

IN THE SUPREME COURT OF NIGERIA  
HOLDEN AT ABUJA

SC/ CV/ 935/ 2023

IN THE MATTER OF THE ELECTION TO THE OFFICE OF THE PRESIDENT OF THE FEDERAL  
REPUBLIC OF NIGERIA, HELD ON 25<sup>th</sup> FEBRUARY, 2023

SC/ CV/ 935/ 2023

PETITION NO: CA/ PEPC/ 05/ 2023

*Copy*  
BETWEEN:

1. ABUBAKAR ATIKU
  2. PEOPLES DEMOCRATIC PARTY (PDP)
- APPELLANTS



AND

1. INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC)
  2. TINUBU BOLA AHMED
  3. ALL PROGRESSIVES CONGRESS (APC)
- RESPONDENTS

**2<sup>ND</sup> RESPONDENT'S BRIEF OF ARGUMENT**

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2<sup>ND</sup> RESPONDENT'S BRIEF OF ARGUMENT

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1.0 INTRODUCTION

- 1.1 This brief is presented by the 2<sup>nd</sup> respondent (respondent) in his reaction to the appellants' appeal against the well-considered decision of the Court of Appeal (the lower court) delivered on 6<sup>th</sup> September, 2023, Coram: H.S. Tsamani, JCA (presiding) S. J. Adah, JCA, M.O. Bolaji-Yusuff, JCA, B. M. Ugo, JCA and A.B. Mohammed, JCA. The said judgment which proceeded from the consolidated proceedings of the lower court, substantially sustained the respondents' objections to petition, the petitioners' reply to the respondents' respective replies, the competence of witnesses subpoenaed by the petitioners and the admissibility of several documents sought to be tendered by the appellants. Ultimately, the lower court resolved all issues in favour of the respondents and against the petitioners, before rightly dismissing the petition for lacking in merit. While the judgment in question is contained at pages 7503 – 8298 (vol.10) of the record, the appellants' Notice of Appeal filed on 18<sup>th</sup> September, 2023, can be found at pages 8229 – 8340 (vol.10) of the record.

2.0 BRIEF STATEMENT OF FACTS

- 2.1 Election into the office of President of the Federal Republic of Nigeria was conducted by the Independent National Electoral Commission (INEC) on 25<sup>th</sup> February, 2023, whereat, the respondent emerged winner with a total of 8,794,726 votes, while the appellants trailed far behind him with a total of 6,984,520 votes. By the statistics, the respondent had one-quarter/25% of the total votes cast in 29 States of the Federation. Unfortunately for the appellants, they only managed to secure 25% of the total votes cast in 21 States of the

Federation, as against the constitutional requirement of 24.67 States, which is the mathematical result of two-thirds of the 36 States of the Federation and the FCT (making 37). Accordingly, INEC, in line with its constitutional mandates, declared the respondent as the winner of the election, having scored the highest number of valid votes cast and having fulfilled all constitutional requirements in that regard. This of course, did not go down well with the appellants who on 21<sup>st</sup> March, 2023, filed a petition before the Court of Appeal sitting as the Presidential Election Court, on trumped up allegations of noncompliance with the provisions of the Electoral Act, 2022, corrupt practices, non-scoring of majority of lawful votes cast at the election and non-qualification of the respondent.

2.2 The hyperbolic character of the foregoing allegations was exposed by the petition itself, which had no facts in support thereof. Starting from the allegation of non-qualification of the respondent, all that the appellants submitted to the lower court through their petition was that the “the 2<sup>nd</sup> Respondent was at the time of the election, not qualified to contest the election, not having the constitutional threshold.” In a rather furtive fashion and contrary to the guiding rules in election petition litigation and every other kind of litigation, the appellants kept whatever they meant by “constitutional threshold” to themselves until the respondent and every other respondent were done filing their respective replies to the petition. It was at this point that they rolled out their drums of cooked up allegations of discrepancies in the respondents’ academic qualifications, dual nationality, and sundry bemusing allegations from the back door. While they also claimed to have won the highest number of votes cast at the election, as against INEC’s declaration, throughout their petition, they did not suggest an alternative score which they considered correct, whether for themselves or the respondent. Though they had alleged the election was riddled with non-compliance and corrupt practices, the paragraphs of their petition putting up these allegations were nothing short of vague, imprecise, generic and nebulous. For these allegations which ought to have been specifically demonstrated through facts and figures like polling units and numbers, the appellants through their petition chose to regale the lower court and the respondents with breath taking suspense, by stating that the said facts will be disclosed in their Statistician’s Report, which was not part of the petition filed. It is only commonsensical that the respondents will only be able to respond to the facts in the petition and not in the crucial, albeit, anticipated Statistician’s Report, since even the devil himself, knows not the heart of man.

2.3 Just when the respondent thought he had had enough taste of the appellants’ suspense, he was met with even worse, when out of 27 witnesses called by the appellants, 13 of them did not have their witness statements frontloaded with the petition. More shocking is the fact that these witnesses were the pillar of the appellants’ case and they include the Statistician and Forensic expert whose reports they copiously accorded a futuristic reliance in their petition, as well as presiding officers, who were meant to give evidence as witnesses to whatever it was they were alleging about the INEC Result Viewing (IREV) portal. With these, it was obvious that the appellants did not intend to prosecute a petition, but rather, to venture into some form of



blockbuster, laced with thrilling suspense, stunning surprises and ecstatic hide and seek recreational activities; and these necessitated series of objections from the respondents, challenging the competence of the petition, as well as the itemized nebulous paragraphs of same, the statements on oath of the subpoenaed witnesses which were not frontloaded with the petition, and tons of documents sought to be tendered which were either irrelevant or unconforming to the mandatory rules of admissibility. Specifically, exhibits PAH1, PAH2, PAH3, PAH4 prepared by the purported Statistician and Exhibits PAR1 (A-F), prepared by the purported forensic expert were all admittedly prepared during the pendency of the proceedings.

2.4 Despite the uninspiring prosecution of the petition by the appellants, the respondent, nonetheless, identified the fact that the appellants' central grouse in the petition was the non-transmission of the result through electronic means, by INEC. All the witnesses introduced by the appellants to speak to this allegation all agreed that the election went very smoothly, where INEC complied with all prescribed procedures, including the sorting of the votes, the counting of the votes, the entry of the scores in the appropriate polling unit result sheets (Form EC8A) and distribution of counterpart copies to the polling unit agents and delivery of the result to the ward collation centers, etc. For these witnesses, though the scores were accurately recorded and manually transmitted across the levels of collation, their only grouse was that the results were manually transmitted. While the respondents demonstrated that there is no provision in the Electoral Act and the Regulations which mandates INEC to electronically transmit results, the attention of the lower court was also drawn to the unappealed decision of the Federal High Court in FHC/ABJ/CS/1454/2022-Labour Party v. INEC admitted by the lower court as Exhibit X1 as well as the judgment of the Court of Appeal in Appeal No: CA/LAG/CV/332/2023-All Progressives Congress v. Labour Party & 42 Ors., which expressed the spirit and tenor of the relevant statutory provisions to the effect that INEC maintained the prerogative to determine the mode and manner for the transmission of the result of the election. This is added to the vivid explanation proffered by INEC, of technical impossibility foisted on it as a result of some form of technological glitch in its system.

2.5 The foregoing and more that will be shown in the body of the brief compelled the lower court to dismiss the entire petition as lacking in merit, while also affirming the election and return of the respondent by INEC as the President of the Federal Republic of Nigeria, having scored the highest number of lawful votes cast and fulfilling all constitutional requirements in that behalf. It is against this well considered judgment that the appellants have presented this appeal.

### 3.0 ISSUES FOR DETERMINATION

3.1 The respondent filed a Motion on Notice on 7<sup>th</sup> October, 2023, challenging the competence of the grounds of appeal contained in the Appellants' Notice of Appeal, as well as the issues formulated in the Appellants' Brief. Without prejudice to the said objection and arguments canvassed in support of same, the respondent respectfully submits the following issues for the determination of this Honourable Court:

- i. Considering the combined provisions of paragraph 15 of the Third Schedule to the Constitution of the Federal Republic of Nigeria, 1999 (as amended); sections 47(2), 60 and 64 of the Electoral Act, 2022; paragraphs 38, 48, 50, 51, 53, 54, 55, 91, 92, 93 of the Regulations and Guidelines for the Conduct of Election, 2022; the judgment of the Federal High Court in FHC/ABJ/CS/1454/2022-Labour Party v. INEC admitted by the lower court as Exhibit X1; the judgment of the Court of Appeal in Appeal No: CA/LAG/CV/332/2023-All Progressives Congress v. Labour Party & 42 Ors., and the preponderance of evidence before the lower court, whether the lower court did not come to a right decision in its interpretation and conclusion regarding the position of the law, vis-à-vis petitioners/appellants' complaints. **Grounds 1, 2, 3, 4, 5, 6, 7, 26 and 29.**
- ii. Upon a combined reading of the preamble to the Constitution of the Federal Republic of Nigeria, 1999 (as amended), sections 17(1), 134(2)(b), 299(1), thereof, section 66 of the Electoral Act, 2022 and other relevant statutes, whether the lower court was not right in coming to the conclusion that the 2<sup>nd</sup> respondent satisfied all constitutional and statutory requirements to be declared winner of the presidential election held on 25<sup>th</sup> February, 2023, and returned as President of the Federal Republic of Nigeria. **Grounds 8, 9, 10, 11 and 12.**
- iii. Having regard to the appellants' pleadings before the lower court, vis-à-vis the provisions of paragraphs 4(1)(d)(2) and 16(1)(a) of the First Schedule to the Electoral Act, 2022 and Order 13 Rule 4 of the Federal High Court (Civil Procedure) Rules, 2019, coupled with consistent judicial authorities on the fundamental nature of pleadings, whether the lower court did not rightly strike out offensive paragraphs of the petition and petitioners' reply to the respondents' respective replies. **Grounds 17, 18, 19, 20, 21, 22, 23 and 24.**
- iv. In view of the clear provisions of section 285(5) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), section 132(7) of the Electoral Act, 2022, paragraph 4(5) of the First Schedule to the Electoral Act, 2022 and the settled line of judicial authorities on the subject, whether the lower court did not rightly strike out the witness statements on oath and expunge the evidence of PW12, PW13, PW14, PW15, PW16, PW17, PW18, PW19, PW21, PW23, PW24, PW25, PW26 and PW27. **Grounds 13 and 14.**
- v. Was the lower court not right when it upheld the respondents' objection to the admissibility of the documents tendered by the appellants and struck out the said documents? **Grounds 15, 16 and 28.**
- vi. Considering the clear provision of section 135 of the Electoral Act, the pleadings and the reliefs sought by the petitioners/appellants as well as the admissible evidence before the lower court, whether the lower court was not right in dismissing the appellants' petition. **Grounds 25, 27, 30, 31, 32, 33 and 35.**
- vii. In view of the circumstances of the petition before the lower court, the terse evidence adduced by the appellants and the state of the law on the respective subjects, whether the lower court could rightly be accused of bias by the appellants. **Ground 34.**

## ARGUMENTS ON THE ISSUES

### 4.0 ISSUE 1

- 4.1 We respectfully submit that by all extant relevant laws, INEC has/had the prerogative of determining the mode and manner for the transmission of election results and the lower court was perfectly in order when it so held. A major basis for appellants' allegation of non-compliance with respect to the presidential election

of 25<sup>th</sup> February, 2023, is their claim that the results of the election were not electronically transmitted to the IREV in real time (not that it was not transmitted at all) and that the 1<sup>st</sup> respondent did not ensure that the results were collated on the IREV. It was their submission before the lower court that the result ought to have been collated electronically on the IREV, and that omitting to do this automatically nullified the result of the election.

- 4.2 The lower court, in deciding the issue, took a painstaking consideration of the binding judgment of the Federal High Court, *per* Nwite, J., in FHC/ABJ/CS/1454/2022-Labour Party v. Independent National Electoral Commission, delivered on 23<sup>rd</sup> January, 2023, which was tendered before it and admitted as Exhibit X1. For ease of reference, the question for determination submitted by Labour Party in the Originating Summons is as follows: “Whether having regard to combined effect of Section 47(2), 50(2), 60(5) and 62(1)(2) and other relevant provisions of the Electoral Act, 2022 the Respondent can still insist on manual collation of results in the forthcoming general election.” Declaratory reliefs were subsequently sought in line with the main question for determination. After considering the relevant provisions of the Electoral Act, the Regulations and Guidelines, as well as the Manuals, the learned trial judge held as follows:

“Now a close reading of section 50(2) has provided for voting and transmission of results, to be done in accordance with the procedure to be determined by the Commission. This is to say that the Commission is at liberty to prescribe or choose the manner in which election results shall be transmitted...In view of the foregoing, can the act of the defendant in collating and transferring election results manually in the forthcoming 2023 general elections be said to be contrary to the relevant provisions of the Electoral Act, 2023? The answer can only be in the negative, as there is nowhere in the above cited sections where the Commission or any of its agents is mandated to only use an electronic means in collating or transferring of election results. If any, the Commission is only mandated to collate and transfer election results and number of accredited voters, in a way and manner deemed fit by it...By the provisions of section 50(2) and 60(5) of the Electoral Act, 2022, the correct interpretation of the said statute is that INEC is at liberty to prescribe the manner in which election results will be transmitted, and I so hold.” (underlining ours)

- 4.3 We submit that by virtue of section 287(3) of the Constitution, all authorities and persons were/are bound to enforce the terms of Exhibit X1 throughout Nigeria. This is more particularly so, as INEC is a recurring party, both at the lower court and in the case culminating in Exhibit X1. We, therefore, urge this Honourable Court to hold that both itself and the lower court are bound by the said decision, which remains extant and not set aside. A similar situation as this, arose in *Labour Party v. I.N.E.C.* (Suit No. FHC/ABJ/CS/399/2011), where the Federal High Court, *per* Kolawole, J (as he then was, now JCA), nullified section 141 of the Electoral Act, 2010 and no appeal to the Court of Appeal was lodged against that judgment, until it was relied upon before this Honourable Court in *Wada v. Bello* (2016) 17 NWLR (Pt. 1542) 374 at 433, by one of the parties. This Honourable Court invoked the decision and stated that

the apex court itself, was bound by it, until set aside on appeal. We further respectfully refer the court to the celebrated case of *Rossek v. ACB Ltd.* 8 NWLR (Pt. 312) 382 at 434-435, where this Honourable Court held that a judgment of any court of record is binding on all parties and persons, unless it is set aside by an appellate court. Even so, Exhibit X1 is a judgment in rem, binding on the whole world, in terms of the rights and obligations determined therein. See *Gbemisola v. Bolarinwa* (2014) 9 NWLR (Pt. 1411) 1 at 19 and *Noekoer v. Gov., Plateau State* (2018) 16 NWLR (Pt. 1646) 481 at 493.

