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

PETITION NO.: EPT/DL/SEN/03/2023

TODAY THURSDAY, 7TH 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. NWABAOSHI ONYELUKA PETER ..... PETITIONERS
2. ALL PROGRESSIVES CONGRESS

AND

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

JUDGMENT

At the end of the Delta North Senatorial election held on 25/02/2023, the 1st respondent (INEC) declared the 2nd respondent (Nwoko Chinedu Munir), the candidate sponsored by the 3rd respondent (PDP), as the winner and the person elected by majority of lawful votes, having polled a total of ninety two thousand five hundred and fourteen (92,514) votes. Piqued by the return, the 1st petitioner (Nwaboshi Onyeluka Peter) as well as the 2nd petitioner (APC) on whose platform he contested the election, lodged the present petition on 18/03/2023.

The petition has just one ground stated in paragraph 19 therein as follows –

"That the election was invalid by reason of corrupt practices or non compliance with the provisions of the Electoral Act, 2022."

Similarly, the facts in support of the sole ground spread across paragraphs 20 to 20.25 of the petition. Thereafter, in paragraphs 21 to 22.310 and paragraphs 23 to 26 thereof, specific particulars are pleaded in respect of the units and wards allegedly affected in each of the nine (9) Local Government Areas that constitute the Delta North Senatorial District, namely – Aniocha North, Aniocha South, Ika North-East, Ika South, Ndokwa East, Ndokwa West, Oshimili North, Oshimili South and Ukwuani.

Facts on the petitioners' complaint of non compliance by the 1st respondent with the requirement of prior filling of some prescribed forms could be found in paragraph 27 of the petition, while facts in support of the segment of the ground that the election was invalid by reason of corrupt practices could be found in paragraph 28 of the petition. The petition concludes in paragraph 32 by praying for five (5) orders which are declaratory in nature, paraphrased as follows –

1. *That the Delta North Senatorial election held on 25th February, 2023 and the declaration of the 2nd respondent (Nwoko Chinedu Munir) of the 3rd respondent (PDP) as the winner are invalid by reason of non compliance with the provisions of the Electoral Act, 2022.*
2. *That the Delta North Senatorial election held on 25th February, 2023 and the declaration of the 2nd respondent (Nwoko Chinedu Munir) of the 3rd respondent (PDP) as the winner are invalid by reason of corrupt practices.*
3. *That the Delta North Senatorial election held on 25th February, 2023 be nullified or cancelled and the 1st respondent (INEC) be directed to conduct a fresh election.*

4. *An order voiding or annulling the certificate of return as the Senator representing Delta North Senatorial District at the Senate of the Federal Republic of Nigeria, issued by the 1st respondent (INEC) to the 2nd respondent (Nwoko Chinedu Munir)*
5. *Cost of the petition*

The petition was accompanied with the list and statements on oath of the witnesses intended to be called by the petitioners, as well as the list of documents to be relied on.

Each of the respondents reacted by filing a reply against the petition. The Reply of the 1st respondent was filed on 23/04/2023. Paragraphs 1 – 52 thereof contain its response to the petition, while paragraph 53 of the same, concludes by praying the Tribunal to hold that the petitioners are not entitled to the reliefs set out in the petition and to dismiss the petition for *inter alia* being incompetent, frivolous and an abuse of the court process; as well as affirm the return made by the 1st respondent. Accompanying the said reply is the statement on oath of the 1st respondent's lone witness intended to be called at the trial, the list of witness and list of documents to be relied on.

Similarly, the reply of the 2nd respondent (the declared winner) was filed on 29/04/2023 in four big volumes (Vol.s I, II, III & IV). Therein incorporated in Vol. I, is a notice of preliminarily objection that the petition is incompetent and liable to strikeout/dismissal on the grounds that – (i) other candidates in the election, especial the Labour Party, are not joined; (ii) non-compliance of the petition with paragraph 5(c) of the Judicial Proceedings Practice Direction, 2022; (iii) lack of *locus standi*, the 1st petitioner having being convicted of sundry offences some of which border on fraud and dishonesty; and (iv) non-disclosure of reasonable cause of action or any at all.

Thereafter, paragraphs 1 – 56 (Vol. I) of the 2nd respondent's reply to the petition contain the facts in response to the petition and

paragraph 57 thereof prays for the dismissal of the petition with substantial cost. The documents to be relied on by the 2nd respondent are listed and pleaded in paragraph 58 which concluded the reply. The said reply is accompanied (still in Vol. I) with written statements on oath of witnesses the 2nd respondent intends to call at hearing and copies of two of the documents to be relied on, namely; Judgments in Appeal No.: CA/LAG/CR/988/2021 and Appeal No. SC/CV/900/2022. Volumes II – IV of the 2nd respondent's reply contain copies of frontloaded documents to be relied on.

In the reply of the 3rd respondent which was filed on 22/04/2023, paragraphs 1 – 366 thereof contain the facts in response to the petition, while the last paragraph 367 concludes that the petitioners are not entitled to the reliefs sought and urge the Tribunal to dismiss the petition with cost for lacking in merit, being frivolous and vexatious. Like the other parties, the 3rd respondent's reply has accompanying it statements on oath and list of witnesses, as well as the list of documents to be tendered.

In return, the petitioners filed a separate reply to each of the respondent's replies respectively on 30/04/2023; 8/05/2023; and 01/05/2023. There are additional statements on oath accompanying the three replies and with respect to the 2nd respondent, the petitioners expectedly have embedded in their reply, answers to the notice of preliminary objection raised and an additional list of documents.

With pleadings closed, pre-hearing session was held as required by the law, at the end of which a report in respect thereof was issued. On 11/07/2023 the petitioners opened their case with the lead senior counsel for the petitioners, Robert Emukpoeruo SAN, tendering from the bar certified copies of some documents, pursuant to the pre-hearing report. The respondents all evinced their objections to the admissibility of the documents, and again as contained in the pre-

hearing report, they reserved the reasons and argument in respect thereof until in the final written addresses. Thus, the documents, some of which were in bundles, were marked as exhibits 1 to 126. However, few of the exhibits were tendered not from the bar but through witnesses in the box.

In all, the petitioners called four (4) witnesses. The application of the petitioners to call a statistician at the tail end of their case, and to file his statement on oath was vehemently opposed by the respondents and same was refused by the Tribunal *vide* a well considered ruling delivered on 09/08/2023.

The 1st respondent by its counsel, I. O. Obare Esq., tendered from the bar exhibit 127(1) – (10) and rested its case on the evidence already before the court. In a similar vein, the 3rd respondent represented by its counsel, C. M. Nzekwe Esq. also did not call any witness but sought to rely on the documents already tendered by the parties. However, counsel to the 2nd respondent led by the senior counsel, A. O. Odum, SAN called a witness (RW1) through whom exhibit 128(1) – (10) was tendered before closing their case. A review of the evidence of the parties is hereunder rendered.

Petitioners' Witnesses

PW1 adopted the statement on oath at pages 427 to 430 of the petition, which he sworn on 18/03/2023 with the initials "NWLGA". He is by name Chukwuemeke Enuma, a farmer from Ndokwa West LGA of Delta State. He disclosed in said statement on oath that he is a member of the 2nd respondent (APC) and was its Local Government Collation Agent at Ndokwa West Local Government during the Delta North Senatorial District election held on 25/02/2023.

He averred that he coordinated all the petitioners' polling unit agents and supervised the ward collation agents in the Local Government. He stated that he received the results of the elections issued to the said agents and it was in his review of the forms EC8A

series that he discovered that there were non-compliance with mandatory accreditation with BVAS of all voters in the polling units.

He also stated that elections in the polling units of the said Local Government were characterized by massive violence unleashed by agents of the 2nd and 3rd respondents whom he accused of hijacking the electoral process. He further stated that after accreditation and during voting, scores were arbitrarily recorded in favour of the 2nd and 3rd respondents without regard to the ballots cast by duly accredited voters, hence the scores are not the product of votes cast. He similarly stated that there was complete absence of some forms which he referred to in paragraph 10 of his statement, including forms EC25B, EC40A, EC40B and EC40C. It was his testimony that when the thumb printed ballots were sorted and counted, they did not tally with the scores recorded for the 2nd and 3rd respondents.

The witness concluded in that statement that, as a result of the corrupt practice, hijack, exclusion of all other parties and actors from participation in the election, there are massive irreconcilable alterations and cancellations in the forms which he referred to in his paragraph 12 – i.e, forms EC8A series; culminating in form EC8E(I) to aid the unlawful return of the 2nd respondent as the winner of the election. The witness was shown the documents he referred to in his statement for identification and his membership of APC's slip and Agent Tag were tendered and marked as exhibits 115 and 116.

