IN THE BAYELSA STATE GOVERNORSHIP ELECTION PETITION TRIBUNAL HOLDEN AT ABUJA

ON MONDAY, THE 17TH DAY OF AUGUST, 2020 BEFORE THEIR LORDSHIPS:

HON. JUSTICE MUHAMMAD I. SIRAJO - CHAIRMAN
HON. JUSTICE YUNUSA MUSA - MEMBER I
HON. JUSTICE S. M. OWODUNNI - - MEMBER II

PETITION NO: EPT/BY/GOV/03/2020

BETWEEN:
ADVANCED NIGERIA DEMOCRATIC PARTY (ANDP) ------ **PETITIONER**

AND

1. **INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC)**
2. **PEOPLES DEMOCRATIC PARTY (PDP)**
3. **DOUYE DIRI**

} **RESPONDENTS**

DISSENTING JUDGMENT

(DELIVERED BY JUSTICE MUHAMMAD I. SIRAJO, CHAIRMAN)

In the build-up to the Bayelsa State Governorship election scheduled for 16th November, 2019, the Petitioner, Advanced Nigeria Democratic Party (ANDP) was one of the political parties that indicated interest to participate in the election. In pursuance of its interest, the party nominated and sponsored Hon. Lucky King-George and Mr. David Peter Esinkuma as her Governorship and Deputy Governorship candidates respectively. Later, the name of Mr. David Esinkuma was substituted with that of Miss Inowei Janet. This petition was originally filed by four (4) Petitioners, to wit; (1) Advanced Nigeria Democratic Party, (2) Hon. Lucky King-George, (3) Mr.

David Peer Esinkuma and (4) Miss Inowei Janet. During the pre-hearing session, the 2nd 3rd and 4th Petitioners who were the candidates of the 1st Petitioner withdrew their petition against the Respondents, leaving their political party as the sole Petitioner.

The sole ground for the Petition is that the 1st Petitioner (now the sole Petitioner) or its candidate was validly nominated but was unlawfully excluded from the election in contravention of the provisions of the Electoral Act, 2010 (as amended) (section 138(1) (d)) and the Electoral Guidelines made pursuant to the Constitution and the Electoral Act.

The petition is predicated on the declaration of the 3rd Respondent by the 1st Respondent on the 14th February, 2020 as the Governor of Bayelsa State pursuant to the Judgment of the Supreme Court delivered on 13th February, 2020. The parties to the case before the Supreme Court and the Appeal Number are not stated in the petition.

The facts pleaded in support of the sole ground of the petition are summarised here below:

After the conduct of her primary election, the Petitioner vide Form CF002B submitted the names of the then 2nd& 3rd Petitioners, i.e. Hon. Lucky King-George and Mr. David Peter Esinkuma as her Governorship and Deputy Governorship candidates to the 1st Respondent. Thereafter, the candidates completed and submitted Form CF001 to the 1st Respondent and the 1st Respondent acknowledged receipt on 9th September, 2019. On 13th September, 2019, INEC wrote to the Petitioner informing her that the nomination of the then 3rd Petitioner was invalid as he did not attain the age of 35 years as constitutionally provided.

The Petitioner maintained that the 1st Respondent has no power to write that letter of 13th September, 2019 by virtue of Section 31(1) of the Electoral Act. Nonetheless, the Petitioner nominated the then 4th Petitioner, Miss Inowei Janet as replacement for the then 3rd Petitioner. After completing and submitting the Form CF001 for Miss Inowei Janet, the 1st Respondent issued its Form 25C dated 20th September, 2019, which included the then 2nd and 4th Petitioners as candidates of the current sole Petitioner. That on 27th September, 2019, INEC wrote to the Petitioner stating that the deadline for submission of nomination ended on 9th September, 2019. The 1st Respondent conducted the election on 16th November, 2019, excluding the Petitioner and its candidates.

On the basis of the foregoing summarised facts in support of the sole ground of the petition, the Petitioner prayed for the following reliefs:

> *"(i) That the election be nullified in that the election was invalid by reason of the unlawful exclusion of the 1st Petitioner and its candidate in breach of Section 138(1)(d) of the Electoral Act, 2010 (as amended).*
>
> *(ii) That the election, declaration and return of the 3rd Respondent as winner of the 2019 Bayelsa State Governorship Election be nullified.*
>
> *(iii) That INEC be ordered to conduct fresh election throughout Bayelsa State for the election of Governor and Deputy Governor of Bayelsa State, also that INEC be ordered to include the name, and logo of the 1st petitioner together with the names*

of 2nd and 3rd Petitioners as its candidates in the said fresh election.

(iv) That INEC be ordered to recognize the 2nd and 3rd Petitioners as the 1st Petitioners Governorship and Deputy Governorship (sic) for the said fresh election.

OR IN THE ALTERNATIVE

(i) That the election be nullified in that the election was invalid by reason of the unlawful exclusion on the 1st Petitioner and its candidate in breach of section 138(1)(d) of the Electoral Act, 2010 (as amended).

(ii) That the declaration and return of the 3rd Respondent as winners of the 2019 Bayelsa State Governorship Election be nullified.

(iii) That INEC be ordered to conduct fresh election throughout Bayelsa State for the election of the Governor and Deputy Governors of Bayelsa State, also that INEC be ordered to include the name and logo of the 1st Petitioner together with the names of the 2nd and 4th Petitioners as candidate (sic) of the 1st Petitioner in the said fresh Election.

(iv) That INEC be ordered to recognize the 2nd and 4th Petitioners as the Petitioner's candidates for the fresh Election."

In its response to the petition, the 1st Respondent indicated that it will raise a preliminary objection to the jurisdiction of this Tribunal to hear this petition on several grounds.

In its reply to the petition, the 1st Respondent denies the allegations contained in the petition and puts the Petitioner to strict proof. The 1st Respondent denies that it unlawfully excluded the then 2nd & 3rd Petitioners from the election. That the then 3rd Petitioner was less than 35 years of age when he sought to contest the election while the constitutionally required age limit is 35 years. That the Petitioner on 23rd September, 2019 sought to substitute the invalid Deputy Governorship candidate but INEC informed the Petitioner that it was impossible to substitute the invalid candidate at that point. First Respondent maintained that Miss Inowei Janet was never validly nominated nor was she a valid substitute to the Deputy Governorship candidate of the Petitioner. That as at the last date for submission of list of candidates the Petitioner did not submit a valid Deputy Governorship candidate who could be substituted. The 1st Respondent denied issuing any Form 25C with the names of the Governorship and Deputy Governorship candidates of the Petitioner.

The second Respondent, like the 1st, also raised objection to the competence of the petition in its reply. In the said reply the 2nd Respondent averred that the Petitioner was lawfully excluded from the Bayelsa State Governorship election due to lack of validly nominated candidates. It is averred that the ground of the petition cannot sustain the petition and that the 1st Respondent has the power to reject candidate whose name was not submitted within the 60 days allowed by law. The 2nd Respondent maintained that the 1st Respondent need not wait for the Judiciary to reject

a candidate who did not reach the constitutional age for contesting the election.

Like the 1st and 2nd Respondents, the 3rd Respondent also state in his reply that he will take objection on 8 listed grounds to the competence of the petition and the jurisdiction of the Tribunal. In his reply to the petition, the 3rd Respondent averred that the Petitioner is not a registered political party in Nigeria and did not sponsor any candidate for the election in question within the time allowed by law. That at the time of the election the then 3rd and 4th Petitioners were not validly nominated as candidates as they were not up to the mandatory age of 35 years stipulated by the Constitution and that affidavits/declarations accompanying the list/information submitted to the 1st Respondent by them was not duly sworn before a Commissioner for Oaths as required by law. He contended that the Petitioner's candidates were not unlawfully excluded from the election; rather it was the Petitioner who failed to comply with the relevant timelines for submission of candidates to the first Respondent. The Petitioner filed replies to the replies of all the Respondents.

During the pre-hearing session, the Tribunal reserved, till final judgment, ruling in the two applications filed by the 1st and 3rd Respondents. I shall now deliver those rulings. In doing so, I have decided to prepare and deliver a composite ruling in respect of the two applications as the prayers in the two motions and the grounds upon which they are predicated are substantially the same.