4.4 Very central to the determination of the court in Exhibit X1, is the provision of section 60(5) of the Electoral Act, which provides that “*the presiding officer shall transfer the results including total number of accredited voters and the results of the ballot in a manner as prescribed by the Commission.*” A proper appreciation of the provision of section 60(5), with respect to INEC’s prerogative to prescribe the mode of transfer of results, will contextualize the several provisions of the Manual and Regulations. Before exploring the said provisions of the Regulations, it is pertinent to also consider other relevant provisions of the Act. Section 62(1) of the Act mandates the presiding officer to, after the recording and announcement of the result, “*deliver same along with election materials under security and accompanied by the candidates or their polling agents, where available, to such person as may be prescribed by the Commission.*” It is beyond cavil that delivery of election results along with election materials under security in the company of candidates or their polling agents simply suggests a physical (as opposed to virtual) character of the exercise. Section 64 (4) and (6) of the Act is also very instructive, in establishing the fact that both transmission and collation of results, as far as the Electoral Act is concerned, are physical in nature. At first, subsection (4) empowers the collation officer or returning officer to “*collate and announce the result of an election.*” What must be appreciated here is that the person required to collate is the “collation officer” and not a collation device/machine. In summary, all through the gamut of the Electoral Act, the appellants were unable to point the lower court to a singular provision which prescribes electronic collation of result or even electronic transmission of results. It is on this basis that the lower court, at page 8182 (vol.10) of the record, found that “*...the petitioners have not been able to prove that the Electoral Act or Guidelines made it mandatory for electronic collation system.*”

4.5 Allied to the binding decision in Exhibit X1 and the clear provisions of the Electoral Act, may we refer the court to the clear provision of paragraph 38 of the Regulations, and submit that the said provision does not support the contention of the appellants. Even more critical is the fact that the appellants did not allege that any of the other procedures of the election, starting from the accreditation, voting, sorting, counting of votes, entry into the relevant forms, and manual transmission was not complied with. In fact, the testimonies of PW4, PW11, PW12, PW13, PW14, PW15, PW16, PW17, PW18, PW19, PW20, PW22, PW23, PW24 and PW25 were very instructive, as despite being witnesses for the petitioners, they all testified to the fact that the only issue with the entire web of processes was that of electronic transmission and upload to the IREV through the BVAS in real time. The point must be made that it was not their claim



before the lower court that the results were not uploaded at all, but that since INEC had some constraint which militated against the immediate upload during the election, then the election must be invalidated. This line of reasoning finds no place within the circumference of logic and law, particularly, when the witnesses, including PW22 (appellants' star witness) clearly admitted that failure to transmit the result on the IREV will not change the content of the result entered in the Form EC8A (see page 7412 (vol.10) of the record); and the fact that PW12, PW13, PW14, PW15, PW16, PW17, PW18, PW23, PW24 and PW25 all agree under cross-examination that not only did they conduct the accreditation as required by the law, the voting went successfully, the votes were sorted and entered into the appropriate form EC8A, the presiding officers signed the results along with the party agents, the results were announced at the respective polling units, party agents and police officers were respectively given their copies, while the respective presiding officers submitted their copies to the ward collation centers, again, in the company of the party agents. In fact, they all agreed that they had taken photographs of the result with the BVAS and that the offline transmission function was activated (see pages 7360, 7364, 7370 – 7377, 7422 – 7433 (vol.10) of the record). Interestingly, RW1, a Deputy Director in the ICT Department of the 1<sup>st</sup> respondent restated these points, while also identifying the technological issues surrounding INEC's inability to electronically upload the results to the IREV immediately (see pages 7479 – 7482 (vol.10) of the record).

- 4.6 Having concurred that in line with paragraph 38 of the Regulations, the litany of "Polling Unit voting and results procedures" as contained in paragraphs 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, were duly complied with, it, therefore, defeats the principle/idea of substantial compliance that the results will be questioned, on the simple basis that it was not uploaded 'electronically' on the IREV "in real time." The appellants gave no evidence that the results which were eventually computed at the ward collation center for the respective polling units were different from what was delivered to the ward collation center from the polling unit; or that the results collated at the local government collation centers were different from the ones submitted from the respective wards; or that the results collated at the respective State collation centers were different from the ones submitted from the respective local government collation centers; or finally, that the results collated at the national collation center were different from the ones submitted from the respective State collation centers.
- 4.7 While the point must be made that the provisions of the Regulations cannot in any way override the express provisions of the Act [see *Nyesom v. Peterside* (2016) 7 NWLR (Pt. 1512) 452 at 551-552 and *Jegade v. INEC* (2021) LPELR-55481(SC) at 25-26], we submit that even the Regulations unambiguously provide for manual delivery of election results across the different levels of collation; and at best, it can only be said that the Regulation has adopted a **hybrid mode of transmission of results**, as opposed to appellants' suggestion of exclusive electronic transmission and collation. Right from the polling unit to the national collation center, there are ample provisions for the transfer of results through the manual process, hence the

use of the phrases “Electronically transmit” or “transfer” as employed in paragraphs 38 and 50 of the Regulations and “transmit” or “transfer” as used under paragraph 54(xii) of the Regulations. A clear understanding of the necessary implications of the words “transmit” and “transfer”, will definitely operate to exfoliate the appellants’ misgivings. According to the Black’s Law Dictionary (11<sup>th</sup> Edition), the word “transmit” means “to send or transfer (a thing) from one person or place to another.” The Merriam Webster Dictionary, defines “transmit” as “to cause (something, such as light or force) to pass or be conveyed through space or a medium” and “to send out (a signal) either by radio waves or over a wire.” The Collins Dictionary puts it in a much clearer form when it states that “When radio and television programmes, computer data, or other electronic messages are transmitted, they are sent from one place to another, using wires, radio waves, or satellites.” On the other hand, however, “transfer” is defined by these same dictionaries as “to move to a different place, region, or situation” and “to convey or remove from one place, person, etc., to another.” The implications are very clear to the effect that while “transmit” may remotely accommodate some forms of electronic activities, “transfer” conclusively infers a physical activity.

- 4.8 Our clear submission is that all the provisions of the Regulations created the alternative between electronic transmission and transfer, with the use of the article “or”. For instance, paragraph 38(i), which deals with movement from the polling unit states that “on completion of all the Polling Unit voting and results procedures, the Presiding Officer shall: (i) Electronically transmit or transfer the result of the Polling Unit, direct to the collation system as prescribed by the Commission.” Paragraph 50(xx) provides that “the Registration Area/Ward Collation Officer shall: Electronically transmit or transfer the result directly to the next level of collation as prescribed by the Commission.” Paragraph 53(xii) provides that “the Local Government/Area Council Collation Officer for the Presidential Election shall Electronically transmit or transfer the result directly to the next level of collation, as prescribed by the Commission.” For each of the above levels of collation, provisions are clearly made for taking of original copy of the forms EC8A, 8B, 8C and 8D, respectively, from the different level of collation to the upper level, in a tamper-evident/tamper-proof envelop, for upward transfer in the company of police officers and party agents in line with section 62 of the Electoral Act. See also, paragraph 3.4.5 of the Manual. In fact, the first step the ward collation officer is to take, by virtue of paragraph 4.2.2 of the Manual, is to “*take delivery of the original copies of Forms EC8A, EC8A(I), and EC8A(II) for the Presidential Election*”, while the tenth step is for him to “*Collate the votes entered in Forms EC8A, EC8A(I) and EC8A(II), for the Presidential Election.*”
- 4.9 Even so, paragraph 92 of the Regulations further provides that “at every level of collation, where the INEC copy of collated results from the immediate lower level of collation exists, it shall be adopted for collation.” Paragraph 93 then goes further to provide for the only circumstance where electronic copy will become relevant, being where there is no hard copy of collated result. From this paragraph, it is clear

that insofar as the Regulations and Guidelines are concerned, the relevance of electronic transmission in the pecking order is extremely tertiary in ranking, and that the Regulations and Guidelines, clearly contemplate its absence, where it directs a fall back on hard copies of collated results already given to the Nigeria Police or agents of political parties, where the ones from the immediate lower level of collation whether from the PO or the IREV, do not exist.

- 4.10 So, from the above provision of the Regulations and Guidelines, before recourse will be made to the electronically transmitted result or results from the IREV portal, the INEC hardcopy of collated results from the immediate lower level of collation must first have been confirmed to be non-existent. It is important to indicate that none of the witnesses fielded by the appellants before the lower court alleged that this was the case at any level of collation. The lower court, therefore, could not have put it better than it did at page 8192 (vol.10) of the record that “*the Regulations and Guidelines as well as the INEC Manual also state that hardcopies of election results shall be used for collation and it is only where no such hardcopies of the election results exist that electronically transmitted results or results from the IReV will be used to collate results.*”
- 4.11 In any event, the absence of the electronically transmitted results or results from the IREV portal does not necessarily create a brick wall in the absence of INEC hardcopy of collated results. The same paragraph creates a solution, to the effect that the collation officer may resort to the duplicate hardcopies issued by INEC to the police and the party agents. This provision signposts the relevance of the duplicate hardcopies issued to polling unit agents, which unfortunately for the appellants, they failed to produce a single one to demonstrate any discrepancy between the copy issued to them and the final collated result. To now further accentuate the place of the hardcopy of the electoral forms, particularly, the Forms EC8As, which the appellants’ witnesses all agree were delivered to the ward collation center, paragraph 91(i) of the Regulations insists that Forms EC8A and EC60E “**are the building blocks for any collation of results.**” An aggregation of these clearly shows that it is either the appellants have, with all respect, naively overestimated the effect of electronically transmitted results, or they have simply chosen to close their eyes to these express provisions of both the Electoral Act and the Regulations. Rather ironically, PW22, appellants’ own star witness before the lower court admitted under cross examination that it is the result in the form EC8A that is meant to be uploaded on the IREV and that a copy will be submitted by the presiding officer to the ward collation officer, while stating further that failure to transmit the result on the IREV will not change the content of the result entered in the Form EC8A (see pages 7412 (vol.10) of the record). This is more so, as INEC, in the course of the proceedings, gave evidence regarding its constraints occasioned by a temporary failure of communication between the e-transmission system and the IReV portal for the Presidential election, due to the return of an HTTP 500 error by the e-transmission system (see pages 320 (vol.1) of the record). In this regard, Exhibit RA3, being the AWS cloud trail logs on the 1<sup>st</sup> Respondent’s E-transmission system/IREV Portal was tendered by the witness in proof of the position. The

question then becomes, would this singular incident, which did not arise out of INEC's own making, occasion the nullification of an election, even when there is no proof that same had any effect on the ultimate result of the election? The answer is of course in the negative and we shall under the succeeding issue, address the effect of substantial non-compliance under section 135 of the Electoral Act. In summary, therefore, it is evident that the appellant's case built around electronic collation of result and implication of inability of upload to the IREV in real time, operate only in the appellants' imagination, without any law to support same.

- 4.12 The appellants, at paragraphs 4.14-4.22 of their brief, have made a disproportionate fuss about what they described as INEC's "guarantees, undertakings, representations" in respect of electronic transmission of results. In a bid to shore up this argument, they have for the first time before this Honourable Court, raised issues around legitimate expectation." Without prejudice to our objection to the propriety of this argument and the entire issue, we submit that promise by INEC's Chairman [which in any event was not proved by calling him to testify in line with the decision of the court in *Abubakar & Anor. v. INEC & Ors.* (2019) LPELR-48488 (CA) at 344-345], cannot substitute for the express provision of the law; and this Honourable Court has been consistent on this position of the law. In *Menakaya v. Menakaya* (2001) 16 NWLR (Pt. 738) 203 at 236, this Honourable Court held that "A mandatory statutory provision directing a procedure to be followed in the performance of any duty is not a party's personal right to be waived. You cannot resort to estoppel to compromise a statutory provision of a public nature." See also *Eghobamien v. F.M.B.N.* (2002) 17 NWLR (Pt. 797) 488 at 501. While for obvious reasons, the appellants have refrained from citing any authority in support of their arguments, we respectfully commend to this Honourable Court, the decision of the court in *F.B.I.R. v. Halliburton (WA) Ltd* (2016) 4 NWLR (Pt. 1501) 53 at 99, to the effect that express statutory provisions unarguably override any form of legitimate expectation. Noting that the principle has its root in foreign jurisdictions, may we respectfully commend to this Honourable Court, the English decision in *Ex P. Begbie* (2000) 1 WLR 1115 to the effect that the operation of statute has the capacity of aborting the application of the principle of legitimate expectation. See also *Birkdale District Electric Supply Co. Ltd. corporation of south-port* (1926) AC355 at 364 and *Ex P. Liverpool Taxi Fleet Operators' Association* (1972) 2 Q.B., 299. More so, in urging this Honourable Court to hold in favour of a compulsory electronic transmission of results, notwithstanding the express provisions afore-referenced, the appellants have attempted to argue in paragraph 4.2 from the perspective of the mischief sought to be cured by the innovation, being "the rigging of elections at the point of collation." We submit with utmost respect to this Honourable Court that for this submission to be of any relevance, the appellants would have proved before the lower court that there were incidents of "rigging of elections at the point of collation." This could only have been done, through the tendering of result sheets from the polling units which had inconsistent results with the collated results.