Answering questions during cross-examination, PW1 confirmed that his party (APC) had agents in all the 204 polling units and 10 wards in Ndokwa West Local Government and that during the election he neither acted as polling unit agent and ward collation agent, nor did he sign any polling unit and ward collation results. Also, he was not there when the results were signed at the polling units and the ward collation centres that constitute the Local Government.

Apart from what he saw where he cast his vote before moving to the venue of the Local Government Collation, he admitted been informed of all that happened by the polling unit and ward collation agents of his party, whom he said are still alive and most of them told him they did not sign the results. The witness also confirmed that he was able to vote on the Election Day after he was duly accredited with BVAS machine and the voters register. He testified that the BVAS machines used for the election are not brought to court but are with the INEC. It is the further evidence of PW1 under cross-examination that he saw the agents of the 2nd and 3rd respondents hijacking the election and proceeded to award arbitrary scores to their candidate – 2nd respondent. He said incident of hijack and carting away of electoral material constitute corrupt practices.

PW2 is Anyaiwe Uche Capulet, a businessman, resident of Agbor in Delta State and a member of the 2nd petitioner (APC). His adopted statement on oath that was sworn to on 18/03/2023 is at pages 419 to 422 of the petition, where he used the acronym "ISLGA". He was the Local Government Collation Agent of his party, the 2nd petitioner (APC) at Ika South Local Government during the Delta North Senatorial District election held on 25/02/2023.

His statement on oath is a verbatim reproduction of that of PW1 above reviewed, safe for the fact that the fact and documents stated therein relate to Ika South Local Government, thus the Tribunal needs not reproduce it here again. He too was shown the documents referred to in his statement for identification and his membership of APC's slip and Agent Tag also tendered and marked as exhibits 115 and 116.

During cross-examination, the witness confirmed that he voted on Election Day and he was neither a polling unit agent nor was present when the agent of his party (APC) signed the result of the poling unit where he cast his vote. He equally confirmed that there

are 169 polling units in his Local Government and stated further that the polling unit agents, who are all still alive, handed over the results to the ward agents (all also alive) who in turn passed them to him. He confirmed that his depositions in the statement were based on what the agents told him, although he witnessed what happened in his polling unit while he was there to vote and few other polling units he visited.

PW3 has his name as Samuel Ekene Kerry, a businessman and his statement on oath deposed to on 18/03/2023 is at pages 423 to 426 of the petition, with the code – "INELG". His statement is also a replica of the 13-paragraphed depositions like the two earlier witnesses, but only relating to Ika North-East Local Government. He was equally shown the documents therein referred for identification and tendered his membership of APC's slip and Agent Tag, marked as exhibits 115 and 116.

Responding to questions during cross-examination, PW3 confirmed that he neither functioned as polling unit nor ward agent at the election in focus, but had on the spot representatives who are polling unit or ward agents and were giving him immediate updates on phone, which formed the basis of the evidence he gave now in court, as well as what he witnessed where he visited. Also, he did not sign any polling unit or ward result but confirmed that some polling unit and ward results were signed by some of his party's agents. He testified that he did not handle any election material, except the results handed over to him by the agents.

The witness confirmed that he voted on the Election Day at unit 10, ward 7 of Ika North-East Local Government. He stated that it is true, all the agents he mentioned are still alive. His response on the irregularity, which he has alleged under paragraph 12 of his statement, is that he had no pictorial or video evidence on same.

PW4 has an 83 paged statement on oath (pages 332 to 414 of the petition) sworn on 18/03/2023 with the initials – "ZAA". He also has three (3) other statements but of very few pages, where he used the code – "DNSD", sworn on 30/04/2023; 08/05/2023 and 01/05/2023, respectively accompanying the petitioners' replies to the 1st, 2nd and 3rd respondents' replies. His name is Ben Iwezu Akwukwuigbo, a businessman of Oshimili North Local Government Area. He adopted the said three statements and identified the documents he referred to therein. He also tendered his agent Tag and was marked as exhibit 125.

In the statement initialed with "ZAA", which is a substantial verbatim reproduction of the averments in the petition itself, PW4's stated that he served in the last elections held on 25/02/2023 as the 2nd petitioner's Senatorial Collation Agent for Delta North Senatorial District election. He also stated that he coordinated all the polling unit agents of the petitioners in the Senatorial District in focus during the said election, and also received all the results issued to them, where his review of the forms EC8A (i.e the polling unit results) collected by the agents revealed to him that there was manifest non-compliance with the mandatory accreditation of all voters with the BVAS machines in all the polling units.

PW4 thereafter that introductory depositions common to all the petitioners' witnesses in this case, repeated the pleadings as contained in the petition almost word for word, e.g: listing the 14 candidates and their parties (Table 1) that contested the Senatorial District Election under reference and that the 1st respondent (INEC) wrongfully and unlawfully declared and returned as the winner, the 2nd respondent (Nwoko Chinedu Munir) of the 3rd respondent (PDP), at the end of the contest.. The total votes received by each of the candidates are tabulated in Table 2. There is also a table which states the summary contained in form EC8D(I) with respect *inter alia* to total

number of registered voters, total number of accredited voters, total number of valid votes, total number of rejected votes *etc*.

It is the statement of PW4 that the Senatorial District Election in contest in this election petition, was conducted by the 1st respondent on 25/02/203 along with the Presidential and Federal House of Representatives elections, with a single accreditation, through Continuous Accreditation and Voting System (CAVS), prescribed in the 1st respondent's Regulations, and the Bimodal Voter Accreditation System (BVAS) device as the only means of accreditation. The witness stated the procedure for accreditation and casting of the votes at the election and maintained that they were not followed.

It is the further statement of the witness that in several of the 1,763 polling units and 98 wards in the Senatorial District and in particular, more than 309 polling units thereof, the Presiding Officers in the polling units complained about in this petition where over-voting took place, failed or neglected to cancel the unit results as prescribed by the law. The Registration Area Collation Officers (for the concerned wards) also failed or neglected to verify and confirm the polling unit results before collating them into the summary in form EC8B(I). Figures of the polling units results affected in each of the 9 Local Governments are given as – 30 polling units in Aniocha North; 34 polling units in Aniocha South; 29 polling units in Ika North-East; 33 polling units in Ika South; 19 polling units in Ndokwa East; 51 polling units in Ndokwa West; 72 polling units in Oshimili South; 12 polling units in Oshimili North; and 29 polling units in Ukwuani.

The witness averred that there was improper accreditation of voters across the 9 Local Governments of the Senatorial District and the Presiding Officers deployed by the 1st respondent allowed many to vote without accreditation. 309 polling units across the 9 Local Governments (paragraphs 22.01 – 22.309) were thereafter particularized on allegation of the total votes cast exceeding the total

number of accredited voters on the BVAS Report. He also stated that the votes credited by the 1st respondent (INEC) to the petitioners and the 2nd and 3rd respondents are vitiated and liable to be cancelled by reason of non-compliance with the mandatory provisions of the Electoral Act, 2022. Such cancellation the witness believes will substantially affect the final result of the whole Senatorial District in question and the declaration of the 2nd respondent as the winner. The Tribunal may make specific reference to figures in any of the polling units complained of in the course of this judgment.

It is the further deposition of the witness that the Presiding Officers conducted elections in all the polling units of Delta North Senatorial District in total absence of and without the prior filling of prescribed forms such as EC25B and EC40A – for recording of number and particulars of ballot papers and other sensitive materials made available for the election. That omission according to the witness rendered the election invalid and liable to be cancelled. That those invalid votes were wrongfully collated by the 1st respondent at various collation stages to declare the 2nd respondent as the winner.

In respect of the election being invalid by reason of corrupt practices, the witness stated that the arbitrary scores recorded by the 1st respondent for the 2nd and 3rd respondents in forms EC8A(I)s, EC8B(I)s, EC8C(I) and EC8D(I) which culminated in EC8E(I), are not the product of ballot papers duly cast by duly accredited voters in a due process election. Specifically, those elections in polling units of Ika North-East, Ika South and Ndokwa Local Governments were characterized by violence, hijack and arbitrary recording of votes to ensure the return of the 2nd respondent. That upon sorting and counting of ballot papers in the polling units of the named Local Governments it would be discovered that the thump printed ballot papers do not tally at all with the scores recorded for the 2nd and 3rd respondents.

It is the conclusion of the witness that in consequence of the hijack by the 2nd and 3rd respondents and the exclusion of all other political parties and actors in Ika North-East, Ika South and Ndokwa Local Governments, there are massive irreconcilable alterations and cancellations in the forms EC8A(I)s, EC8B(I)s, EC8C(I) and EC8D(I) culminating in EC8E(I) to aid the return of the 2nd respondent as the winner of the election. That the purported total valid votes from the polling units in the 3 above-named Local Governments is 91,269 and the total number of registered voters in the said Local Governments is 400,615. The witness stated that the same violence and hijack were also replicated in the polling units in Ukwuani Local Government. The witness thereafter restated the five (5) prayers in the petition.

