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

PETITION NO: EPT/DL/HR/04/2023

TODAY FRIDAY, 8TH DAY OF SEPTEMBER, 2023

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

BETWEEN:

***1.* MR. UTOMI NWANNE**
2.* LABOUR PARTY (LP)** } ***..... PETITIONERS

AND

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

JUDGMENT

The facts leading to this petition were that the 1st petitioner (Mr. Utomi Nwanne), a candidate sponsored by the 2nd petitioners (Labour Party) contested the election into the House of Representatives for Ika Federal Constituency held on 25/02/2023. At the end of the election, the 1st respondent (INEC) declared the 2nd respondent (Mr. Victor Nwokolo) who was sponsored by the 3rd respondent (PDP), as the winner and the person elected into the Federal House of Representatives having scored the majority of lawful votes cast by polling a total of 27,973 votes.

The petitioners therefore filed this petition with No. EPT/DL/HR/04/2023 on 17/03/2023 on the following grounds –

1. *The 2nd respondent, Mr. Victor Nwokolo, was not duly elected by majority of lawful votes cast at the election.*
2. *The election held in most parts of the Ika North-East Local Government Area of Delta State, as more particularly shown in paragraphs 16.1 – 16.27 of the petition, was invalid by reason of non-compliance with the provisions of the Electoral Act, 2022.*

Each of the respondents reacted to the petition through their respective replies. The 1st respondent's reply was filed on 05/04/23 and another reply on 08/04/2023, but the earlier one was subsequently withdrawn. The 2nd respondent's reply was filed on 10/4/2024, while the 3rd respondent too filed its reply on the same 10/04/2023.

The petitioner initially filed a joint reply to the reply of the 1st respondent and the reply of the 2nd respondent on 22/4/2023. He also on the same 22/4/2023 filed another joint reply to again the 2nd respondent's reply and the 3rd respondent's reply.

The petitioner applied on 29/04/2023 for issuance of pre-hearing notice in form TF007 & TF008, hence, pre-hearing session commenced on 09/05/2023. The session proceeded to scheduling, settlement of issues and other pre-hearing businesses. Also during pre-hearing sessions, the Tribunal took the following, among other applications filed by the parties, to wit –

1. Oral application by the 1st respondent: to withdraw one of the two replies he filed; the 1st one filed on 5/04/2023 and the 2nd one filed on 8/04/2023. It was the earlier one of 5/04/2023 that he withdrew without objection by the other parties.
2. Oral application by the 2nd respondent to withdraw a motion for dismissal of the petition for not following due process in its initiation.
3. A motion on notice filed on 27/4/2023 by the 2nd respondent for dismissal of the petition due to non compliance with paragraph

18(1) of the First Schedule to the Electoral Act, 2023 on abandonment; was on 20/06/2023 argued, opposed and ruling reserved until the final judgment.

4. A motion for change of counsel brought by the 1st respondent, filed on 24/4/23; granted as prayed.
5. An application to amend the reply of the petitioners to the 1st respondent's reply, (because the said 1st respondent withdrew one of his two replies); moved on 15/05/2023, and granted without objection from the other parties.
6. A motion by the petitioners on 13/05/2023 for production and recount of the ballot papers used during the election. The motion was vehemently objected and the Tribunal in a well considered ruling refused same.
7. 3rd respondent's motion filed on 01/05/2023 for dismissal of the petition for abandonment, pursuant to paragraph 18(1) of First Schedule to the Electoral Act; was on 20/06/2023 argued, opposed and ruling reserved until the final judgment.

However, in a rather intriguing twist, while the pre-hearing session that had commenced since 09/05/2023 was still on-going, the petitioners on 22/05/2023 announced before the Tribunal that they just filed a new application for pre-hearing on 16/05/2023 – just because they had purportedly amended their reply to the 1st respondent's reply.

Be that as it may, from the above, it is ascertained that few applications, moved and argued during the pre-hearing session had their rulings reserved until final judgment in line with the provision of section 285(8) of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

Two of such applications brought by the 2nd and 3rd respondents, though bordered on the same non compliance with paragraph 18(1) of the First Schedule to the Electoral Act 2022, shall now be considered and resolved in this judgment, before proceeding further in the judgment, if need be.

