IN THE COURT OF APPEAL
ABUJA JUDICIAL DIVISION
HOLDEN AT IBADAN

ON MONDAY THE 11TH DAY OF NOVEMBER, 2019

BEFORE THEIR LORDSHIPS:

ABUBAKAR DATTI YAHAYA	**JUSTICE, COURT OF APPEAL**
HON. JUSTICE M. A. DANJUMA	**JUSTICE, COURT OF APPEAL**
HON. JUSTICE I. O. AKEJU	**JUSTICE, COURT OF APPEAL**
HON. JUSTICE M. A. A. ADUMEIN	**JUSTICE, COURT OF APPEAL**
HON. JUSTICE J. Y. TUKUR	**JUSTICE, COURT OF APPEAL**

CA/IB/EPT/GOV/26/2019

BETWEEN

1. **ADELABU ADEBAYO ADEKOLA**
2. **ALL PROGRESSIVES CONGRESS (APC)** } **APPELLANTS**

AND

1. **INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC)**
2. **OLUSEYI MAKINDE**
3. **PEOPLES DEMOCRATIC PARTY (PDP)** } **RESPONDENTS**

JUDGMENT
[DELIVERED BY ABUBAKAR DATTI YAHAYA, JCA]

The 1st respondent herein, the Independent National Electoral Commission (INEC) conducted the election in to the office of Governor of Oyo State, on the 9th of March 2019. The 1st

respondent declared the 2nd respondent who was sponsored by the 3rd respondent, as the winner of the election and returned him as the duly elected Governor, Oyo State. Aggrieved by the declaration, the1st and 2nd appellants herein, challenged it by way of presenting a Petition on the 29th March 2019 before the Oyo State Governorship Election Tribunal. The scores were stated to be 515,621 votes for the 2nd respondent and 357,982 votes for the 1st appellant. The Grounds of the petition being –

GROUNDS OF THE PETITION

(i) **That the 2nd respondent was not duly elected by the majority of lawful votes cast at the election.**

(ii) **That the election of the 2nd respondent was invalid by reason of non-compliance with the provisions of Electoral Act 2010 (as amended).**

(iii) **That the Election of the 2nd respondent was invalid by reason of corrupt practices.**

The Petitioners sought the following reliefs against the respondents –

(i) That it may be determined that the 2nd respondent was not duly elected or returned by the majority of lawful votes cast at the Oyo State Governorship election held on the 9th day of March 2019.

(ii) That it may be determined that the 1st Petitioner, who was the candidate of the 2nd petitioner, scored the highest number of lawful votes cast at the election and satisfied the requirements of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and the Electoral Act 2010 (as amended).

(iii) That the 1st petitioner be declared validly elected or returned, having scored the highest number of lawful votes cast at the Governorship Election held on 9th day of March, 2019.

IN THE ALTERNATIVE

(iv) That it may be determined that the Oyo State Governorship Election held on the

9th day of March, 2019 be nullified for substantial non-compliance with the provisions of the Electoral Act which non-compliance substantially affected the result of the election and in its place, make an Order for a fresh election to be conducted.

The brief of the appellants was settled by Yusuf Ali SAN and was filed on the 22nd October 2019. He identified the following four issues for determination –

1. **Whether the trial tribunal acted properly in the way and manner it reviewed and ascribed probative value to the testimonies of the witnesses for the appellants and by so doing determined the petition against the appellants without any consideration of the testimonies of the witnesses for the respondents even when some of the testimonies were favourable to the appellants and thereby truncated the right of the appellants to fair hearing.**

2. **Whether the learned trial judges of the trial tribunal were right in coming to the conclusion that the appellants dumped all the documents they tendered on the tribunal when the witnesses called by the appellants and those called by the respondents spoke to the documents in their written statements on oath and under cross-examination.**
3. **Whether the Learned Trial Judges of the Tribunal were correct in the view and conclusion they reached that the votes recorded in Exhibit P4082 (Card Reader Report) need not tally with the votes declared in the final result of the election when there was unrebutted testimonies from all the witnesses and the provisions of the Manual for Election Officials and Guidelines that there must be unanimity as to the number of votes and the card reader report and the total votes declared in Exhibit P2 (Form EC8D).**

4. **Whether the Learned Trial Judges of the Tribunal were right in holding that all the 27 Ward Collation Agents gave hearsay evidence and that the testimony of PW62 in particular was not sufficient to establish the unlawfulness of the votes accredited to the 2nd and 3rd Respondents at the disputed election.**

Learned counsel for the 1st respondent Mr. A. T. Kehinde SAN in the brief he filed on behalf of his client on 26th October 2019, distilled two issues for determination to be –

A. **Whether the trial Tribunal violated the fundamental right of the appellants to fair hearing in the manner the trial Tribunal evaluated the evidence placed before it by the parties.**
B. **Whether the trial court was right in dismissing the appellants' petition.**

Mr. Eyitayo Jegede SAN, settled the brief of the 2nd respondent which was filed on 26th October 2019. He identified three issues to be –

1. **Whether given the pleadings, and the evidence led by parties, the Lower Tribunal was not right in the manner it reviewed and evaluated the evidence of parties in arriving at the decision to dismiss the petition.**
2. **Whether the trial tribunal was not correct in its findings that appellants dumped electoral documents on the tribunal, notwithstanding that the documents were tendered from the bar and admitted as Exhibits.**
3. **Whether the Lower Tribunal was not right to have discountenanced or disregarded Exhibit P4082 (the Card Reader Report) and the testimonies of the ward collation Agents, the Local Government Collation Agent and PW62 State collation Agent in respect of events outside the polling units where they voted or acted as agents.**

The 3rd respondent's brief was settled by Mr. Nathaniel Oke SAN and was filed on 25th October 2019. He adopted the four issues identified by the appellants.

Having gone through the grounds of appeal, I find the issues raised by the appellants to be apt. I shall therefore utilise them in resolving this appeal.

Issue No. 1

Whether the trial tribunal acted properly in the way and manner it reviewed and ascribed probative value to the testimonies of the witnesses for the appellants and by so doing determined the Petition, against the appellants without any consideration of the testimonies of the witnesses for the respondents even when some of the testimonies were favourable to the appellants and thereby truncated the right of the appellants to fair hearing.