Briefly put, in the other three statements on oath all sworn with the code – "DNSD", the witness stated that the petitioners are interested and qualified to file this petition as the 1st respondent duly recognized and published their names without excluding or disqualifying them from the election under consideration and all the above referred forms used at the election contained the name of the 2nd petitioner. PW4 averred that form EC8D(I) used in the election does not depict the lawful votes received by each party or the total number of accredited voters consistent with the number contained in the BVAS.

He further said that accreditation was done only at polling units, record of which the 1st respondent issued from its backend server of the BVAS on polling unit basis and there was no BVAS report indicating the sum total of accredited voters on Local Government basis. He said the petitioners did not make any case that accredited voters exceeded the votes cast in Aniocha North.

It is the statement of PW4 that the subject matter of the 1st respondent's conviction was a triple secured loan transaction of N1.2 Billion which he had paid the principal sum and over N700 Million

interest. The 1st petitioner was qualified to contest the election because he promptly challenged the judgment of the Court of Appeal to the Supreme Court which has adjourned judgment till July, 2023 and that, makes the disqualification provisions in the Constitution inapplicable to the 1st petitioner and his imprisonment did not affect his qualification and campaigns, and the petitioners are not barred from participating in the election.

The witness responded that the petitioners' complaint of over-voting was the one limited to 309 polling units, but they are complaining of invalidity of the election in all the polling units of Delta North Senatorial District. That, issue was only with respect to uploading data from the BVAS to the INEC Server for Presidential election alone and not in respect of the National Assembly election and there is no register used to record the purported spoilt ballot papers, which was only used to conceal the over-voting.

PW4 stated that Labour Party and its candidate are not valid respondents to be joined in this petition and that no agent of the petitioners signed any result, as they were not allowed to take part in the electoral process. He contended that the petitioners had two (2) set of prayers/reliefs, the only one being at paragraph 31 and not paragraphs 29, 30 and 31.

Under cross-examination, PW4 stated that he voted on election day at unit 17, ward in Oshimili North Local Government, after he had been duly accredited with BVAS machine and that after voting, he went round some other polling units and before he could come back there was uproar, hence the result could not be announced but taken away. He confirmed that his party had agents in the polling units, wards and Local Governments collation centres and he did not sign any result.

He also confirmed that the reports from the agents which got to him were indecent/dirty and the reports got to him through the

hierarchies, i.e polling unit agents reported to their ward collation agents, who in turn reported to their Local Government collation agents, who then reported to him (PW4). There were also on the spot phone calls to him from the agents on the field, all of which formed the opinion he stated in his depositions. He replied that he neither has those call logs in the Tribunal now nor did he record them anywhere nor has he made any application to any of the network providers for the call logs. The witness again confirmed that there were 1,763 units in the Senatorial District and 22 units in his ward, but was only able to move round just two (2) units in that ward and twenty (20) other units in other wards. That the reports he got in the units he visited were all dirty.

He disclosed that apart from the agents' copies of the results handed over to him, he did not handle any other electoral material. He confirmed that one Kennedy is on exhibit 56 shown to have signed the result but that the Kennedy he knows as APC member did not tell him he signed any result. Also on exhibit 56, he confirmed that it is recorded that APC got 45 votes and PDP had 38 votes and APC won there, stating that this is the only ward were APC won lawfully. He stated further that he never made any of the documents tendered before the Tribunal; it was INEC who did. His answer to whether he knows any one by name Kennedy Onochie Kanma from Okuasiku who was a candidate at the election, was in the negative. He however admitted that other political parties fielded candidates at the election and he was aware that the Labour Party's candidate is equally before the Tribunal claiming that he won the election.

It was his response that the final declaration of the result was done by midnight of 26/02/2023 but the collation was not done where it was supposed to be done but somewhere else they did not know. He confirmed that 36,816 votes were recorded for his party in exhibit 87, but they do not agree with that figure. He stated that no voter'

register and/or BVAS machine has been shown to him before the Tribunal.

Respondents' Witness

As indicated earlier in this judgment, although all the respondents joined issued with the petitioners by filing replies, it was only the 2nd respondent that called a witness (RW1) and adopted his witness statement on oath with the acronym "DE" at pages 272 – 273, Volume I, of the 2nd respondent's reply to the petition. The 1st respondent only tendered from the bar some documents marked as exhibit 127(1) – (10) and relied on the evidence elicited through cross-examination. While 3rd respondent prayed to rely on both the evidence obtained through cross-examination and the exhibits already tendered.

RW1 is a legal practitioner by name Nelson Atunuya Enuma. He adopted his statement on oath, which he deposed to on 29/04/23 with the code "DE" at pages 272 to 273 (Vol. I) of the 2nd respondent's reply to the petition. He tendered some documents, which he referred to in his paragraph 7 and the documents were marked as exhibit 128(1) – (10). It is his statement that he served during the election as the Ndokwa Local Government collation agent of the 3rd respondent. He stated that he voted at his polling unit from where, at about 5pm, he proceeded to his Local Government collation centre were the ward collated result were handed over to him by his party ward collation agents. He stated further that he obtained the BVAS report from INEC and confirmed therefrom that the collated results in the forms EC8As are product of votes duly cast at the election.

The witness testified that BVAS machines were deployed and used during the election, form EC25B was duly signed and forms EC40B and EC40C also were used. That sensitive materials were duly distributed, all ballot papers were accounted for and the used,

rejected and spoilt ballot papers were duly accounted for and result of the election was properly collated and the 2nd respondent rightly declared as the winner of same. He stated that he thereafter submitted the Local Government collated results to the constituency collation agent of his party and he witnessed the final collation and declaration of result.

To the witness, the entire election process were conducted in very peaceful atmosphere and no incidence of violence, hijack or over-voting occurred. That the election was conducted in substantial compliance with Electoral Act and INEC Guidelines and Regulations. The witness also identified exhibits 85 and 87 referred to in his statement on oath.

In answer to questions under cross examination by the other respondents, RW1 confirmed that accreditation was done during the election with BVAS machine and the Voters Register, maintaining that the election was free, fair and peaceful. To the questions by counsel to the petitioners, RW1 stated unit 2 ward 7 of Ndokwa LG as where he voted on Election Day and would not remember how many polling units were in that Local Government. He said that it was true that his party had polling units and ward collation agents who should be in their respective homes. That it was the polling unit agents who entered the results in forms EC8As he tendered. The witness confirmed that he was there in his own unit when the results were entered and announced but result of other units were handed over to him by the relevant ward agents. He responded that he did not sign any polling unit or ward result. He agreed that exhibits 108 & 111 shown to him, though were filled, but the content of some pages thereof are not readable.

The close of cross-examination of RW1 marked the closure of hearing of the petition. Parties were then ordered to file and exchange final addresses pursuant to the provision of paragraph 46(10) – (13)

of the First Schedule to the Electoral Act, 2022. On 26/08/2023 counsel to the respective parties adopted the written final addresses and replies on point of law as the case may be. Opportunity of few minutes oral adumbration was equally given to allow counsel drive home their points.

However, during the said adumbration, the petitioners hinted that apart from their final address which also contained responses to the arguments of the 1st and 2nd respondents, they equally have a reply filed separately to react to the argument of the 3rd respondent who they alleged filed its final address out of time for the petitioner to react to same along with the others. Judgment was thereafter accordingly reserved. The Tribunal wishes to note that at appropriate time in the course of dealing with the issues, a review of the submissions by the parties in respect thereof will be made.

In any judicial decision making process like this, the norm is to first deal with pending application(s) and/or preliminary objection(s), if any, before venturing into the resolution of the main issue(s) in contest.

The 2nd respondent in his reply to the petition issued a notice of preliminary objection, predicated on 4 grounds, namely –
(i) non joinder of other candidate at the election especially the Labour Party that came 2nd; (ii) non compliance with paragraph 5(c) of the Election Judicial Proceedings Practice Directions, 2023 on the type and size of font to be use in preparing processes to be use in the petition; (iii) 2nd petitioner' lack of locus standi for being convicted for fraud and dishonest related offences; and (iv) non disclosure of cause of action against the respondents, especially the 2nd and 3rd respondents.

The petitioners in their reply to the 2nd respondent's reply responded that the other parties, especially the Labour Party and its candidate, are not statutory respondents who ought to be joined and

no law makes it mandatory that they must be joined. The petitioners argued that paragraph 5(c) of the Election Judicial Proceedings Practice Directions, 2023 was well complied with. It is stated that exhibit 126 has discharged the 1st petitioner of any conviction, thus having the requisite *locus standi* by virtue of the provisions of section 66(2)(c) of the 1999 Constitution (as amended). That the serious grounds and facts in support upon which the petition is based has disclosed sufficient cause of action. To all the above, it is the petitioners submission that there is no argument proffered thereon in the 2nd respondent/objector' final address and they are therefore deemed abandoned.