The 2nd and 3rd respondents filed their separate motions and sought for the following similar orders, these are in addition to the preliminary objection raised in their replies to the petition:

1. *An order of this Honorable Tribunal granting leave to the respondents/applicants for this application to be filed, argued and determined outside the pre-hearing session in view of the special and jurisdictional nature of the application.*
2. *An order of this Honorable Tribunal dismissing the petition No. EPT/DL/HR/04/2023: between Mr. Utomi Nwanne & Anor. V. INEC & 2 Ors. as an abandoned petition for failure of the petitioners to comply with the mandatory provisions of paragraph 18(1) of the First Schedule to the Electoral Act, 2022.*
3. *And for such order or further orders as this Honorable Tribunal may deem fit to make in the circumstance.*

The grounds upon which the applications are predicated are contained in page 2 of the 2nd respondent's application and pages 2 – 3 of the 3rd respondent's application, and they are supported by thirteen and twelve paragraphed affidavit respectively. Each respondent has attached to the affidavits six documents, these are the certified true copies of:

1. *1st Respondent's reply to the petition;*
2. *Endorsement and Return page;*
3. *2nd Respondent's reply to the petition;*
4. *Endorsement & Return page;*
5. *3rd Respondent's reply to the petition; and*
6. *Endorsement & Return page.*

By their affidavits of which the cumulative depositions therein are that the 1st, 2nd and 3rd respondents' respective replies to the petition were served on the petitioners on 17/04/2023, and having been served, the petitioners had five (5) days within which to file their replies, if any, to the respondents' replies to the petition, that was from the 17/04/2023, the petitioners had up to 21/04/2023 to file their reply. However, the petitioners failed, refused and/or neglected

to file their said replies until on 22/04/2023, which has exceeded one (1) day in violation of paragraph 16(1) of the First Schedule to the Electoral Act, 2022.

Similarly, from the date of filing their said reply, the petitioners are enjoined to apply for the issuance of Pre-hearing Notice in form TF007 and TF008 either within 7 days of the service of the respondents' replies to the petition; or if they (petitioners) have a reply, within 7 days after their reply to the respondents' replies. Thus, the respondent averred that the said application for Pre-hearing Notice was supposed to be, either from 17/04/2023 to 23/04/23, or from 21/04/23 to 28/04/2023. However again, the petitioners applied for the said Notice on 29/04/2023 which was clearly out of time.

Instructively, the respondents averred that from whichever angle one looks at it, the petitioners' reply to the replies of the respondents was out of time, while also their application for pre-hearing notice was equally out of time. Therefore, the petition is an abandoned petition and consequently it is liable to be dismissed by this Honorable Tribunal.

Counsel to the 3rd respondent, in his written address in support of his motion, raised lone issue for determination, thus:

> *Whether, pursuant to the provisions of paragraph 18(3)(4) and (5) of the First Schedule to the Electoral Act, 2022 and other enabling laws in that behalf, this Honorable Tribunal has the competent power to dismiss the instant petition as an abandoned petition by virtue of the failure of the petitioners to comply with paragraph 18 (1) of the First Schedule to the Electoral Act, 2022?*

The counsel answered the question in affirmative and quoted the provision of paragraph 18(1) of the First Schedule to the Electoral Act, 2022 and submitted that the quoted paragraph is simple, clear and unambiguous, and where such is the case, the provision should be accorded its simple and ordinary meaning. He referred to the cases of ***Fawehinmi V. IGP (2002) 7 NWLR (pt. 767) 606 at 678,***

paras. B – D; Sunmonu V. Oladokun (1996) 8 NWLR (pt. 467) 387 at 419, paras. B – D; and A. G. Federatiion V. A. G. Abia State (No. 2) (2002) 6 NWLR (pt. 764) 542 at 794, paras. B–C

The provision of paragraph 16(1)&(2) of the First Schedule to the Electoral Act, 2022 was also referred to, to the effect that where a petitioner is served with a reply of a respondent, the petitioner is enjoined by the Electoral Act, 2022 to file a reply within five (5) days from the date of service, where there are new issues raised by a respondent which he wishes to react to. Where a petitioner fails to file within the prescribed time by the First Schedule, he cannot be granted an extension of time to do same.

The counsel explained the purport of paragraph 18(1) of the First Schedule as to when a petitioner should apply for the issuance of Pre-hearing Notice, that is, within seven (7) days from filing and service of the petitioners' reply on a respondent, or where a petitioner does not intend to file a reply to a respondent's reply, within seven (7) days from filing and service of a respondent's reply on him.

In the instant case, the counsel argued that the petitioners have, by law, mandatory obligation to apply for the issuance of Pre-hearing Notice because of the use of the word "shall" in paragraph 18(1) of the First Schedule to the Electoral Act, and the counsel cited the cases of ***Kallamu V. Gurin (2003) 16 NWLR (pt. 847) 493 at 177, paras. F – G and Onoche V. Odogwu (2006) 6 NWLR (pt. 975) 65 at 89, paras. G – E.***

The counsel found the definition of the word "within" in Chambers 21st Century Dictionary, Revised Edition at page 1630, which means "not outside the limit of something, not beyond".

The counsel submitted that where there are several respondents in an election petition, as in the instant case, out of which one filed and served his reply to the petition before others, the petitioners are mandated in the circumstance under paragraph 18(1) of the First Schedule to the Act to apply for the issuance of Pre-hearing Notice on the basis of the said reply filed by the said

respondent out of the other respondents who have not filed and served on the petitioner, their replies, and it is not stated in paragraph 18(1) of the First Schedule that where there are several respondents in an election petition, all the respondents must file their replies before the issuance of Pre-hearing Notice.