In the motion on notice filed by the 1st Respondent, the applicant prays for the following orders:

1) ***AN ORDER*** *of this Honourable Tribunal striking out the sole ground of the petition for being incompetent;*
2) ***AN ORDER*** *of the Honourable tribunal striking out paragraph 14 i – viii of the petition which raise pre-election matter therefore incompetent;*
3) ***AN ORDER*** *of the Honourable Tribunal striking out all the paragraphs of the petition for being predicated on an incompetent ground:*
4) ***AN ORDER*** *of the Honourable Tribunal striking out the petition for being incompetent as it contains no result of the election as declared by the 1st Respondent as mandatorily required by paragraph 4 (1) (c) of the 1st Schedule to Electoral Act, 2010 (as amended);*
5) ***AN ORDER*** *of the Honourable Tribunal striking out the petition same having been filed by Petitioners who lack locus standi to institute this petition;*
6) ***AN ORDER*** *of this Honourable Tribunal striking out reliefs sought in paragraph 15 (i) – (iv) same being incongruous, illogical and un-grantable;*
7) ***AN ORDER*** *of this Honourable Tribunal striking out the alternative reliefs sought in paragraph 15(i) – (iv) same not being within the powers of this Honourable Tribunal and thus incompetent.*
8) ***AN ORDER*** *of the Honourable Tribunal dismissing or otherwise striking out the petition for want of jurisdiction and on the ground that the petition does not disclose any reasonable cause of action.*

AND FOR SUCH FURTHER ORDER OR OTHER ORDERS *as this Honourable Tribunal may deem fit to make in the circumstance."*

The application is predicated on the grounds stated hereunder:

1) The sole ground of the petition as presently constituted is incompetent and in gross violation of section 285 (9) and (14) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) same having been filed outside 14 days from the decision of the 1st Respondent;
2) Paragraph 14 i – viii of the Petition and in fact all the paragraphs of the Petition are predicated on pre-election matter and on incompetent ground of Petition.
3) The Petitioners did not participate in the election hence lack the locus standi to challenge the election.
4) The result of the election as declared by the 1st Respondent is not contained in the Petition.
5) The main reliefs sought in the Petition are incongruous, illogical and un-grantable and the alternative reliefs sought are not within the powers of this Honourable Tribunal and thus incompetent.
6) Also, by virtue of **Section 285 (9) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended)**, the complaint relating to the sole ground of the Petition being a pre-election matter cannot be ventilated later than **14 days** from the date of the occurrence of the event.
7) The Petition cannot survive after the striking out the sole ground of the Petition.

8) The reliefs sought by the Petitioners at paragraph 15 of the Petition are not grantable.
9) The Application herein essentially concerns the competence or jurisdiction of this Honourable Tribunal to hear the Petition;
10) The Petition is not properly constituted hence it is incompetent and is liable to be struck out.
11) This Honourable Tribunal has the power to hear and determine this Application before, outside or within the pre-hearing session.
12) It is in the interest of justice to grant this Application.

In support of the application is an affidavit of 19 paragraphs sworn to by one Mukaila Yahaya Mavo, a legal Practitioner with the Law firm of Ibrahim K. Bawa & Co. counsel to the 1st Respondent. There is a written address settled by Ibrahim K. Bawa, SAN, lead counsel to the 1st Respondent.

In opposition to the motion, the Petitioner filed a counter-affidavit of 15 paragraphs deposed to by one Chief Charles Ogboli, the National Chairman of the Petitioner. Annexed to the counter-affidavit are two exhibits marked ANDP1 and ANDP2. The written address in support of the counter-affidavit is settled by Stephen Anichebe Esq. In response to the written address of the Petitioner/Respondent, Mr. Bawa, SAN, filed on behalf of the 1st Respondent/applicant a reply on points of law. All the processes filed by parties were adopted when the application came up for hearing on 29th April, 2020.

On the part of the 3rd Respondent, his application by way of motion on notice prays the Tribunal for an order striking out/dismissing this petition for want of jurisdiction, want of *locus standi*, being incompetent, frivolous,

vexatious, unsustainable and disclosing no reasonable cause of action. The grounds for the application are:

> *"1. The Petitioners lack the locus standi to institute and maintain this petition, not having participated in the election sought to be challenged.*
>
> *2. The petition is statute-barred having been filed outside the statutory time provided by the law.*
>
> *3. The sole ground of the petition is predicated on a pre-election dispute which this Honourable Tribunal lacks the jurisdiction to entertain, and same has also been caught up by the limitation period.*
>
> *4. The Petition is incompetent, fatally defective and a gross abuse of Court process as the Petitioners by the instant petition are inviting this Honourable Tribunal to sit on appeal over and review the decision of the Supreme Court in SC/01/2020 – PEOPLES DEMOCRATIC PARTY vs. BIOBARAKUMA DEGI-EREMIENYO & 3 ORS.*
>
> *5. The petition is frivolous, vexatious, scandalous, unsustainable and ought to be dismissed with punitive costs."*

An affidavit of 4 paragraphs attached with 3 exhibits marked A, B, C, sworn to by one Emmanuel Tsebo, a litigation officer in the law firm of Chief Chris Uche (SAN) & co; supports the application. The written address containing the legal submissions in support of the application is settled by Chief Chris Uche, SAN. Chief Charles Ogboli, the National Chairman of the Petitioner deposed to a counter-affidavit of 5 paragraphs with several sub-paragraphs in opposition to the application. Attached to the counter-affidavit are exhibits ANDP1 – ANDP5. The written address in opposition to the

application is settled by Stephen Anichebe Esq. A further and better affidavit and reply on points of law was filed by the 3rd Respondent/applicant in reaction to the counter-affidavit and written address filed on behalf of the Petitioner/Respondent.

In his application, learned senior counsel to the 1st Respondent/applicant formulated a sole issue for determination in his written address. The issue is couched thus:

> ***"Whether the prayers of the applicant in the present application should not be granted considering the circumstances and contents of the petition vis-à-vis the mandatory provision of the Electoral Act, 2010 (as amended), the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and established judicial decisions."***

On behalf of the Petitioner/Respondent, three issues were formulated for determination in the application of the 1st Respondent. The issues are:

> ***"(a) Whether the instant petition is a post-election matter filed within the period allowed by law.***
>
> ***(b) Whether by law, the petition is competent despite the alleged non-inclusion of the results of the election and the purported non-participation of the Petitioner in the said election.***
>
> ***(c) Whether the instant application is competent in the absence of valid affidavit and if answered in the affirmative, whether paragraphs 7 (b), (e), (f) and (g),***

8, 9, 10, 11, 12, 13, 14, 15, 17, and 18 of the affidavit in support of same are offensive to section 115 of the Evidence Act, 2011 as to be struck out."

In the motion on notice filed by the 3rd Respondent, Chief Chris Uche, SAN formulated a lone issue for determination:

"Whether having regard to all the defects, incompetence, lack of locus standi, statute barred, want of jurisdiction, this petition is not liable to struck out/dismissed."

Stephen Anichebe Esq, formulated on behalf of the Petitioner 4 issues for determination in the application of the 3rd Respondent:

"a. Whether the instant petition is a post-election matter filed within the period allowed by law.

b. Whether by the circumstances of the case and the declaration of the result of the Governorship election on the 14/12/2020 by the 1st Respondent the Petitioners are estopped from filing and maintaining the instant petition.

c. Whether 1st Petitioner is a body corporate with capacity to institute and maintain the instant petition.

d. Whether the instant petition constitute a review of the judgment of the Supreme Court in SC/01/2020. Peoples Democratic Party Vs. Biobarakuma Degi-Eremienyo & 3 others."

RESSOLUTION OF ISSUES IN THE MOTION OF THE 1ST RESPONDENT

In resolving the issues that had arisen in the application of the 1st Respondent, I hereby adopt the three issues formulated on behalf of the Petitioner. I shall treat the issues in the reverse order as the 3rd issue challenges the competence of the application itself. The issue reads:

> ***"Whether the instant application is competent in the absence of valid affidavit and if answered in the affirmative, whether paragraphs 7 (b), (e), (f) and (g), 8, 9, 10, 11, 12, 13, 14, 15, 17, and 18 of the affidavit in support of same are offensive to section 115 of the Evidence Act, 2011 as to be struck out."***

Stephen Anichebe Esq., who settles the written address in support of the Petitioner's counter-affidavit submitted that the motion is incompetent as it has no origin in that it is not indicated on the face of the motion who the applicant and Respondent are. Mr. Anichebe also attacked the competence of the supporting affidavit on the ground that the legal practitioner who deposed to same did not affix his stamp. He further argued that paragraphs 7 (b), (e), (f), (g), 8-15, 17 and 18 of the affidavit offends section 115 of the Evidence Act as they are legal arguments, prayers, conclusion and legal opinion. The Tribunal is urged to strike out these paragraphs for the reasons stated. Reliance is placed on the cases of Princess vs. Governor of Ogun State & Ors (2018) LPELR 44986 (CA). A. G. Adamawa State vs. A. G. Federation (2005) 18 NWLR (Pt. 958) 581 and Bamaiyi vs. The State (2001) 8 NWLR (Pt.715) 270. Mr. Anichebe contended that once these offending paragraphs of the supporting affidavit are struck out, the motion will be barefooted and therefore incompetent.

In his reply on points of law, learned senior counsel for the 1st Respondent/applicant submitted that the Petitioner/Respondent is not at all misled as to who the applicant is, in that its counter-affidavit has clearly indicated who the applicant and Respondents are.

In resolving this sub-issue, I note that the motion on notice was filed in petition No. EPT/BY/GOV/03/2020 with the names of the parties correctly stated. The body of the motion begins thus:

> *"Take Notice that this Honourable Tribunal will be moved on the ....day of.....2020 at the hour of 9 o'clock in the forenoon or as soon thereafter as counsel can be heard on behalf of the 1st Respondent/applicant for the following orders."*

It is clear from the body of the motion on notice that the 1st Respondent is the applicant. Little wonder that even the Petitioner acknowledged this fact by filing his counter-affidavit in a way as to reflect the 1st Respondent as the applicant. I consider this sub-issue as the height of unnecessary recourse to undue technicality even after the party raising it has by its conduct admitted that the 1st Respondent is the applicant in this application. I frown at this kind of practice which tends to unduly overstretch the Tribunal both in terms of physical and mental exertion, time and space. I resolve this sub-issue against the Petitioner/Respondent.