In his reply on point of law, the 2nd respondent contended that the above position of the petitioners is not true, as issue of the competence of the petition was argued by the 2nd respondent based on the sole ground of the petition put forward. He offered other explanations, but the Tribunal feels that judicial time and energy should not be dissipated at this stage on this issue, since same is a major issue formulated for determination and will be dealt with very soon. With that, it means the coast is now clear to go into the substantive petition.

Although not in any particular order of filing, the petitioners raised the following three issues for determination in their final written address, to wit –

1. *Whether the petition is not fundamentally defective and incompetent and the Tribunal is robbed of jurisdiction to entertain same in view of the various issues raised in the respondents' pleadings in that regard.*
2. *Whether the petitioners having appealed against his conviction by the Court of Appeal of Nigeria for various offences can lawfully present the petition, giving the surrounding circumstances of this case.*

3. *Whether from the pleadings and totality of the evidence led, the petitioners in any way proved that the election was invalid by reason of corrupt practices or non-compliance with the provisions of the Electoral Act, 2022.*

The two issues formulated by the 1st respondent in its final address read thusly –

1. *Whether the National Assembly election conducted on 25th February, 2023 in the nine (9) Local Government Areas of the Delta North Senatorial District was vitiated by reasons of substantial non-compliance with the provisions of the Electoral Act, 2022 and the Guidelines and Regulations for the Conduct of the 2023 General Election.*
2. *Whether the 2nd Respondent was validly elected and returned as the winner of the National Assembly election for Delta North Senatorial District conducted on 25th February, 2023 by the 1st Respondent having polled the majority number of the lawful cast.*

On the part of the 2nd respondent, the following are the two issues for determination formulated in his final written address –

1. *Whether the petition is not fundamentally detective and incompetent and the Tribunal is not robbed of the jurisdiction to entertain same.*
2. *Whether from the pleadings and totality of the evidence led, the petitioners in any way proved that the election was invalid by reasons of corrupt practices or non-compliance with the provisions of Electoral Act, 2022.*

As for the 3rd respondent, it equally formulated three issues as follows –

1. *Whether having regard to the state of pleadings and evidence adduced, the petitioners have succeeded in providing the allegation of corrupt practices in the conduct of Delta North*

Senatorial Election held on 25th February, 2023 to warrant this Honorable Tribunal invalidating the said election.

2. *Whether considering the state of pleadings and evidence adduced, the petitioners have been able to substantiate or prove the allegation of substantial non-compliance with the provisions of the Electoral Act, 2022 which substantially affected the outcome of the Delta North Senatorial Election held on 25th February, 2023.*
3. *Whether having regard to the facts pleaded and the totality of evidence adduced by parties the petitioners have established that the 2nd and 3rd respondents did not win the majority of lawful votes cast at the Delta North Senatorial Election held on 25th February, 2023.*

It is the petitioners that adopted the exact issues settled by the parties and the Tribunal during the prehearing session, though the other parties' issues are well related. The petition will therefore be determined based on the above three issues distilled by the petitioners, for all encompassing sake.

Issue One

This issue queries the competence of the petition and the jurisdiction of the Tribunal to entertain same, in view of the various objections raised against it by the respondents, most especially the 2nd respondent who raised four grounds of objection earlier mentioned. The Tribunal is of the opinion that assuming a party to a matter refuses to proffer argument in his final address over any matter on which issue(s) has/have been joined, the court or Tribunal still has the duty to treat the issue and resolve it one way or the other. See the case of ***Iwuchukwu & Anor V. A.G. Anambra State (2015) LPELR – 24487 (CA)*** to the effect that where the other party fails to proffer an address on an issue, it does not absolutely

mean the present position represents the law and fact on the issue, the Court will still has a duty to dispassionately decide on the issue, as address of counsel in a matter is a mere guide to the Court. It is even more so in the instant case, since parties have joined issues thereon and even lead evidence during hearing in respect of some of the grounds of the objection.

By way of recap on the parties' positions on this vexed issue, the 2nd respondent contended that the 1st petitioner was not qualified to contest the election into the Senate to represent Delta North Senatorial District, because as at 25/2/2023 when the election was held he was in jail and not free to have participated in the election. It is contended that the offences for which the 1st petitioner was convicted border on fraud and dishonesty as part of their elements, and the conviction was handed down in July, 2022 and being less than 10 years to the date of the election, is a constitutionally disqualifying element which deprived the 1st petitioner of the right to contest any election, and has robbed the 1st petitioner the right to present this election petition.

Against that position, the petitioners relied on section 66(2)(c) of the Constitution of the Federal Republic of Nigeria (as amended).

Thus, section 66 of the 1999 Constitution (as amended) provides that–

> "(1) No person shall be qualified for election to the Senate or the House of Representatives if –
>
> .....
>
> (c) he is under a sentence of death imposed on him by any competent Court of law or Tribunal in Nigeria or a sentence of imprisonment or fine for an offence involving dishonesty or fraud (by whatever name called) or any other offence imposed upon him by such a court or Tribunal or substituted by a

competent authority for any other sentence imposed on him by such a Court

.....

(2) Where in respect of any person who has been –

.....

(c) sentenced to death or imprisonment;

.....

any appeal against the decision is pending in any Court of law in accordance with any law in force in Nigeria, subsection (1) of this section shall not apply during a period beginning from the date when such appeal is lodged and end on the date when the appeal is finally determined or, as the case may be, the appeal lapses or is abandoned, whichever is earlier.

(3) For the purpose of subsection (2) of this section, an "appeal" includes any application for an injunction or an order of *certiorari*, *mandamus*, *prohibition or* appeal from any application."

Section 66 of the Constitution has to be accorded its literal interpretation as it is clear and unambiguous. See the case of ***Abubakar V. INEC (2020) All FWLR (pt. 1052) p. 908 at 964, para. A.*** The implication of Section 66 of the 1999 Constitution is that by subsection (1) a person is disqualified from contesting into the Senate or House of Representatives if such person is under a sentence of death or imprisonment for any offence involving fraud or dishonesty imposed by any Court or Tribunal. However, subsection (2) of the same section provides that subsection 1 is not applicable when an appeal has been lodged and during the pendency of such appeal until it is determined or the appeal lapses or abandoned, whichever that occurs earlier.

The Tribunal has had recourse to the certified copy of the judgment of the Supreme Court dated 07/07/2023, which is Exhibit

126 and discovered that the 1st petitioner was discharged and acquitted, the Supreme Court quashing the charges against him. The appeal was initiated by the 1st petitioner vide a Notice of Appeal filed on 26/07/2022, the judgment which the Tribunal has taken judicial notice of. See the case of ***Nigergate V. Niger State Government (2008) All FWLR (pt. 406) 1938 at 1967 (CA); and Agbareh V. Nimrah (1999) SCNJ 94 at 105.*** It is discovered that the said appeal against the petitioner's conviction had been initiated and pending even as at the time of the election.

In the light of the above constitutional provision, the 1st petitioner was qualified to have contested the election and thus has the *locus standi* to present this petition. As an aside, how he prosecuted his political activities and campaigns while in the correctional services pales to insignificance in view of his discharge and acquittal. The Tribunal so holds.

It is also the law that by section 133(1)(a) and (b) of the Electoral Act, 2022 it is clear and unambiguous that a candidate who participated in an election, a political party which participated in the election or both, can present and maintain an election petition, and on the other hand, either or both can be made respondent(s) in an election petition. See the case of ***Olarewaju V. INEC (2011) All FWLR (pt. 559) p. 1142 at 1164, paras. A – F.*** In the instant case, the 1st petitioner is beyond any peradventure a candidate who contested the election in question under the platform of the 2nd petitioner and therefore becomes a statutory party (petitioner) under section 133(1)(a) of the Electoral Act, 2022. While the 1st respondent is the statutory body that organized the election, the 2nd and 3rd respondents are the candidate and the political party that participated in the election. The Tribunal therefore asks the respondents, especially the 2nd respondent/objector, that where then is the want of reasonable cause of action in a dispute with respect to an election the

parties presently before the Tribunal took part in and the 1st respondent was alleged to have been wrongly and unlawfully declared?

