exceed the number of accredited voters. See ***IKpeazu V. Otti (2016) LPELR – 40055 (SC)***.

In the recent ***Oyetola & Anr. V. INEC & Ors (2023) LPELR – 60392 (SC) P. 12, paras. D – D*** the Supreme Court while considering the provisions of the Electoral Act, 2022 stated *thus* –

> *"The evidence to prove non-accreditation, improper accreditation and over voting under the Electoral Act, 2022 are the BVAS, the register of voters and the polling unit result in INEC Form EC8A by virtue of section 47(1)&(2) and 51(2) of the Electoral Act 2022, Regulationss 14, 18, 19(b)(I – iv), (e)(I – iii) and 48(a) of the INEC Regulation and Guiidelines for the Conduct of Elections, 2022."*

Elsewhere in the same ***Oyetola & Anr. V. INEC & Ors (supra) at Pp. 48 – 49, paras. D – D*** the Supreme Court held thus–

> *"Whenever it is alleged that there was over voting in an election, it is my view that 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 EC8As to show the number of votes cast at the polling units. These three documents will show exactly what transpired at the polling units. Failure to tender these documents would be fatal to any effort to prove over-voting." (underlines ours for emphasis)*

In the instant petition, though the petitioners "dumped" on the Tribunal the results forms, EC8A(I) series, they woefully failed to produced the materials used for accreditation, which are the BVAS Machines and the Voters Registers as required by the law. That omission or failure is also very fatal to the petitioners' case and resulted in them failing to prove any over-voting.

It is also expedient that the Tribunal should not gloss over the submissions of the respondents, especially the 3rd respondent, that the petitioners in paragraph 24 of the petition made an admission against interest, where they pleaded that even after deducting the alleged unproved unlawful votes which resulted from also unproved over voting, and adding what the petitioners alleged was wrongly deducted from their votes in Ndokwa(East LG: i.e 2,151 – 215 =1,936), the scores of the parties would be: APC 34,867; LP **87,375**; and PDP **90,018**. The respondent argued that it means the 1st and 2nd respondents still won by majority of lawful votes and the 3rd respondent was *thus* not only right to have returned the 1st respondent but also strengthened the presumption of regularity of the result declared by the 3rd respondent. See pages 17 – 18, paragraph 24 of the main petition. When PW4 and PW5 were unequivocally asked, they confirmed during cross examination the above scores. See paragraphs 24s at Pages 64 and 100 of their respectively statements on oath.

The petitioners' response to the purported above admission against interest, in paragraph 4.056 of their final address, is that after those figures, paragraphs 25 – 39 complained that constitutive elements of a valid election were not observed in identified polling units in named three Local Governments and that the vitiated votes in those Local Government are further deducted from the votes of the parties in tables in paragraphs 37 and 38 of the petition and the final scores in paragraphs 37 of the petition is APC 34,216; LP **86,771** and

PDP **85,935** – the 1st petitioner *thus* allegedly won. What the petitioners called the constitutive elements are forms EC40s and EC25B which were allegedly not filled. The Tribunal however discovered that those forms were pleaded in the petition and facts on them deposed to in the witnesses statements on oath of PW4 and PW5, but unfortunately were not tendered in court – not even dumped like other documents, fortifying the facts further that they could not prove their win. However, in the light of the above clarification, the petitioners could not be safely deemed to have conceded victory to the 1st respondent. The Tribunal so holds.

Also worthy of remark is the inconsistency of the petitioners, especially the 1st petitioners, who maintained under cross examination that the alleged and unproved alterations in exhibits 1 – 27 (i.e originals of forms EC8A(I), were done to affect the outcome of the election in the polling units won by the 1st and 2nd respondents, but exactly the same alterations in exhibits 50(1) – (11) (also originals of forms EC8A(I) in polling units where he (1st petitioner) won were not done to affect the outcome of the election in those polling units. 1st petitioner also under cross-examination confirmed that all the alleged alterations in both cases were signed/initialed. The Tribunal therefore holds that the petitioners are approbating and reprobating at the same time, and should not be believed. See **Comptroler Geeneral of Custom V. Gusau (2017) LPELR – 42081 (SC)**

There is the submission by the petitioners that had the respondents called evidence in support of their defence, the Tribunal would had an arduous task evaluating the two competing sets of evidence on the imaginary scale of justice. But they did not, but abandon their defence. They relied *inter alia* on ***Sokoto & Anr. V. INEC & Ors. (2022) 3 NWLR (Pt. 1818) 577, 600 – 601 paras. G – B*** and that the respondent failed during cross examination to impugn the evidence proffered by the petitioners, relying again on

Adedayo V. Christine (supra). Hence, they argued that the petitioners no longer by the respondents' default required to proof by preponderance of evidence, for the respondents are deemed to have admitted. ***Ajadi V. Akinola*** was cited. The petitioners still went further that even the only RW1 called by the respondent made a mess of himself and his rationalization of the alterations found in the certified results (originals of forms EC8A(I) series) which were absent in the duplicate yellow copies, is bizarre, unpleaded and goes to no issue, referring to ***Mekwunye V. Carnation Registrar Ltd.*** and the Tribunal should reject his cock and bull story.