On the non-fixation of the stamp/seal of the legal practitioner who deposed to the affidavit on the said affidavit, Mr. Bawa, SAN submitted that issue of evidence is governed by the Evidence Act and not by the Rules of Professional Conduct. He submitted that this is a mere irregularity that can

be cured. I find as a fact that the affidavit in support of this application was deposed to by one Mukaila Yahaya Mavo, a legal practitioner in the Law firm of Ibrahim K. Bawa & Co; where Ibrahim K. Bawa, SAN, is the lead counsel for the 1st Respondent. I find as fact that as at 23/04/2020 when the motion was filed and the affidavit sworn to, the seal of the deponent, who is a legal practitioner, was not affixed to the affidavit. I am at one with the learned senior counsel for the 1st Respondent that the omission to affix the stamp/seal is curable. The question now is, has that omission been cured? Upon conducting a search in the original case file, I find that the NBA stamp of one Mukaila Mavo Yahaya is affixed to the last page of the affidavit beneath the deponent's signature, by the right side of the Commissioner for Oaths stamp and slightly above it. I hold that the 1st Respondent's motion is competent as it is supported by an affidavit known to law, the error having been cured as required by law.

The last sub-issue under issue (c) questions the propriety of some listed paragraphs of the affidavit in support of the application. Learned Senior Advocate, Bawa contended that facts deposed in paragraph 9 (b), (e), (f) and (g) of the affidavit are derived from information received from an informant whose particulars, time and place have been amply supplied. He relied on Baa vs. Adamawa Emirate Council (2013) LPELR-22068 CCA) and Sambo vs. Nigeria Army Council (2015) LPELR-40636 (CA). With respect to paragraphs 8-15, 17 and 18 of the affidavit, learned silk argued that they do not offend any of the provisions of section 115 of the Evidence Act. It is his further argument that the 1st Respondent has given notice that it will be relying on the petition and all other processes in the file of this petition at the hearing of this application. He further submitted that the issues raised in

this application are issues wherein the use of affidavit can be dispensed with. He urged the Tribunal to so hold on the authority of paragraph 47(2) of the First Schedule to the Electoral Act which allows filing of an application without an affidavit.

After taken a calm study of the paragraphs of the supporting affidavit in issue, I come to the conclusion that paragraphs 7(e) and (g) 9, 15, 17 and 18 of the affidavit do not offend any of the provisions of section 115 of the Evidence Act. I however find that paragraphs 7(b) and (f), 8, 10, 11, 12, 13, 14 and 15 of the supporting affidavit constitute legal arguments, conclusions and prayers and therefore offends section 115 of the Evidence Act. The said paragraphs are hereby struck out. Having done so, I hold that the remaining paragraphs of the affidavit are adequate to support the motion. But even if the entire affidavit is struck out, this motion having raised issues of law touching on the jurisdiction of the Tribunal to adjudicate on this petition, can still be heard without an affidavit. Paragraph 47 (2) of the First Schedule to the Electoral Act, 2010 (as amended) provides:

> *"Where by these rules any application is authorised to be made to the Tribunal or court such application shall be made by motion which may be supported by affidavit...."*

This rule mandates that all applications shall be by way of motion and the applicant is at liberty either to support the application by affidavit or to file same without an affidavit. An applicant who feels that his application does not need an affidavit to succeed may file the application without an affidavit. There is no compulsion on any applicant in an election petition to support his application with an affidavit. With or without an affidavit, this application

is competent and shall be determined on its merit. Accordingly, issue 3 or (c) formulated by the Petitioner/Respondent is resolved against her.

Issue (b) or (2) formulated by the Petitioner/Respondent is couched thus:

> **"Whether by law, the petition is competent despite the alleged non-inclusion of the results of the election and the purported non-participation of the Petitioners (sic) in the said election."**

Mr. Anichebe submitted on this issue that by stating the votes scored by the 3rd Respondent who is the winner of the election, the Petitioner has substantially complied with the provisions of paragraph 43 (1) (c) of the First Schedule to the Electoral Act, 2010 (as amended). He submitted further that the Petitioner's application to INEC for certified true copy of the form EC8E which contains the names and scores of the candidates, but was denied further shows that the Petitioner has substantially satisfied the requirement of the law. He relied on paragraph 53 (1) of the First Schedule to the Electoral Act. After quoting a lengthy passage in the judgment of Agube, JCA in Dara & Anor vs. Agbaso & Ors (2015) LPELR – 25672 (CA), learned counsel submitted that even though the provision of paragraph 4 (1) (c) is couched in mandatory terms, the courts have recognised exceptions to the general rule where the scores of all the candidates need not be stated.

It is further argued that the Petitioner has substantially participated in the said election before the unlawful exclusion which is the foundation of the petition itself. Learned counsel submitted that the non-participation, founded on unlawful exclusion is already the premise upon which the

petition is filed pursuant to section 138 (1) (d) of the Electoral Act; hence cannot be a preliminary issue. On this submission, the Tribunal is referred to the authorities of Idris vs., ANPP (2008) 18 NWLR (part 1088) 1 and PPA vs. Saraki (2007) 17 NWLR (part 1064) 453. The Tribunal is urged to resolve this issue in favour of the Petitioner and against the 1st Respondent.

On the non-inclusion of the scores of the candidates, Ibrahim K. Bawa, SAN, submitted for the 1st Respondent/applicant that by the provisions of paragraphs 4 (1) (c) and 4 (9) of the First Schedule to the Electoral Act, this petition ought to be struck out for the Petitioner's failure to state the scores of the candidates in her petition. He argued that paragraph 4 (1) (c) of the First Schedule is mandatory and requires strict compliance. He relied on Ojong vs. Duke (2003) 14 NWLR (part 841) 581.

Paragraph 4 (1) (c) of the First Schedule to the Electoral Act provides:

> *"4 (1). An election petition under this Act shall –*
>
> *a*
>
> *b*
>
> *c. state the holding of the election, the scores of the candidates and the person returned as the winner of the election..."*

As admitted by learned counsel for the Petitioner, this provision is couched in mandatory terms. The said provisions must be strictly complied with except where there are extenuating circumstances preventing the petitioner from stating the scores of candidates. In the instant petition, learned counsel for the Petitioner argued strenuously that the failure of the Petitioner to state the scores of the candidates is occasioned by failure of INEC, the 1st Respondent, to avail her the form EC8E after she has duly

applied for same. Having not participated in the election, this appeared to be a plausible reason for the Petitioner. But that is not where the matter ends. By paragraph 11 of the petition, the Petitioner founded her petition on a declaration made by INEC on 14th February, 2020, following the judgment of the Supreme Court in Suit No. SC.1/2020. Meanwhile, exhibit ANDP1, the application for certified true copy of the results of the election, relied upon by the Petitioner in this petition is dated 25th November, 2019. Certainly, the application therein could not have been for the certified true copies of the Form EC8E which declares the 3rd Respondent winner of the election on 14th February, 2020. Exhibit ADNP1 was made 3 months before the declaration of the 3rd Respondent. I hold that Exhibit ANDP1 cannot avail the Petitioner/Respondent as same was not made pursuant to the declaration of 14th February, 2020 which enabled the Petitioner to file this petition on 26/02/2020. The Petitioner has not shown any cogent excuse why she did not comply with the mandatory provisions of paragraph 4 (1) (c) of the First Schedule to the Electoral Act. In the circumstance, I hereby resolve this sub-issue against the Petitioner and in favour of the 1st Respondent by holding that the failure by the Petitioner to state the scores of the candidates has rendered the petition incompetent and liable to be struck out.

The second sub-issue raised in issue (b) or (2) deals with the incompetence of the petition on the ground that the Petitioner did not participate in the election. Mr. Bawa, SAN, argued that having not participated in the election, the Petitioner lacks the *locus standi* to file a petition by virtue of the provisions of section 137 (1) (a) and (b) of the Electoral Act.

The Petitioner herein is not a candidate in the election as the purported candidates withdrew from the petition. The Petitioner is a political party. The question is whether the Petitioner participated in the election. The answer is an emphatic No. As at 27th September 2019 when the 1st Respondent wrote to the Petitioner, informing her that nomination has closed, the Petitioner became aware that she will not participate in the election. Instead of challenging the decision of INEC at a regular Court, the Petitioner waited till 26th February, 2020 before filing this petition. Not being a political party that participated in the election, the Petitioner lacks the *locus standi* to institute this petition. Her locus only resides in challenging the decision of the 1st Respondent before a regular Court. I so hold. On the whole, I resolve issue (b) or (2) against the Petitioner/Respondent and in favour of the 1st Respondent/applicant. I hereby strike out the petition for failure to state the scores of the candidates and for want of *locus standi* on the part of the Petitioner.

Issue (a) or (1) formulated by the Petitioner/Respondent is -

> **"Whether the instant petition is a post-election matter filed within the period allowed by law"**

Stephen Anichebe Esq submitted on this issue that the failure of the 1st Respondent to include the name and symbol of the Petitioner on the ballot papers for the Governorship election after the Petitioner has validly nominated her candidates for the election is a post-election and not a pre-election matter. He submitted that by virtue of section 138 (1) (d) of the Electoral Act, 2010 (as amended), the validity or otherwise of nomination and unlawful exclusion is now a post-election matter entertainable by

election Tribunals. This is the meat of the lengthy submission of Mr. Anichebe. In support of this submission, he cited and relied on the cases of Wambai vs. Donatus (2014) LPELR – 23303; Mohammed & Anor vs. Sallau & Ors (2015) LPELR – 40752; Tsoho vs. Yahaya (1999) 4 NWLR (part 600) 657.