It is the further considered view of the Tribunal that recourse could be had to the pleadings in the petition in order to determine whether there is a cause of action disclosed or not. See the case of ***Rinco construction Company Ltd. V. Veepee Industries Ltd. (2005) All FWLR (pt. 264) 818 at 825, para. G***

By a cumulative consideration of the averments pleaded in the paragraphs of the petition, it can be deduced that the petitioners have the right to present this petition for the fact that they have participated in the election conducted by the 1st respondent on the 25th February, 2023, and do very well have a cause of action disclosed against the respondents herein. What is of utmost importance is for the petitioners to disclose that they have a complaint; a civil right or obligation of a sort, fit for determination by Court of law. In other words, that they have a dispute in respect of which a Court of law is entitled to invoke its judicial powers to determine. See the case of ***Omo Tunde V. Omoleye (2005) All FWLR (pt. 260) p. 148 at pp. 155 – 156, paras. G – A.*** The Tribunal holds that, that has been disclosed in the present petition.

As to whether the Labour Party or other candidates in the election are mandatory, necessary or desirable parties in this particular petition, it has not been shown that the petitioners bear any grouse against them or have any scores they wish to settle with them or any specific prayer made against them in the petition. The blanket submission that they will be affected by the outcome of the petition is lame and unconvincing. What about the general electorate of the senatorial constituency, then – who ordinarily are entitled to elect a person of their choice to represent then in the Senate of the Federal

Republic of Nigeria? Must they all also be joined simply on the supposition that they will be affected by the outcome of the election?

It is equally instructive to note that the Tribunal can and has taken judicial notice of the Petition No.: **EPT/DL/SEN/06/2023** filed by the said Labour Party and its candidate at the election, and same is before this panel of the Tribunal. At least, to the best of our knowledge none of the parties in the two petitions has sought for consolidation of the petitions simply because they are on the same return and are necessary parties in both.

Meanwhile, reference can also be made to section 133(2) of the Electoral Act, 2022 as to necessary respondents to sue in an election petition. See the case of ***Ize-Iyamu V. ADP (2021) All FWLR (Pt. 1098) pp. 441 – 443, paras. E – G per Wambai JCA*** on whether an electoral candidate who is not declared as having won an election is a necessary party in an election petition and also on who are the only two categories of parties necessary in an election petition. It is further held in that case that they are (i) the person whose election is being questioned, that is, the candidate returned as the winner of the election and (ii) the Electoral Commission and its officers whose conduct is complained about or such other person who participated in the conduct or the management of the election not being staff of INEC.

On the premise of the foregoing, the Tribunal holds that non-joinder of the Labour Party or other candidates not declared/returned as the winner of the election in question, has no *iota* of effect on the competence of the petition at hand. As to the 2nd and 3rd respondents herein and the Labour Party in the other petition earlier mentioned, let each one carry its own cross!

The 2nd respondent also contended that the petition did not comply with paragraph 5(c) of the Election Judicial Proceedings Practice Direction, 2023 and must suffer the inevitable fate of

invalidity as prescribed in paragraph 5(d) of the same Practice Direction. Paragraph 5(c)&(d) of the Judicial Practice Direction, 2023 provides –

"5(c) Every process to be filed in a Tribunal or Court must be prepared in 210mm by 297mm paper size (A4) and in clear typographic character. The font type shall be in Arial, Times New Roman or Tahoma of 14 font size with at least 1.5 line spacing between

(d) "Every process which does not comply with these provisions shall be invalid"

*It is observed that no particulars or argument of such non-compliance has been proffered by t*he 2nd respondent, as earlier reviewed, hence, has not proved same. The Supreme Court in ***PDP V. INEC (2012) All FWLR (pt. 639) p. 1059 at 1075, paras. E – F*** held that the effect of the provisions of paragraph 5(a) and (c) of the Practice Directions, 2011 (a similar provision as the present one), on a written address filed by counsel, is limited to where a party failed to comply with this directive, the Secretary of the Tribunal shall not accept the process for filing, assuming the 2nd respondent's objection holds any water. Now, that the Secretary of the Tribunal had accepted the petition and in order to generate confidence and to sustain the right and interests of the parties to come to the Tribunal to ventilate their grievances, on the merit, would it not be better to avoid slavish adherence to technicalities capable of shutting out one of the parties?

Accordingly, the objection of the 2nd respondent in this regard is hereby overruled. See the case of ***Ibo V. Wombo (2011) All FWLR (pt. 591) p. 1527, paras B – D per YAHAYA JCA.***

Also, the 2nd respondent alluded to the fact that the ground of the petition is that the election was invalid by reason of corrupt practices or non-compliance with the provision of the Electoral Act, 2022, and what section 134(1)(b) of the Electoral Act, 2022 contains

is that there are two separate and district grounds for presenting an election petition and it is a grave fault to lump the two grounds in a single ground which has turned out to be a total wreckage, and that there is nothing to sustain the petition, and he cited the case of ***Goyol V. INEC (Nol 1)(2012) All NWLR (pt. 1311) 207*** to the effect that the word "or" used in the subsection (1)(b) of section 134 of the Electoral Act, 2022 connotes, that is to say, the petitioner should have filed the petition either on ground of corrupt practices or non-compliance, but that the petitioner came to the Tribunal on the two grounds, and therefore urged the Tribunal to strike out this petition

While, it is the contention of the petitioners in their final written address and reply address to the 2nd and 3rd respondents' address that the petition was predicated on two grounds, as the first one is on over-voting in 309 polling units while the other relates to presiding officers' non prior recording in the prescribed forms of the quantity serial numbers and other particulars of result sheets, ballot papers and other sensitive materials in polling units.

In ***Usman V. Jibrin (2019) LPELR – 48792 (CA)*** to Court of Appeal held to the effect that unnecessary adherence to technicality is inherent in trying to shut out a party to the petition because he has used "or" or "and" in presenting his ground, that there is no law that bars a petitioners from questioning an election by reason of more than one ground. And a petitioner can come to the Tribunal to question an election by virtue of corrupt practices or non-compliance in one ground of the petition.

But in ***Re: Onwubuariri (2019) LPELR – 4121 (CA) P. 27 – 29 para B*** it has been held that ground 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.

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, there seem to be two schools of thought. But what is manifest in the present petition is quite different from lumping. The petitioners have even used "or" as used by section 13(1)(b) of the Electoral Act, and instead of "and". Which means they are praying in the alternative. What is forbidden by ***Goyol & Anr. V. INEC & Ors. (supra); Orji & Anr. V. Ndukwe & Ors***. relied on by the respondents is the use of the word *"and".* Both corrupt practices ***and*** non-compliance with Electoral Act should not be joined together as one ground but can be well made in the alternative.

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."

Having asked for the relief in the alternative, the Tribunal is of the considered legal view that that is the language of section 134(1)(b) and the ground is thus competent. We so hold.

On the whole, the Tribunal finds that there is no fundamental defect that could render the present petition incompetent and also that there is no feature whatsoever that robs the Honourable Tribunal of its jurisdiction to entertain this petition. The various issues raised in the respondents' pleadings in that regard are thus resolved against them. Issue No. 1 is resolved in favour of the petitioners.

Issue No. 2

The issue for determination under this head had earlier on been succinctly and admirably resolved in favour of the petitioners. The Tribunal intends not to over flog the issue. Only to recall that the 1st petitioner had been held to have a valid pending appeal at the time of the election, and even much later, a discharge and acquittal in respect of his hitherto conviction. Section 66(2) of the Constitution was to his prompt rescue. Hence, he had vires in abundance at the time of the election to contest and was lawful to have presented this petition. Resolution of Issue No. 2 is as well in favour of the petitioners. We say no more on that.

Issue No. 3

This issue is the font origio of this petition and it investigates whether the petitioners have proved the sole ground premised on which their petition is based and regard being had in the circumstance to their pleadings and the totality of available evidence. It must also be borne in mind that the ground of the petition is that the election held on 25/02/2023 into the Delta North Senatorial District was invalid by

reason of corrupt practices or non-compliance with the provision of Electoral Act, 2022

It is customary to set out the general principle, which has attained in law the status of elementary, that the declaratory nature of the reliefs being prayed for by the petitioners, places a high burden of proof on them. It is a proof, which must be on the strength of the evidence they have adduced and with no chance of reliance by them on the weakness of the respondent, or discharged of that proof even by the respondents' admission. See **Omisore V. Aregbesola (2015) All FWLR (pt. 813) p. 1694 at 177, paras. B – C** where the Supreme Court held that in a claim for declaratory relief, the burden is always on the person who alleges to establish his case and not rely on the weakness of the defence.

The capsule summary of the complaint of the petitioners under this issue, is that in 309 polling units out of 1,763 polling units in the senatorial district, the total number of votes cast exceeded the total number of voters accredited by BVAS, thereby occasioning over-voting, and that the Presiding Officers at the polling units and the Collation Officers at the collation centres failed to comply with the provisions of the Electoral Act when they failed to cancel polling units results which manifested over-voting.