Unfortunately, throughout the proceedings, this was not done- not even through the pink copies given to the appellants' agents, as they did not tender anyone. At any rate, it was not the case of the appellants that the election was rigged while the results were 'airborne' or 'cloud bound.'

4.13 We accordingly urge this Honourable Court to resolve this issue in favour of the respondents and against the petitioner.

## 5.0 ISSUE 2

5.1 Although this issue primarily revolves around whether or not a candidate in a presidential election has to mandatorily secure one-quarter of the votes cast at the FCT, Abuja before he can be declared as the winner of the election, in framing the issue, we have carefully brought into the fore, the amalgamation of all relevant provisions of the Constitution, as well as the Electoral Act, in order to demonstrate to this Honourable Court, that the appellants, with respect, are not on any legal wicket in their ventilation of this issue, which was rightly resolved against them by the lower court.

5.2 It is apt to commence our argument on this issue by humbly restating the obvious, that an election is about votes and voters and when votes and voters are mentioned in any part of the world, there is no superiority of votes or voters, as all votes and voters are equal. Within the Nigerian context, there is no superiority between the votes from voters secured in either Lagos or Kano, which are the most populous States and Bayelsa, Ebonyi and Ekiti, which are the least populous States. In the US for example, where the Electoral College system appears more potent than the popular ballot in some circumstances, the District of Columbia (Washington DC) which houses the capital city, has 3 Electoral College votes, while the smaller States like Rhode Island, North Dakota, Wyoming, Hawaii, Washington State itself and Arkansas, have 4, 3, 3, 4, 12 and 6 Electoral College votes, respectively. For larger States like Florida, Texas and California, they have electoral votes of 30, 40 and 54, respectively. These Electoral College votes are shared according to the respective populations of the States, without any preference being allocated to Washington DC, which is the State capital.

5.3 Coming back to Nigeria, it is our submission that the wordings of sections 134 and 299 of the Constitution are clear. While section 3(1) of the Constitution specifically lists the 36 States by their respective names, the sidenote reads thus: "States of the Federation and the Federal Capital Territory, Abuja." Section 299, for ease of reference and clarity, provides thus: "The provisions of this Constitution shall apply to the Federal Capital Territory, Abuja as if it were one of the States of the Federation..." The phrase 'as if' has been defined in *Corpus Juris Secundum*, page 298 as connoting "*in the same manner and to the same extent.*"

5.4 May we draw the attention of the court to the fact that there is no punctuation (comma) in the entire section 134(2)(b) of the Constitution, particularly, immediately after the 'States' and the succeeding 'and' connecting the Federal Capital Territory with the States. In essence, the reading of the subsection has to be

conjunctive and not disjunctive, as the Constitution clearly makes it so. Pressed further, by this constitutional imperative, the Federal Capital Territory, Abuja, is taken 'as if' it is the 37<sup>th</sup> State, under and by virtue of section 299 of the Constitution. With much respect, any other interpretation different from this will lead to absurdity, chaos, anarchy and alteration of the very intention of the legislature. Our courts have always adopted the purposeful approach to the interpretation of our Constitution, as exemplified in a host of decisions, including but not limited to *Nafiu Rabi v. State* (1980) 12 NSCC 291 at 300-301, *Marwa v Nyako* (2012) 6 NWLR (Pt. 1296) 199, 306 – 307, *ADH Limited v AT Limited* (2006) 10 NWLR (Pt. 986) 635, 649, *Awolowo v. Shagari* (supra), *Abraham Adesanya v. President, Federal Republic of Nigeria* (1981) 12 NSCC 146 at 167-168; *A.G Abia v. A.G Federation* (2002) 6 NWLR (Pt. 763) 265 at 365. The appellants themselves admit this much in paragraph 107 of their petition (pages 38-39 of the record), where they listed the FCT as the 37<sup>th</sup> State, after listing the States mentioned in section 3(1) of the Constitution, as numbers 1 to 36. Again, the maxim, *res ipsa loquitur* applies to the petitioners.

5.5 Coincidentally, these sections of the Constitution were considered by this Honourable Court in the celebrated case of *Buhari v. Obasanjo* (2005) 13 NWLR (Pt. 941) 1 at 105 and the apex court held thus: "This provision appears clear to me. Where a candidate wins the highest number of votes cast in at least two-thirds of the 36 States in the Federation and the Federal Capital Territory Abuja, he is deemed to be elected ...I do appreciate any ambiguity in the provision and even if there was one, this court is bound to adopt a construction which is just, reasonable and sensible. (See Maxwell on the Interpretation of Statutes, 12th Edition, Chapter 10). In my view, it would lead to absurdity and manifest injustice to nullify the election for the entire nation because of the nullification (sic) of the election of one State, some Local Government Areas, Wards and Units. Such a devastating result could hardly have been contemplated by the framers of the Constitution. It is my conclusion therefore that the cancellation of the election in Ogun State and the other smaller components does not substantially affect the election of the 1st and 2nd respondents. In the event, this petition fails and same is dismissed with costs which I assess at N5,000 in favour of each set of respondents."

5.6 The court went on to hold thus, at page 242 of the report: "The purport of section 134(2)(b) of the 1999 Constitution, which stipulates that where there are more than two candidates for an election to the office of President of the Federation, a candidate shall be deemed to have been elected where he has not less than one-quarter of the votes cast at the election in each of at least two-thirds of all the states and the Federal Capital territory of the Federation, is that a winning candidate should have the required majority. Consequently, once a winning candidate has attained the required majority, it cannot be argued that because there was no election in one State, or because the election in a State is voided, the entire election must be voided unless where the result in that State, had then been an election, would have affected the final result of the election. In the instant case, the fact that the election in Ogun State was voided by the Court of Appeal did not mean the entire election was invalid. The Court of Appeal was therefore right when it did not invalidate the entire election."

- 5.7 At page 274 of the report, Edozie, JSC., further held thus:  
“In my view, the words of Section 134(2)(b) of the 1999 Constitution are clear precise and unambiguous. The invalidation of election in any number of states does not affect the basis of the calculation of 2/3 of all the states in the Federation and the FCT, Abuja. The contention of the learned Senior Counsel for the appellants is with respect erroneous”
- 5.8 Arising from the foregoing, are very salient and fundamental constitution takeaways, as sanctioned by the apex court:
- i. That even if results of elections are cancelled in more than one State (including the FCT), that election is not rendered invalid, provided, the winning candidate meets the constitutional requirements of one-quarter of the votes cast in two-thirds of the 37 States contemplated.
  - ii. Anything to the contrary would be devastating, and such was never contemplated by the framers of the Constitution.
  - iii. All the winning candidate needs, is majority of the votes, and even if there was no election in one State (including the FCT), or even if the election of a State/States (including the FCT) is/are voided, the entire election cannot be voided or cancelled.
- 5.9 Be it further noted that **Buhari v. Obasanjo** (supra), was an affirmation of the judgment of the Court of Appeal, regarding the interpretation of section 134(2)(b) of the Constitution and the result of the presidential election in Ogun State, where the erstwhile President, Chief Olusegun Obasanjo hails from, was voided, meaning that the presidential candidate himself did not have any vote from his State, including his own vote. It is our further submission that the constitutional provisions afore-quoted are very straightforward, direct, clear and simple; thus, they call for no extraneous interpretation, other than applying the literal rule of interpretation. See **Awolowo v. Shagari** (supra). It is further submitted that the legislature is presumed not to make any law that intends what is unreasonable. According to Maxwell, on the Interpretation of Statutes, 12th edition, by P. St. J. Langan (Tripath) page 199 “An intention to produce an unreasonable result is not to be imputed to a statute.” The author goes further to state that “if there is nothing to modify, alter or qualify the language which the statute contains, it must be construed in the ordinary and natural meaning of the words and sentences. See **Attorney-General v. Mutual Tontine Westminster Chambers Association Ltd.** (1876) 1 Ex. D. 469 and **Bradlaugh v. Clarke** (1883) 8 App. Cas. 354.
- 5.10 In **Nokes v. Doncaster Amalgamated Collieries Ltd.** (1940) A.C. 1014 (P.C.) at page 1022, it was held that: “Judges are not called upon to apply their opinions of sound policy so as to modify the plain meaning of statutory words, but where, in construing general words the meaning of which is not entirely plain there are adequate reasons for doubting whether the legislature could have been intending so wide an interpretation as would disregard fundamental principles, then we may be justified in adopting a narrower construction.”

- 5.11 Similarly, in *Magor and St. Mellons Rural District Council v. Newport Corporation* (1952) A.C. (H.L.) 189 at 191, the court held that: “The duty of the court is to interpret the words that the legislature has used; those words may be ambiguous, but even if they are, the power and duty of the court to travel outside them in a voyage of discovery are strictly limited.”
- 5.12 The nagging question arises, going by the appellants’ posture, that is, assuming a candidate scores majority of the votes cast in all the 36 States and does not secure 25% in the FCT, does the Constitution then expect the absurdity that such a candidate will not be declared the winner? The answer will naturally be in the negative. In the celebrated case of *Bush v. Gore* 531 U.S. 98 (2000), where the US Supreme Court was faced with the task of pronouncing on whether or not a manual recount of the votes in Florida should be ordered as already pronounced by the Supreme Court of Florida, the court, while upturning the decision of the Florida Supreme Court, held that that decision went against the “legislative wish”, and that the particular legislation in issue was/is very simple, calling only for a literal and definitive interpretation to bring about the true intention and will of the legislature. At page 114-115, the court held thus: “Isolated sections of the code may well admit of more than one interpretation, but the general coherence of the legislative scheme may not be altered by judicial interpretation so as to wholly change the statutorily provided apportionment of responsibility among these various bodies... The Florida Supreme Court’s interpretation of the Florida election laws impermissibly distorted them beyond what a fair reading required, in violation of Article II. This inquiry does not imply a disrespect for state courts but rather a respect for the constitutionally prescribed role of state legislatures. To attach a definitive weight to the pronouncement of a state court, when the very question at issue is whether the court has actually departed from the statutory meaning, would be to abdicate our responsibility to enforce the explicit requirements of Article II.” Be it noted that in this particular election in the USA, Bush, narrowly defeated Gore with 1784 votes in the popular ballot in the contested State of Florida, whereas, in the present instance, the respondent beats the petitioners to a distant second position by 1,810,206.
- 5.13 More specifically, it has been held by our superior courts in a litany of decisions that the FCT is not superior by any means to any State of the federation. See *Ibori v. Ogboru* (2005) 6 NWLR (Pt.920) 102 at 137-138 (CA), *Bakari v Ogundipe & 3 Ors.* (2021) 5 NWLR (Pt. 1768) 1 at 37 (SC). By parity of reasoning, it has also been held in several decisions that the FCT High Court enjoys similar status or recognition like the High Court of any other State. See *Mailantarki v. Tongo* (2018) NWLR (Pt. 1614) 69 at 86-87, *Audu v. APC* (2019) 17 NWLR (Pt.1702) 379 at 398, 399, and 400 and *Dalhatu v. Turaki* (2003) 15 NWLR (Pt. 843) 310 at 338. The principle of equality finds expression through the Preamble to the Constitution and section 17(2) thereof, which guarantee equality of rights, obligations and opportunities before the law, for every citizen of Nigeria. In *Ogbonna v. A.-G., Imo State* (1992) 1 NWLR (Pt. 220) 647 at 672, this Honourable Court, per Nnaemeka-Agu, JSC held that preambles may “*be resorted to as*



*an aid to construction when there is an ambiguity or when there are two conflicting views as to the true meaning of the enactment at which case that view which fits with the preamble ought to be preferred.”* See also *Osawe v Reg. Trade Unions* (1985) 1 NWLR (Pt. 4) 755 at 769. We submit that the wordings of sections 134 and 299 of the Constitution are clear enough to dispel the appellants’ furor on this subject.

- 5.14 Now, section 66 of the Electoral Act which refers to sections 133, 134, and 179 of the Constitution speaks of election to the office of President or Governor, meaning that the position at the Federal level, as anticipated and contemplated by the Constitution rhymes with what obtains at the State level, including the votes cast at each of the State capitals, without any discrimination, as between the votes and voters in each State capital and the votes and voters outside the State capitals. By the imperative of this statutory provision, it cannot be argued that the votes and voters at the FCT are more superior than those of other voters in other States of the federation, since the Constitution does not so provide. While the appellants did not even discharge the burden placed on them to demonstrate their assertion that a candidate in a presidential election should win 25% of the votes in the FCT before he can be declared winner, the respondent tendered Exhibit RA11 titled Report of the Committee on the Location of the Federal Capital Territory, to demonstrate the fact that no such thing was ever contemplated. See also section 179(2)(b) of the Constitution.
- 5.15 We submit that the provisions of the Constitution cannot be considered in isolation as suggested by the appellants, but as a whole, in line with plethora of judicial authorities. See *N.U.P. v. I.N.E.C.* (2021) 17 NWLR (Pt. 1805) 305 at 342 and *Umeano v. Anaekwe* (2022) 6 NWLR (Pt. 1827) 509 at 532. After painstakingly considering the arguments of parties before it on this subject, as well as all relevant provisions of the Constitution, the lower court rightly concluded at page 8234 (vol.10) of the record, that “*...if the framers had wanted to make scoring one-quarter of votes cast in the Federal Capital Territory, Abuja, a specific requirement for the return of a Presidential candidate, they would have made that intention plain by using words that clearly separate the scoring of one-quarter of votes in the Federal Capital Territory as a distinct requirement.*” It is against this unassailable decision of the lower court that the appellants have not just appealed to this court, but also praying that this court should resolve this issue in their favour and grant the reliefs in their petition. One of such reliefs is relief (d) (page 55, vol. 1 of the record), where the 1<sup>st</sup> appellant, who scored lesser votes than the respondent at the FCT is praying the court to declare him as the winner of the election and the duly elected President of Nigeria. The essence of this reference to the appellants’ case before the lower court and at the Supreme Court is to demonstrate the hypocritical nature of their appeal and that the only deductible inference from this posture, is that they themselves, are neither convinced, nor persuaded that scoring 25% of the votes cast at the FCT is a constitutional requirement for a presidential candidate to be declared as winner of the election. *A fortiori*, they are also persuaded that in Nigeria, there is neither a royal ballot, nor royal voter, and that the residents

of the FCT do not have any special voting right or casting ballot over residents of any other State of the Federation, in a manner similar to the concept of preferential shareholding in company law.