It is further argued that by section 31 (1) of the Electoral Act, and the authority of A.C. vs. INEC (2007) LPELR-8988 (CA), the 1st Respondent has no power to reject or disqualify any candidate whatsoever.

Learned counsel submitted that the Petitioner has not waived her right as the cause of action only arose after the declaration of result on 14th February, 2020. He again submitted that Section 285 (9) & (14) were cited by the applicant out of context and therefore inapplicable. He urged the Tribunal to hold that the instant petition situates itself on section 138 (1) (d) of the Electoral Act and to resolve this issue in favour of the Petitioner.

Earlier in his address relevant to this issue, Ibrahim K. Bawa, SAN, submitted that the Petitioner's sole ground constitutes pre-election matter which is only actionable within 14 days of the occurrence of the event. He argued that this petition is statute barred as the Petitioner waited for more than 14 days after the occurrence of the event complained of in the sole ground of the petition before taking a step by way of filing this petition. It is the submission of learned senior counsel that the provision of section 138 (1) (d) of the Electoral Act, which gives a Petitioner right to challenge an election on the ground of unlawful exclusion, cannot stand in view of section 285 (9) & (14) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended by the 4th Alteration). He cited and relied on Alhassan & Anor

vs. Ishaku & Ors (2016) LPELR-40083 (SC); Adekunle Abdulkadir Akinlade & Ors vs., INEC & Ors (unreported) Appeal No. CA/IB/EPT/09/GOV/20/2019, judgment delivered on 11/11/2019; Atiku vs. INEC (unreported) Appeal No. SC/1211/2019; Jeremiah Timbut Useni & Anor vs. INEC & Ors (unreported) Appeal No. SC/1501/2019. He urged the Tribunal to hold that the Petitioner has waived her right to challenge the election on this sole ground. He drew the Tribunal's attention to section 285 (14) of the Constitution which enumerated actions or inactions that constitute pre-election matters. On what constitutes pre-election matters, learned silk referred the Tribunal to the cases of Watharda vs., Illaramu (2015) 3 NWLR (part 1446) 369 and Egeonu vs., INEC (2014) LPELR -22868 (CA).

I shall commence the resolution of this issue by quoting the relevant sections of the enactments concerning it:

section 138 (1) (d) of the Electoral Act provides:

> *"An election may be questioned on any of the following grounds, that is to say –*
>
> *(a)*
>
> *(b)*
>
> *(c)*
>
> *(d) That the Petitioner or its candidate was validly nominated but was unlawfully excluded from the election."*

Section 285 (9) & (14) of the CFRN, 1999 (as amended) provides:

> *"(9) Notwithstanding anything to the contrary in this constitution, every pre-election matter shall be filed not*

later than 14 days from the date of the occurrence of the event, decision or action complained of in the suit.

(10).....

(11).....

(12).....

(13).....

(14) for the purpose of this section, "pre-election matter" means any suit by –

(a).....

(b).....

(c) a political party challenging the actions, decisions or activities of the Independent National Electoral Commission disqualifying its candidate from participating in an election or a complaint that the provisions of the Electoral act have not been complied with the Independent National Electoral Commission in respect of the nomination of candidates of political parties for an election, timetable for an election, registration of voters and other activities of the Commission in respect of preparation for an election" (Underlining mine, for emphasis).

In maintaining that this petition is competent, learned counsel for the Petitioner, Stephen Anichebe Esq relied heavily on the provision of section 138 (1) (d) of the Electoral Act, which listed unlawful exclusion as one of the grounds upon which an election can be questioned before the Election Petition Tribunal. While the Electoral Act was enacted in 2010, amended in 2011 and further amended in 2015, section 285 (14) of the Constitution, as

amended by the Fourth Alteration, No. 21 Act, 2017 defines "pre-election matter" to include among other things –

> *"A political party challenging the actions, decisions or activities of the Independent National Electoral Commission disqualifying its candidate from participating in an election....."*

Now, the complaint of the Petitioner, as captured in her sole ground of the petition is founded on the unlawful exclusion of her candidate by the Independent National Electoral Commission. This falls squarely within one of the enumerated matters in section 285 (14) of the Constitution which constitutes pre-election matters. How and when are such matters or grievances ventilated? Section 285 (9) of the same Constitution provides the answer. It provides for 14 days' window within which such matters shall be ventilated from the date of the event, decision, action or inaction/omission of the Independent National Electoral Commission. Undoubtedly, this action, by way of a petition, was not filed within 14 days of the decision of the 1st Respondent to exclude the Petitioner's candidates.

I find that there is clearly a conflict between section 138 (1) (d) of the Electoral Act which makes unlawful exclusion of candidate a post-election matter and the provisions of section 285 (14) of the Constitution which makes it a pre-election matter. Being a pre-election matter, contesting the action of the 1st Respondent in excluding a candidate at an Election Petition Tribunal as a post-election matter ran contrary to the provisions of section 285 (9) and (14) of the Constitution. I would have struck down the provision of section 138 (1) (d) of the Electoral Act for its inconsistency with the provisions of section 285 (9) & (14) of the Constitution but for want of

jurisdiction to do so, as such powers resides only in the regular Courts, this being a special Tribunal with special and specific jurisdiction. I shall however rely, as i must, on the Constitutional provisions as opposed to the Electoral Act, to hold that the sole ground for this petition constitute a matter that predates the actual holding of the election and therefore a pre-election matter which is only actionable within 14 days of the occurrence of the event or the decision complained of. By filing this petition long after the action complained about, the Petitioner is deemed to have waived her right to challenge the exclusion of her candidates in the Governorship election which held on 16th November, 2019. I hold that this petition, founded on pre-election matter, has ran fouled of section 285 (9) and (14) of the Constitution which divest this Tribunal of the jurisdiction to entertain it. The petition is statute barred. Accordingly, I resolve issue (a) or (1) against the Petitioner/Respondent and in favour of the 1st Respondent.

Having resolved all the three issues formulated by the Petitioner against her, I hereby strike out the sole ground of the petition and the petition itself for being incompetent due to the various reasons stated in this ruling.

RESOLUTION OF ISSUES IN THE MOTION OF THE 3RD RESPONDENT

I have already reproduced the issues formulated by learned counsel for the 3rd Respondent/applicant. Even though proliferated, I shall adopt the issues formulated on behalf of the Petitioner/Respondent in resolving this application. Like I did earlier on, I shall start the determination of the issues from the rear, i.e., issue (d) or (4) as referred to by learned counsel for the Petitioner. The issue is-

"Whether the instant petition constitutes a review of the judgment of the Supreme Court in

SC/01/2020: Peoples Democratic Party vs Biobarakuma Degi-Eremienyo & 3 others."

In the affidavit of Mr. Emmanuel Tsebo filed in support of this motion, the deponent stated in paragraph 3(n) thereof that the petition is an attempt to review the decision of the Supreme Court in SC.1/2020 delivered on 13th February, 2020. At paragraph 3.36 of his written address, Chief Chris Uche SAN, submitted that this petition is an invitation to this Tribunal to sit on appeal over and review the judgment of the Supreme Court in Appeal No. SC.1/2020, and that the Petitioner is unwittingly setting up this Tribunal against the Supreme Court, whose judgment binds all Courts in Nigeria. He urged the Tribunal to decline this invitation.

Stephen Anichebe Esq., who settles the written address for the Petitioner/Respondent argued otherwise. He submitted that a look at the petition and the ground will reveal that this petition is not an invitation on the Tribunal to review the judgment of the Supreme Court, which is annexed as exhibit "B" to the applicant's affidavit. He submitted that the said judgment binds everybody only as to the status of the 1st Respondent therein who was disqualified from the election along with his party, the All Progressives Congress. He submitted that this petition has nothing to do with the status of those persons in that suit, just as the validity of the election was not considered in the said judgment.

In SC.1/2020 the Supreme Court disqualified the All Progressives Congress (APC) and her candidates from the election on the ground that the candidate for the Deputy Governorship position was not qualified to contest the election. The Court proceeded to make the following orders: -

"it is hereby ordered that INEC (the 4th Respondent herein) declare as winner of the Governorship election in Bayelsa State the candidate with the highest number of Lawful votes cast with the requisite constitutional (or geographical) spread. The 4th Respondent (INEC) is hereby further ordered to forthwith withdraw the Certificate of Return issued to the 2nd and 1st Respondents and issue Certificate of Return to the candidate who had the highest number of lawful votes cast in the Governorship election and who also had the requisite constitutional (or geographical) spread."

That judgment is now reported as PDP & Others vs. Biobarakuma Degi-Eremienyo & Others (2020) LPELR-49734 (SC). In carrying out the orders above, the 1st Respondent herein excised the votes scored by APC and declared the 3rd Respondent as winner of the election. It is against the backdrop of that declaration that this petition was filed. The issues in this petition has no bearing with the issue decided by the Supreme Court. Accordingly, I have no difficulty in holding that this petition is not an invitation to review the judgment of the Supreme Court. I resolve this issue in favour of the Petitioner/Respondent and against the 3rd Respondent/applicant.

Issue (c) or (3):

"Whether the 1st Petitioner (sic) is a body corporate with capacity to institute and maintain the instant petition."