He submitted that a Court of law cannot read into a statute that which is not contained therein, and the cases of ***UTB (Nig) Ltd V. Ukpabia (2000) 8 NWLR (pt. 610) at 580, para.E; and Adewole V. Adesanoye (1998) 3 NWLR (pt. 541) 175 at 198, para. G.*** were referenced. The counsel submitted that it is not in the paragraph to the First Schedule that the petitioners must wait for the other respondents in the issuance of Pre-hearing Notice, and the case of ***Mohammed V. Abdulaziz (2008) 16 NWLR (PT. 1114) 553 at 572, paras. E. – F*** was cited where the appellants therein attempted to rely on the fact that because some of the respondents had not filed their replies to the appellants' petition time to apply for Pre-hearing Notice had not arisen. The appellants' contention in that case was rejected by the Court of Appeal, and the Court proceeded to affirm the Tribunal's decision and dismissed the petition as having been abandoned. The case of ***Onyedelu V. Nwaneri (2008) LRECN 207 at 225, paras. E. G.*** was also commended to the Tribunal.

The counsel submitted further that failure to urgently act within the purview of the said paragraph 18(1) results in the still-birth of a petition under paragraph 18(3),(4) and (5) of the First Schedule to the Electoral Act, 2022.

The counsel invited the Tribunal to look at exhibits 1, 2 and 3 to confirm the date when the respondents' respective replies were served on the petitioners and compare it with the date on which the petitioners eventually filed their replies to the respondents' replies, and the Tribunal will discover that the petitioners' replies were filed outside the period of (5) five days, and therefore, the replies of the petitioners are incompetent and is liable to be struck out or

discountenanced. In the same vein, the seven (7) days within which the petitioners must apply for the issuance of Pre-hearing Notice had also expired before they did so, citing the cases of ***Uzodinma V. Izunaso (No. 2) (2011) 17 NWLR (pt. 1275) 30 at 35 paras. F – H; and Akinnola V. Unilorin (2004) 11 NWLR (pt. 885) 616, paras.*** The counsel then urged the Tribunal to dismiss the petition, and commended the case of ***Okereke V. Yar'adua (2008) 12 NWLR (pt. 1100) 95 at 129, paras. B – D.***

The counsel further commended the case of ***Ajayi V. Nomiye & Ors. (2011) LPELR,*** to the effect that an election petition is neither seen as a civil proceedings in the ordinary sense nor of course, a criminal proceedings. It can be regarded as a proceeding *sui genesis*. The Tribunal is urged to use the provisions of paragraph 18(4) of the First Schedule of the Electoral Act, 2022, which had also been construed by the Supreme Court, to dismiss the petition.

The petitioners filed their counter affidavits on the 11/05/2023 and 17/05/2023. They also filed further counter affidavits. In the counter affidavits, the petitioners admitted to paragraphs 4, 6 and 7 of the affidavits in support, and admitted further that they were served with the Replies on the 17/04/2023 and that they were able to file their reply only on 22/04/203 because 21/04/2023 when they were supposed to file the reply was a public holiday declared by the Federal Government for ***Eidl-Fitr,*** and that was the reason why they filed on 22/04/2023 and the respondents were duly served with the said petitioners' replies.

The petitioners stated that they applied for the issuance of the Pre-hearing Notice as in Form **TF008**, and this was made within time from the date of service of the petitioners' reply on the respondents.The counter affidavit was accompanied by a written address of counsel, and in it, the counsel raised lone issue for determination, thus;

Whether the 3rd respondent's application is not an abuse of court process?

The counsel quoted the provisions of paragraph 18(1) of the First Schedule to the Electoral Act, 2022, and submitted that it is clear that there are two forms of closure of pleadings in election petition. The first is upon service of the petitioner's reply on the respondent, and the second, is upon service of the respondent's reply on the petitioner, where the petitioner does not intend to file a reply. He commended the case of ***Enyinnaya V. Nkwonta (2021) 11 NWLR (pt. 1788) 587 at p. 600, paras. E – G*** to the Tribunal.