5.16 Strangely enough, appellants are quarrelling vide paragraphs 5.11-5.13 of their brief, albeit very wrongly that **section 299 of the Constitution** relates only to legislative, executive and judicial structures of government for the FCT, without appreciating the fact that the section talks of “**the provisions of the Constitution**”; the draftsman also employs a semicolon (;) immediately before the word “and accordingly”; it is only 299 (a) that makes reference to legislative, executive and judicial powers, while 299(c) makes reference to the general provisions of the Constitution, mandating that they shall be read “with such modifications and adaptations...” They obviously made this argument, without taking into account the fact that the draftsman deliberately inserted a semicolon (;) between the first part of the provision and the part touching on the exercise of legislative, executive and judicial powers. To state the obvious, the use of the semicolon punctuation implies a separation between two parts of a sentence. We respectfully commend to this Honourable Court, the definition of semicolon by the New International Webster’s Comprehensive Dictionary of the English Language (Deluxe Encyclopedic Edition) at page 1143, where a semicolon is defined as “a mark (;) of punctuation indicating a greater degree of separation than coma; the Oxford Advanced Learner’s Dictionary (International Student’s Edition) at page 1328, indicates that it is “used to separate the parts of a complicated sentence or items in a detailed list, showing a pause that is longer than a comma but shorter than a full stop.” We further respectfully commend to your Lordship, **Abdullahi & Anor. v. Sadauki & Ors. (2008) LPELR-3557 (CA)** at 49, wherein, the court was confronted with the onus of ascertaining the intendment of the legislature in crafting section 318 of the Constitution, having regard to the punctuation marks. The court observed thus: “**The semicolon that appears immediately after the word "Commission" in (iii) is only indicative of the fact that the enumeration which commenced under (i) had come to an end. And Clause (d) which reads - "any other qualification acceptable by the Independent National Electoral Commission" only allows the said Commission to require additional qualification to the ones already enumerated and not to derogate or subtract therefrom as the submission of the 3rd Respondent.**”

5.17 Therefore, on the strength of the above authority and the well-known usage of semicolon in the English language, the indication of the legislative, executive and judicial functions succeeding the semicolon does not in any way, derogate from the preceding provision that the “**Constitution shall apply to the Federal Capital Territory, Abuja as if it were one of the States of the Federation.**” May we, *arguendo*, take the petitioners on, on their own wicket, suggesting a bifurcated interpretation of section 134(2)(b) of the Constitution, which reads: “*he has not less than one-quarter of the votes cast at the election in each of at least two-thirds of all the States in the Federation and the Federal Capital Territory, Abuja.*” Applying the decision of the Supreme Court in **Awolowo v. Shagari** (supra), particularly, where the apex court clinically considered the issue of Kano State, *vis-à-vis* the scores of Shehu Shagari, and juxtaposing

same with the wordings of similar provision to section 134(2)(b) supra, it is our submission that the respondent satisfied/satisfies the provision of that subsection, as he scored not less than one-quarter of the votes cast, in two-thirds of the votes in the FCT. Thus, it is our submission that considering that the total votes cast in Abuja is 460,071, two-thirds of those votes are 306,714; and one quarter of the said two-thirds is 76,678.5; meanwhile, the respondent scored 90,902 votes, which is more than 76,678.5 votes (one-quarter of the two-thirds of the votes cast at the FCT). We have made this alternative submission, in view of the appellants' misconceived construct and novel postulation, isolating the variable "one-quarter", while disregarding the imperative "two-thirds" in the same provision. May we crave the court's indulgence, to, by parity of reasoning (also, relying on the reasoning of the Supreme Court in *Awolowo v. Shagari*, supra), draw an arithmetical imagery of the interpretation of section 134(2)(b) of the Constitution, using the appellants' disjunctive interpretation theorem, by taking figure 24 as the base or the total votes cast in the FCT. Unarguably, figure 16, is two-thirds of 24, while figure 4 is one-quarter of 16, which is the two-thirds of 24. Thus, it is figure 4 that will be reckoned with, as the base of qualification, and not any other figure, and, it is only if any figure less than 4 is scored by a candidate, that the return of that candidate can be questioned, as he will be taken not to have polled one-quarter of the two-thirds of 24; again, going by the appellants' formula.

- 5.18 In concluding our arguments on this issue, we urge the court to hold that any election where the electorate exercise their plebiscite, there is neither a 'royal' ballot nor 'royal' voter; and that residents of the FCT do not have any special voting right over residents of any other State of the federation, in a manner similar to the concept of preferential shareholding in Company Law. We, therefore, urge the court to resolve this issue in favour of the respondent and against the appellant.

## 6.0 ISSUE 3

- 6.1 It is our submission that the lower court rightly struck out the offensive paragraphs in the appellants' petition and the identified paragraphs of their replies to the respondents' respective replies. Before delving further into arguments on this issue, it is compelling to establish the fact that pleadings and body of rules governing same are all structured on the cardinal principle of fair hearing expressed in the Latin maxim, *audi alterem partem* (translated to mean, let the other side be heard as well). Pleadings are intended to facilitate clear definition of the ambits of disputation and to guard against surprises in the course of proceedings. In *Ugbodume v. Abiegbe* (1991) 8 NWLR (Pt. 209) 261 at 272, the apex court, per Olatawura, JSC., identified the philosophical underpinning for pleadings and the detrimental effect of any infraction of the rules in the following words:

"With very great respect to the learned counsel to the respondent, he has missed the essence of pleadings; to compel the parties to define accurately and precisely the issues upon which the case is to be contested, to avoid element of surprise by either party: not to adduce evidence which goes outside the facts pleaded:...Once the

rules of pleadings are infringed or brushed aside the trial cannot be free and fair; consequently there will be no fair hearing.”

## VAGUE AND GENERIC PARAGRAPHS OF THE PETITION

6.2 May we contextualize the foregoing, by referring this Honourable Court to the appellants' petition before the lower court, as contained on **pages 1 – 58 (vol.1) of the record**. The said petition is made up of 150 paragraphs, out of which paragraphs 23, 82-86, 88-92, 95, 98, 121, 124, 126, 129, 133, 135, 136, 143, 144 and 146 leave more to be desired, with the material vagueness and imprecision. For instance, in paragraph 84 of the petition (**page 30 (vol.1) of the record**), the appellants, without listing the affected polling units anywhere in their petition, averred that “the Permanent Voters Card (PVCs) collected in the polling units where elections were cancelled and did not hold across the country is over and above 1,810,206...” one would have expected the appellants to state the polling units as well as the exact figure, rather than stating that “it is over and above.” It is only by this, that the respondents would have been able to meet the averment with the requisite responses. In paragraph 85 (**page 31 (vol.1) of the record**), the appellants pleaded Form EC8B series “...in the respective polling units where elections were not held or were cancelled.” No where in the petition were these polling units stated. In paragraph 88 (**page 31 (vol.1) of the record**), they alleged that “discounting of the lawful votes cast of the Petitioners, while inflating the scores of the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents”, without stating the actual votes that were discounted and inflated, respectively. Paragraph 91 (**page 32 (vol.1) of the record**) alleged “massive suppression of votes...in several States, as shown in the Report of Statisticians relied upon...” Apart from the fact that the particulars of the votes suppressed and the “several states” were not specifically stated, it is bewildering that the appellants as petitioners before the lower court indicated that the particulars of their pleadings are “as shown in the Report of the Statistician...” This report was not annexed to the petition and was not made available to the respondents for them to be able to respond appropriately in their respective replies. In paragraph 121 (**page 42 (vol.1) of the record**), they also alleged alterations in “over 40,000 polling units”, without stating the polling units. In paragraphs 129, and 133 (**pages 44 & 45 (vol.1) of the record**) criminal allegations were made against one Hon. Friday Adejoh and Governor Yahaya Bello, without making the individuals parties to the petition for them to be afforded the privilege of defending the criminal allegations made against them in accordance with the rules of fair hearing. Also, in paragraph 146 of the petition, (**page 50 (vol.1) of the record**) the appellants alleged the 2<sup>nd</sup> respondent of being disqualified as a result of his failure to meet the “constitutional threshold.” Noting that the constitutional threshold, as contained in sections 131 and 137 of the Constitution are 13 in number, it behoved the appellants to indicate which of the “thresholds” they actually meant. They, however, cleverly left out the specifics of the constitutional threshold they were referring to, with clear plans of introducing same through their reply.



such that the respondents will not be able to proffer any response to the allegations. In short, the same style of vagueness was replicated across the petition, including the paragraphs outlined above.

6.3 We have taken out time and space to highlight the above, to vividly demonstrate that the said paragraphs of the petition and indeed the entire petition, were clearly intended to overreach the respondents, as they were well aware that the respondents will not be privy to the necessary facts and figures like the number of votes and polling units concerned, as well as relevant particulars, in order to afford them proper knowledge of the case made by the appellants as petitioners and for them to also respond appropriately. This is obviously in contravention of paragraph 4(1)(d) and (2) of the First Schedule to the Electoral Act, which mandates that the petition shall “state clearly the facts of the election petition” and that each of the paragraphs “shall be confined to a distinct issue or major facts of the election petition.” Equally of relevance to our arguments under this subhead is Order 13 Rule 4(1) and (4) of the Federal High Court (Civil Procedure) Rules, 2019, which is made applicable to the proceedings at the lower court, by Paragraph 54 of the First Schedule to the Electoral Act. In no ambiguous terms, Order 13 Rule 4 provides that “every pleading shall contain a statement in a summary form of the material facts on which the party pleading relies for his claim or defence, as the case may be...” and that “*the facts shall be alleged positively, precisely and distinctly, and as briefly as is consistent with a clear statement.*”

6.4 These provisions were brought to the attention of the lower court, in the respondents’ complaints about the vagueness of the identified paragraphs and the appellants’ deliberate refusal to join the relevant parties against whom criminal allegations had been made. Surprisingly, however, the best answers the appellants could muster were that the referenced documents have been incorporated by reference and that respondents ought to have sought better particulars, submission which are also canvassed by the appellants at paragraphs 6.41-6.42 of their brief. With immense respect to the appellants, we submit that these lines of argument are far-fetched and acutely disconnected from every known law. May we refer this Honourable Court to the fact that the phrase “further particulars” is mentioned in the First Schedule to the Electoral Act, in paragraphs 5, 17 and 36 of the First Schedule to the Electoral Act. It is, however, obvious that these provisions were inserted for the benefit of the party who so desires and none of the provisions entitles a petitioner to make vague and generic averments, withholding relevant facts from the respondent, in the hope that the adversary’s only recourse is in “further particulars.” Specifically, paragraph 5 of the First Schedule is a provision regarding the power of the court to order “further particulars” in the event that a tribunal or court considers it necessary. Paragraph 17 of the First Schedule also points to the fact that seeking further particulars is entirely at the discretion of the party who desires it. Even more critical in paragraph 17(3), is that the kind of further particulars that can be provided are subject to the parameters laid down in paragraph 14. For clarity and ease of reference, may we reproduce paragraph 17(3) thus:

“Supply of further particulars under this paragraph shall not entitle the party to go beyond the ambit of supplying such further particulars as have been demanded by the other party, and embark on undue amendment of, or additions to, his petition or reply, contrary to paragraph 14.”