Learned senior counsel for the appellants Mr. Yusuf Ali SAN submitted that the Tribunal reviewed the testimonies of the

witnesses for the appellants, without considering the testimonies of the respondents where some of them had given evidence favourable to the case of the appellants, and as a result determined the Petition against the appellants. He emphasised the necessity and absolute importance of a court evaluating the evidence led before it by all parties before arriving at a conclusion, otherwise there will be a denial of fair hearing. He placed reliance on the cases of **FBNV OZUKWERE (2014) 3 NWLR (Pt. 1395) 439; QUEEN Vs. UCHE (1994) 6 NWLR (Pt. 350) 329; ONISADU & ANOR Vs. ELEWUJO & ANOR (2006) LPELR – 2687 (SC); SKYE BANK PLC Vs. AKINDELU (2010) 9 NWLR (Pt. 1198) 179; MOGAJI Vs. ODOFIN (1978) 4 SC 19; OGUNLOYE Vs. AINA (2011) 3 NWLR (Pt. 1235) 479; ANYANWU & ORS. Vs. UZOWUAKA & ORS (2009) LPELR – 515 (SC) and KOWA Vs. MUSA (2006) 5 NWLR (Pt. 972) 1 at 39C.**

Learned senior counsel referred to page 1127 Volume 5 Part II of the record and submitted that the Tribunal made a summation of all witnesses called by the parties in the Petition, dealt with the witness called by the appellants but refused to evaluate the evidence called by the 1st, 2nd and 3rd respondents as if the appellants did not elicit any evidence from the cross-

examination of the respondents' witnesses. That the Tribunal just dwelled on the onus of proof being on the Petitioners who sought declaratory reliefs, without considering whether the case of the respondents had supported that of the Petitioners. He argued that the petitioners had discharged that burden of proof though the 69 witnesses it called. He drew a distinction between summation of evidence and evaluation of evidence and referred to **ABUBAKAR & ANR. Vs. JOSEPH & ANR. (1994) LPELR 595; ADEGBAYI Vs. ISHOLA (2003) 11 NWLR (Pt. 831) 343 at 370 and AREGBESOLA Vs. OYINLOLA (2011) 9 NWLR (Pt. 458) at 600 – 601.** He referred to page 1225 Volume 5 Part II of the record to submit that it shows that the Tribunal only summarised, the evidence and had failed to comply with the law as enunciated in **MOGAJI Vs. ODOFIN (1978) 4 SC. 91** which has affected the fundamental rights of the Petitioners and the case had not been judged fairly on the balance of probabilities – **TESPIN Vs. KYAMWAN (2003) F.W.L.R (Pt. 149) 157.**

Learned senior counsel referred to pages 1226 – 1240 of the record, and pages 1256 – 1275 of the record on Issues 1 and 2 and submitted that the Tribunal only partially evaluated the evidence of **PW1 – PW12, PW14 – PW27, PW29 – PW38** and **PW62,** but did not evaluate the evidence of the respondents'

witnesses at all. That at pages 1278 – 1283 of the record, the Tribunal did not refer or evaluate the evidence of the respondents' witnesses and therefore failed to arrive at a just decision, having destroyed the case of the appellants which occasioned miscarriage of justice against them – **OSHIYEMI Vs. AKINTE (1995) 2 NWLR (Pt. 379) 555 at 568 – 569.**

It was the submission of the learned senior counsel, that had the Tribunal painstakingly evaluated the evidence of the respondents' witnesses and weighed same on the imaginary scale with that of the appellants' witnesses, it would have found that the evidence adduced by **RW1, RW2, and RW3,** supported the evidence of **PW39** called by the appellants, which was that all the voters accredited, had voted but yet inexplicably, the total votes cast did not tally with the number of accredited voters which rendered the votes unlawful and void. Rather than evaluate the totality of the evidence he argued, the Tribunal went into speculation at page 1270 of the record, on an accredited voter not voting and not committing an infraction thereby. That this speculation on the part of the Tribunal, is due to its failure to evaluate the evidence before it, that by the Manual and Regulations for Election, an accredited voter moves immediately to the voting area to vote and so the total votes cast, must tally

with the total number of accredited voters. He submitted that no evidence was led by any witness called by the parties to the petition, that any accredited voter after collecting the ballot paper, failed to vote and so the Tribunal was only speculating.

Learned senior counsel also submitted that another instance indicating that the Tribunal did not evaluate the total evidence led before it, is at page 1240 of the record where it held that all polling agents at the scene of the election, had testified that they signed the various polling units results. Counsel argued that **PW17, PW24, PW30, PW35, PW37, PW47, PW49, PW63, PW64** under cross-examination; all stated that they signed the respective electoral forms to enable them get a copy. That **RW6** also corroborated the evidence of the **PWs** when he testified for 2nd respondent, stating that an agent could only get a copy of Form EC8A, if he signed it, showing that signing the Form was not a conclusion of a free and fair election - **OMISORE Vs. AREGBESOLA (2015) 15 NWLR (Pt. 1482) 205 at 324 C - A.** He opined that the various failures of the Tribunal to be guided by the principle of evaluation of evidence, destroyed the case of the appellants which occasioned miscarriage of justice against them, as otherwise it would have found that they had proved their allegation of non-compliance – **OSHIYEMI Vs. AKINTE**

(1995) 2 NWLR (Pt. 379) 555 at 568 – 569 G – A. He urged us to resolve the issue on behalf of the appellants.

Learned senior counsel for the 1st respondent on this Issue, submitted that the Tribunal did not violate the fair hearing of the appellants in the manner it evaluated the evidence of the parties to the petition. He agreed that the duty of a court or Tribunal is to consider all the evidence placed before it, including evidence elicited under cross-examination in support of the other party, before it arrives at a verdict – **AKOMULAFE Vs. GUARDIAN PRESS LTD (2010) 3 NWLR (Pt. 1181) 338 at 351.** He referred to pages 1176 – 1190 of the record, to submit that the Tribunal had reviewed the evidence of the respondents' witnesses and evaluated the evidence of the respondents, at page 1218 of the record.

Learned senior counsel argued that the claim of the appellants are declaratory and so must prove same by qualitative evidence otherwise there will be nothing to rebut by the respondents, even if there was any admission – **CPC Vs. INEC (2002) ALL FWLR (Pt. 617) 648.** He argued that the Tribunal was right to hold, after evaluating the evidence of the parties, the evidence of the 27 witnesses to be hearsay. He referred to **DOMA Vs. INEC (2012) ALL FWLR (Pt. 628) 815 at 829 – 830.**

That the Tribunal was right at page 1220 of the record, and submitted that the Tribunal was right when it declared the pleadings in respect of 1,389 out of the 1,426 polling units as deemed abandoned, since the witnesses in that regard, gave hearsay evidence – **AGBI Vs. OGBEH (2006) 11 NWLR (Pt. 990) 65 at 132 – 133.** He then argued that whatever evidence the appellants said they elicited from the witnesses of the respondents, cannot support pleadings that had been deemed abandoned due to the hearsay nature of the evidence.