It is also the complaint of the petitioners that scores were arbitrarily recorded in favour of the 2nd and 3rd respondents in Ika North-East, Ika south and Ndokwa Local Government Areas, and there were massive violence unleashed by the agents of the 2nd and 3rd respondents with their express knowledge and authorization during the process of accreditation and during voting. The petitioners similarly pleaded that there were exclusion of other political parties and actors from participating in the electoral process in the polling units in those three Local Government Areas. It is also the complaint that statutory forms required to be filled were not filled prior to the

commencement of elections and there were massive alterations and cancellation in forms EC8A(I), EC8B(I), EC8C(I) and EC8D(I).

As earlier reviewed, the petitioners fielded PW1, PW2, PW3 and PW4 in proof of the above stated allegations. Their pieces of evidence had been highlighted in the earlier part of this judgment. Litany of documents, some in bundles, were also tendered, mostly from the bar and few others through the afore-mentioned witnesses. On record they were marked exhibits 1 – 126. Reference shall be made appropriately to them in due course.

The considered view of the Tribunal is that the petitioners' above stated allegations, even including over voting, are criminal in nature and therefore, the standard of proof is beyond reasonable doubt, pursuant to section 135 of the Evidence Act, 2011. See **Adediji V. Kolawole (2004) All FWLR (pt. 472) p. 95 at 105, paras. E – F** where the Court of Appeal, Ibadan Division held that over-voting alleged in a petition is in itself a crime. The same Court of Appeal, but Abuja Division held similarly in **Kingibe V. Maina (2004) All FWLR (pt. 191) p. 1562 at 1603, para. B**. See also **Omisore V. Aregbesola (supra); APC V. PDP (2015) All FWLR (Pt. 791) p. 1506 at 1558, paras. E – F**.

In the instant petition part of which complaints, in the sole ground and by the pleadings, include corrupt practices and other malpractices, the courts have been consistent that the standard of proof is beyond reasonable doubt, even in civil causes or matters, once there is imputation of commission of crime therein. See **Nwoko V. Osakwe (2010) All FWLR (pt. 543) p. 1974 at 1996, paras. B – C**.

However, of their own volition, the petitioners in their final address opted to abandon and not to press for the criminal part of their sole ground in the petition – by abandoning the complaint of invalidity of the election by reason of corrupt practices. See paragraph

6.58 at pag 22 of the Petitioners' Final Written Address filed on 21/08/2023. The implication therefore, is that the petition is left with only the ground of non-compliance with the provisions of the Electoral Act, 2022.

The remnant ground as above identified is alleged to be on two legs, namely – (i) over-voting in 309 polling units; and (ii) presiding officers not filling the prescribed forms prior to the election as required by the Electoral Act, 2022. The particulars expected to be recorded and filled in the said forms include the quantity, serial numbers and other particulars of result sheets, ballot papers and other sensitive electoral materials in the polling units.

With regard to over-voting, after making reference to exhibit 1 – 76 (i.e, results of the polling units, Forms EC8A(I), where over-voting was alleged); exhibits 91 – 99 (i.e, voters register) and exhibit 88 (the BVAS report), it is the submission of the learned senior counsel for the petitioner, relying on the provisions of paragraph 46(4) of the First Schedule and section 137 of the Electoral Act, 2022 (both of which he quoted), that the Tribunal should scrutinize the documents with a view to ascertain the claim of the petitioners that the total number of votes cast recorded in the Form EC8As exceeded the total number of accredited voters in the polling units being challenged, simply because it is so manifest.

The petitioners through their counsel submitted further that with those documents and the testimonies of their witnesses, especially PW4, they have established the manifest non-compliance in 309 polling units and there is no need for them to call any other oral testimony that can alter them. Cases referred to are **Folyemi V. Oni (2009) 7 NWLR (pt. 140) 223 at 291, paras. C – D (CA); INEC V. Oshiomhole (2009) 4 NWLR (pt. 1132) 607; and G.S. & D IND. LTD V. S.O.C.D. CO. Ltd. (2020) 1 NWLR (pt. 1704) 99 at 116 paras. H – D**. the petitioners also submitted that the 1st

respondent is bound by certified true copies of its documents, placing reliance on **Onwudinjo V. Dimubi (2006) 1 NWLR (pt. 261) 318 at 338, paras. A – B**.

The petitioners equally argued that documentary evidence is the best evidence and that oral evidence will not be allowed to discredit or contradict the content of a document, citing **Gbenga V. APC (2020) 14 NWLR (pt. 144) 248 at 284, paras. B – C; Skye Bank V. Akinpelu (2010) 9 NWLR (pt. 1198) 179;** and **PDP V. Idrissu (2019) LPELR – 49213 (CA)** where the innovative provisions of section 137 of the Electoral Act, 2022 appears free-hold by the Court of Appeal per Abubakar Yahaya JCA.

It is further submitted that the respondents did not tender any other BVAS report in opposition to the accreditation figures pleaded on over-voting, meaning they have not proved any conflicting accreditation figures. That PW1 – PW4 during cross-examination were not questioned at all on the accuracy of the number of accredited voters in the 309 polling units, and lack of cross-examination in the material issue means it is accepted, on the authority of **Amadi V. Nwosu (1992) LPELR – 442 (SC) p. 20 paras. A – C**.

In a twist, the petitioners computed that from the BVAS report (exhibit 88) compared with Forms EC8As shows in at least 36 polling units that accreditation was in excess on EC8As than the BVAS and that affected the petitioners' 655 votes and 2,550 votes of the 2nd respondent, which when deducted from their total votes leaves them with 36,161 and 89,964 votes respectively.

The petitioners quoted section 47(2) of the Electoral Act, 2022 on process of accreditation and that it was not complied with, and that words of a statute that are plain and unambiguous are to be given their ordinary grammatical meaning; **Bakare V. N.R.C. (2002) 17 NWLR (pt. 1064) 606** and again **Amadi V. NNPC. (supra)**. Also, where a statute has provided the mode for doing an act, it has

to be followed. **Rasaki V. Ajijola (No. 2) (2018) 7 NWLR (pt. 1617) 41; and AGbi V. FRN (2020) 15 NWLR (pt. 1748) 416** were referred to.

Their submission is also that under the present disposition, technological device is imperative for accreditation and is the primary source of record of accreditation in the polling units and according to the petitioners, the hitherto voters register has been displaced by section 47(2)&(3) of the Electoral Act, 2022 as the primary tool for accreditation. The said technological device, they said, is BVAS Machine by paragraph 18(a) of 2022 Regulation and Guidelines and clause 20 to the Regulations and Guidelines issued by INEC, hence no BVAS accreditation no voting and a vote produced without corresponding BVAS accreditation is no vote at all.

The petitioners again reiterated the importance of section 137 of the Electoral Act 2022; read with paragraph 46(4) of the same Act, they are commendable innovation introduced to achieve electoral justice, concluding that certified copies of public documents enjoy presumption of regularity, as held in **Daggash V. Bulama (2994) 14 NWLR (pt. 892) 144 at 221**.

According to the petitioners, the consequence of over-voting in section 51(2) of the Electoral Act, 2022 is that the election must be cancelled, urging the Tribunal to cancel the results of the election in the identified and proved 309 poling units or as an absolute irreducible minimum, in 36 polling units, citing **Mrs. Philomena Umezulike V. E.C. Olisah & 3 Ors. (1999) 6 NWLR (pt. 607) 376 at 376**; and **Ekeman V. Onyeji (1999) 12 NWLR (pt. 631) 507 at 514**. The petitioners thereafter gave a tabular summary of how the over-voting will affect the scores of the parties in the affected polling units in 8 Local Governments in line with 655 and 2,550 deductions of votes they earlier computed.

Arguing the 2nd leg of the ground of non-compliance with the Electoral Act, 2022, it is said to relate to the presiding officers' failure or refusal to comply with the provisions of section 73(2) of the Electoral Act, 2022 whereby the petitioner stated that in the entire polling units in all the 9 Local Government of Delta North Senatorial District, the election was conducted without the prior recording by the presiding officers in the prescribed forms of the quality, serial numbers and othe particulars ofresult sheet, ballot papaers and other sensitive electoral materials, as a result of which all the election in those units are invalid.

The petitioners argued that a scrutiny and investigation pursuant to paragraph 46(4) of the First Schedule to the Electoral Act 2022, of the polling unit results tendered (exhibits 1 – 76 – EC8A forms) and forms EC25B, EC40A, EC40B, EC40C for Ika North East, Ika south and Ndokwa West (exhibits 100 – 111) manifest incongruity in the entries on the forms and forms EC8A in respect of the above required record expected to be done of them. This, the petitioners conclude, irresistibly portends they were not priorly recorded, otherwise their entries should have been the same. The petitioners said RW1 was shown the forms which were blank and where they were filled, they were not completely or properly filled, indicative of lack of prior filling. Interestingly, PW1 – PW4 were said not to have been asked any question on the forms under cross-examination, citing **Oforlete V. State (2000) LPELR – 2270(SC Pp. 32 – 33 para. D – D;Unilorin Teaching Hospital V. Abeguunde (2013) LPELR – 21375 (CA)** on the effect of failure to cross-examine a witness on an issue or point.