The further submission of the petitioners is that where evidence is uncontradicted, the petitioners are only expected in law to prove minimally which they have done. Reliance is place on ***Dr. Ukpo V. Lyle Imoke & 2386(sic) Ors.; Ucha & Anr. V. Elechi*** and ***Larmine V. D.P.M.S Ltd.***

It is noteworthy that contrary to the above reviewed contentions of the petitioners on the shift of burden of proof, the outcome of the above resolutions of the Tribunal is that the petitioners did not discharge the primary onus of proof on them as to shift that burden on the respondents. On the balance of probability this petition is bereft of any proof, hence, no burden has shifted on the respondents to lead any evidence in defence. See ***Nnaji V. Ago (2006) 2 EPR 896***.

The totality of all that has been said above is that while there is no incongruity or mutual exclusiveness in the sole ground that the 1st respondent was not duly elected by majority of lawful votes cast at the election; the petitioners however failed woefully to prove that ground as required by the law. Apart from lack of proof, the petitioners also unequivocally admitted that the 1st respondent won by majority of lawful votes cast at the election. This is issue is therefore, save for the first leg, resolved against the petitioners.

ISSUE NO. 2

This issue pertain to the qualification and sponsorship of the 1st petitioner as a candidate of the 2nd petitioner, as raised by the 1st respondent in their reply to the petition pursuant to section 134(1)(a) of the Electoral Act. The petitioners referred to ***ANPP V. Goni (2012) 7 NWLR (Pt. 1298) 147*** to pray the Tribunal to give the words used in section 134(1)(a) above referred its plain, ordinary and unambiguous meaning. The petitioners posited that by its wording the provision is a veritable weapon only in the hand of the petitioners and not a weapon of defence in the hand of the respondents, relying on ***Oshiomhole v. Airhiavbere & Ors. (2013) 7 NWLR (Pt. 1353) 376*** to say that in an election petition, it is the qualification of a respondent that is to be questioned under that provision, while the issue of qualification of the petitioner can only be raised through a cross petition constituted by the respondent, citing ***Idris V. ANPP & Ors. (supra)***. To the petitioners, all the arguments and authorities cited by the 1st respondents are irrelevant, because the issue is only not for this Tribunal but also it is dead on arrival.

The 1st respondent who raised this issue submitted perforce that the Tribunal is competent to entertain this issue pursuant to section 134(1)(a) of the Electoral Act, 2022; that it is settled law in this country, as reiterated by the Supreme Court in ***Gwede V. INEC & Ors. (2014) LPELR – 23763 (SC) P. 49, para. C***, that no one can contest an election without first and foremost being a member of a registered political party and secondly, being sponsored by that party as a candidate for the election. Section 65(1)(a) & (2)(b) of the Constitution referred. The 1st respondent argued that the Supreme Court in ***Fayemi V. Oni & Ors. (2019) LPELR – 49291 (SC) Pp. 19 – 24, para. D*** decided that issue of qualification of a candidate is both pre and post election matter that can be challenged either in the

regular High Court or Election Tribunal. He similar quoted from ***Dickson V. Sylva (2017) 10 NWLR (Pt. 1573) 299 (SC)*** and ***Wambai V. Donatus & Ors. (2014) LPELR – 23303 (SC) Pp. 26 – 28, para. F***.

According to the 1st respondent, relying on ***Labour Party V. Wike & Ors. (2015) LPELR – 25991 (CA)***, section 85(1) of the Electoral Act mandates a registered political party to give INEC at least 21 day notice of any convention, congress, conference or meeting convened for the purpose of electing members of its executive committees, other governing bodies or nominating candidate for any elective office specified under the Act. Non compliance with the said requirement of notice renders any purported election, primary or nomination invalid. Also commended to the Tribunal and quoted to that effect is ***Aliyu V. Namadi & Ors. (2023) LPELR – 59742 (SC) Pp. 5 – 60***. From the evidence led in court, especially during cross examination of PW5 and exhibit 49, the 1st respondent contended that the 2nd petitioner (LP) did not give INEC adequate notice of its primary that produced the 1st respondent as its sponsored candidate at the election in contest. The notice (exhibit 49) was said to have been served on the 3rd respondent (INEC) on 25/05/22 for a primary to be held on 28/05/2022 and that rendered the nomination and sponsorship of the 1st respondent invalid. The 1st respondent therefore prayed the Tribunal that the 1st petitioner not being validly sponsored, is not a candidate at the election and he is not clothed with the requisite standing to contest the outcome of the election through an election petition as he seeks herein presently.