It is submitted by the counsel to the petitioners that the petitioners filed their reply to the 2nd respondent's reply on the 22/04/2023 which marked the closure of pleadings in this petition. The counsel relied on exhibit 'B' attached to the counter affidavit which shows that the petitioners applied to the Honorable Tribunal for the issuance of Pre-hearing Notice on 29/04/2023 which was within seven (7) days prescribed by paragraph 18(1) of the First Schedule to the Electoral Act, and he cited the case of ***Sanwo-Olu V. Anamaridi (2020) 10 NWLR (pt. 1736) 458 at 482 – 483 paras. C – G.***

On why they could not file on public holiday, the counsel made reference to section 4 of the Public Holiday Act, Cap P40 LFN, 2004 to the effect that this Tribunal is enjoined to take judicial notice of all public holidays, and he commended the cases of ***Onyekwuleye V. Benue State Government (2015) 16 NWLR (pt. 1484) 40 at 74, paras. C – D;*** and ***Etsako West LGC V. Christopher (2014) 14 NWLR (pt. 1426) 73 at 90, paras. A – D*** to the effect that in computation of time, the limited time does not include the day or date of the happening of the event, but commences at the beginning of the day next (a) following that date, the act or proceeding must be done or taken (b) at least on the last day of the limited time, where time limited is less than six days, no public holiday or Sunday shall be reckoned (c) as part of the time, when the time expires on a public holiday or Sunday, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards not being a public holiday or Sunday.

The counsel submitted that the respondents so much rely on technicality, but the modern approach is to do substantial justice between the parties, and he cited the case of ***Maitunbi V. Baraya (2017) 10 NWLR (pt. 1550) 347 at 407 – 408, paras. D – A,*** and urged the Tribunal to discountenance the plethora of cases cited by the counsel to the respondents as they were based upon the Electoral Act, 2006.

As said earlier, the petitioners filed a further counter affidavit on the 17/05/2023, that was six days after the filing of the earlier counter affidavit in opposition to the application. In the affidavit, it is deposed to the fact that the 2nd and 3rd respondents' motions on notice have been overtaken by event, in that the 1st respondent filed two replies to the petition, one on 5/04/2023 and the other one filed on 8/04/2023, and that the 1st respondent did not indicate which of the two replies it will rely on at the trial, hence the petitioners consequently filed a joint reply to both replies on 22/04/2023.

The petitioners also deposed to the facts that on 09/05/2023, in the open Court, the 1st respondent withdrew its reply filed on 5/04/2023 and wished to rely on the one filed on 8/04/2023, hence the effective date of the reply dated the 8/04/2023 is the date of the regularization, which was 09/05/2023 and not 8/04/2023 when it was original filed. The petitioners consequently filed a motion on notice on the 10/05/2023 to amend their reply to the 1st respondent's reply, and upon no objection, the Tribunal granted the application on 15/05/2023 and the amended reply to the 1st respondent's reply was consequently filed on 15/05/2023 and served on the respondents.

That this amended reply thus closed the pleadings in this petition, and it effectively activated the powers of the Tribunal to proceed with the Pre-hearing as the petition is not abandoned, and that the petitioners have now, out of abundance of caution, filed a new application for Pre-hearing Notice on 16/05/2023 in view of the newly filed amended reply which closed the pleadings in this petition.

In his written address accompanying the further counter affidavit, the counsel to the petitioners raised this issue;

> *Whether the regularization of the 1st Respondent's Reply which necessitated the petitioners' consequential amendment to the 1st Respondent's Reply, has not overtaken the 2nd and 3rd Respondents' application on abandonment?*

The counsel to the petitioners answered the above question in the affirmative, and submitted that it was within the 1st Respondent's right to withdraw the reply filed on 05/04/2023, because leaving the two processes amounts to abuse of court process, and he cited the case of ***Audu V. Pandiri (2022) 9 NWLR (pt. 1835) 269 at 300, paras. E – F.*** The counsel argued that having been granted the leave to regularize its reply on 9/05/2023, the petitioners' petition was kept alive and that validly changed the dynamics of the case which was further solidified with the amendment granted to the petitioners on 15/05/2023 and pleadings were deemed closed, and the petitioners applied for a new Pre-hearing Notice on 16/05/2023, thereby regularizing the petition, Thus, this application has become academic.

The counsel to the petitioners urged the Tribunal not to heed the unnecessary objections of the 2nd and 3rd respondents and to consider the merit of the case, and he cited the case of ***INEC V. Yusuf (2020) 14 NWLR (Pt. 1714) 374 at 413, para. A*** to the effect that rule of equity demands that the Tribunal should insist on doing substantial justice and to look at the substance and not the form.

The counsel to the petitioners still re-iterated his earlier submission that the First Schedule to the Electoral Act, 2022 makes no provision for the filing of a reply within five days where the last day falls on public holiday and payment could not be made until the next day, and he cited the case of ***Adesule . Mayowa (2011) 13 NWLR (pt. 135) at 157 – 158, paras. H – A*** to the effect that the provision of Interpretation Act apply to all legislations in Nigeria unless

excluded either by the Interpretation Act itself or the relevant legislations, and if the Electoral Act had specifically made provision for the method of computation of time and what should happen if the last day fell on a public holiday, the Interpretation Act could have excluded it, but it did not. They submitted that there is no other option than to have recourse to the Interpretation Act.

They submitted further that the petitioners' replies to the 2nd and 3rd Respondents' replies having been filed and served on the respondents, are competent, and cited the case of ***Mana V. PDP (2012) 13 NWLR (pt. 1318) 579 at 608 – 609, paragraphs F – A*** to the effect that once a defence has been filed, the court must consider it before delivering its judgment, and the Court cannot turn a blind eye to it even if it was filed out of time.