In respect of the 37 witnesses that the Tribunal considered, the evidence of **PW4** and **PW28** were discountenanced by the Tribunal because the Yoruba version along with the English translation was not tendered and for inconsistency. The result he said, is that only 35 witnesses acceptable to the Tribunal were left to prove non-compliance with the Electoral Act or guidelines as in this case, contrary to the requirement of the law, that evidence must be called from all the polling units in issue, as to the form of the non-compliance alleged and then tender INEC Form to substantiate the allegation – **NGIGE Vs. INEC (2018) 1 NWLR (Pt. 1440) 281 at 329.** Learned Counsel argued that following **Section 139(1)** of the Electoral Act 2010 as amended, the appellants had failed to prove non-compliance or if any, had

substantially affected the result of the election. He referred to page 1240 of the record and submitted that the Tribunal had properly evaluated the evidence of the parties and did not violate the fundamental right of the appellants. He urged us to resolve the issue in favour of the respondents.

For the 2nd respondent, learned Senior Counsel Eyitayo Jegede on this issue, submitted that the Tribunal had painstakingly and comprehensively summarised the evidence of witnesses called by the parties – **pages 1127 – 1175 and 1176-1190 of the record**. That **pages 1204 – 1241 of the record** is a dispassionate evaluation and review of the evidence led by the parties under this issue. Counsel then referred to **ANDREW Vs. INEC (2018) 9 NWLR (Pt. 1625) 507 at 551 and MBANEFO Vs. MOLOKWU (2014) 6 NWLR (Pt. 1403) 377** to submit that where a Petitioner fails to lead credible evidence in support of his case, he is not entitled to have the case placed on an imaginary scale as nothing can be placed on nothing and that the Tribunal was therefore right in this respect. He referred to page 1271 of the record where the Tribunal considered the evidence of the witnesses and evaluated same, similar to the submission of learned Counsel for the 1st respondent. The rest of the submission of learned Senior Counsel

on this Issue 1 is not strictly on non-evaluation but on other aspects that are to be resolved on the other issues raised by the appellants herein.

For the 3rd respondent, learned Senior Counsel Mr. Oke, SAN on this issue, made submission similar to that of the 1st respondent. He submitted that as the nature of the reliefs claimed by the appellants are declaratory, they must succeed on the strength of their cases and not on the weaknesses of the respondents' case – **ANDREW Vs. INEC (SUPRA) at page 559**. That as there is a presumption of correctness and authenticity of election results – **CPC Vs. INEC (SUPRA) and ABUBAKAR Vs. YAR'ADUA (2008) 19 NWLR (Pt. 1120) 1 at 15**, the appellants have the burden to rebut that presumption.

Learned Senior Counsel submitted that throughout the arguments of the appellants as contained in their brief, they never highlighted or brought into focus, the portion of evidence they said they elicited from the respondents' witnesses that supported their case. That since the evidence of the appellants had been held by the Tribunal not to be credible, there was no need to consider the case of the respondents – **ROTIMI Vs. FAFORITI (1996) 6 NWLR (Pt. 606) 305 at 328 – 329.** That the appellants did not show how the alleged failure to

evaluate the respondents' witnesses would have proved the incorrectness of the judgment of the Tribunal – **PETROLEUM TRUST FUND Vs. WESTERN PROJECT CONSORTIUM LTD (2006) LPELR – 7719 (CA).**

Learned Counsel then referred to the evidence of PW39 who was a ward collection agent, not a polling unit agent and submitted that this would not have changed the judgment. On **RW6** corroborating evidence of the prosecution witness, Counsel submitted that this has no weight and cannot change the judgment of the Tribunal, especially as the signing of polling unit's results was not an issue before the Tribunal.

On fair hearing, Counsel submitted that once it is shown by the surrounding circumstances that the court afforded parties equal opportunity to put forward their cases, there cannot be a complaint in that vein. He urged us to resolve the Issue in favour of the respondents.

The appellants filed Replies to the briefs of the respondents and I shall consider them appropriately.

In the first place, let me say that the submission of learned Senior Counsel for the 3rd respondent that the appellants have not highlighted the portion of the evidence elicited by the

appellants from the witnesses of the respondents which supported their case, is not borne by the record. For surely at page 10 of the appellants' brief, paragraph 5.25, is a submission that **RW1, RW2** and **RW3** supported the case of the appellants' **PW39**. At paragraph 5.30, Page 11 of the appellants' brief, is also a highlight that **RW6** gave evidence that supported the case of the appellants as given by the PW5 named therein. At any rate, it seems like a change of heart, when 1st respondent's Counsel later picked these pieces of evidence which were highlights and then proceeded to answer them. The point made is that these highlights exist, contrary to the earlier submission of the 3rd respondent.

Now, evaluation of material and relevant evidence and ascription of probative value thereto, are the duty and the prerogative of a trial court. It is duty bound to evaluate the entire evidence led by the parties. It carries out this duty by listening to the witnesses and observing them as they give evidence in chief or under cross-examination. It watches their hesitations in answering questions or in promptly answering them, observing any memory loss or attempts to circumvent or dodge questions. It is not right, it is an error for a trial court, to evaluate the evidence of one party and neglect the other side.

Once that happens, the findings of the trial court and its conclusion would be a mistake, a miscarriage of justice – **SAKA ATUYEYE & ORS Vs. EMMANUEL ASHAMU (1987) LPELR – 638 (SC)** per Oputa, **JSC, at PAGE 30 C – D; ONISAODU & ANOR Vs. ELEWUJU & ANOR (2006) LPELR – 2687 (SC) at 18 D – E.** In other words, proper evaluation of evidence is absolutely important, for in order to determine a case and come to a just decision or conclusion, a trial judge must assess and appraise all evidence before him. Therefore, the cardinal duty of a trial judge, is the evaluation of evidence so as to decide where the scale preponderates by qualitative evidence. This is done by the judge, by considering the totality of the evidence placed before him, evaluating same on the imaginary scale of justice, and making findings of facts before applying the law – **CPC Vs. INEC (2011) LPELR – 8257 (SC)** per Adekeye, **JSC at PAGE 46 B – F**. As stated in **KABIRU ABUBAKAR Vs. JOHN JOSEPH & ANOR (2008) LPELR – 48 (SC) at PAGE 57** per Ogbuagu – *"It needs to be borne in mind that the law is trite that for a judge to produce a judgment which is fair and just, he must fully consider the evidence proffered by all the parties before him, ascribe probative value to it, make findings of fact, apply the*

relevant law, and come to some conclusion on the case before him....."