At paragraph 3.28 through 3.35 of his written address, Chief Chris Uche, SAN, argued that by virtue of exhibit "C" annexed to the affidavit in support of the motion, which is the list of de-registered Political Parties in Nigeria, the Petitioner having been de-registered lacks the legal capacity to institute this petition. He submitted that the Petitioner having been de-robbed of its corporate personality by INEC can no longer institute and maintain a petition as it is no longer an entity known to law. He urged the Tribunal to strike out the petition.

Mr. Anichebe argued for the Petitioner at paragraphs 2.44 through 2.50 that the Petitioner still retains its juristic personality notwithstanding the purported de-registration by the 1st Respondent as the purported de-registration has been suspended by the order of Court, which order still subsist, pending the determination of the suit before the Federal High Court. Learned counsel took a lot of time and space to explain the meaning of *"status quo ante bellum"* with the aid of decided authorities.

It is not in dispute that on 6th February, 2020, the 1st Respondent de-registered the Petitioner and others as political parties in Nigeria. Dissatisfied by that action, the Petitioner and others filed a suit at the Federal High Court and on 17th February, obtained an order of injunction restraining the 1st Respondent herein from de-registering her and others. That order was subsisting as at 26th February, 2020 when this petition was filed. In the eyes of the law, the corporate personality of the Petitioner was untainted as at 16th November, 2019, when the Governorship election took place and as at 26/02/2020, when this petition was filed. What happened to the suit at the Federal High Court after the filing of this petition has not been officially brought to the notice of the Tribunal during the hearing of

this application. I shall therefore restrict myself to the materials before the Tribunal at the time of the Pre-hearing session when this application was taken, in determining same.

It has been argued by Chief Chris Uche SAN, in his reply on points of law that Courts do not grant restraining orders on acts that has already been done. That is correct law. But where, as in this situation, the Court makes the restraining order after the conclusion of the act, I am bound to follow that order, even if wrongly made, until same is set aside. This position is also good law. There is no material before me as at the date this application was argued to show that the said order was set aside. I therefore hold that the Petitioner has the legal capacity to institute this petition as at the time same was filed. I resolve this issue in favour of the Petitioner/respondent and against the 3rd Respondent/applicant.

Issue (b) or (2) formulated by the Petitioner/Respondent is –

> **"Whether by the circumstances of the case and the declaration of the result of the Governorship election on the 14/02/2020 by the 1st Respondent, the Petitioners are stopped from filing and maintaining the instant petition".**

Chief Chris Uche, SAN, argued in his written address as follows:

> *"3.24 My Lords, as can be gleaned from the averments contained in paragraph 3 of the affidavit in support of this application, this Honourable Tribunal will*

see that the Petitioners have earlier on instituted an action before this Honourable Tribunal on the same subject-matter, which is the action/decision of the 1st Respondent to invalidate the nomination of the 1st Petitioner's candidate in respect of the 16th November 2019 Governorship election of Bayelsa State.

3.25 Additionally, your Lordships can also see by paragraph 3 of the affidavit in support of this application, as well as exhibit "A", that the said Petitioners also filed affidavits relinquishing their grievance with the action of the 1st Respondent in the overall interest of Bayelsa State.

3.26 We therefore submit, that the Petitioners having sworn on oath relinquishing their grievance in the overall interest of Bayelsa State are estopped from filing the instant petition which arose from the same cause of action as their earlier Petition. We submit that in the circumstances of this matter it amounted to a waiver on the part of the Petitioners of a legal right beneficial to them and estoppel by conduct. We refer your Lordships to the recent Supreme Court case of ***GANA vs. S.D.P. & ORS (2019) LPELR – 47153(SC).***

3.27 *We therefore urge your Lordships to hold that the Petitioners cannot maintain the instant petition."*

The summary of Mr. Anichebe's response to the above quoted submission is that a competent petition can only be validly filed after a declaration and return of a winner has been made and that the declaration of David Lyon of the APC as the winner of the election having been invalidated by the Supreme Court, everything done pursuant to that declaration becomes spent and abated, including the petition earlier filed by the Petitioner against the declaration of David Lyon. That the cause of action that now accrued to the Petitioner follows the declaration made by the 1st Respondent on 14/02/2020 pursuant to the Supreme Court judgment, exhibit 'B'. Learned counsel contended that the Petitioner is not estopped from instituting the instant petition because estoppel operate only where there has been a decision on the merit in respect of the same parties and same issue. The Tribunal is referred to the authorities of Ogbonna (Nig) Ltd vs. President, FRN (1997) 5 NWLR (part 504) at 281; Omnia (Nig) Ltd vs. Dyktrade Ltd (2007) 15 NWLR (Part 1058) 576; A.G Bendel State vs. A.G Federation (2001) FWLR (part 65) 448.

I cannot but agree with Mr. Anichebe on his restatement of the law of estoppel. A successful plea of estoppel can only be predicated upon the parties, subject matter and issues being the same. I note that while the subject matter and issues in petition No. EPT/BY/GOV/02/2019 are the same with the instant petition, the parties are not the same. What is more, there was no decision on the merit in the previous petition as to bind the Petitioner and estop her from instituting and maintaining the present petition. Furthermore, as at December, 2019 when the previous petition was filed and later withdrawn, the Petitioner does not have a cause of action against the 3rd Respondent, who was then a loser in the election. The

Petitioner's cause of action against the 3rd Respondent only accrued after the judgment of the Supreme Court on 13/02/2020 and the declaration by the 1st Respondent pursuant thereto. The act of withdrawal of the previous petition by the Petitioner cannot be a bar to the institution of the instant petition against a different Respondent from the previous one. Estoppel of whatever kind cannot operate in this situation. The Petitioner did not lose her right to file this petition just because she withdrew her earlier petition against a previous winner whose declaration and return was invalidated by the Supreme Court. This issue is accordingly resolved in favour of the Petitioner/respondent.

Issue (a) or (1) reads thus –

> **"Whether the instant petition is a post-election matter filed within the period allowed by law."**

I note all the submissions and legal fireworks displayed by both parties on this issue. In the cause of this judgment I have previously dealt exhaustively with this issue while deciding on issue (a) or (1) in the motion of the 1st Respondent. I resolved then that this petition, predicated on its sole ground, is a pre-election matter within the meaning ascribed by section 285 (14) of the Constitution and that this Tribunal lacks the requisite jurisdiction to entertain it. I adopt the entirety of my decision on issue (a) or (1) in the motion of the 1st Respondent as my decision on issue (a) or (1) in the instant motion of the 3rd Respondent. For being a pre-election matter and for being statute barred, this petition is incompetent. I so hold. This issue is hereby resolved in favour of the 3rd Respondent/applicant and against the Petitioner/Respondent.

In the result, I dismiss the petition for the reasons aforesaid.

Considering that this is a trial Tribunal and taking into account that time is of the essence in election matters, I shall abide by the admonition of the apex Court by proceeding to decide this petition on the merit, in case my decisions supra on the interlocutory applications are found to be erroneous.

The sole ground of the petition and the facts in support thereof have already been summarised at the beginning of this judgment. In prove of her case, the Petitioner called 2 witnesses and tendered 25 exhibits marked as P1 – P21 and P25 – P28. Exhibit P1, judgment of the Supreme Court in SC.1/2020 delivered on 13/02/2020, was tendered from the Bar.

Ibrahim Sani Mohammed, a Principal Legal Officer with the Headquarters of the Independent National Electoral Commission, Abuja, testified on subpoena for the Petitioner as PW1. The two subpoenae are exhibits P2 and P3 while two Forms 1A issued on the Chairman of INEC were admitted as exhibits P4 and P5. Other exhibits tendered by PW1 are as follows:

1. Certificate of Registration of ANDP – Exhibit P6
2. INEC letter dated 13/09/2019 titled: Re-nomination of candidates for 16th November Bayelsa State Governorship Election – Exhibit P7
3. INEC letter to Petitioner dated 27/09/2019 – Exhibit P8
4. Form EC25C, list of nominated candidates – Exhibit P9
5. Form CF 001 of Hon. Lucky King George – Exhibit P10
6. Form CF 001 of Mr. David Peter Esinkuma – Exhibit P11
7. Form CF 001 of Miss Inowei Janet – Exhibit P12
8. 5 copies of ballot papers for Yenagoa LGA – Exhibit P13
9. Media briefing by the Chairman of INEC – Exhibit P14

10. Summary of results from LG's and Declaration of Result – Exhibit P15
11. Form EC4B (ii) – Exhibit P16
12. Form CF 002 (B) – Exhibit P17
13. ANDP's letter to INEC dated 21/09/2019 – Exhibit P18
14. ANDP's letter to INEC dated 29/09/2019 – Exhibit P19
15. Application by Orji Nwafor – Orizu & Associates to INEC – Exhibit P20
16. Receipt for certification of documents – Exhibit P21

When shown exhibit P13, this witness confirmed that the name of the Petitioner is not on the ballot paper.

Responding to questions under cross-examination, PW1 agreed that the 1st Respondent issued Amended Time Table preparatory to the election. The Amended Time Table was tendered by Ibrahim K. Bawa, SAN, through PW1 and same was admitted and marked as exhibit P22. Similarly, PW1 admitted that INEC issued Press Release on Kogi and Bayelsa States Governorship Election. The said Press Release was tendered as exhibit P23. Continuing his evidence under cross-examination, PW1 told the Tribunal that the Petitioner vide exhibit P17 submitted to INEC the names of her candidates on 09/09/2019. On the Form CF 001 of Mr. David Peter Esinkuma, Exhibit P11, this witness said his date of birth was given as 10/02/1985 while on his attached West African School Certificate, his date of birth was written as 02/10/1985.