The 2nd and 3rd respondents' counsel filed further written addresses pursuant to the filing of the further counter affidavit by the petitioners and submitted that the filing of further counter affidavit by the petitioners is so strange and abuse of court process and in total disregard to the Rules of Court and the rules governing the presentation of the petition, and that the petitioners have admitted in paragraph 14 of further counter affidavit that they filed their reply out of time

The respondents also stated that the petitioners admitted when they said their petition having been abandoned was brought back to life when the 1st respondent withdrew his reply filed on 5/04/2023. The counsel to the 2nd and 3rd respondents distilled three issues in determining whether or not the petition of the petitioners is competent before this Tribunal as to activate its jurisdiction to hear it:

1. *Whether facts admitted need any further proof?*
2. *Whether amendment, if any proceedings by the 1st Respondent can amend the position of the Electoral Act, 2022 as to time to file a reply to the Respondents' reply or the time for the application for the issuance of Pre-hearing Notice.*

3. *Whether the petitioners were right to have filed a further counter affidavit to the motion of the 3rd Respondent seeking the dismissal of the petitioners' petition in the absence of any further averments by the 3rd Respondent?*

It is the submission of the counsel that facts admitted need no further proof and the fact that the petitioners admitted in paragraphs 12 and 14 of the further counter affidavit that they filed their reply out of time, and the 1st respondent's withdrawal of his reply filed on the 05/04/2023 brought back to life the petition, and they cited the case of ***Petats Resources V. Nbanefo (2018) V. 82, E JSC, p. 41*** at ***70 para. E;*** and ***Godsgift V. State (2017) 11 53, E JSC, p. 131*** at ***158, paras. E – G.***

On issue No. 2, counsel submitted that amendment of pleading in a regular civil matter can be done at any time of the proceedings before judgment and that amendment of pleadings has nothing to do with close of pleadings, as pleadings are deemed closed the moment issues are joined by the parties, and submitted further that the pleadings would have closed from the date the petitioners filed their replies which is 22/04/2023 and the petitioners filed an application for issuance of Pre-hearing Notice on 16/05/2023, one month after the service of the Respondents' Reply.

The counsel submitted, on the issue no. 3, that the only persons entitled to file a further affidavit on the receipt of the petitioners process are the respondents, and they referred to paragraph 47 (5) of the First Schedule to the Electoral Act, and in these applications, the 2nd and 3rd respondents are the applicants while the petitioners are the respondents, and it is against the rules of practice and procedure, and against the First Schedule to the Electoral Act for the petitioners to have filed a further counter affidavit, and urged the Tribunal to discountenance the so called further counter affidavit as it is an abuse of court process.

Thus, the Tribunal formulates the following issue for determination in the applications, to wit:

> *Whether the petition of the petitioners is abandoned and whether the Tribunal is robbed of the Jurisdiction to entertain it.*

The Tribunal is keen to reproduce the provision of paragraphs 18(1) and 16(1) of the First Schedule to the Electoral Act 2022, thus:

> *"18(1) Within seven days after the filing and service of the petitioner's reply on the respondent or seven days after the filing and service of the respondent's reply, whichever is the case, the petitioner shall apply for the issuance of Pre-hearing notice as in Form TF008."*
>
> *"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 issues of facts, so that:*
>
> *(a) The petitioner shall not at this stage be entitled to bring in new facts, grounds or prayers tending to amend or add to the content of the petitioner filed by him; and*
>
> *(b) The petitioner's reply has not run counter to the provisions of paragraph 14(1)".*

The purport of the provision of paragraph 18(1) of the First Schedule to the Electoral Act is that when a petitioner files a reply to a respondent's reply, the said petitioner should within seven (7) days after the filing and service of the said petitioner's reply on the respondent, apply for the issuance of a Pre-hearing Notice, or when a petitioner is served with the respondent's reply to the petition and the petitioner does not intend to file a reply to the respondent's reply, the petitioner should within seven days after the filing and service of the

respondent's reply on the petitioner, apply for the issuance of Pre-hearing Notice, whichever is the case. See ***Gebi V. Dahiru (2012) 1 NWLR (pt. 1282) 560 at 598, paras. D – E,*** and it is only when fresh issues are introduced by the respondent, that the petitioner will be required to file his reply within 5 days by virtue of paragraph 16(1) of the First Schedule. See the case of ***Sylva V. INEC (2017) All FWLR (pt. 875) p. 1996 at 2053, paras. C – D.***

Also by paragraph 18(1) of the First Schedule to the Electoral Act, 2022 where the petitioner did not file any reply to the respondent's reply, the petitioner shall within seven days apply for the issuance of Pre-hearing notice. See the case of ***Sanwo-Olu V. Awamaridi (2020) All FWLR (pt. 1049) p. 457 at 472, paras. A – E.***

The contention of the 2nd and 3rd respondents is that the petitioners did not file any reply to the 2nd and 3rd respondents' replies until the 22/04/2023 and therefore, the petitioners are out of time, while it is the contention of the petitioners that the 21/04/2023 was a public holiday declared by the Federal Government, and therefore that was the reason behind filing on the 22/04/2023.