Evaluation of evidence is not the same as summation or summary of the evidence. When a court summarises evidence, it captures the essential and material evidence led without any comment. But an evaluation of evidence entails the court considering the entire evidence even in a summary form, weighing same by putting the evidence of one party on one side of the imaginary scale and the evidence of the other party on the other side of the scale and weighing their quality, not quantity, to see which side will outweigh the other. Credibility, materiality and admissibility all come into play in this exercise.

In the instant appeal, learned counsel for the 1st respondent submitted that pages 1176 – 1190 of the record, Volume 5, Part 11 is a review of the evidence of the respondents' witnesses. It is nothing of the sort. The pages are part of the judgment of the Tribunal which merely reproduced or summarised the evidence led. There was no evaluation in the sense that the evidence was compared with the other side and a finding made and why one side was preferred over the other. The learned senior counsel for the 2nd respondent also submitted that all evidence before the Tribunal was evaluated by the Tribunal and that, pages 1204 –

1241 of the record show evaluation and review of evidence led by the parties. That is not my finding. For these pages only depict the addresses of counsel, and the review of the evidence of the petitioners. There is no evaluation of the witnesses of the respondents. It is pomp and plain, and we agree with learned senior counsel for the appellants, that the Tribunal did not evaluate all the evidence led before it, especially the evidence of the respondents' witnesses. This came about because the Tribunal discountenanced the evidence of some of the witnesses of the appellants for being hearsay. That since the Petitioners had not discharged the burden on them to prove their case initially, there was nothing to rebut and there was therefore no need to evaluate the evidence led by the witnesses for the respondents.

A party who did not call any witness, is entitled to cross-examine the witness of the other party and if he elicits evidence upon which there was pleadings and relevant, then he can rely on it as his evidence to support his case. It would be wrong for the court to dismiss the case of the party who did not call a witness for not leading evidence, without the court first considering the evidence that party elicited under cross-examination of the witness of the other party. See **M.T.N. (NIG) Vs. CORPORATE**

COMMUNICATION LTD (2019) 9 NWLR (Pt. 1678) 427 at 449 – 450.

This is what happened here. The witnesses of the respondents gave evidence and were cross-examined by the appellants; and their evidence supported the case of the appellants. Whilst considering and evaluating the evidence of those respondents' witnesses, the Tribunal held that the appellants had not discharged the initial burden on them. This was palpably wrong, because had the Tribunal carried out its primary duty of evaluating all the evidence led before it by both parties, it would not have come to the conclusion it erroneously reached. In other words, the point I am making, is that the Tribunal had the duty to consider and evaluate all the evidence led, including the evidence elicited under cross-examination in supporting any party. If it had done that, and came to the conclusion that the evidence was not sufficient on the side of the petitioners, that they did not discharge the initial burden, then it would have been right to say there was nothing to rebut. But because it did not properly evaluate the evidence led and the evidence of **RW1, RW2 and RW3,** it denied itself that opportunity of properly assessing the evidence on behalf of the petitioners whether by their witnesses or under cross-

examination, and that was miscarriage of justice occasioned against the appellants.

Again, the Tribunal did not consider and evaluate the evidence of the **RW6,** who corroborated the evidence of **PWs 17, 24, 30, 35, 37, 47, 49, 63 and 64** that the purpose of their signatures, was to enable them obtain copies of the results declared. It was this failure to consider and evaluate, that led the Tribunal to conclude that the polling agents had signed the results voluntarily, whereas this was not the evidence at all. It was therefore a factor that contributed to the holding of the Tribunal that the Petitioners had not discharged the initial burden on them. It was open to the Tribunal to say or hold that it did not believe them and give a reason. That would have shown a due discharge of the primary responsibility of evaluation of evidence on it. The failure to consider it and make a finding one or the other, is a serious breach of that duty.

When a court fails to properly evaluate the evidence led, especially where it fails to evaluate the evidence of a party in his behalf whether through evidence in chief or under cross-examination, and where the result or conclusion would have been different, but for the failure to so evaluate, that decision cannot stand as it is a denial of fair hearing enshrined in section 36 of the

1999 Constitution as amended. Clearly the findings of the Tribunal, are perverse and cannot be allowed to stand, even if parties were given equal opportunity to present their cases.

Where findings of a court are perverse, an appellate court is in a good position to re-evaluate in order to come to a right decision – **MKPONG Vs. NDEM (2013) 4 NWLR (Pt. 1344) 302 at 321 (SC) and ADEGOKE Vs. ADIBI (1992) LPELR – 95 (SC) 29 – 30** per Wali JSC.

We shall do this in the course of this judgment. Issue No. 1 is resolved in favour of the appellants.

ISSUE NO. 2

Whether the learned trial judges of the Tribunal were right in coming to the conclusion that the appellants dumped all the documents they tendered on the Tribunal when the witnesses called by the appellants and those called by the respondents, spoke to the documents in their written statements on oath and under-cross examination.

Learned senior counsel for the appellants referred to page 1265 of the record where the Tribunal held that the appellants had only dumped all the documents tendered, on the Tribunal and argued that the finding is wrong and erroneous, as documents can only be said to have been dumped, if they were not spoken to, linked to the specific areas of the case and demonstrated in open court during the course of proceedings – **ACN Vs. NYAKO (2015) 18 NWLR (Pt. 1491) 352; LADOJA Vs. AJIMOBI (2016) 10 NWLR (Pt. 1519) 87 and OGBORU Vs. OKOWA (2016) 11 NWLR (Pt. 1522) 84.** He referred to the evidence of the 69 witnesses called by the appellants contained in their statements on Oath, which he said referred to specific documents tendered from the Bar as exhibits. They adopted their statements on oath and the documents tendered as exhibits were identified in the proceedings. That this is in line with front-loading procedure and the witnesses' statements on Oath are their evidence in chief after adoption – **ASSOCIATED BUSINESS COMPANY LTD Vs. NWACHINEMELU & ANOR (2014) LPELR 24393 CA; MTN Vs. CORPORATE COMMUNICATION INVESTMENT LTD (2019) LPELR – 47042 (SC).** He referred to pages 978 – 980 of the record where he said the documents were demonstrated before the

Tribunal during cross-examination. He referred to the evidence of **PW62** who was cross-examined by the respondents' counsel on Exhibits EC8A, EC8B, P2 (EC8D), P4081 and P4082 at pages 978 – 980 of the record. He referred to the findings of the Tribunal at pages 1199 – 1200 and 1202, where it held that Exhibits P4163 – P4165 which are Forms EC8A, EC8B EC8C, EC8D and EC8E were tendered from the bar and that the respondents did not challenge their authenticity and were infact relied upon by all the respondents. With this findings he argued, it was not open to the Tribunal to later find that the documents were dumped. It was an act of approbating and reprobating which a court should not engage itself in exercising he said – **NGERE Vs. OKURUKET XIV (2017) ALL FWLR (Pt. 882) 1302 and SAROR & ANOR. Vs. SUSWAM & ORS (2012) LPELR – 8611 (CA).** He urged us to resolve the issue in favour of the appellants.