6.5 The said paragraph 14, which regulates the extent to which further particulars can be introduced by a party, at the expiration of 21 days after the declaration of results, outrightly precludes a petitioner from “introducing any of the requirements of paragraph 4 (1) not contained in the original election petition filed, or” “effecting a substantial alteration of or addition to the statement of facts relied on to support the ground for, or sustain the prayer in the election petition.” The above provision becomes even more instructive, given the fact that the lower court, at page 8007 (vol.1) of the record, explicitly considered the impact of paragraph 4 of the First Schedule, when it held that “*this provision is clear and directs that it does not require any aid in its interpretation. It simply restates in mandatory terms the first rule of pleading, that claimants, in this case, a petitioner, shall state ‘clearly’ the facts of the election petition and the ground or grounds on which the petition, or claim, is brought. This requirement/duty to plead one’s complaints and facts clearly in the statement of claim/petition (not Reply) is a basic rule of pleading even in ordinary civil proceedings.*” It is noteworthy that the lower court did not reach the foregoing decision in abstractum, but upon reliance on a long line of judicial authorities, including the decisions of this Honourable Court in *Atanda v. Ajani* (1989) 3 NWLR (Pt. 111) 511 at 546 and *M.M.A. v. N.M.A.* (2012) 18 NWLR (Pt. 1333) 506 at 533, to the effect that when owing to the said provisions, “... *the rule which required every fact upon which a party intends to rely at the hearing to be pleaded goes to the fundamentals of justice. For no one can defend the unknown.*”

6.6 These decisions of course, align with logic, as the petitioners could not have, by their own dereliction, imposed the innocent respondent with the additional obligation of applying for further particulars, especially, when they have very limited number of days to file a reply. Therefore, the absurdity (with all respect) in the appellants’ contention, is that such will inflict the respondents with insufficient time (as to the number of days) and resources (as to the material facts and figures) to prepare their defence, contrary to section 36(12)(b) of the Constitution and the decision of this Honourable Court in *Garba v. Mohammed* (2016) 16 NWLR (Pt. 1537) 114 at 172. This is more so, as the respondents had promptly drawn the attention of the court to the situation through their objections, as contained on pages 242 – 246 (vol.1), 462 (vol.1), 1077 – 1079 (vol.2) of the record, thus, giving the appellants sufficient notice and hint of the inadequacies in their petition. Given these circumstances, the decision of this Honourable Court in *PDP v. INEC* (2012) 7 NWLR (Pt. 1300) 538 at 564, sounds a reverberating death knell on these appellants’ line of argument in the following words:

“From the above, it is clear to me that it is not mandatory that the 2nd - 4th respondents should ask for particulars. By their preliminary objection, they called the attention of the appellant to the defect in its petition. The appellant should have taken the hint and put its house in order. The application for an order

for further particulars, or the like, is merely a shield in the hand of a party, whoso desires and not a sword to be used by a party whose pleading is grossly inadequate, insufficient or devoid of necessary particulars as herein...It is not the duty of a respondent to groom a petitioner on how to draft its petition.”

6.7 We respectfully commend to this Honourable Court, *Olawepo v. Saraki* (2009) All FWLR (Pt.498) 256 at 294-295, where the entire scenario herein was captured as follows:

“To start with, I think the learned counsel for the appellant does not have a good appreciation of the application of the Rules relating to discoveries, interrogatories and ordering of particulars in pleadings...Hence, it is generally desirable for each party to see all material documents in possession of his opponent, the failure of a party who does not require such material particulars does not derogate from pleadings and would not as suggested by the learned counsel for the appellant, strengthen the case of a party whose pleadings are inadequate or insufficient to maintain his claim...In other words, the application for the order of further particulars or any such orders is a shield in the hand of a party who so desires and not a sword to be used by a party whose pleading is inadequate, insufficient or devoid of necessary particulars. The insistence by learned counsel for the appellant that the respondent should have demanded further particulars would also not be justified because the need to state material facts and/or to provide particulars where necessary are provided for under the applicable Rules of court in election petition cases...In the instant case, the inability of the petitioner/appellant to specify particular polling units, wards or local governments where malpractices took place in the state and his failure to provide necessary particulars on allegation of commission of crime are bound to take the respondents by surprise...”

#### STRIKING OUT OF PARAGRAPHS OF THE PETITIONERS' REPLIES

6.8 The second arm of this issue is as it relates to the striking out of specific paragraphs of the petitioners' reply to the respondents. In submitting that the lower court was on a firm ground when it struck out the said offensive paragraphs, we respectfully invite this Honourable Court to pages 1 – 55 (vol.1) of the record, containing the petition; pages 240 – 304 (vol.1), 461 – 514 (vol.1), 1063 – 1146 (vol.2) of the record, containing the replies of each of the respondents, and pages 1696–1704 (vol.3), 1718-1731 (vol.3), 1733-1750 (vol.3) of the record, containing the petitioners' replies. This Honourable Court will realize from these documents that what the appellants termed as replies to the respective respondents, were in fact not replies but the setting up of new cases, with the obvious intention of overreaching the respondents. It is important to also underscore this argument by stating that same is premised on fair hearing and the need for parties to litigation not to spring surprises at their adversaries. This point will be appreciated when it is realized that there has to be an end to the exchange of pleadings and that once the petitioner files his reply to the respondents, the respondents are not entitled to file yet another reply to the said reply. Where a petitioner is then allowed to spring up fresh facts (other than reply to fresh issues raised by the respondent), the respondent who will not be able to respond again, will be put at the very detrimental end of the table. Hence, paragraph 16(1)(a) of the First Schedule to the Electoral Act, provides thus:

16.(1) If a person in his reply to the election petition raises new issues of facts in defence of his case which the petition has not dealt with, the petitioner shall be entitled to file in the registry, within five days from the receipt of the respondent's reply, a petitioner's reply in answer to the new issues of fact, so that— (a) the petitioner shall not at this stage be entitled to bring in new facts, grounds or prayers tending to amend or add to the contents of the petition filed by him.

- 6.9 What the foregoing provision clearly indicates is that the right to file a reply by the petitioner is not as a matter of course. It is contingent on the raising of “new issues of facts in defence of his case which the petition has not dealt with” and the said petitioner's reply is required to stay within the ambit of its response to the said new issues. In effect, therefore, even in reacting to the new issues raised, the petitioner must ensure that he, himself, does not at this point, raise new issues. Authorities are replete on this, and we respectfully refer this Honourable Court to *Ombugadu v. Sule* (supra) at 184 and *Ughutevbe v. Shonowo* (2004) 16 NWLR (Pt. 889) 300 at 318.
- 6.10 In relation to the petitioners' reply to the 1<sup>st</sup> respondent, we urge the court to consider paragraph 1(a) of the 1<sup>st</sup> respondent's objection incorporated into its reply to the petition and paragraph 16 of the substantive reply to the petition on the one hand (see pages 241 & 252 (vol.1) of the record); and paragraph 1.2(i) (ii) (iii) (iv) (v) and 2.1(b),(c) and (d) of the petitioners' reply which purported to reply to the afore-listed paragraphs of INEC's reply, on the other hand (see pages 1697-1702 (vol.3) of the record). For the 2<sup>nd</sup> respondent, we invite the court to the entirety of the 2<sup>nd</sup> respondent's preliminary objection before the lower court, as incorporated into his reply to the petition, paragraphs 8, 10, 27, 131 and 132 of the 2<sup>nd</sup> respondent's reply (see page 1081, 1082, 1089, 1139, 1140 (vol.2) respectively of the record) on the one hand, and paragraphs 1(vii)(a), (c) and (viii) of Part One, paragraphs 2, 3(i), (ii), (iii), 8, 11(i), 24 and 25 of Part Two (see pages 1735, 1737, 1739, 1740, 1746, 1747 (vol.3) respectively of the record) of the petitioners' reply on the other hand. For the 3<sup>rd</sup> respondent, we beckon on the court towards the entirety of the 3<sup>rd</sup> respondent's reply on the one hand (see pages 461-514 (vol.1) of the record), and the whole of Part B (save paragraph 35 thereof) of the petitioners' reply to the 3<sup>rd</sup> respondent's reply (see pages 1722 - 1731 (vol.3) of the record) on the other hand. A dispassionate examination of these paragraphs will reveal that the appellants as petitioners were only out to spring surprises at the respondents, as none of the highlighted paragraphs of their said replies was meant to reply to any new issue raised in the respondents' reply. It was through these paragraphs that they introduced various fresh issues, including allegations of previous conviction/fine, forgery and dual citizenship against the 2<sup>nd</sup> respondent, amidst sundry unfounded claims. The lower court was, therefore, right, when at page 8061 (vol.10) of the record, it held that it “must also not fail to point out that the petitioners were only being clever by half when they claimed...that they were simply giving, as they put it, ‘further details...’” We respectfully submit that the actions of the appellants before the lower court cannot be better put than as done by the lower court and we urge the court to also hold so. Appellants' submission under paragraph 6.45 of their brief further



expose the entire attitude of the appellants before the lower court, that is, the attitude of first filing a petition and then fishing for evidence during the pendency of the petition and even up to the point of appeal to this Honourable Court. Without prejudice to our objection to this issue, we submit that the arguments regarding a purported “Case No. 1:23-CV05009-In Re Application of Atiku for an Order Directing Discovery from Chicago State University...” is alien to this proceedings, does not arise from the record or the judgment of the lower court and cannot be countenanced by this Honourable Court and we urge the court to so hold.

- 6.11 In the final analysis, it is our humble prayer that this Honourable Court resolves this issue in favour of the respondents and against the appellants.

## 7.0 ISSUE 4

- 7.1 We submit that the decision of the lower court, striking out the witness statements of PW12, PW13, PW14, PW15, PW16, PW17, PW18, PW21, PW23, PW24, PW25, PW26 and PW27, and also expunging their evidence is absolutely unassailable and in conformity with laid down rules and principles on the subject. Prefatorily, we must again, indicate that this issue is also structured on parties’ right to fair hearing as guaranteed under and by virtue of section 36 of the Constitution, which requires that all parties must be afforded a level playing field in the litigation process. Towards this end, procedural precepts enacted under the Constitution and the Electoral Act, 2022 outline the rules of engagement for election litigation. We take our bearing from section 285(12) of the Constitution, which prescribes the time for the filing of election petition to be within 21 days after the declaration of results. For the said petition to be competently filed, paragraph 4 (5)(a) and (b) of the First Schedule to the Electoral Act provides that same must be accompanied by “list of witnesses that the petitioner intends to call in proof of the petition” and “written statements on oath of the witnesses.” Anything short of this will render the petition incompetent and even by subparagraph 6, same is liable to be rejected for filing, as the court will lack the jurisdiction to entertain the petition. See *Gundiri v. Nyako* (2014) 2 NWLR (Pt. 1391) 211 at 242. The rational for this, is to afford the respondent a foreknowledge of the entire case being made against him, so that he is able to put up appropriate defence to the petition in his reply.

- 7.2 In the case before the lower court, the appellants filed their petition on 21<sup>st</sup> March, 2023, together with witness statements on oath of only 22 witnesses. On the basis of the petition and the witness statements served on the respondents, the respondents immediately prepared their defence, by way of reply and accompanying statements on oath, addressing all points made in the petition and the statements on oath. Surprisingly, at the hearing of the petition, the appellants introduced 14 new witnesses who were said to have been brought through subpoenas. The rather concerning observations are that the appellants, as petitioners knew they would be fielding more witnesses so, at the pre-hearing session, they indicated intention of calling more than 100 witnesses; and the fact that these witnesses were available to the

petitioners all through the preparation of the petition and could in fact have had their witnesses statements frontloaded together with the petition. In fact, PW21 and PW26 both admitted the fact that they were recruited by the petitioners for the purpose of the assignment, while PWs 12, 13, 14, 15, 16, 17, 18, 23, 24 and 25 were all invited in their personal capacities and served in person with the subpoenas (see pages 7345, 7347, 7354, 7358, 7362, 7367, 7372, 7419, 7424, 7427 (vol.10) of the record). The undoubtable fact is that these witnesses were available to the petitioners as at the time of filing the petition. In fact, PW19 confessed before the lower court that PW21 was a member of the 2<sup>nd</sup> petitioner's situation room during the election and that the Reports to be tendered by PW21 (Exhibits PAH1-PAH4) were compiled between 1<sup>st</sup> March and 20<sup>th</sup> March, 2023, while the petition was filed on 21<sup>st</sup> March, 2023 (See pages 7387 (vol.10) of the record). It was very obvious that the appellants, as petitioners before the lower court, deliberately chose to hoard the statements of these witnesses, in order to cause a surprise on the respondents, thus, turning an exercise as serious as litigation, to a hide and seek bout. They then attempted to circumvent the mandatory provisions of section 285(5) of the Constitution and paragraph 4(5) of the First Schedule to the Electoral Act, by cloaking the witnesses in the garb of subpoenaed witnesses.

7.3 It must at this point be reiterated that election petition is *sui generis* and as earlier pointed out, the rules as to time and procedure are strictly adhered to, such that in *A.P.C. v. Marafa* (2020) 6 NWLR (Pt. 1721) 383 at 423, the apex court held that applications for extension of time to call additional witnesses and to file additional witnesses' statements after the prescribed period for presenting election petitions are not permitted because election matters are time bound and by reason of being *sui generis*, the procedures in handling them are stricter than ordinary civil matters. More so, a long line of authorities, which are of binding effect on the lower court have maintained the position that the rule against the introduction of witness statements midway into the trial does not exclude those of witnesses who have been styled 'subpoenaed witnesses', like the appellants chose to call them. We respectfully commend to this Honourable Court, *Ararume v. INEC* (2019) LPELR 48397 at 33, where the court held thus:

"It is clear to me that the Tribunal was of the view that for any deposition of witness to be countenanced, it must have been deposed to and filed within the time prescribed by law for doing so. This then brings to the fore, the provision of Paragraph 4(5) of the First Schedule to the Electoral Act, 2010 (as amended)... It is clear therefore that written statement on oath of intended witness in proof of a petition shall be frontloaded. This invariably will come along with the list of those intended witnesses. In the instant case, the name of Ama Ibom Agwu was not listed at the inception of the Petition nor his deposition frontloaded. The law therefore is that the deposition of a witness must accompany the Petition at the time of filing of the Petition. In other words, the written statement on oath of an intended witness must be filed along with the petition. Thus any written deposition of a witness not filed along with the petition will not be countenanced by the Court or Tribunal. See *Oraekwe & Anor. V. Chukwuka & Ors* (2010) LPELR- (9128) (C.A); *Chukwuma V. Nwoye & Ors* (2009) LPELR 4997 (CA)."