The Tribunal again out rightly says this issue is another '*much ado about nothing*'. That much will be properly appreciated by any discerning mind, if the provisions of section 285(1) of 1999 Constitution (as amended) that constituted and confer jurisdiction on

this Tribunal; and section 134(1)(a) of the Electoral Act under which the 1st respondent raised this issue, are put in proper legal context. Section 285(1) of the grundnorm, the Constitution, provides –

> *"The shall be established for each State of the Federation and the Federal Capital Territory, one or more Election Tribunals to be known as the National and State Houses of Assembly Election Tribunals which shall, to the exclusion of any court or tribunal, have original jurisdiction to hear and determine petitions as to whether:*
>
> (a) *any person has been validly elected as a member of the National Assembly; or*
>
> (b) *any person has been validly elected as a member of the House of Assembly of a State."*
>
> *(underlines for emphasis)*

On its part, section 134(1)(a) of the Electoral Act, 2022 provides–

> *"(1) An election may be questioned on any of the following grounds:*
>
> *(a) a person whose election is questioned was, at the time of the election, not qualified to contest the election;" (underline for emphasis)*

Now, giving the words used in the above two provisions of the laws their ordinary, literal, plain and unambiguous meaning, without even the use of any dictionary, it is patently and *ex-dubito justicea* clear that this Tribunal's jurisdiction is limited to determining whether any person has been validly elected; and that the kind of issue of qualification that may be brought before this Tribunal is limited ONLY to the qualification of a person whose election is being questioned. In other words, while the Constitution talks of the "person elected", which is the person declared as the winner, the Electoral Act similarly

says the "person whose election is being questioned", which is also the person declared as the winner.

The irresistible question now is, whether the 1st petitioner whose qualification is allegedly being challenged by the 1st respondent is the person declared as the winner? The answer certainly is in the negative. Therefore, the issue of the qualification of the 1st petitioner to contest the election in dispute is not a question this Tribunal can constitutionally and statutorily adjudicate upon. This stand of the Tribunal was reinforced by the decision of the Supreme Court in ***Dickson V. Sylva (2017) 10 NWLR (Pt. 1573) 299 (SC)***, even earlier cited by the 1st respondent but quoted out of context. The major issue in that case before the Supreme Court was whether the Tribunal can entertain a challenge to the qualification of a person who was not the person returned as the winner of the election, which the trial Tribunal said NO! And the Court of Appeal affirmed that position. At pages 334 – 336 the Supreme Court in upholding the decision held that –

> *"As rightly held by the Tribunal, and affirmed by the lower court, the petition before the Tribunal was not a challenge to the election and return of Chief Timipre Martin Sylva but a challenge to the election and return of Hon. Henry Seriake Dickson as a duly elected Governor of Bayelsa State. The duty and indeed the jurisdiction of the Tribunal is to determine whether Hon. Henry Seriake Dickson was duly elected…… Since Chief Timipre Sylva was not declared winner of the election and was not so returned, the issue of questioning his competence to contest the election on any ground before the Tribunal did not arise…."*

Flowing from the above exposition of the law and without belabouring the issue further, the Tribunal entirely agrees with the petitioners that challenge to qualification before an Election Tribunal is a weapon, which enures in favour of the petitioners against the respondent whose election is being questioned and not a weapon of defence in the hand of the respondent. All the other arguments canvassed by the 1st respondent on the qualification of the 1st petitioner, have in that light paled into irrelevance, insignificance and not worthy of any consideration, and the authorities therein cited inapposite. It only left to be added that even the substratum of the 1st respondent's objection, i. exhibit 49; its admissibility had earlier on in this judgment been objected to and the objection sustained. Accordingly, Issue No. 2 is resolved against the respondents.

In the final analysis however, in view of the Tribunal's earlier resolution on the issue of proof, under issue No. 1 above, this petition is found to be lacking in any iota of merit; same is accordingly dismissed. Cost assessed at N500,000.00 against the petitioners and in favour of each of the 1st and 2nd respondents.

Hon. Justice Catherine Ogunsanya
(Chairman)
07/09/2023

Hon. Justice Mas'ud Adebayo Oniye
Member I
07/09/2023

Hon. Justice Babangida Hassan
Member II
07/09/2023

APPEARANCES

C. O. Erondu SAN and with him J. A. Ogodi Esq., Habeeb Lawal Esq., Modester Oti (Mrs.), N. A. Erondu (Mrs.), V. C. Nwanko Esq., P. O. Ihuoma Esq. for the Petitioners.

A. O. Odum SAN with him Ikhide Ehighelua Esq., Terhemba Gbashima Esq., O. J. Obodaya Esq.,T. O. Binitie Esq., B. Ganagana Esq., Francis Okoye Esq., K. K. Akpule Esq., C. W. Martins for the 1st Respondent.

Chief I. A. Atikueke Esq. and with him Dr. Jonathan Ekperusi Esq., O. C. Ikpen Esq. for the 2nd Respondent.

Abdullahi Yahya SAN and with him E. R. Victor (Mrs.) for the 3rd Respondent.