The contra submission of learned senior counsel for the 1st respondent on this issue, is his reference to the submission of counsel for the appellants that 69 witnesses made statements on oath and referred to specific documents tendered from the Bar and then his argument that this cannot be correct since 27 of the witnesses' evidence were hearsay and declared inadmissible. Since the Supreme Court held he argued, that tendering electoral

documents without adducing evidence, which link the documents with the particular complaint amounts to dumping and is fatal, the appellants had dumped the documents.

For the 2nd respondent, learned senior counsel referred to **OKE Vs. MIMIKO (2014) 1 NWLR (Pt. 1388) 332,** which held the evidence of a petitioner who identified the electoral result form in the course of evidence at the Tribunal, was hearsay as he was not in all the polling units, like the instant appeal, and submitted that the electoral Form tendered by the appellants, including Exhibit P4052 (report of card-reader) amounted to dumping them – **PDP Vs. INEC (SUPRA)** at pages 22, 24 and 25; **ANPP Vs. INEC (2010) 13 NWLR (Pt. 1212) 549; UCHA Vs. ELECHI (2012) 13 NWLR (Pt. 1317) 330 and UDOM Vs. UMANA (2016) 12 NWLR (Pt. 1526) 179.** He referred to **BUHARI Vs. INEC (2008) 19 NWLR (Pt. 1120) 246 at 391 – 392,** and submitted that where a witness did not make a document, he is not in a position to answer question or speak to them and so the 27 collation agents who were not the makers of the documents and were not at the polling units on the election day, could not answer questions on those documents. He referred to the cases of **MAKU Vs. AL-MAKURA (2016) 5 NWLR (Pt. 1505) 201 at 222** and **ANDREW Vs. INEC**

(SUPRA) at pages 558 – 559 on front-loading statement of witnesses and tendering documents from the Bar, as not sufficient to prove the allegation complained of. He therefore debunked the submission of the appellants that no law states that only the maker of a document can link the documents. He urged us to resolve the issue in favour of the respondents.

Learned counsel for the 3rd respondent submitted that the issue of dumping of documents is an elementary principle of law as set out in numerous judicial authorities. He made reference to **ANDREW Vs. INEC (SUPRA) BUHARI Vs. INEC (SUPRA) at 246** and the other cases similarly cited by the 1st and 2nd respondents. He referred to the position of the Tribunal at pages 1265 – 1266 of the record, that the exhibits in which their makers were not called, and tied to the specific areas of the Petitioners' case, were merely dumped and submitted that it was the right position to take – **INEC Vs. OSHIOMHOLE (2009) 4 NWLR (Pt. 1132) 607.** He urged us to resolve the issue in favour of the respondents.

Now, there is no doubt about it, that the case of **ANDREW Vs. INEC (SUPRA),** following the case of **MAKU Vs. AL-MAKURA (2016) 5 NWLR (Pt. 1505) 201,** and a host of other decisions of the Supreme Court of Nigeria, which

established that a witness who did not make a document, is not in a position to answer questions on them and the documents would be held to have been dumped on the court, as they would not have been linked to any specific allegation by the Petitioners, cited with approval the finding of the Court of Appeal in the same case which held that –

> ***"What the law requires is that first of all, the maker of the documents must tender it and must testify to its contents. Then the document must be subjected to the test of veracity and credibility and where it involves mathematical calculations, how the figures were arrived at must be demonstrated in the open court and finally, the correctness of the final figure must also be shown in the open court. What the Appellants did here was to dump documents on the court by tendering it from the Bar, got a few witnesses to identify or recognise some of the documents and left the Tribunal to figure out the rest in its Chambers."***

My lord Okoro JSC continued at pages 558 – 559 H – A that –

> ***"I need to state clearly, that demonstration in open court is not achieved where a witness simply touches a bundle of numerous documents with numerous pages.***
>
> ***The frontloading of evidence and tendering documents in bulk from the bar do not alter this requirement which is an element of proof. See OGBORU Vs. OKOWA (2016) 11 NWLR (Pt. 1522) 84; OMISORE Vs. AREGBESOLA (2015) 15 NWLR (Pt. 1482) 205."***

The Supreme Court is not only a policy court, it is also a responsive and dynamic institution which marches with time and developments in the society, so that its decisions will be relevant, current and easily accepted and so obeyed. This is why there have been some developments which phased out earlier decisions, and all courts below the Supreme Court are enjoined to

follow its most recent decisions where there are seeming differences.

In a more recent case later than **ANDREW Vs. INEC (SUPRA)** in **SYLVESTER NWOYE Vs. FEDERAL AIRPORTS AUTHORITY OF NIGERIA (2019) 5 NWLR (Pt. 1665) 193 at 209 – 210**, Sanusi JSC in the leading judgment held: -

> ***"It is worthy of note, that when the documents admitted as exhibits M, N, O, P and Q were tendered at the trial, the appellant did not challenge the authenticity or existence of those exhibits. That being so, it would not be necessary for the respondent to tender them through the maker.....***
>
> ***Therefore, since there was no challenge on the authenticity of the five exhibits by the appellant, the trial court was right in overruling the objection by the appellant on their admissibility....."***

In the recent case of **MTN (NIG) COMMUNICATIONS LTD Vs. CORPORATE COMMUNICATION INVESTMENT LTD**

(2019) 9 NWLR (Pt. 1678) 427 at 456 D, the Supreme Court per Kekere-Ekun JSC held that –

> ***"I am of the considered view, that as the authenticity of exhibit A was never in issue before the trial court, it cannot be made an issue before this court."***

The current position of the Supreme Court therefore, is that when documents are tendered at the trial and no challenge is made in respect of their existence or authenticity at the trial, they can be tendered not necessarily by the maker of the document. And once that challenge was not made at the trial court, it cannot be made at the appellate court. In the instant appeal it is correct as submitted, by learned senior counsel for the appellants in the Reply brief to 1st respondent's brief, that when the documents were tendered from the Bar, the respondents did not challenge their existence or authenticity. It is therefore too late to raise that challenge in this court, especially taking into consideration that the respondents cross-examined the appellants' witnesses on the said exhibits and were used by the respondents. This is evident at pages 978 – 980 of the record, where the respondents' counsel cross-examined **PW62** on the documents tendered from the Bar

without objection. Their authenticity could therefore not be in question.