PW1 told the Tribunal that by exhibit P7, the 1st Respondent informed the Petitioner that Mr. David Peter Esinkuma was 34 years old, hence not qualified to contest the election and that by substituting him with Miss

Inowei Janet, the Petitioner was satisfied with the position taken by the 1st Respondent. With respect to Miss Inowei Janet, PW1 testified that by exhibit P12 her date of birth is 26/11/1984, making her less than 35 years old as at 16/11/2019 when the Governorship Election took place. Witness agreed that it was exhibit P7 that gave rise to exhibit P12. That even though the Petitioner got the letter marked as exhibit P8 before the election, she did not go to Court to challenge the decision of the 1st Respondent. The list of de-registered political parties, which included the Petitioner as No. 8 therein, was tendered by Chief Chris Uche, SAN, through this witness and same was marked as exhibit P24. PW1 was not re-examined.

Chief Charles Ogboli, the National Chairman of the Petitioner gave evidence as PW2. He adopted all the written statements on oath made by him annexed to the petition and the replies to the replies of all the Respondents to the petition as his evidence in-chief.

Before summarising the evidence of Chief Ogboli, it is apposite to quote him at paragraph 3 of his written statement on oath dated 26th February, 2020, where he said:

> *"3. That the facts that led to the filing of this petition emanated from the actions and inactions of the 1st Respondent who was the electoral umpire in the just concluded Bayelsa State Governorship Election held on 16th November, 2019"*

I shall return to this piece of evidence later in the course of the judgment. Now the summary of the evidence. As a registered political party, desirous

of contesting the Governorship Election in Bayelsa Sate, the Petitioner, on 9th September, 2019 forwarded to the 1st Respondent list of her Governorship and Deputy Governorship candidates via Form EC25C together with their respective forms CF 001. The candidates were David King – George for the Governorship and David Peter Esinkuma for the Deputy Governorship. On 13th September, the 1st Respondent wrote to the Petitioner informing her that the nomination of David Peter Esinkuma was invalid on the ground that his age was below the statutory minimum of 35 years. On 21st September, 2019, the Petitioner forwarded the name of Miss Inowei Janet as substitute for David Peter Esinkuma. By another letter dated 27th September, 2019, the 1st Respondent wrote to the Petitioner informing her that it was no longer possible for her to make a fresh nomination for the position of Deputy Governor and that the name and logo of the Petitioner would not be on the ballot. The Petitioner urged the 1st Respondent to rescind its decision through a letter dated 3rd October, 2019. On the day of the election, i.e., 16th November, 2019, the Petitioner found that her name and logo was not on the ballot. PW2 maintained that the 1st Respondent has no power to disqualify the Deputy Governorship candidate of the Petitioner.

Through this witness, the Petitioner tendered the following exhibits-

1. Acknowledgment of receipt of Form CF 001 of Lucky King George – P25
2. Acknowledgement of receipt of Form CF 001 of David Peter Esinkuma – P26
3. Petitioner's letter to the 1st Respondent dated 03/10/2019 – P27

4. Ruling of the Federal High Court in Suit No: FHC/ABJ/CS/444/2019 – P28

PW2 told the Tribunal that exhibits P6 – P21 are the documents be referred to in his written statements on oath.

Under cross-examination, PW2 said he did not state in paragraph 7 of his main statement on oath that his party's Deputy Governorship candidate was disqualified by the 1st Respondent. He agreed that on 13/09/2019, as per exhibit P7, the 1st Respondent informed them that David Esinkuma was not qualified. He admitted signing exhibit P18. He also admitted that the Petitioner did not go to Court after Exhibit P27. PW2 said by exhibit P7, the reason given by the 1st Respondent for disqualifying David Peter Esinkuma was that he was only 34 years old. He testified that Inowei Janet whose name is on exhibit P12 was born on 26/11/1984 and that she will turn 35 on 26/11/2019 after the date of the election. He also admitted that after declaration of result of the election, they filed a petition but later withdrew same. He identified the affidavit sworn to by him in support of the ground for withdrawal of the petition and same was tendered by Chief Chris Uche, SAN, and marked exhibit P29. He confirmed that it is true that David King-George, David Peter Esinkuma and Janet Inowei have all withdrawn from this petition. PW2 was not re-examined, and with his testimony the curtain was drawn on the Petitioner's case.

The 1st Respondent opted not to call any witness. The 2nd Respondent did not also call any witness but tendered exhibit R1 from the Bar. The said exhibit is the Form EC25C, list of nominated candidates from the Petitioner dated 20/09/2019. Like the 1st and 2nd Respondents, the 3rd Respondent

also did not call any witness but tendered from the Bar three affidavits of David King-George, David Peter Esinkuma and Inowei Janet in petition No. EPT/BY/GOV./02/2019. The 3 affidavits are marked as exhibits R2, R3 and R4 respectively.

Learned counsel for the parties filed final written addresses which were adopted by them on 20th July, 2020. In all of the addresses, the issues argued are the same issues formulated by the Tribunal in the Pre-Hearing Conference Report. The issues are:

1. **Whether the petition as constituted is not frivolous, vexatious and a gross abuse of court process.**
2. **Whether the Petitioner has validly nominated candidates but were unlawfully excluded by the 1st Respondent from the Bayelsa State Governorship Election of 16th November, 2019.**

The 1st address to be filed is that of the 2nd Respondent, which was filed on 17/06/2020. In the said address, settled by Emmanuel Enoidem Esq, learned counsel argued that the petition was not brought under any of the cognisable grounds enumerated under Section 138 (1) of the Electoral Act in that it is brought under Section 138 (1) (d) of the Electoral Guidelines made pursuant to the Constitution". In a similar challenge to the ground of the petition, Chief Uche, SAN, counsel to the 3rd Respondent argued that by adding to her ground of appeal the words "and the Electoral guidelines made pursuant to the constitution and the Electoral Act", the petitioner has no doubt expanded the provisions of section 138 (1) (d) of the Act beyond its limits and boundaries. Learned counsel for the 2nd and 3rd Respondents both cited and relied on the cases of Ojukwu vs., Yar'adua (2009) 12 NWLR

(part 1154) 50 at 121 and APC vs. Adeleke & Ors (2019) LPELR -47736 (CA).

In response to this preliminary issue, learned senior counsel for the Petitioner, Kehinde Ogunwumiju, SAN, submitted at page 36, paragraph 6.11 of his composite final written address that the ground of the petition complies fully with the provisions of section 138 (1) (d) of the Electoral Act, and that the addition of "and Electoral guidelines made pursuant to the constitution and the Electoral Act" was a mere surplusage which does not affect the competence of the sole ground of the petition. That the decision in Ojukwu vs. Yar'adua (supra) did not bar a Petitioner from employing his own words in couching his ground of petition, provided the words used did not add to or expand the scope of the Electoral Act.

In determining whether or not the sole ground of the petition as couched has expanded the scope of the provisions of section 138 (1) (d) of the Electoral Act, two things shall be borne in mind – (a) the Electoral Act is made pursuant to the provisions of the Constitution which donates to the National Assembly power to enact same; (b) before the conduct of any election, the Independent National Electoral Commission usually issues Guidelines and Manual for the step by step conduct of the processes leading to the actual voting. Such processes include Time Table for the conduct of party primaries and submission of names and particulars of candidates by political parties. The 1st Respondent derives its powers under the Electoral Act and the Constitution. It is in the light of (a) and (b) above that I shall now look at the sole ground of the petition as couched by the Petitioner. In adding the words "and the Electoral Guidelines made pursuant to the Constitution and the Electoral Act", after the verbatim reproduction of the

words used in section 138 (1) (d) of the Electoral Act, the Petitioner did not, in my humble view, expand the scope of the matters covered by that section of the Electoral Act, especially bearing in mind the symbiotic relationship between the Electoral Act and the Constitution on one hand and the Electoral Act and the 1st Respondent's Guidelines made pursuant to it, on the other hand. Consequently, I hold that the ground of the petition as couched did not expand the limit/boundary of section 138 (1) (d) of the Electoral Act.

The next preliminary issue is the petitioner's attack on the competence of the Final Written Address of the 1st Respondent. Learned senior counsel for the Petitioner challenged the said address on the ground that it was filed contrary to the provisions of paragraph 46 (10) – (14) of the First Schedule to the Electoral Act. It is the argument of Mr. Ogunwuniju, SAN, that the 1st Respondent having called evidence through PW1 by tendering exhibit P22, is obliged to file his address 10 days after the 3rd Respondent closed his case. Rather than do that, the 1st Respondent waited till 18 days after the close of the 3rd Respondent's case on 08/06/2020 before filing its final address on 25/06/2020. He urged the Tribunal to strike out the 1st Respondent's final address for incompetence, same having been filed out of time. On this submission, learned silk referred the Tribunal to the cases of Andrew vs. INEC (2018) 9 NWLR (part 1625) 507 @ 584; ONOR vs. ENOR (2015) LPELR – 25707 (CA) and Mustapha vs. Suntai (2013) LPELR – 22109 (CA).