The petitioner contended that when exhibits 1 – 76, 100, 103 – 105 and 11 are scrutinized and investigated under paragraph 46(4) of the First Schedule and section 137 of the Electoral Act, 2022 it is manifest that as tabulated 1,052 polling units in the 9 Local

Governments of Delta North Senatorial District were where the said prescribed forms were incongruously filled or not filled at all in relation to the ballot papers, while there is complete failure in all the 1,7663 polling units of the senatorial district in relation to entry of serial number of polling unit result sheets.

On the part of the respondents, it is their contention in unison that by the provisions of section 135 of the Electoral Act, 2022 the petitioners must succeed on the strength of their case to prove that there was non-compliance and that the non-compliance was substantial, referring to **Oyetola & Anor. V. INEC & 2 Ors. (2023) LPELR – 60392 (SC)**; **Oyewusi & Ors. V. Olagbami & Ors (2018) LPELR – 44906**; and **Aliucha & Anor. V. Elechi & Ors (2012) 13 NWLR (pt. 1317)**.

The respondents contended that the petitioners have to prove that there was non-compliance occasioned by the breach of relevant sections of the Electoral Act and the Manual for the Conduct of Election and that the non-compliance substantially affected the result of the Election. The cited **Aliucha V. Elechi & Ors. (supra)** and **Maku V. Al-makura & Ors (2016) LPLR -48123 (SC)**.

Also to succeed in proving non-compliance, the petitioners, it is submitted, must also present credible evidence from eye witnesses at the various polling units, who can testify directly in proof of the alleged non-compliance. **Andrew & Anor. V. INEC & Ors. (supra); Nyesom V. Peterside (2016) 7 NWLR (Pt. 1512) 452** were referenced. That after adopting the witness statement on oath, such eye-witness must still face the crucible of cross-examination to test the probative value of evidence adduced.

The cases of **Aliucha & Anor. V. Elechi & Ors. (supra)**; and **Skye Bank V. Perone (Nig.) Ltd. (2016) LPELR – 41443 (CA)** were cited to the effect that when a party decides to rely on documents to prove his case, he must by direct evidence relate each

document to specific area of his case for which the document was tendered, otherwise he would have succeeded in "dumping" the documents on the trial court, which no court is allowed to spend precious judicial time linking documents tendered by a party to specific areas of his case. In other words, the documents must be directly linked to each and every polling units to show their relevance thereto.

Therefore, the respondents posited that what PW1, PW2, PW3 and PW4 had done in the instant case was to dump the documents on the Tribunal and by so doing, have robbed the documents of any probative value to be attached thereto. The cases of **Wawu V. Abdullahi (2018) LPELR – 45382 (CA)**; and **Terab V. Lawan (1992) 3 NWLR (pt. 241) 569** were commended to the Tribunal in that regard and also urging the Tribunal not to consider bundles of documents whose relationship with the case has not been explained by the party that produced them as required by law.

According to the respondents, by the authority of **Oyetola & Anor. V. INEC & Ors. (2023) 11 NWLR (pt. 1894) 125,** to prove over-voting, the evidence required are the BVAS, Register of voters, and polling unit results in INEC Forms EC8A. As such, the petitioners owe a duty to tender the results of the 309 polling units they are complaining of, but they never did, submitting that it is trite law that a court neither has the right to pronounce on any piece of evidence that is not before it nor allowed to go outside the case before it to shop for materials upon which to decide a case before it.

By analysis, the respondents contended that 3 of the petitioner's witnesses are Local Government collation agents of the petitioners, i.e PW1, PW2 and PW3. The 4th witness was the senatorial district collation agent of the petitioners. All of the said witnesses admitted under cross-examination that they were never polling unit agents at the election in focus and that the polling unit agents are alive. They

neither signed the polling unit results tendered, nor functioned as ward collation agents. Each of them voted.

To the respondents, PW1, PW2, PW3 and PW4 do not meet the requirement of the law and as such cannot assist the Tribunal in arriving at just decision on the allegation of non-compliance brandished before the Tribunal by the petitioners, and that they too conceded that it was the Presiding Officers for the polling units under reference that operated the BVAS machines on the day of the election, but could neither mention the names nor phone number of persons given ballot papers without accreditation or proper accreditation, neither also did they state the number of accredited voters nor the number of votes which constituted over-voting.

The respondent urged the Tribunal to disregard the submission of the petitioners that the respondents have failed to lead evidence in rebuttal of the petition, as it is a trite law that even where the respondents fail to call a witness, their respective cross-examination of the witnesses of the petitioners would suffice, citing **Akomolafe & Anor V. Guardian Press Ltd. & Ors. (2010) LELR – 366(SC)**; and **Andrew & Anor. V. INEC & Ors. (2017) LPELR – 48518(SC)** to the effect that evidence elicited under cross-examination is as good as the one elicited during examination-in -chief and urged the Tribunal to hold the evidence is against the interest of the petitioners.

The respondents minced no words that the evidence of the four (4) witnesses called by the petitioners is hearsay, having not being polling agents, relying on so many cases, including **Doma V. INEC (2012) 13 NWLR (pt. 1317) 297 at 321, paras. B – E; ACN V. Nyako (2005) 18 NWLR (pt. 1491) 352 at 386, paras. D –H; Hashidu V. Goje (2003) 15 NWLR (pt. 843) 352 at 386, paras. D – H;** and **Oyetola & Anor. V. INEC & Ors. (supra)**.

It is the contention of the respondents that the facts pleaded by the petitioners are at variance with the grounds of the petition and insufficient to sustain same.

The foregoing is the capsule summary of the submissions on both sides of the divide. Any other arguments presumably not captured are either tautology or re-arguments claimed to be reply to another party, which essentially had earlier been touched one way or the other. And in the most unlikely event that some are still left out unreviewed, the resolution coming *anon* will definitely cover all the live issues that are relevant and germane to a just and fair determination of this petition.

On the first leg of over voting, it needs to be stated from the on set that a petitioner alleging over-voting, non-accreditation with BVAS, lack of accreditation, allocation of votes, miscalculation or wrong calculation of votes etcetera must of necessity call evidence of those who witnessed the infractions from the polling unit. This is because all of it can only take place at the polling units, thus, evidence of polling units agents is not only a sine qua non but must be from each and every polling unit where the non-compliance is being complained of in order to prove the allegation. See the cases of **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**. and **Andrew V. INEC (2018) 9 NWLR (pt. 1625) 507 at 560, paras. G – N** where it has been held thusly –

> "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 <u>in all the polling units challenged</u> in order to prove lack of or improper accreditation, over-voting and improper accounting of ballot papers. I agree with L. O. Fagbemi SAN, counsel for the 3rd Respondent

> that the appellants seem to have the impression that the need to call unit agents in proof of the 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." (Underlining ours for emphasis)

Emphasizing the indispensability of eye-witness account in proof of allegation of the nature alleged by the petitioners herein, the Court went further in the same Andrew's case that –

> "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."

From the earlier reviews, it is crystal clear that the petitioners, herein neither called any polling unit agent from the 1,763 polling units of the entire Delta North Senatorial Constituency, nor from any of the 309 polling units across the 9 Local Governments of the Constituency where there is allegation of over voting. All of the witnesses called are not even ward collation agents but three out of the four called (PW1, PW2 and PW3) were Local Government Area collation agents, while the last one, PW4 was the Senatorial District collation agent of the petitioner.

So the later portion of the above proposition of the law in Andrew's case brings the Tribunal to the claim of the petitioners that, just like in Andrew's case, the petitioners believe that proof of their case is documentary.

Again, it is the contention of the petitioner that the case of over-voting is usually predicated on the (in the words of the

petitioners) "scrutiny" and "investigation" of result sheets which contains the total number of votes cast and the evidence of accreditation (BVAS report tendered). Yes, these are documentary evidence but the Tribunal says that their review and computation must be carried out by competent witnesses as required by the law.

It could be seen that the Supreme Court is so emphatic in the underlined portion above, that it is not the position of the law to say because documents are manifest, they should be speaking for themselves, petitioners will just dump tons of electoral material before the court to "scrutinize" or "investigate". There are long lines of decided cases to the effect that nothing, we repeat, obviates the requirement of calling not just oral evidence on any document tendered before the Tribunal, but also calling the required oral witnesses, that is, the maker or person who participated in the making. This proposition of the law is even relevant with the advent of the petitioners' much touted paragraph 46(4) and section 137 of the Electoral Act, 2022, as shall soon be demonstrated.