On front-loading of documents, the current position as I know it, is as stated in **MTN Vs. CORPORATE COMUNICATION (SUPRA)** where at page 455 A – F, Kekere-Ekun JSC held –

> ***"Learned senior counsel for the appellant contended that the respondent failed to lead evidence to demonstrate the terms of exhibit A. With due respect to the learned silk, he appears to have overlooked the fact that the front-loaded deposition on oath of a witness in support of his pleadings, constitutes his evidence in chief in the proceedings. Exhibit A was tendered and admitted without objection.***
>
> ***.....***
>
> ***The terms of exhibit A were therefore pleaded and exhibit A was before the court to support the pleading along with the written deposition of the witness..... It is therefore not correct to contend that the terms of exhibit A were not demonstrated before the court..... Furthermore, the***

authenticity of exhibit A was never challenged by the appellant at the trial court."

Clearly therefore, the Tribunal was wrong when it found that since the documents tendered from the Bar were not demonstrated in open court by their makers, they had been dumped on her. They were not dumped. Their authenticity was not challenged and it was not necessary to call their makers, as they had also used them to cross-examine the witnesses who tendered them. That is the current position of the law and I am bound thereby. Issue No. 2 is resolved in favour of the appellants and against the respondents.

ISSUE NO. 3

Whether the learned trial judges of the Tribunal were correct in the view and conclusion they reached that the votes recorded in Exhibit P4082 (Card Reader Report) need not tally with the votes declared in the final result of the election when there was unrebutted testimonies from all the

witnesses and provisions of the Manual for Election Officials and Guidelines that there must be unanimity as to the number of votes and the card reader report and the total votes declared in Exhibit P2 (Form EC8D).

Learned counsel in this issue, submitted that by the evidence of **PW62** at pages 978 -980 of the record, the results in Exhibit 4082 and **P2** which are the card-reader report and the Form containing the results of the votes cast, must not be at variance and must tally – the depositions of the witnesses for the appellants (**PW62**) at paragraphs 36 & 50 page 579 and the evidence of **RW1, RW2 and RW3** under cross-examination. He then criticised the position of the Tribunal that the information in Exhibit **P4082** is inadequate and not useful in determining the challenge by the Petitioners – pages 1240 – 1241 of the record. He also faulted the speculation of the Tribunal, that some votes were rejected or that some accredited voters had failed to vote, which was almost an impossibility since accredited voters do not have the opportunity to leave the polling unit since they were required to proceed to vote immediately they were accredited. He

submitted that it was dangerous for a court to speculate or conjecture – **ARCHIBONG Vs. ITA (2004) ALL FWLR (PT. 197) 930 at 955.** He referred to exhibits **P4083 AND P4084** pages 31 – 33 of the record.

On abandonment of pleadings, learned counsel referred to the decision of the Tribunal at page 1220 of the record, where it restricted the relevance of the evidence of **PW2** to Exhibit 2 since he was present at the State collation centre and participated. As he was not in the other polling units challenged, the Tribunal deemed abandoned, the pleadings in respect of 1389 out of 1,426 polling units.

The Tribunal therefore considered only 37 polling units in respect of which evidence was called it said. Learned counsel submitted that this was perverse since it was as a result of failure to consider and evaluate the evidence of **PW62** and **RW1, RW2 and RW3.** Counsel drew the attention to the chart made at pages 22 – 23 of the brief to show the discrepancies on the entries in Exhibits **P4082 and P2**, showing the votes did not tally with the accredited voters. He urged us to resolve the issue in favour of the appellants.

Learned counsel for the 1st respondent referred to the findings of the Tribunal on non- compliance with Regulations and Guidelines of INEC on when votes are to be declared null and void, at paragraphs 23 (a) and (b) and submitted the allegation of the appellants did not come within those paragraphs and so could not amount to non-compliance and even more fundamentally, amount to substantial non-compliance with the Electoral Act which substantially affected the result of the election – Section 139 (1) of the Electoral Act, **NGIGE Vs. INEC (2018) 1 NWLR (Pt. 1440) 281 at 329 and EZEANUNA Vs. ONYEAMA (2011) 13 NWLR (Pt. 1263) 36 at 73 A – B**. He argued that the evidence of 27 witnesses were hearsay and so inadmissible. He was emphatic, that the card-reader could not be given the importance and relevance the appellants gave it, relying on **IKPEAZU Vs. OTTI (2016) 8 NWLR (Pt. 1513) 38 at 100; NYESOM Vs. PETERSIDE (2016) ALL FWLR (Pt. 842) 1573 at 1636 and OKEREKE Vs. UMAHI (2016) 11 NWLR (Pt. 1524) 438 at 480.**

Learned counsel for the 3rd respondent argued that the position of the appellants on this, is based on accreditation or non-accreditation/over-voting and that can be proved only if the voters registers are tendered. He argued that Exhibit **P4082**

tendered from the Bar has no evidential value and even if it has, accreditation process can only be compared with the smart card-reader and Form EC8As, with the number of accredited voters on the polling units results, contrary to the position of the appellants.

Learned counsel argued that from the evidence of **PW62**, the total votes cast, is the total valid votes added to the rejected votes and those who failed to vote, which must tally with the accredited votes since this was not provided here, the comparison by the appellants could not be correct. He referred to paragraphs 23(a) and (b) of the Regulations and Guidelines of INEC, which the other respondents referred to.

Learned counsel for the appellants replied by referring to pages 31 – 33 of Exhibit **P4083** to submit that unlike previous elections, the 2019 elections did not leave room for accredited voters to leave the voting centre without voting. That **PW62** did not give hearsay evidence.