The counsel to the 2nd and 3rd respondents contended that the word used in the paragraph 18(1) of the First Schedule to the Electoral Act is "shall' and therefore urged the Tribunal to accord paragraph 18(1) a simple and ordinary meaning, and they cited the cases of ***Fawehinmi V. IGP (supra), Sunmonu V. Oladokun (supra).*** The counsel to the 2nd respondent cited the case of ***Yaki V. Bagudu (2015) 18 NWLR (pt. 1491) p. 288 at 233, paras. A – G.*** On the effect where the petitioner fails to apply for Pre-hearing Notice within the time limited by law, it is the contention of the counsel to the petitioners that by section 4 of the Public Holiday Act cap.p40. LFN, 2004 that no person shall be compellable to do any act on a day under the provision of the Public Holiday Act, and he urged the Tribunal to take judicial notice of all public holidays. He also cited the case of ***Onyekwuleye V. Benue State Government (2015)***

16 NWLR (pt. 1484) 40 at 74 paras. C – D to support his argument in taking judicial notice. The counsel also cited the case of ***Etsako West L.G.C. V. Christopher (2014) 14 NWLR (pt. 1426) 73 at 90, paras. A – D*** to the effect that the computation of time does not include the day of the happening of the event but commences at the beginning of the day next and no public holiday should be reckoned with.

Thus, in the case of ***Ngige V. INEC (2015) 11 NWLR (pt. 1440) p. 281; PDP V. CPC (2011) 17 NWLR (pt.1277) 485 at 506; Okechukwu V. INEC (2014) 17 NWLR (pt. 1436) 255 and PDP V. INEC (2014) 17 NWLR (pt. 1437) 525***, the Supreme Court affirmed that Interpretation Act is not applicable in relation to computation of time in election matters. See also the case of ***Aliyu V. Namadi & ORS. (2023) LPELR-59-742 (SC)*** where the Supreme Court held that it must be re-iterated here that election related matters are sui genesis and time sensitive. It has been held severally by this Court that Interpretation Act still is inapplicable with regard to computation of time. In the instant applications, the cases cited by the counsel to the petitioners are not election related matters. See also the case of ***Adagba & Anor. V. Onah & Ors. (2015) LPELR-40450 (CA)*** where the Court of Appeal held that in computing time in election matters the Courts includes Saturdays, Sundays, public holidays as well as Court vacations. More so, the Tribunal is quite aware and can safely take judicial notice that our registry has always been open since the commencement of this assignment, including on Saturdays and Sundays and was even opened on that particular day in question, i.e 21/04/2023 which the petitioner claimed was public holiday. So, the argument of the counsel to the petitioners is hereby discountenanced. See also ***Ize-Iyamu V. ADP (2021) All FWLR (Pt. 1098) p. 393 at 421, paras. B – E*** where the Court of Appeal Benin Division held that election petition is *sui generis* in nature and therefore time is of the essence. It is for its peculiar and unique nature which distinguishes it from the ordinary civil causes and

matters that are governed and regulated by a special procedure designed to meet its uniqueness.

It is the contention of the counsel to the petitioners that the 1st Respondent filed two replies to the petition, one dated 05/04/2023 and the other 08/04/2023, and the 1st respondent did not indicate which of the replies it would rely on at the trial, and the petitioners filed joint replies to both replies on the 22/04/2023, the effective date of regularization of the 1st respondent's reply was on the 09/05/2023 and not the date it was filed. While, it is the contention of the 3rd respondent that the petitioners admitted that their petition was dead for failure to apply for Pre-hearing Notice within the time limited by law, and was therefore brought back to life on the 09/05/2023 when the 1st respondent withdrew his reply dated the 05/04/2023.

The counsel to the 3rd respondent in his reply on points of law to the further counter affidavit of the petitions posed this question: whether amendment if any during proceedings by the 1st Respondent can amend the position of the Electoral Act, 2022 as to time to file a reply to the respondents' reply or the time for the application for the issuance of Pre-hearing notice? The counsel submitted that amendment of pleading has nothing to do with close of pleadings, and pleadings are deemed closed the moment issues are joined by the parties.