My lords, just recently in 2019 in **APC V. Adeleke & Ors (2019) LPELR – 47736 (CA) pp. 37 – 38, paras. C – D,** a case with similar facts like the petition at hand, 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 will have jurisdiction to see for itself and access 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 access them privately and reach any conclusion in respect of them, See also Belgore V. Ahmed (2013) 8 NWLR 60 at 100, D – G (underlines ones).

It is to be reiterated that "dumping" as forbidden in election petitions is equally so in other regular matters. It is even more in election related matters because documents are usually turned in greater detail in election petition matters. We dare say, that if not for the pro-activeness of this Tribunal and in line with the provision of the Electoral Act that exhibits are marked in consecutive serial numbers, while bundle of documents are marked as one exhibit, but with sub-numbers. A case for instance in this same petition are exhibit 100(1) – (169); exhibit 102(1) – (166); and exhibit 105(1) – (173) to mention just three. Were it not for that arrangement, only God knows that these documents admitted in this petition would be close to a thousand exhibits, or more.

What is being driven at here is that a Tribunal may be left in confusion if the law had allowed "dumping" and the Tribunal would have become a dumping ground. The Tribunal owes no duty to be scrutinizing or investigating documents dumped on it as the petitioners seems to be arguing, otherwise it may be accused of descending into the arena or helping a party at the detriment of the other. In **Maku V. Al-makura A (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 on 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."

Based on the above settled authorities and many others not cited for constraint of time and space, it is expedient and purposeful for parties to speak to the documents tendered in court in proof of any relevant fact. 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 tone 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 then that a Court can attach probative value to it … " (Underline supplied.)

Similarly, in **Pastor Ize-Iyamu Osagie 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 therefore will not attract any probative value"

The argument of the petitioners at the risk of repetition is that they have established or proved both over voting and non-compliance

by bringing loads of documents. The questions begging for answers in the light of **Ize-Iyamu (supra)** and plenty others is, is any of the PW1 – PW4 the maker of any of the 126 bundle of documents tendered? Hence, the petitioners were arguing perforce that PW4 or any other of them were not asked questions on the documents during cross-examination, because they are neither the makers of the documents nor were the documents made in their present or with their involvement.

The petitioners have made heavy weather on the purported paragraph 46(4) of the First Schedule and section 137 of the present and recent Electoral Act, 2022 as to contend that their introduction has dispensed with the requirement of oral evidence of the polling units personnel in election matters under the circumstances mentioned therein, i.e if there is manifest on the documents which is being complained of. The learned senior counsel to the petitioner quoted the two provisions more than two times in their final written address.

With due respect, the Court of Appeal interpreting the section and paragraph and re-stated the position of the law thereon, which 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 state –
>
> Section 137 of the Electoral Act, 2022.
>
> "It shall not be for a party who alleges non-compliance with the provisions of the 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) of the First Schedule to the Electoral Act, also provides –

'Documentary evidence shall be put in and may be read or taken as read by content'

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 imputed 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 will and how long you search … That is why the Court could need more than the mere figures in the electoral forms and the BVAS report to satisfy itself that the petitioner either successfully proved his case of non-compliance or not. 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." (Underlines supplied)

It is noteworthy that the Supreme Court affirmed the above unanimous judgment of the Court of Appeal without upturning or revisiting any part thereof in **Oyetola & Anor V. INEC & 2 Ors. (2023) LPELR**, which invariably means the above statement of the law has come to be used in interpreting the two provisions no matter how hard the literal meaning of the words therein might be tempting otherwise. Therefore all the distinguishing features the learned senior counsel to the petitioners laboured perforce to bring on the provisions, even his explanation of Oyetola's case, could make us depart from the stare decisis on same.

Finally, again on the issue of the documents tendered in the election petition, a re-visit of **Andrew & Anor. V. INEC & Ors. (supra)** bring to fore the court's pronouncement thusly –

> "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."

It has been held earlier that there is no doubt that PW1 – PW4 were not the makers of all the documents (electoral or otherwise) tendered by or through them. The cross-examination by the other parties could not have been on those documents and they were not challenged as to the veracity and credibility of the documents. The documents are therefore nothing but documentary hearsay, having not been made by them or made with their involvement.

Therefore, from all that have been said, the Tribunal is safe to hold that the petitioners have dumped all those documents marked as exhibits 1 - 126 on the Tribunal, to which no probative value will be attached to them by the 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 them being made and 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 materials 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.

Let it be understood that over-voting is said to occur 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)**. Again, in **Oyetola & Anor. V. INEC & Ors.**

(supra) the Supreme Court while considering the provisions of the Electoral Act, 2022 stated thusly:

> "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 results in INEC Forms EC8A by virtue of section 47(1) & (2) and 51(2) of the Electoral Act, 022, Regulations 14, 18, 19(b) (i – iv), (e) (i – iii) and 48(a) of the INEC Regulation and Guidelines for the conduct of Elections, 2022."

Furthermore in the same **Oyetola & Anor V. INEC & Ors. (supra)** the Supreme Court still held thusly:

> "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"

In the instant petition, apart from the facts that the petitioners "dumped" on the Tribunal the results forms, EC8A(I) series and the voters registers, both of which documents have no weight attached to them by this tribunal, the petition have failed woefully to produce the material used for accreditation, which is the BVAS machine as required by the law. By the authority of Oyeleke (supra), BVAS is said to be the primary source of the record of accreditation with which over-voting will be judged.

That omission or failure to produce the BVAS is also very fatal to the petitioners' case and resulted in them failing to prove any over-voting. It should be noted that the petitioners in paragraph 6.21 of their final address agreed that BVAs is the primary source of record of accreditation. But contrary to the petitioners position that voters register has been displayed, the case of Oyetola says it is still relevant and part of our electoral process.

It is to be noted that it is with the same set of documentary and oral hearsay, i.e the weightless bundle of documents in exhibits 1 – 126 and each of PW1 – PW4' testimony, the petitioner allegedly proved the 2nd leg of their case, bordering on non-compliance with the Electoral Act, 2022, i.e not filling/record the prescribed forms ahead of the election. Where also is the proof on that leg of the ground of the petition, when the substratum of their case have all been knocked. There is also some element of inconsistence in the petitioners' position here. In one breath, they cry foul that the prescribed forms were not filled prior to the election. In another breath, there is incongruity in their filling, which is leading the petitioners to speculate that the forms were not filled prior to the election. At any rate, the Tribunal cannot but hold that the same documents and witnesses cannot also sustain the 2nd leg of the sole ground of the petition.

The Tribunal needs to harp on the fact that the respondents are not under any obligation to call witness(es) or tender any document, until and unless the petitioners have discharged the onus of proof on them.

Of course, the Tribunal will not overlook some other issues in passing relating to the parties that may be capable of standing the law on it head if not addressed. One of such is the submission of the respondent, especially the 2nd respondent, over the replication of the averment in the pleadings of the petition and the witness statement on oath of the petitioners' witness, especially PW4.

Let it be pointed out that that practice of repeating word for word, paragraph for paragraph (as pointed out under review of parties witnesses) in the pleadings and statements of on oath of witnesses, which trend among many counsel, is inelegant to say the least. Though some school of thought sees that as mere technicality which should not be allowed to override justice, others frown at it seriously and may want to apply sanction on the offending process. A keen reading of the depositions of PWI, PW2, PW3 and PW4 show they are identical, repetition, replication and with absence of any discrepancy. Apart from the inelegance, it make facts of the case to look as being concocted by counsel. See **Orji V. INEC (2021) All FWLR (Pt. 1105) p. 601 at 649, paras. D.** where the Court held:

> "The absence of any discrepancies in the statements or evidence of many witnesses even on the same subject is the usual accompany agent of a concocted story. Imperfections and different personal expressions in human reflections are quite normal."

In the instant case and by mere looking at the depositions of the petitioners' witnesses, it can be seen that the statements are the same, though the witnesses are from different Local Government Areas and this did not reasonably represent personal account of each of the witnesses. PW4 was even repeating the averments in the petition without removing the expression "Your Petitoner" when his statement was supposed to be in the 1st person pronoun.

By and large, this issue is bound to be resolved against the petitioners, that they have not been able to prove the ground of their petition as required by the law. They could not discharge the burden of proving over-voting, neither have they proved non-compliance with the provisions of the Electoral Act alleged. How much more to establish that the said non-compliance was substantial.

In sum, the petition lacks merit and is accordingly 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)
07/09/2023

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

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

APPEARANCES

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C. M. Nzekwe Esq. for the 3rd Respondent.