7.4 We also commend to the court, **PDP v. Okogbuo (2019) LPELR 489989** at 22-28, where, contrary to the arguments of the appellants that the witnesses were witnesses of the court, the court distinguished between a witness of the court and a witness subpoenaed at the instance of a party, as in the case of the appellants. In this case, while reiterating that the subpoenaed witnesses must have their witness statements frontloaded with the petition, it held that they cannot by any stretch of the imagination be regarded as witnesses of the court. Though the decision is lengthy, we consider the following excerpt instructive as the other portions:

"It is clear by the records before this Court that P.W.1 and P.W.6 were subpoenaed to appear before the Tribunal based on the applications of the Petitioners. They were not summoned by the Tribunal suo motu as envisaged by the provisions of Paragraph 4(5) and (6) of the First Schedule. Then Sub-paragraph (8) unequivocally stipulated that except with the leave of the Tribunal or Court after an applicant has shown exceptional circumstances, no document, etc, shall be received in evidence at the hearing of a Petition unless it has been listed or filed along with the Petition in the case of a Petitioner or filed along with the Reply in the case of the Respondent. What this postulates is that for any document not filed along with the Petition or Reply as the case may be, to be used during hearing of a Petition, the leave of the Tribunal must be obtained. P.W.1 and P.W.6 were summoned to give evidence before the Tribunal on the applications of the Petitioners i.e. the Appellants. They were not summoned by the Tribunal suo motu, therefore, the Petitioners had the duty to file their depositions at the time of filing the Petition. It follows that once a witness was summoned via a subpoena based on the application of a party to the Petition, the provisions of Paragraph 4(5) of the 1st Schedule to the Electoral Act, 2010 as amended shall be complied with."

7.5 Even more recently, the court had had further opportunity to consider the subject in the unreported decision of the Court of Appeal in **Advance Nigeria Democratic Party (ANDP) v. Independent National Electoral Commission & 2 Ors.**, delivered on 17<sup>th</sup> July, 2020. In the said case with even milder facts than the one before the lower court, the court considered all the authorities on the subject, as well as the line of arguments being put up by the appellants herein, before holding thus, at pages 43-44 of the judgment:

"There is no dichotomy between the witnesses mentioned in paragraph 4(5) of the 1<sup>st</sup> Schedule to the Electoral Act in respect of the witness statement on Oath of witnesses and witness statement on oath of a subpoenaed witness. There is no distinction between ordinary witness and a subpoenaed witness under paragraph 4(5) of the 1<sup>st</sup> Schedule to the Electoral Act. In essence paragraph 4(5) covers Witness Statement on Oath of all categories of witnesses the Petitioner intends to call at the trial of his or her petition."

7.6 We submit that the justice of the case demands/demanded that the statements are frontloaded in order for the respondents to be able to also proffer his defence to the petition, particularly, when the witnesses in question are neither adverse witnesses, nor witnesses who were not available to the petitioners. We urge this Honourable Court to observe that as at the time the appellants introduced the witnesses through the unconventional route, the respondents were left helpless and hapless, as the procedure no longer allowed them to file any process, including statement on oath, at that particular stage of the proceedings. Therefore,

it would have amounted to grave unfairness if the lower court had allowed the appellants to overreach the respondents in the manner they attempted to do. With immense respect to the appellants, the appellants' scheme becomes very palpable when it is realized that out of a total of 27 witnesses, 12 were purportedly "subpoenaed", thus, implying that the entire case or a substantial portion thereof, is predicated on evidence of witnesses to which the respondents never had the opportunity of responding.

7.7 We also submit that the unreported decision of the Court of Appeal in Appeal No: CA/PH/EP/SEN/06/2023-Allied Peoples Movement (APM) v. Independent National Electoral Commission & 2 Ors., delivered on 10<sup>th</sup> August, 2023, is by no means applicable to the case before the lower court. Right from the issue for determination in that judgment and the eventual determination of the court, it is obvious that the bone of contention was whether or not a subpoenaed witness could testify orally. The ultimate finding of the court at page 19 of the judgment reflects this, when the court held that: "*the lower court was bound to receive the evidence of the two witnesses orally...*" The records bear eloquent witness to the fact that there was no such contention as to whether or not the subpoenaed witnesses could testify orally and they in fact, did not testify orally but through the imposed witness statements on oath. However, even if they had testified orally, this Honourable Court would still observe that the subpoenaed witnesses invited in the APM's case were official witnesses and not private persons directly employed by the petitioners like the appellants' acclaimed expert witnesses and party members. This fine distinction informed the reasoned decision of the lower court at page 7598 (vol.10) of the record thus: "It is pertinent to observe that the above ten witnesses subpoenaed by the Petitioners were all witnesses who were available to the Petitioners at the time of filing the Petition. They are neither subpoenaed as adversaries nor subpoenaed as official witnesses...."

7.8 Similarly, appellants' reference to the unreported decision of the Court of Appeal in Appeal No: CA/KN/PG/GOV/KAN/05/2023- Abba Kabir Yusuf v. All Progressives Congress & 2 Ors., delivered on 24<sup>th</sup> August, 2023, is of no effect to their case, since the petitioners in that case filed a formal application for leave to file witness statements on oath of subpoenaed witnesses. In fact, the Court of Appeal held thus at page 20 of the judgment that "*indubitably, a written deposition of a subpoenaed witness can only be presented to tribunal or court with the leave of a tribunal or court grantable on the behest of a party.*" It is important to point out that neither the record nor the assertion of the appellants suggests that there was such formal application filed by the appellants to file witness statements on oath of subpoenaed witnesses. Rather, all they did before the lower court, was to seek issuance of subpoenas administratively. In addition, the subpoenaed witnesses in that case were not members and employees of the petitioners as it was the case before the lower court. With immense respect, we submit that there is no basis at all, for complaining that the lower court ought to have held itself bound by it, when even they were convinced about the inapplicability of the case, hence, their refusal (as borne by the record) to bring the case to the lower court's attention. We also submit that Order 3 Rules 2 and 3 of the Federal High Court (Civil)



Procedure Rules, 2019 is not applicable to the proceedings before the lower court, as same will only be relevant, when it is demonstrated that there is no applicable provision in the Electoral Act. In fact, the provisions of the Federal High Court Rules is subject to the provisions of the Electoral Act on the subject, which have earlier on been cited herein. See *Yusufu v. Obasanjo II* (2003) 16 NWLR (Pt. 847) 554 at 603.

7.9 On account of the foregoing, we respectfully urge this Honourable Court to resolve the issue in favour of the respondent and against the appellants.

## 8.0 ISSUE 5

8.1 While submitting forthwith, that the lower court was absolutely correct in its decision to strike out the appellants' documents tendered before it, it is important to indicate that this issue is partly interconnected with issues 3 and 4. This is because once the court agrees with the respondents that the lower court rightly struck out the itemized paragraphs of the appellants' pleadings, as well as the incompetent subpoenaed witnesses, it naturally follows that all documents and witnesses deriving their root from the said paragraphs will automatically become liable to be expunged, even where they have erroneously, earlier been admitted. This is informed by the commonplace position of the law that evidence without pleadings goes to naught [see *Dabo v. Abdullahi* (2005) 7 NWLR (Pt. 923) 181 at 207 and *Adenle v. Olude* (2002) 18 NWLR (Pt. 799) 413 at 434]. The documents concerned with these are Exhibits PAH1, PAH2, PAH3 and PAH4 (tendered through PW21); Exhibits PAR1 (A-F) (tendered through PW26).

8.2 However, an additional reason why the lower court struck out the said documents, is the fact that they were in violation of the clear provision of **section 83(3) of the Evidence Act**, same having been made by a party interested during the pendency or in anticipation of litigation. Before putting the above assertion in context, we shall reproduce the said provision of the Evidence Act as follows: **"Nothing in this section shall render admissible as evidence any statement made by a person interested at a time when proceedings were pending or anticipated involving a dispute as to any fact which the statement might tend to establish."**

8.3 The above outlined documents were tendered by the duo of PW21 and PW26. Now, before examining the documents, the personalities of these purported witnesses are essential in determining whether or not they were **"persons interested"** for the purpose of **section 83(3) of the Evidence Act**, before then determining whether or not the documents were made **"when proceedings were pending or anticipated."** Starting from PW21, we respectfully refer to **page 7387 (vol.10) of the record**, where PW19 admitted that the documents have not only been made while the proceedings were anticipated (that is, from 1<sup>st</sup> March, to 20<sup>th</sup> March, 2023, before the petition was filed on 21<sup>st</sup> March, 2023), but that PW21, the purported maker of same, was with them at the 2<sup>nd</sup> appellants' situation room while the presidential election was in progress (see **page 7387 (vol.10) of the record**). Meanwhile, PW21 himself, admitted under cross examination that he was handsomely rewarded for the production of the report by the appellants (see **page 7400 (vol.10) of**

the record). There is no better description for this witness other than being “a person interested.” We submit that the provision of **section 83(3) of the Evidence Act** applies without any exception to all evidence and witnesses, including as it relates to the appellants’ purported experts before the lower court. See **Oyetola v. INEC (2023) 11 NWLR (Pt. 1894) 125 at 176.**

8.4 For PW26, he was also obviously engaged by the appellants for the purpose of the report he produced, which said reports were delivered during the pendency of the action at the lower court. In summary, not only are these witnesses interested in the outcome of the litigation, but the documents were also produced during the pendency of the action. Plethora of the decisions of this Honourable Court have defined a person interested to mean a person whose interest is affected by the result of the proceedings and therefore would have some temptations to prevent the truth to serve his personal or private ends. See **Oyetola v. INEC (2023) 11 NWLR (Pt. 1894) 125 at 176, Ladoja v. Ajumobi (supra) at 170, Evan v. Noble (1949) 1 KB 222 at 225, Holton v. Holton (1946) 2 AER 534 at 535 and C.P.C. v. Ombugadu (2013) 18 NWLR (Pt. 1385) 66 at 149-150.**

8.5 With the foregoing, therefore, the documents stood to be struck out and were justifiably struck out under several heads. In summary, the paragraphs under which the documents were brought had been struck out for several inadequacies, including for being vague, generic and nebulous; the witnesses through whom the documents were tendered and their witness statements on oath had been struck out for failure to accompany the petition with the witness statements on oath of the said witnesses; and the fact that the witnesses were interested persons who had made the documents sought to be tendered, during the pendency of the proceedings.

8.6 We accordingly urge this Honourable Court to resolve this issue in favour of the respondent and against the appellants.

## 9.0 ISSUE 6

9.1 We submit that the lower court rightly held that the appellants, as petitioners before it, failed to prove their allegations of non-compliance and corrupt practices as required by law. While we adopt all our arguments under the preceding issues, we shall first consider the allegation of non-compliance, before then proceeding to deal with the allegations of corrupt practices, pointing out how the appellants before the lower court, only made allegations, while shirking the responsibility of proof.

### NON-COMPLIANCE

9.2 A good starting point is to reproduce section 135(1) of the Electoral Act, 2022, which provides thus:  
*“An election shall not be liable to be invalidated by reason of non-compliance with the provision of [the] Act, if it appears to the Election Tribunal or Court that the election was conducted substantially in accordance with the principles of [the] Act and that the non-compliance did not affect substantially the result of the election.”*

- 9.3 Instructively, the word “shall” has been deliberately employed by the legislature, connoting the fact that the invalidation of an election for remote and unsubstantiated reasons, is mandatorily forbidden. The law is well settled that whenever the legislature employs the use of the word “shall” in any enactment, what is to be done or forbidden to be done, is mandatory, peremptory, not allowing for any discretion. See *Ugwu v. Ararume* (2007) 12 NWLR (Pt.1048) 367 at 441 – 442 and *Diokpa F. Onochies & Ors v. Ferguson Odogwu & Ors* (2006) 6 NWLR (Pt. 975) 65 at 89. The subsection is also broken into different limbs or compartments, the first one being the admission by the legislature that there is no institution created by man that is perfect, thus, prohibiting in the first limb, the invalidation of any election by reason of non-compliance with the provisions of the Act itself. The second limb takes off from the first, as it provides an exception in the sense that “if it appears...” This phrase is very simple, unambiguous and elementary, literally meaning that in the unlikely event of any petitioner proving non-compliance, the court will disregard the proof “*if it appears to the court that the election was conducted substantially in accordance with the principles of [the] Act.*” In *Abubakar v. Yar'Adua* (2008) 19 NWLR (Pt.1120) 1 at 163, this Honourable Court succinctly described the said provision of the Electoral Act, in the following words: “The operative words in section 146(1) are “if it appears ...”
- 9.4 Also essential for the consideration of the court, is the last limb of the provision, where the clause “in accordance with the principles of this Act...” is employed. The effect of this clause is that the relevant parameter is not strict adherence to the Act itself, but that the court will be guided by the principles of the Act. In ascertaining whether the presidential election under reference was conducted substantially in compliance with the principles of the Act, it is then important to first identify its principles. In this connection, we are guided by the settled judicial authorities, including *Skye Bank Plc v. Iwu* (2017) 16 NWLR (Pt. 1590) 24 at 94, to have resort to the long title to the Electoral Act, 2022, which describes it as “an Act...to regulate the conduct of Federal, State and Area Councils in the Federal Capital Territory elections; and for related matters.” When this is read side by side with section 135 of the Act, it becomes obvious that the central concern, nay principle of the Act, is the substantial conduct of elections and declaration of winners through plurality of votes, as demonstrated by the plebiscites of the voters.
- 9.5 Not done yet, we submit that even if any election has not been conducted substantially, in accordance with the principles of the Act, the section then requires the petitioner to establish how the non-compliance affected, not just ordinarily, but substantially, the result of the election. The word “substantial” is defined by the Black’s Law Dictionary, 11<sup>th</sup> Edition, page 1729 to mean: “*Considerable in extent, amount, or value; large in volume and number*”; while the New Lexicon Webster’s Dictionary of the English Language (1988 Edition), at page 987, defines it as “*having real existence; not imaginary; firmly based; relatively great in size, value or importance.*” The essence of these definitions is to demonstrate that for

any non-compliance to be substantial enough, or raised to the degree of invalidating an election, it must be of a high gravity or degree, as opposed to mere conjecture or gainsaying.