Now, it is admitted by the petitioners in their further counter affidavit that the 1st respondent withdrew the reply to the petition filed on the 05/04/2023, thereby leaving the one filed on the 08/04/2023. It was also admitted by the petitioners that they responded to the both replies to the petition of the 1st Respondent. It is the Tribunal stance that having the 1st respondent withdrew his reply filed the 05/04/2023, leaving the one filed on the 08/04/2023, the later is still effective from the date it was filed, that was on the 08/04/2023 and not on the day the one filed on the 05/04/2023 was withdrawn. It is not that the 1st Respondent amended his reply to the petition, rather he withdrew one out of the two`replies. See the case

of ***Akpaji V. Udemba (2009) All FWLR (pt. 471) p. 821 at 829, paras. D – F*** to the effect that a process of Court is deemed duly filed when a paper or process is brought to the registry and is assessed and paid for, that such a process can be said to be filed in Court. In the instant case, the 1st respondent's reply to the petition filed on the 8th April, 2023 is effective on the day it was received by the Registry, that was the 8th day of April, 2023 and not on the day the one filed on the 5th April, 2023 was withdrawn by the 1st Respondent, and the argument of the counsel to the petitioners is hereby discountenanced.

It is also the contention of the petitioners that they filed a Motion on Notice on the 10th May, 2023 to amend their reply to the 1st Respondent's reply and after being granted on the 15th May, 2023, the petitioners filed their Amended reply to the 1st Respondent's reply on the 15th May, 2023 and served on the Respondents, and this Amended Reply effectively closed the pleadings in this petition, and the petitioners then applied for the Pre-hearing Notice dated the 16th May, 2023, while the 3rd Respondent contended in his reply on points of law in opposition to the further counter affidavit of the petitioners that no new issues were introduced or raised by the petitioner in the so called amendment.

It is the position of the Tribunal that amendment takes effect from the date of the original process sought to be amended. See the case of ***S.C.C. (Nig.) Ltd V. Elemadu (2004) All FWLR (pt. 230) p. 1172*** at ***pp.1185-1186, paras. H – A.*** See also the case of ***Fayemi V. Oni (2021) All FWLR (pt. 1078) p. 594*** at ***605, paras. F – H*** where the Supreme Court held that an amendment of a Court process goes to the roots on the day the original process was filed. In the instant case, the amended Reply of the petitioners takes effect from the date of the initial reply to the 1st Respondent's reply filed on the 22nd day of April, 2023, and to this the Tribunal so holds.

The petitioners admitted in paragraph 3 and 4 of their counter affidavit that they were served with the 1st, 2nd and 3rd Respondents'

replies on the 17th April, 2023, and by paragraph 16 (1) of the First Schedule to the Electoral Act, 2022 the petitioners had only five days within which to file their reply to the 1st, 2nd and 3rd Respondents' reply, that was on the 21st day of April, 2023, and the petitioners could not file their reply till the 22nd April, 2023 relying on the fact that the 21st day of April, 2023 was a public holiday for ***Eid-el-Fitr*** declared by the Federal Government and also relied on the Interpretation Act and Public Holiday Act to the effect that the day of the occurrence of the event should be excluded and when the last day within which to do an act falls on public holiday, the act will extend to the following day. The Tribunal had already in this Judgment taken a decision relying on the plethora of cases that the position taken by the petitioners was wrong, and that the petitioners were out of time in filing their reply to the 1st, 2nd and 3rd Respondents' replies, and so the reply of the petitioners filed on 22nd April, 2023 became incompetent.

More so, by the provisions of paragraph 18(1) of the First Schedule to the Electoral Act, the petitioners had seven days from the date of filing and service of their reply to the respondents' replies to file an application for the issuance of Pre-hearing Notice but the petitioners could not file their application for the issuance of Pre-hearing notice till 29/04/2023, that is, from 21/04/2023 when they were ordinarily and lawfully supposed to file their reply, the petitioners would have had upto 28/04/2023 to make the application. Thus, the application for Pre-hearing made on 29/04/2023 was clearly beyond seven days.

On the position of the law about where there are more than one respondents in a petition, the Supreme Court, in the case of ***Isiaka V. Amosun (2016) All FWLR (pt. 839) p. 1045 at 1061, paras. D – E,*** held that Election Proceedings are *sui genesis* and time is of the essence. See the case of ***Onyedebelu V. Nwaneri (2008) 1 LRECN 207, Abdullahi JCA*** stated thusly:

"Again, it is a misconception on the part of the appellant to suggest that the duty imposed on him by the practice directions will not be performed by him until the respondents file their replies even when the law stipulates the period allowed for filing of the petition and reply. It is trite that when the law makes provision for time to perform a certain act it is presumed that the period will come to a close when the time allowed has lapsed. Based on the foregoing, whether the petitioner has filed petitioner's reply to other respondents or not, pleadings will be deemed closed with them upon the expiry of the time limited for filing the petitioners reply to them. In circumstances, resort must be made to the last date the petitioners reply on the 1st respondent was served on the respondents. The last date as earlier indicated in this Judgment, was the service effected on the 1st respondent which was on 11th July, 2011. The computation of the 7 days will therefore commence from the 11th July, 2011. The motion for Pre-hearing notice dated 30th August, 2011 and filed on 1st September, 2011 was no doubt filed outside the seven days prescribed by law, thus qualifying the petition as an abandoned one. See also the case of Nwagwu V. U. Aeron (2019) LPELR-48192 (CA) pp. 15-16 per Bolaji Yusuf JCA: "This Court has considered the Interpretation of paragraph 18(1) (supra) in several cases. In Labour Party V. Bello (2016) LPELR-40848, that court considered the issue of whether a petitioner must wait for all the respondents to file their replies before filing a Pre-hearing notice. The firm position of this Court is that where there are more than one respondents to a petition, the petitioner needs not to wait for all the respondents to file their replies in answer to the petition