I am unable to agree with the 3rd respondent and the Tribunal in respect of the issue of the tally of votes. This is because by clause 10 (a) of Exhibit **P4084**, in accordance with section 49 (2) of the Electoral Act, an intending voter is to be verified by the use of the Smart Card Reader (SCR). By clause 10

(b) therefore, any official of INEC who violates clause 10 (a), shall be guilty of an offence and shall be liable to prosecution. This underscores the importance of a smart card reader in the process of an election.

Regulation 28 (a) (iv) of the Regulations and Guidelines for the conduct of Election 2019, requires the Registration Area/Ward Collation Officer, to compare the number of voters verified by the Card-reader, with the number of accredited voters and total votes cast for " consistency." Nothing is said therein about rejected ballot papers or accredited voters who failed to vote. This is further established by the evidence of **PW62** in his witness statement on Oath at paragraph 36, page 579 of the record, where he deposed that,

> ***"....I know as a fact that the process of election in this Local Government is that the total number of accredited voters must tally with the number of votes cast in the election, such that the total number of valid votes and rejected votes must be the same with the number of accredited voters."***

This **PW62**'s evidence was not controverted. He also spoke to the documents tendered which include Exhibits **P4082** (the smart card report and exhibit **P2**) which I have earlier held were not dumped on the Tribunal as they were not challenged at all at the Tribunal. Further, under cross-examination, **RW1** stated that –

> ***"Yes I am familiar with the INEC Manual and Guidelines regulating election. I know accreditation and voters accredited. Accredited voters must tally with the number of votes cast."***

With the above, it is a total misconception and erroneous, for the Tribunal to hold as it did at pages 1240 – 1241 of the record, that the total number of accredited voters will not tally with the total valid votes cast. That was what the regulation required and it should have been observed.

As stated by the respondents, at page 3 of Exhibit **P2**, there are alterations on total votes in about two columns on the face of the exhibit. There is no explanation proffered as to why those alterations have been made. There is also no evidence by INEC,

as to how many invalid votes there were if any, and how many people failed to vote after they were accredited. This is unfortunate. It simply means that the Resident Electoral Commissioner whose responsibility it is, to ensure correct authentic and clear entries are made by staff under him, did not carry out his supervisory role adequately for the public to have confidence in the Rules and Guidelines made by INEC itself, for a proper and due election. Also when votes did not tally, as required by clause 10 (b) of Exhibit. **P4084**, some explanation from INEC was required as to whether some accredited voters refused to vote and left or that some votes were invalidated. It would have shown concern and responsibility. The lack of explanation, shows that the guidelines were not followed and the leadership of INEC in that State must bear the blame since the country has been engaged in building and consolidating the system, to entrench accountability and purposefulness. If proper supervision of the staff was made, such serious lapses capable of causing the problems leading to the allegations in the petition would not have been reared.

As there was credible evidence before the Tribunal, which if it had evaluated properly, the Tribunal would have found that the number of accredited voters should tally with the total votes cast,

unless of course adequate explanation was proffered. As it is, the Tribunal was wrong. The cases cited by the respondents, such as **IKPEAZU Vs. OTTI (SUPRA); NYESOM Vs. PETERSIDE (SUPRA)** and **OKEREKE Vs. UMAHI** on the tally of votes between number of accredited voters in the smart card reader and total number of votes cast was not in issue in them. This was introduced in the 2019 INEC Regulations and Guidelines for the conduct of Election. Issue No. 3 is resolved in favour of the appellants.

ISSUE NO. 4

Whether the learned trial judges of the Tribunal were right in holding that all the 27 Ward Collation Agents gave hearsay evidence and that the testimony of PW62 in particular was not sufficient to establish the unlawfulness of the votes accredited to the 2nd and 3rd respondents at the disputed election.

Learned counsel submitted that this Issue is about the finding of the Tribunal, that all the 27 Ward Collation Agents gave

hearsay evidence and that the testimony of **PW62** was not sufficient to establish the unlawfulness of the votes credited to the 2nd and 3rd respondents at the disputed election. That the Tribunal found that their evidence was not of the eye witnesses of what transpired at the polling units with respect to the votes cast and so, their evidence was hearsay. He submitted that since some of the 27 witnesses testified that they moved around their wards and Local Governments on motor cycles, their evidence was that of an eyewitness – **IBRAHIM Vs. OGUNLEYE (2010) LPELR 4556 (CA) and PDP Vs. EL-SUDI & ORS (2015) LPELR – 26036 (CA).** He emphasised that the Tribunal did not find their evidence unreliable or incredible – Section 126 of the Evidence Act 2011. Counsel submitted that 27 witnesses tendered documents for their wards, which were not challenged and they were cross-examined by the respondents.

On sufficiency of the testimony of **PW62** to establish the unlawfulness of the votes credited to the 2nd and 3rd respondent, learned senior counsel submitted that the evidence of **PW62** was in respect of the entire area in contention, having identified 4162 exhibits, tendered by the appellants. That he stated that **P2** has fictitious figures contrary to the entries made in form EC8A, EC8B, EC8C, and that his evidence was not countered by the

respondents. That the evidence of **RW1** confirmed at page 982 that there were alterations on Exhibit **P8**. That by **AREGBESOLA Vs. OYINLOLA (SUPRA),** ward collation agents, ward supervisors and Local Government Collation Agents are competent witnesses, if their evidence is direct, credible and reliable.

Since **PW62** said that only 5 out of 33 Local Governments in Oyo State were the Total number of votes cast equal to the number of accredited voters and so valid, this was a serious infraction he argued and submitted that the election could not be free and fair. He urged us to resolve the issue in favour of the appellants.

Learned senior counsel for the 1st respondent submitted that the position of the Tribunal is right as all the 27 witnesses of the appellants in issue were not physically present in the polling units. They were there only in spirit and they cannot give eyewitness account of what transpired. That made their evidence hearsay. Further, that the evidence of **PW4** and **PW28** were discountenanced by the Tribunal for failure to tender the Yoruba version of the English translation of their statements on oath.