9.6 In *Ogboru v. Okowa* (2016) 11 NWLR (Pt. 1522) 84 at 148, this Honourable Court, while appreciating the fact that it is impossible to have a perfect election anywhere in the world, held that in the proof of an allegation of non-compliance, the petitioner must do the following: “Where however the petitioner contends that an election or return in an election should be invalidated by reason of corrupt practices or non-compliance, the proof must be shown forth:-

- (i) that the corrupt practice or non-compliance took place; and
- (ii) that the corrupt practice or non-compliance substantially affected the result of the election.

The quantum of measurement and consideration is not to show that there was a proof of non-compliance, as it is almost impossible to have a perfect election anywhere in the world. The measure however, is whether the degree of non-compliance is sufficient enough so as to vitiate the credibility of the election held. The reason for the proof on the balance of probability is not farfetched therefore.” *Andrew v. I.N.E.C* (2018) 9 NWLR (Pt. 1625) 507 at 553.

9.7 The lower court, no doubt, contextualized the above provision of the Act, vis-à-vis sections 131-135 of the Evidence Act, before coming to the conclusion that “*for the Petitioners to succeed in their allegation of non-compliance, they must plead clearly in their petition the non-compliance and call witnesses or place before the court cogent and credible evidence of such non-compliance.*” (see page 8157 (vol.10) of the record). Against the foregoing background, it is our submission that the petition before the lower court, both as presented, as well as the terse evidence adduced, could not have been described as a petition, *stricto sensu*, within the meaning and context of the Electoral Act, as the complaint expressed is not strictly in relation to non-compliance with the provisions of the Act, but with very remote events after the conclusion of election, even as admitted by their witnesses (that is, PW12, PW13, PW14, PW15, PW16, PW17, PW18 and PW23); that is, that election was primarily concluded at the polling unit level, when, after the PO has sorted the ballots in the full glare of the party agents and the public, counted the votes, announced the results to the hearing of everyone, recorded the scores of each party in Form EC8A, signed same himself, and called on the agents as well as the security officers present to sign. The law is well settled, and the Act has not changed the principle that Form EC8A forms the foundation of the pyramid for election results. See *Agagu v. Mimiko* (2009) 7 NWLR (Pt. 1140) 342 at 488, *Ukpo v. Imoke* (2009) 1 NWLR (Pt. 1121) 90 at 168. In fact, paragraph 91(i) of the Regulations and Guidelines for the Conduct of Elections, 2022, provides thus: “*Voting takes place at polling units. Therefore, Forms EC8A and EC 60E are the building blocks for any collation of results.*” Arising from this provision, it is our submission that collation of results happens on ground, in the full glare of everybody, and not in the air or in the ‘cloud’ and the lower court had no hesitation in agreeing with this.



- 9.8 The evidence of the afore-listed witnesses is very instructive, as they eventually all agreed under the crucible of cross-examination, that the voting and counting went well, while admitting that the forms EC8As were duly signed by the presiding officer and the party agents. This is a clear case of admission against the interest of the petitioners, as they would not have made these statements against their own interests, if it was not true. We submit that admission against interest is binding on the party against whom the admission is made. See *Nwabuba v. Enemu* (1988) 5 SCNJ 154 at 286-287; *ADEGBOYE v. AJIBOYE* (1987) 3 NWLR (PT. 61) 432 at 444; *Ojukwu v. Onwudinwe* (1984) 1 SCNLR 247 at 284.
- 9.9 Also before the lower court, appellants' PW19 who did set out to give a general evidence in respect of all the alleged irregularities all over the country, admitted under cross-examination that he was not at the national collation center and that on the day of the election, he was at the situation room of his party, all through the election day. Similarly, he stated that he remained in Abuja on the election day and the succeeding days, up until the declaration of the election. With this, it goes without saying that as far as his entire evidence covering all the States of the Federation was concerned, they were merely hearsay evidence. The witness also acknowledged that he was accredited at his polling unit with the BVAS and that he was able to cast his vote without any issue, therefore attesting to the fact that even at his polling unit, the election went smoothly. According to him, his party had agents in all the polling units across the federation, as well as all levels of collation. In his evidence, he admitted that in places where election took place and there were no problems, their agents duly signed the result sheets. However, none of these results duly signed by their agents were tendered in demonstration of any of the allegations made by the appellants. PW22 gave very similar evidence (attesting to the success of the election process at his polling unit), only with the variation that he was at some point at the National Collation Center, before leaving mid-way in protest.
- 9.10 PW21 who claimed to be a certified statistician, was fielded with the intention of giving evidence on allegations bordering on over-voting, non-stamping or signing of electoral results and alteration of results (see pages 2408 – 2416 (vol.4) of the record for his witness statement). By all standards and parameters, the lower court could not have been reasonably expected to rely on the evidence of this witness to give judgment in favour of the appellants. The said reports admitted as Exhibit PAH1-PAH4 (and later expunged), relate to a total of 30, 348 polling units. Not only are these polling units not contained in the petition, the witness only gave hearsay evidence of what transpired across the said polling units. In the same vein, appellants' PW26, who described himself as a forensic expert claimed to have examined a controversial number of BVAS devices used for the election in some polling units across Area Councils in the FCT. He also provided some contrived reports admitted as Exhibit PAR1(a-f) (see pages 3333 – 3335 (vol.6) of the record for his statement). As earlier indicated in this brief, none of these polling units in both reports were referenced in the petition to have enabled the respondent put up a reply in the course of the preparation of his reply filed on 12<sup>th</sup> April, 2023. The net implication of this is that the purported evidence of these witnesses, apart from other manifest maladies plaguing same, were all adduced in respect of facts that are

not pleaded. The law on this is settled that in litigation, evidence elicited without predicate pleading goes to no issue. See *I.N.E.C v. Abubakar* (2009) 8 NWLR (Pt. 1143) 259 at 289 and *Akpoti v. I.N.E.C.* (2022) 9 NWLR (Pt. 1836) 403 at 428.

9.11 Asides the above witnesses, the appellants also feigned a proof of their allegations of suppression of votes, multiple thumb printing of ballot papers, entering of wrong scores/results and disruption of voting, through PW 1, PW2, PW3, PW5 and PW7. From the records, the common denominator with all these witnesses is that none of them was a polling unit agent. In fact, they were all State collation agents for the appellants. Now, the appellants had in paragraph 4 of their petition claimed that they had “agents in all the polling units in all the States of the Federation.” (see page 3 (vol.1) of the record). Seeing that the allegations in question all occurred at the level of the polling unit, and considering the gravity of same, including their criminal connotation, the imperative of calling witnesses with direct perception of the allegation (polling unit agents), becomes axiomatic. The law in this regard is trite that the only witnesses acceptable in election matters in proof of incidents at polling units are polling unit agents and no other. See *P.D.P. v. I.N.E.C.* (2022) 18 NWLR (Pt. 1863) 653 at 693 and *Mustapha v. Bulkachuwa* (2020) 12 NWLR (Pt. 1739) 391 at 441-442. It is important to point out that the lower court analyzed the rationale for this position of the law at page 8159- 8160 (vol.10) of the record, when it alluded to section 43 of the Electoral Act which allows for the appointment of polling unit agents by political parties for each polling unit and proceeded to identify that “*the wisdom in this is for each of the political parties involved in an action to be represented by its own agents....Having regard to the fact that no mortal man can be in all the places at the same time, the law allows political parties to have their agents at all polling units and collation centers. It is therefore not anticipated by the law for any political party to appoint an octopus agent with his tentacles in all the polling units and collation centers. This is humanly not practicable.*” This particular finding of the lower court has not been appealed against, and it remains binding for all intents and purposes. See *Ogunyade v. Oshunkeye &Anor.* (2007) 15 NWLR (Pt. 1057) 218 at 257. We submit that the suggestion of the appellants regarding the impact of the incursion of the technological innovations holds no water, as there is no such technological device which could have proliferated the said witnesses across the thousands of polling units in their respective States. In any event, if there is such technological device, then the appellants would have been bound to tender it before the lower court, but none of this was the case. It follows, therefore, that the evidence of these witnesses was of no relevance and rightly discountenanced by the lower court.

9.12 The very notable point is that even the appellants appreciate the fact that this is the extant position of the law on the subject, hence, their argument at paragraphs 4.19-4.22 of their brief, urging this Honourable Court to “depart from its previous decisions in the mode of electoral non-compliance in the past”, citing “difficulty or impossibility of calling polling unit agents in a presidential election from over 178,000.” We

submit with immense respect to the appellants that this argument does not hold water at all, as the hearing of presidential election petitions, is only just like any other litigation proceedings, where the cardinal concept of fair hearing is also dominant. Therefore, if the appellants suggest to this Honourable Court that it should depart from its previous decisions which are admittedly binding, one would have expected the appellants to also suggest how the fair hearing implications will be addressed. The point being made is that the respondent in an election petition proceeding, just like any other defendant, deserves to exercise the right to cross examine witnesses on any allegation in respect of which they are testifying. The right to cross examine enures for the benefit of both the respondents and the court, as it is the only avenue where the veracity, accuracy and credibility of the evidence is tested. See section 223 of the Evidence Act. Should this Honourable Court now accede to the supplication of the appellants by allowing evidence in proxy, the respondents will be left with no platform for the exercise of its right of fair hearing, by way of cross examining witnesses with the capacity to speak on the allegations and the documents sought to be tendered. We submit that this will do material injustice to the respondent, particularly, as justice is not just for the petitioners, but a three-way traffic, for the petitioners, the respondents and the court. See *Josiah v. State* (1985) 1 NWLR (Pt. 1) 125 at 141. Another implication of the appellants' admission of the subsistence of the extant position of this Honourable Court on hearsay, is that their unfair attack on the decision of the lower court is flattened. This is because, if the appellants agree that there is a particular path which this Honourable Court has consistently toed, then by the doctrine of stare decisis, could the lower court have departed from the said position? The answer is definitely in the negative. It, therefore, follows that not only have the appellants contradicted themselves, they have also admitted that in fact, the lower court was not in error in its decision, and we urge this Honourable Court to so hold.

9.13 More so, it is only commonsensical that when allegations like suppression of votes and entering of wrong scores are made, the required evidence will be the actual scores that were suppressed and the end result of the suppression in the respective polling units. These were not made available before the lower court. In *Agballah v. Chime* (2009) 1 NWLR (Pt. 1122) 373 at 460-461, the court outlined the necessary requirements for proving such allegations as the foregoing as:

- (a) obtain leave of court to file the head of votes;
- (b) file the list of such votes to support his complaint that his own votes were short counted or given to his opponent;
- (c) show that those votes when added to his own would have tilted the election in his favour. See also *Ojukwu v. Onwudiwe* (1984) 1 SCNLR 247.

### CORRUPT PRACTICES

9.14 In similar vein, there was no way the appellants could have proved allegations of multiple thumbprinting through these witnesses or any witness at all, without the provision of the ballot papers as well as a forensic

report demonstrating thumb semblance. This was not the case before the lower court, and in fact, the lower court adverted itself to this fundamental omission at page 8158 (vol.10) of the record that “*there was no forensic report to support allegations of multiple printing at Polling units.*”

- 9.15 Meanwhile, the appellants seem to be in glaring misapprehension of the effect of section 137 of the Electoral Act to the effect that oral evidence would not be necessary to prove allegations of non-compliance where there are original or certified true copies of documents which manifestly demonstrate the non-compliance. What the appellants fail to appreciate is that the said provision has not in any way absolved a plaintiff/petitioner of the responsibility of not dumping documents on the court. The first point that must be identified is that for section 137 to apply, the allegation must be in respect of ground of non-compliance simpliciter. Here, the appellants made several allegations against the respondents, ranging from non-qualification, over-voting, multiple thumbprinting, ballot box stuffing, thuggery, inflation of votes, etc. It is evident that not all of these allegations border on non-compliance. They border on disqualification and corrupt practices, which in appropriate cases are required to be proved beyond reasonable doubts. Having, therefore, dumped tons of documents, it would naturally have been expected that the appellants would take the pains of (through their witnesses), identifying the portion of their case where each of the documents fitted. With immense respect to the appellants and the lower court, it is never the case that the court would roll its sleeves to begin to grope through the series of envelopes and buckets thrust on it, seeking to identify where each of their contents apply. Authorities are replete that it is not the place of a court of law to begin to interrogate documents privately in the inner recess of its chambers, as this will amount to shopping for evidence, thus descending into the arena of the conflict. See *Abubakar v. I.N.E.C.* (2020) 12 NWLR (Pt. 1737) 37 at 130 and *Makinde v. Adekola* (2022) 9 NWLR (Pt. 1834) 13 at 45-46. As this Honourable Court, per Fabiyi, JSC., rightly put it *Ucha v. Elechi* (2012) 13 NWLR (Pt. 1317) 330 at 367-368, “it was not the duty of the tribunal to untie the exhibits in chambers and assess them. It was not the duty of the tribunal to embark upon cloistered justice by making enquiry into the case in chambers by examination of documents which were in evidence but not demonstrated by witnesses before the tribunal. A Judge is an adjudicator; not an investigator.”
- 9.16 Appellants’ construction of paragraph 46(4) of the First Schedule to the Electoral Act, is with all respect, misplaced. This Honourable Court will observe from the record (pages 7287 (vol.10) of the record), that it was when the appellants’ counsel sought to tender the respective documents from the Bar that they sought the leave of the court to take the documents as read. It must be pointed out that the said provision does not in any way, make a witness out of a counsel. Rather, it envisages that leave could be sought for documents to be taken as read when same has been properly tendered by a witness or identified and tied to a particular segment of the party’s case. The second point is that the condition for the activation of the provision is the consent of the other parties. Instructively, the records also bear witness that all the respondents withheld



their respective consents, thereby, disapplying the said paragraph 46(4) of the First Schedule to the Electoral Act. We further submit that the requirement of consent as a condition precedent for the activation of the said provision is not novel at all. It was in the previous versions of the Electoral Act, under which regime, this Honourable Court emphatically held that the courts are not expected to embark on private interrogation of the documents. The appellants as petitioners could not, therefore, have indiscriminately heaped documents on the lower court and expect both the respondents and the court to begin to hazard guesses as to what they desired to do with them. This is antithetical to logic and reality, and we urge the court to so hold. In summary, therefore, the lower court was right, when at pages 8248-8249 (vol.10) of the record, it held that the following documents were dumped: that is, Exhibits PG, PG1-PG3, PH, PH1-PH36, PJ, PJ1-PJ17, PK1-PK9, PL1-PL23, PM1-PM2, PN1-PN29, PP1-PP21, PQ1-PQ20, PR1-PR3, PS1-PS10, PT1-PT33, PAW1-PAW25, PAX1-PAX13, PAY1-PAY18, PAZ1-PAZ17, PBA1-PBA27 and PBB1-PBB21.