before filing an application for issuance of Pre-hearing notice. This is so because the likelihood of each respondent being served various and different dates is very real. Obviously, where the respondents are served on different dates, their time to file a reply in answer to the petition would certainly start to run in different dates. Since time is of the essence in election petition matters, the petitioner must ensure that all the time lines stipulated by the law is absolutely complied with. Considering the fatal consequence of failure to apply for issuance of Pre-hearing Notice, it is safer and reasonable for the appellant to file his application for Pre-hearing once the pleadings between him and any of the respondents closes. If he waits for the last respondent to file his reply in answer to the petition and fails to apply within 7 days from the date pleadings between him and the respondent who was served first is deemed closed, he will be caught by the provisions of paragraph 18(4) (supra). See EZEUDU V. JOHN (2012) 7 NWLR (PT. 1298) 1".

From the facts and circumstances of this case at hand, it is the firm position of the tribunal that the petitioners having not filed their reply to the respondents within time, are deem in law to have no reply. Hence, pleadings are deemed to have closed on 17/04/2023, when the petitioners were served with the respondents' replies. Therefore, the petitioners only have seven (7) days from 17/04/2023 to apply for pre-hearing notice, and that was supposed to lapse on 23/04/2023.

Hence, the application of the petitioners for pre-hearing made on 29/04/2023 is patently, clearly and statutorily out of time and incompetent, and the tribunal so hold. All other steps allegedly been taken by the petitioners to supposedly cure the fatality in their failure

to act within time go to nought, including the purported amendment and the 2nd application for Pre-hearing Notice filed on 16/05/2023.

In the light of the foregoing, the Tribunal holds that the petition has been abandoned by the petitioners, having failed, refused and neglected to apply for Pre-hearing Notice within time as required by the law or having not a competent Pre-hearing application in this case.

The Tribunal cannot conclude this judgment without resolving whether the further counter affidavit filed by the petitioners is regular or not? Counsel to the 3rd respondent contended that the petitioners' further counter affidavit is completely an abuse of court process on the ground that the only person entitled to file a further affidavit on the receipt of the petitioners' counter affidavit is the applicant which is the 3rd respondent, and he referred to paragraph 47 (5) of the First Schedule to the Electoral Act, 2022. He submitted that it is strange that the petitioners on their own volition against the rules of practice and procedure and against the First Schedule to the Electoral Act, 2022 filed a further counter affidavit which raised new facts not contained in the supporting affidavit of the 3rd respondent and therefore urged the tribunal to discountenance the so called further counter affidavit.

In this wise, by paragraph 47(4) and (5) of the First Schedule to the Electoral Act, 2022 the petitioners need not to file further counter affidavit when the respondents did not file any response to their counter affidavit as this is unnecessary, but for the fact that the 2nd and 3rd respondents filed their further written addresses in answer to the further counter affidavit of the petitioners, the tribunal sees this as mere irregularity, because this does not occasion any miscarriage of justice to any of the parties. See the case of ***APC V. Asekonhe (2020) All FWLR (pt. 925) 29 at 43 – 44, paras. H – A*** where the Court of Appeal Ilorin Division held that it is not every irregularity that automatically nullifies the entire proceeding, particularly the

irregularity which did not in any way materially affect the merit of the case or occasion miscarriage of justice.

Paragraph 18(4) and (5) of the First Schedule to the Electoral Act, 2022 provides –

> *"(4) Where the petitioner and the respondent fail to bring an application under this paragraph, the Tribunal or court shall dismiss the petition as abandoned petition and no application for extension of time to take that step shall be filed or entertained".*
>
> *"(5) Dismissal of a petition pursuant to subparagraphs (3) and (4) is final, and the Tribunal or Court shall be funtus officio."*

By the above quoted provisions, the Tribunal has no option than to dismiss this petition. Accordingly, this petition is hereby dismissed. Cost assessed at N500,000.00 against the Petitioners and in favour of each of the 2nd and 3rd Respondents.

Hon. Justice Catherine Ogunsanya
(Chairman)
08/09/2023

Hon. Justice Mas'ud Adebayo Oniye
Member I
08/09/2023

Hon. Justice Babangida Hassan
Member II
08/09/2023