I have taken time to read the authorities cited and I find that none of them deals with the issue of order of filing final addresses before an Election Petition Tribunal. While those authorities are good law on the factual

situations of those cases, they cannot apply in the instant petition as the issue in the instant petition is distinct from the issues in those cited authorities. That is one aspect. The second aspect has to do with the provisions of paragraph 46 (10) (11) of the First Schedule to the Electoral Act. It provides:

> *"When the party beginning has concluded his evidence, if the other party does not intend to call evidence, the party beginning shall within 10 days after close of evidence file a written address. Upon being served with the written address, the other party shall within 7 days fie his own written address.*
>
> *Where the other party calls evidence, he shall within 10 days after the close of its evidence file a written address"*

This is the section under which Mr. Ogunwumiju, SAN, predicated his challenge to the competence of the 1st Respondent's final address. What the paragraph meant is that where a Respondent calls evidence, then he shall file his final address within 10 days after the close of evidence. Where the Respondent did not however call evidence, the Petitioner, who is the party beginning, shall file final address within 10 days after the close of evidence. In determining who, as between the Petitioner and the 1st Respondent in the instant petition, shall file his address first, I shall interrogate and decipher the intention of the Legislature through the words used in the enactment. The provision did not say that a Respondent who led evidence at any stage of the proceedings, like say, in the course of the Petitioner's case through Petitioner's witnesses, shall file his address first. The provision

qualifies the period within which the Petitioner who led evidence shall be the first to file final address. Hear the Legislature:

"When the party beginning has concluded his evidence,..." (Underlining for emphasis)

Herein lies the all-important qualification of the operation of paragraph 46 (10) of the First Schedule to the Electoral Act. The question is whether, at the time the 1st Respondent tendered exhibit P22 through PW1, the party beginning, i.e., the Petitioner has concluded his evidence. The answer is an empathic No. After PW1 was cross-examined by all the Respondents, the Petitioner proceeded to call PW2, its National chairman. Therefore, the condition precedent for the 1st Respondent to be deemed as having called evidence which will oblige it to file final address before the Petitioner, has not been fulfilled, as the Petitioner has not concluded his evidence at the time the 1st Respondent led evidence through PW1 by tendering exhibit P22. In this situation, it is the Petitioner that ought to address the Court first before the 1st Respondent, bearing in mind the fact that the 1st Respondent did not call evidence at the conclusion of the Petitioner's case. For the avoidance of doubt, we reproduce here below the portion of the proceedings of 08/06/2020 relevant to this issue:

> *"Mr. Bawa, SAN – The petition was adjourned to today for defence. After taken a look at the quality of evidence led by the Petitioner, the 1st Respondent has decided not to call any witness."*

It is clear as crystal that the 1st Respondent did not call any evidence either by tendering document or calling witnesses at the conclusion of the case of

the party beginning, i.e., the Petitioner. In the circumstances of my findings, observations and analysis supra, I hold that the final address of the 1st Respondent was filed within time and therefore competent. On the other hand, the Petitioner's reply to the 1st Respondent's final written address is incompetent as the sequence of filling addresses was not observed and followed in filling it. The Petitioner's address ought to be filed first since the 1st Respondent did not call evidence at the conclusion of the Petitioner's case. Having not filed her address against the 1st Respondent after the close of defence, the Petitioner's reply address against the address of the 1st Respondent filed on 29/06/2020 is incompetent and is hereby discountenanced.

I shall now treat the issues for determination

ISSUE 1

"Whether the petition as constituted is not frivolous, vexations and a gross abuse of Court process"

On behalf of the 2nd Respondent, Emmanuel Enoidem Esq., submitted that this petition is statute barred as it was filed on 26/07/2020, more than 21 days after the declaration of the result of the election on 17/11/2020 and therefore contravenes section 285 (5) of the CFRN, 1999 (as amended). He submitted that even though the Petitioner is contending a declaration made on 14/02/2020 pursuant to the Judgment of the Supreme Court delivered on 13/02/2020, the Petitioner has failed to produce the said second declaration before the Tribunal. Learned counsel further submitted that since the petition is grounded on unlawful exclusion, the Petitioner doesn't have to wait for declaration of result before filing her petition as she is not

excluded from the declaration but from the election. He urged the Tribunal to dismiss the petition as being incompetent, frivolous, vexatious and an abuse of judicial process. On the above submissions, the Tribunal is referred to the following authorities- Bello vs. Yusuf (2019) LPELR – 47918 (SC); Mamonu vs. Dikat (2019) LPELR – 46560 (SC); Gana vs. SDP (2019) LPELR – 47153 (SC); Dangana vs. Usman (2012) LPELR – 25012 (SC); Agbai vs. INEC (2008) LPELR – 3647 (CA).

Another point demonstrating the frivolity of the petition, according to Mr. Enoidem, is that the petition is a pre-election matter which robs this Tribunal of jurisdiction to entertain it. He submitted that the jurisdiction of this Tribunal does not extend to the determination of disqualification or exclusion of any candidate in an election, which essentially is the complaint of the Petitioner in the instant petition. Learned counsel referred to the provisions of section 285 (14) of the Constitution on what constitute pre-election matters with particular reference to paragraph (c) thereof. He observed that the complaint being that of exclusion, only the regular Courts have jurisdiction to determine it, to the total exclusion of the Election Petition Tribunal. Referring to section 285 (9) of the Constitution, Mr. Enoidem submitted that the complaint being a pre-election matter, the Petitioner is obliged to bring such an action not later than 14 days from the date of the occurrence of the event, decision or action complained of. It is argued that by coming to this Tribunal, the Petitioner has chosen the wrong forum, having admitted through PW2 that she did not file any suit before any Court against the 1st Respondent on the basis of exclusion of her candidates from the election. On this score, the Tribunal is urged to dismiss the petition for being frivolous and vexatious, placing reliance on Obi vs.

INEC (2007) LPELR – 2166 (SC) and Chukwukezie vs. APGA (2019) LPELR 47240 (CA).

Learned counsel argued that by its wordings, section 285 (14) (c) of the Constitution has given power to the 1st Respondent to disqualify a candidate that has fallen short of the constitutional requirement from contesting an election, and where the 1st Respondent takes such a decision before the election, it is defined as pre-election matter which must be commenced within 14 days of the decision. He urged the Tribunal to bring down section 138 (1) (d) of the Electoral Act for being in conflict with section 285 (14) of the Constitution.

On the reliefs claimed by the Petitioner vis-a-vis the withdrawal of the erstwhile 2nd, 3rd and 4th Petitioners who were the candidates of the Petitioner at the election, learned counsel submitted that all the reliefs claimed by the Petitioner are incompetent in that they are reliefs that inures to the parties who withdrew from the petition. On this submission, reliance is placed on Resque Construction Company Ltd vs. Adesola (2013) LPELR-22142 (CA) PP. 14 – 15 and Ozomgbachi vs. Amadi & Ors (2018) LPELR – 45152 (SC).

He finally urged the Tribunal to dismiss the petition as being frivolous, vexatious and a classic abuse of judicial process in view of the de-registration of the Petitioner which was affirmed by the Federal High Court in suit No. FHC/ABJ/CS/211/2020, between National Unity Party of Nigeria vs. INEC, delivered on 18/03/2020 and suit No. FHC/ABJ/CS/444/2019 between Advanced Congress of Democrats & 32 Ors vs. A.G. Federation and INEC, delivered on 11/06/2020. He concluded that in view of these two

judgments, if this Tribunal were to grant the prayers of the Petiitioner, they will be purely academic and unenforceable.

Chief Chris Uche, SAN, on behalf of the 3rd Respondent, opened his argument with the challenge to the *locus standi* of the Petitioner to claim the reliefs in the petition as the reliefs only inure to the candidates of the Petitioner, who denounced the petition by withdrawing from it. He also relied on the case of RCC Nig. Ltd (supra). On the issue of *locus standi,* learned senior counsel cited and relied on Alilionu & Anor vs. Njoku (2017) LPELR–4625 (CA), A.G Federation vs. A.G Lagos State (2017) LPELR-42769 (CA) Pp50-51. He also made reference to petition No. EPT/BY/GOV/02/2019 which was earlier filed by the 2nd – 4th Petitioners but later withdrawn and was struck out, and submitted that having wilfully relinquished their rights (if any) to complain about their alleged unlawful exclusion, they cannot turn around to file the instant petition on the same subject matter. He submitted that the cause of action of the Petitioner crystallised on 16/11/2019 being the day they must have finally realised that INEC did not place her on the ballot. He argued that unlike other Petitioners before this Tribunal who could even contend that there was a declaration of results on 14/02/2020 by INEC, and use same to ground their petition, that is not the case with the instant Petitioner as her case must of necessity relate back to the date of the alleged unlawful exclusion being 16/11/2019. He submitted: -

> *"it is pertinent to note that the case of the petitioner is not hinged on the nullification of the votes of the APC candidate, David Lyon, nor on the declaration of results by the 1st Respondent on the 14th day of*

February 2020; nor on the return of the 3rd Respondent as the Governor of Bayelsa State, but on their alleged unlawful exclusion from the election held on the 16th day of November, 2019. The only election the petitioner claims to be excluded from is the one of 16th November, 2019. In effect from whatever angle the case of the petitioner is looked at, it is indeed statute barred for all ages and unenforceable by the petitioner".