Learned senior counsel for the 2nd respondent re-iterated the position of the Tribunal and other respondents. He cited the cases of **DOMA Vs. INEC (2012) 13 NWLR (Pt. 1317) 297 at 321; BUHARI Vs. INEC (2008) 19 NWLR (Pt. 1120) 246 at 424; EZEAZODOSIAKO Vs. OKEKE (2005) 16 NWLR (Pt. 952) 612 at 630 and ANDREW Vs. INEC (2018) 9 NWLR (Pt. 1625) 507 at 557 and 583.**

It is not controverted that the authorities relied upon by the Tribunal and the respondents, have clearly established the fact that polling agents are important witnesses when it comes to giving evidence as to what they saw in their respective jurisdictions. That would be eyewitness evidence which would be admissible and relevant. In all these authorities, the witnesses gave evidence on issues they did not see or witness with their eyes and their evidence amounted to hearsay and therefore inadmissible. For instance, in **DOMA Vs. INEC (SUPRA)** the Supreme Court at page 321 held that *"It is basic that a person who says he was only in the polling unit where he voted on the day of the election would not know of malpractices that happened in other polling units. To that extent, the evidence of **PW14 and PW44** is clearly hearsay. Same is not in tune with the provisions of section 38 of the Evidence Act 2011."* In **BUHARI Vs. INEC**

(SUPRA) at page 424, Tobi JSC of blessed memory held that *"An agent is the representative of all the candidates in the polling stations. He sees all the activities. He hears every talk in the station. He also sees all actions and inactions in the station. Any evidence given by a person who was not present at the polling units or polling booth like the Appellant is certainly hearsay....."* In **ANDREW Vs. INEC (SUPRA) at page 557** Okoro JSC held that

> ***"....The requirement of the law is that a Petitioner must call eye witnesses who were present when the entries in the forms were being made and can testify to how the entries in the documents were arrived at....."***

Those cases are authorities of what they decided and the central theme in them is that for a person to be able to give evidence of what happened, he had to have observed same. It therefore follows that a person who was present during the process and personally witnessed it, can give evidence and it will not be hearsay, even on the authorities above recounted. See **FRANCIS OKOYE Vs. ANUBIKE (2015) LPELR – 40664 (CA).** The point of emphasis is not whether a witness was a

polling agent or a collation agent. Even if he was no agent at all, once a person was present at a polling place or a collating centre during the activity complained about, even if he was there unlawfully, when he was supposed to be somewhere else, he is still a competent person to give evidence as to what he saw or observed, his illegal presence notwithstanding. His evidence will not be regarded as hearsay, since it is coming from an eye witness – **YUSUF LASUM Vs. ADEJARE (2011) LPELR – 5116 (CA) and PDP Vs. EL-SUDI (2015) LPELR – 26034 (CA)**

In the instant appeal, there is evidence that some of the 27 witnesses whose evidence the Tribunal regarded as hearsay said they moved around their wards and Local Governments on motor cycles on the Election Day and saw what happened. That evidence had not been dislodged and the Tribunal did not disbelieve them. We find that evidence relevant, believable and admissible. It is not hearsay, contrary to the finding of the Tribunal. The evidence of **PW62** is also relevant, believable and was not dumped on the Tribunal, which is what we earlier held.

However, there is a sore thumb as to the evidence. Since it was only "some" of the witnesses who said so, how many of

them? Again, the evidence of **PW4 and PW28** were discountenanced not because they were hearsay per se, but due to the failure to tender the Yoruba version of the English translation of their statements on Oath. There was therefore no way to know for certain the correctness of the English translation. Be that as it may, having held that the evidence of some of the 27 witnesses could not be held to be hearsay, Issue No. 4 is resolved in favour of the appellants against the respondent.

Now, from the evidence we have re-evaluated, was it sufficient for **PW62** to establish unlawfulness of the votes and did the evidence of the witnesses led properly before the Tribunal establish the non-compliance required to grant the reliefs prayed for by the appellants?

It is clear that the votes did not tally i.e. the total number of the accredited voters and the total number of votes cast have not tallied as required by the INEC Regulation and Guidelines for the conduct of Elections. That is what we held earlier to be the non-compliance. Has there been a comparison with the votes that did not tally with the votes scored to see what the final votes would be, so that the election could be affected?

Furthermore, the non-compliance is in respect of the INEC Regulations and Guidelines for the Conduct of the 2019 Elections in Nigeria, not the Electoral Act itself. Whereas, the position earlier held by this Court when it was the final destination for Gubernatorial appeals such as in **FAYEMI Vs. ONI (2009) 7 NWLR (Pt. 1140) 223 at 285 H – 286A,** is that non-compliance with INEC Manuals amounts to non-compliance with the Electoral Act, the current position for now, is to the contrary. In **NYEMSON Vs. PETERSIDE (2016) ALL FWLR (Pt. 842) 1573 at 1660,** the Supreme Court held that in section 138 (2) of the Electoral Act 2010 as amended,

> ***"....it is clear that as long an act (commission) or omission in relation to guidelines and regulations is not contrary to the provisions of the Act, it shall not in itself be a ground for questioning an election...."***

In **IKPEAZU Vs. OTTI (SUPRA) at page 1980** the Supreme Court in considering INEC Regulations and Guidelines held that –

"....more importantly, whichever angle both exhibits PWC2 and PWD are viewed, they cannot ground nullification of the election of the appellant."

This is sequel to the provision of section 138 (1) (b) of the Electoral Act 2010 as amended, that a challenge on non-compliance is to the provisions of the Electoral Act. It has been argued that it is the provision of the Electoral Act in section 153 that gave INEC the power to make regulations, guidelines or manuals, and so these three instruments if made, should have the same effect with the Act, once they are not contrary to it, otherwise they will be toothless, especially when non-compliance with them is an offence. But until the Supreme Court looks at the issue again, we are bound by its decision, and we cannot nullify an election on the basis of non-compliance with INEC Regulations and Guidelines.

We have already held under Issue No. 1, that the Tribunal had failed to properly evaluate all the material and relevant evidence placed before it, which resulted in its decision to be perverse as it failed to take into consideration relevant evidence it

ought to have taken and the finding had been reached as a result of a wrong approach of principles of law and procedure – **MTN Vs. COMMUNICATION INVESTIMENT (SUPRA) at page 453 E – F.** We have also re-evaluated the evidence as we are enjoined to so do.

We therefore hold that the judgment of the Tribunal was perverse and had violated the fair hearing principles the appellants ought to have enjoyed from the Tribunal. We set it aside. However in our further evaluation of the evidence led and the current position of the law, we cannot nullify the election. It is only when the election is nullified that the reliefs of either returning the 1st appellant as duly elected, or ordering a fresh election can be granted. Again, since we have re-evaluated the evidence and have come to a conclusion, the issue of Ordering a re-hearing of the Petition does not arise, even if there is still time to do that. We therefore maintain our position in setting aside the judgment of the Tribunal delivered on the 16th of September 2019.

No Order as costs.

ABUBAKAR DATTI YAHAYA

JUSTICE, COURT OF APPEAL