- 9.17 While the appellants do not deny the fact that they have made criminal allegations of electoral violence and malpractices against third parties like Hon. Adejoh and Governor Yahaya Bello of Kogi State, which of course amount to allegations of criminality, their only explanation for failing to make the said persons parties to the petition is/was that they are not statutory parties to the petition by virtue of section 133 of the Act. We urge this Honourable Court to consider the unambiguous provision of section 133 of the Act and to find that the said provision, does not exclude the joinder of persons against whom allegations have been made. While section 133(2) of the Act provides that “a person whose election is complained of is...referred to as the respondent”, there is no provision which states that there can be no other respondent apart from the respondent referred to in the Act. In any event, even in the face of the said provision in previous version of the Electoral Act, this Honourable Court, has repeatedly emphasized on the crucial need to join any person against whom allegations have been made. See *Jegade v. INEC* (2021) 14 NWLR (Pt. 1797) 409 at 559-560. In fact, in *Wada v. I.N.E.C.* (2022) 11 NWLR (Pt. 1841) 293 at 323, this Honourable Court pointedly emphasized on the fair hearing effect of making allegations against non-parties and concluded “that criminal allegations in election petitions are personal to the person who committed the offences. Such criminal allegations cannot be transferred from one person to another. It follows that where an allegation of crime is, made against a person who is not joined in the petition, the paragraphs of the petition where such allegations are made are liable to be struck. The simple reason being that you cannot prove allegation of crime against a person who is not before the court and who is not given an opportunity of being heard or of defending himself. This position was taken by the court below and I entirely agree. It will amount to a breach of a person’s fundamental rights enshrined in the constitution. It is my view that the court below was right in upholding the striking out of these paragraphs of the petition.”

9.18 With the foregoing, it goes without saying that the decision of the lower court striking out the said paragraphs is unassailable, therefore, translating into failure of proof in respect of the said allegation. Equally critical in demonstrating appellants' failure before the lower court, is the fact that this Honourable Court has consistently held that where there is an allegation of corruption against the winner of an election, the petitioner has the burden of proving amongst others, that the respondent whose election is being challenged, personally committed the corrupt acts or aided, abetted, consented to, or procured the commission of the alleged corrupt practices; that where the alleged act was committed through an agent; that the agent was expressly authorized to act in that capacity or granted authority; and that the corrupt practice substantially affected the outcome of the election, while demonstrating how it has affected it. See *Waziri v. Geidam* (2016) 11 NWLR (Pt. 1523) 230 at 277-278 and *Omisore v. Aregbesola* (2015) 15 NWLR (Pt. 1482) 205 at 234 – 235. The appellants, as petitioners, did not put up the remotest demonstration of any of these indices, let alone, proving any of the items relative to non-compliance and its substantiality. We have earlier in this address, referred this court to its decision in *Abubakar v. Yar'Adua* (*supra*); a decision which was rendered at the same time with *Buhari v. INEC* (2008) 19 NWLR (Pt. 1120) 246. The two cases deal with fundamental principles of our electoral jurisprudence, and more particularly, with the implication and essence of section 135 of the Electoral Act. What was at issue in the two cases was non-serialization of ballot papers throughout the country, and in each of the petitions, heavy weather was made out of it. While this court agreed that printing out ballot papers without serial numbers might be a corrupt practice, it went on to hold that the burden is on the party (petitioners) not only to prove it beyond reasonable doubt, but to also show how the non-serialization has substantially affected the result of the election. Drawing comparison on non-serialization, the Supreme Court posed a very fundamental question that appellants who complained of non-serialization won the election in Lagos State, and posed a further question as to whether or not, the non-serialization gave them victory! By parity of reasoning and drawing inspiration from the fundamental observations made by the Supreme Court, may we draw the court's attention to the truism that the appellants herein won the election in 12 States, including Adamawa (1<sup>st</sup> appellant's home State), Yobe, Bayelsa, Akwa Ibom, Kebbi, Sokoto, Osun, Gombe, Katsina, Bauchi, Kaduna and Taraba. The question then arises against the background of the heavy weather the appellants are making out of non-transmission of already counted and recorded votes on Form EC8As to IREV electronically, that whether the said non-transmission/uploading, aided their own electoral victory in these 12 States. The reasonings and conclusions of this Honourable Court in the *Abubakar v. Yar'Adua* (*supra*) have been applied and adopted by the Ghanaian Supreme Court in the celebrated case of *Mahama v. Electoral Commission & Anor.* (J15 of 2021) [2021] GHASC 1 (4 March 2021) page 17. We urge the Supreme Court to resolve this issue against the appellants.

## 10.0 ISSUE 7

10.1 This issue addresses appellants' complaints about the use of some words by the lower court, alleging that the said use of words indicates bias against them. We preface our arguments under this issue, by stating that while the lower court was very temperate in its use of words, none of the referenced statements was targeted at any of the appellants' counsel, since it is the parties and not counsel, that were the litigants before the court.

10.2 Be that as it may, we submit that the allegation of bias is not a whimsical assertion, but one embedded in cogent and verifiable facts backed up by law. This Honourable Court and the lower court have restated this position, while admonishing parties to refrain from such unsubstantiated allegations. We respectfully refer to the decision of this Honourable Court in *Abalaka v. Akinsete* (2023) 13 NWLR (Pt. 1901) 343 at 377, this Honourable Court held thus:

"It is not a light thing to allege or accuse a judicial officer of bias. Since the appellant did not state specifically any of the circumstances where bias can be successfully proved against a judicial officer but merely stated the reasons why he thought the court's evaluation of evidence on record is wrong and thus biased, there is no other recourse but to conclude that in this case, no reasonable man would conclude that there has been improper interference with the course of justice. The appellant can always challenge the decision of a judge as erroneous in law or fact, but the integrity of a Judge should not be challenged without concrete evidence of bias. The unwarranted and ungrounded allegation of bias made by Mr. Isaac Okpananchi in this case is unwarranted, misconceived and ill advised."

See also *Osuji v. Ogualaji* (2020) 9 NWLR (Pt. 1728) 134 at 145.

10.3 The appellants' complaint about the decision of the lower court, which according to them signify bias and use of discourteous language, is that the lower court employed the use of words like 'ludicrous', 'clever by half', 'dishonourable practice', 'smuggle', 'fallacious', 'foul play', 'cross the line of misconception', 'collect evidence from the market', 'those who are not used to reading preambles', 'hollowness in the arguments of the petitioners'. While the use of these words cannot by any definition account for bias, we respectfully submit that when they are read in context, they were not meant to disparage the appellants or their counsel in any way. The first is in the context of the determination of the lower court, of the appellants' rather strange claim that the 25% of the total votes cast in the FCT, is a condition precedent for assumption to the office of President of the Federal Republic of Nigeria. Upon consideration of the provision of section 134(2)(b) of the Constitution over which they relied, the lower court was constrained at pages 8224 – 8225 (vol.10) of the record, to describe such claim which has no nexus with the law relied upon, as "completely fallacious, if not outrightly ludicrous." The contextual usage of these words will no doubt be better gleaned upon a better appreciation of the arguments under issue 2 of this brief. The second one is the expression "clever by half." This arose from the lower court's perplexity by the appellants' arguments regarding the allegation of dual citizenship, certificate forgery, fine, etc. The lower court noted that these

allegations were not contained in the petition and upon the objection of the respondents, rather than gallantly own up to the error, they claimed that they were giving further details of non-qualification, which they alleged in their petition without giving any detail. Seeing that logically, it is only when you have given details that you can talk about “further details”, the lower court was left with no other option than to consider the said claim as the appellants’ attempt of “being clever by half.” If this Honourable Court considers the meaning of the phrase, “being clever by half” and the arguments under issue 3 of this brief, the court will understand that the lower court meant no disrespect to both the appellants’ and their counsel. It was in respect of the same issue that the lower court, displeased by the appellants’ deliberate decision to bring the allegations from the back door, that it held at **page 8061 (vol.10) of the record**, that “they had never given any details of 2<sup>nd</sup> Respondent’s non-qualification and so cannot talk about ‘further details’ let alone hide under such ‘further’ details to smuggle in the new facts.” With immense respect to the appellants, the use of the word “smuggle”, was the lower court’s way of describing the appellants’ style of bringing fresh allegations into the petition through unconventional means. It was a similar attitude that necessitated the use of the phrase “foul play” at **pages 8064 – 8065 of the record**.

10.4 The lower court was compelled to employ the phrase “dishonourable practice” against the appellants, upon observing that the appellants made concerted attempts at overreaching the respondents by deliberately redacting critical details and particulars of their claims from their petition and attempting to introduce them amid trial, at a point when the respondents will no longer be able to proffer responses and in fact, at a time after they had called as many as sixteen witnesses. To put it in the right perspective, may we quote the relevant portion of the lower court’s finding at **pages 505-506** thus:

“A statistician’s Report that is supposed to contain missing particulars in a petition but which was only filed in the middle of hearing of the same petition, long after the time for exchange of pleadings had closed and even after petitioners had called as many as sixteen witnesses in proof of their case, as happened in this case, cannot serve that purpose of audi alterem partem-let the other party be heard too. In short, the tactics employed by the Petitioners in this case as regards their pleading and the Statistician’s Report referenced in it is to say the least most unfair and definitely negates the current practice regime that emphasizes frontloading of processes. Such dishonourable practice can only be likened to the unlawful boxing tactic of hitting one’s opponent below the belt or from behind...”

10.5 These words were not in any manner aimed at the character or personality of the appellants or their counsel and we urge the court to so hold. While further submitting that the said words and expressions had no impact whatsoever on the judgment of the lower court, this Honourable Court had in time past, employed sterner terms, without necessarily impacting on the justice of the case. We respectfully refer the court to its decision in **Ajide v. Kelani (1985) 3 NWLR (Pt. 12) 248 at 269**, where this Honourable Court, while condemning the inconsistent manner of the appellant’s prosecution of his case, held that “Justice will never

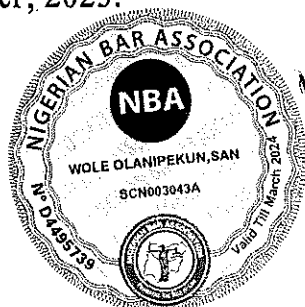


decree anything in favour of so slippery a customer as the present Defendant/Appellant. We, therefore, urge this Honourable Court to resolve this issue in favour of the respondent and against the appellants.

## 11.0 CONCLUSION

- 11.1 It is obvious from the foregoing arguments and clear position of the law that neither the appellants have demonstrated any reason why this Honourable Court should disturb any of the findings of the lower court, which, with all modesty are rooted in law and perfect demonstration of scholarship. We accordingly urge this Honourable Court to affirm the decision of the lower court, while dismissing this appeal in its entirety, as same is lacking in merit and bona fide.
- 11.2 We cannot draw the curtain on this brief, without drawing the Supreme Court's attention to another hypocritical relief being claimed by the appellants in their petition, and more particularly, that in their supplication before the Supreme Court, they are asking that their reliefs be granted. The alternative relief (e) put forth by the appellants at the lower court reads thus: **"An Order directing the 1<sup>st</sup> Respondent to conduct a second election (run-off) between the 1<sup>st</sup> Petitioner and the 2<sup>nd</sup> Respondent."** Undoubtedly, this relief has exposed the pretentious attitude of the appellants, both at prosecuting their case at the lower court and before this Honourable Court. Here are the same set of appellants alleging non-qualification of the respondent, *via* the backdoor, that is, through their reply, on the one hand, and on the other hand, praying this Honourable Court to nullify the presidential election of 25<sup>th</sup> February, 2023 and direct a second election between the 1<sup>st</sup> petitioner and the respondent. The logical conclusion from this approbative and reprobative posture of the appellants is that deep down in their hearts, they are convinced that the respondent won the election, but have decided to embark on this voyage of abuse of court processes.
- 11.3 Lastly, may we draw the attention of the Supreme Court to the fact that at the lower court, this set of appellants did not ask for any relief that could inure to the benefit of the appellants in their final written address, as all issues formulated by them and prayers also sought by them before the lower court were targeted at the respondent, without any one of those reliefs designed for their benefit. May we quickly refer the court to the 4 issues formulated for determination in their final written address at page 6974 (vol. 9) of the record, and the concluding part of the address in paragraph 6.01 (a), (b), (c) and (d) on pages 7004-7005 (vol. 9) of the record. Everything put together or summarized, this appeal is a further demonstration of the abusive nature to which the appellants have subjected court processes. The Supreme Court is urged to dismiss it.

Dated this 7<sup>th</sup> day of October, 2023.



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