Chief Uche, SAN, further submitted that the petition is frivolous and vexatious in that at the time of filing same the Petitioner was aware that it had since been de-registered as a political party by the 1st Respondent. He maintained that till date, the Petitioner has no judgment of any Court of competent jurisdiction vacating its de-registration and restoring it as a political party in Nigeria. He referred to the decisions of the Federal High Court which upheld the right of the 1st Respondent to de-register non-performing political parties like the Petitioner. The cases are unreported and the particulars are already given supra in the cause of reviewing the submissions of Emmanuel Enoidem, Esq.

The learned Chief Uche, SAN, observed:

"We must also respectfully observe that it has now become the penchant of political parties who have no possibility of winning any seats in any election and to use them to deliberately and fraudulently claim to have been unlawfully excluded from the election, merely as a bargaining chip to

negotiate with the winner of the election. Like Hon. Justice Chikere stated in the said judgment above:

> *"It is clear from paragraph 36 of the Plaintiffs application that they have participated in various elections in the country but could neither show any evidence of winning an election or attached certificates of returns from INEC to show the seat they* won"

This ugly trend has seen a rise in recent years of these spurious allegations of unlawful exclusions and demands/threats of cancellation of the election and fresh elections by political parties who have never won any seat in any election and who by their very conduct excluded themselves from the election, all as a means of blackmail and extortion from the winner. This trend is indeed vexatious and must be condemned in very strong terms in the overall interest of our nascent democracy.

We submit that the PW2 as a party chairman and a lawyer must be presumed to know, of all things, at least the age qualification for Governorship candidates he is sponsoring.

We submit that it is not a coincidence that he kept fielding marginally under-aged persons for the office of Deputy Governor deliberately as shown hereinabove. Even if he made a mistake the first time, same having been pointed out in writing by the 1st Respondent, the least he could do was to replace him with a person of age. We submit that

the fielding of under-aged deputies was made deliberately and for the purpose of occasioning a non-clearance of the candidate and generating a false and self-imposed ground for exclusion, for the sole purpose of filing a speculative election petition after an election in which the petitioner had no chance whatsoever of scoring any votes"

He submitted that section 285 (14) (c) of the Constitution is intended to cure that mischief by rendering the erstwhile post-election relief provided in section 138 (1) (d) of the Electoral Act, to now become a pre-election matter. He submitted that in view of the clear constitutional provisions, section 138 (1) (d) under which this petition is filed is inapplicable and in conflict with the constitution and liable to be struck down. He urged the Tribunal to strike down section 138 (1) (d) of the Electoral Act and to decline jurisdiction over this petition.

Learned senior counsel submitted that it is vexatious of the Petitioner who is fully aware of the constitutional provision in section 285 (14) (c) to proceed to file this petition. The Tribunal is urged to resolve this issue in favour of the 3rd Respondent.

In his own submission on this issue, Ibrahim K. Bawa, SAN, learned counsel for the 1st Respondent, contended that the case of the Petitioner is pre-election matter by virtue of section 285 (14) of the Constitution of the Federal Republic of Nigeria, 1999 and that same having been filed outside the time allowed by the Constitution, this Tribunal lacks jurisdiction to entertain same. Mr. Bawa, SAN, argued that the Petitioner is estopped from re-litigating on her exclusion having withdrawn petition No.

EPT/BY/GOV/02/2019 on the same subject matter. He further argued that prayers iii, iv, and alternative prayers iii and iv having been struck out by the Tribunal, there is no prayer left on the recognition of the purported candidates of the Petitioner as candidates at the election and no declaration of any person as candidate of the Petitioner can therefore be made by the Tribunal, as it is not a father Christmas.

He submitted that with the de-registration of the Petitioner on 06/2/2020, the Petitioner ceases to be a lawful personality and therefore lost the right to institute this petition. He urged the Tribunal to note that there is no Court order setting aside the de-registration of the Petitioner. He relied on the dicta of the Supreme Court in APC vs. INEC (2014) LPELR-24036 (SC) 33-34; a SGB Ltd vs. Braimoh (1991) 1 NWLR (part 108) 428 at 434; Nzom vs. Jinadu (1987) 1 NWLR (part 51) 533 at 539. He urged the Tribunal to hold that the inevitable result of the situation of this petition is that same has become frivolous with no benefit whatsoever to the Petitioner. Mr. Bawa, SAN, urged the Tribunal to resolve this issue in favour of the 1st Respondent.

In the Petitioner's composite final address and response to the addresses of the 2nd & 3rd Respondents, Kehinde Ogunwuniju, SAN, lead counsel for the Petitioner argued that none of the Respondents has the vires to challenge the competence of this petition because of the illegality perpetrated by the 1st Respondent when it acted contrary to section 31 (1) of the Electoral Act by excluding candidates nominated by the Petitioner. He submitted that the action of the 1st Respondent is null and void having been done contrary to the Electoral Act. He cited and relied on Olaniyan vs. University of Lagos (1985) 2 NWLR (part 9) 599 and the unreported case of Ugwumba Uche

Nwosu vs. APP & Ors SC. 1384/2019 delivered on 20/12/2019 where an exception to section 285 (9) and (14) has been established. He urged the Tribunal to disregard and discountenance all the objections/defences of the Respondents challenging the competence of this petition based on section 285 (9) of the Constitution in order not to allow them benefit from their own wrong.

Mr. Ogunwuniju contended that the cause of action in this petition is not statute-barred in that the gravamen of the petition is against the declaration of the 3rd Respondent by the 1st Respondent on 14/02/2020 pursuant to the judgment of the Supreme Court in SC.1/2020 between PDP & Ors vs. Biobarakuma Degi – Eremienyo & Ors delivered on 13/02/2020. The Tribunal is referred to exhibits P14 and P15, the Press Release by the 1st Respondent and the summary of result and declaration respectively. He submitted that cause of action in election matters arises on the date of the election or the date the result of the election is declared. Adesale vs. Mayowa (2011) 13 NWLR (part 1263) 135 at 177 and Kumaila vs. Sheriff (2009) 9 NWLR (part 1146) 420, were cited among others, in aid of this proposition of the law. He submitted that a new cause of action accrues upon every declaration of result made by the 1st Respondent as confirmed by the Supreme Court in SC/1540/2019 between Muhammadu Sani Takori vs. Bello Muhammed Matawalle delivered on 23/01/2020. He reiterated that this petition is not statute barred.

Learned senior counsel also argued that contrary to the submissions of learned counsel for the 2nd and 3rd Respondents, this petition is not a pre-election matter. He submitted that any issue, even though pre-election in nature, but touching on one of the grounds under Section 138 (1) of the

Electoral Act can be determined by an Election Petition Tribunal. He placed reliance on Atiku Abubakar vs. INEC, unreported judgement in Appeal No. SC.1211/2019 delivered on 15/11/2019, and submitted that the Tribunal has jurisdiction to determine any pre-election matter as long as it can be circumscribed within the ambit of section 138 (1) of the Electoral Act. He submitted that the decision being challenged in this petition is the declaration of the 3rd Respondent as the winner of the election from which the Petitioner was unlawfully excluded from the ballot papers. That the cause of action in this petition has nothing to do with what transpired before the conduct of the election.

I shall treat and decide on this last submission right here, right now. It is now firmly settled that counsel address, no matter how brilliantly rendered, cannot take the place of legal evidence before the Court. In Segun Ogunsanya vs. The State (2011) LPELR – 2349 (SC) PP. 47 – 48, Rhodes-Vivour, JSC, stated:

> *"No amount of brilliant address or playing to the gallery by counsel can make up for lack of evidence to prove or defend a case in Court. The main purpose of an address is to assist the Court, and is never a substitute for compelling evidence."*

Similarly, in James Chiokwe vs. The State (2012) LPELR – 19716 (SC) P.23 the Supreme Court held:

> *"It needs be reiterated that submissions of counsel however beautiful or enticing cannot take the place of evidence. This is because address*

of counsel to be accepted and utilised must be a reminder to Court on evidence proffered. On its own, address of counsel cannot stand."

See also Olagunju vs. Adesoye & Anor (2009) LPELR – 2555 (SC) P.38; Adegbite vs. Amosu (2016) LPELR – 40655 (SC) P. 10.

The ground of this petition, the entire facts pleaded in support of the ground and the evidence led, all points to one direction, that is, that the Petitioner's validly nominated candidates were unlawfully excluded by the 1st Respondent during the conduct of the Governorship election in Bayalsa State which held on 16/11/2019. The submission of Mr. Ogunwuniju, SAN, that the cause of action in this petition has nothing to do with exclusion but more to do with the declaration of the 3rd Respondent as the winner of the election not only ran in the face of the pleadings and the evidence led but has damaged, defaced and deformed both the pleadings and evidence beyond recognition. The law does not and can never allow such an argument that is rendered outside the confines of the case made by the Petitioner in both her pleadings and the evidence led before the Tribunal. Learned senior counsel cannot substitute hard and concrete evidence with his eloquent advocacy. In testifying for the Petitioner, Charles Ogboli, the National Chairman of the Petitioner, who had a higher stake in the petition than counsel representing him, situated the petition squarely within the ambit of pre-election matter of exclusion in line with the ground of the petition. Counsel cannot change that in his address. I have no hesitation in throwing overboard the disingenuous submission of learned counsel which is made contrary to the pleading in the petition and the evidence led. I so do.

On the *locus standi* of the Petitioner to institute this petition, it is submitted that the withdrawal of the 2nd- 4th Petitioners did not render this petition incompetent as such withdrawal did not tantamount to withdrawal of their candidacy. He referred to section 35 of the Electoral Act on the procedure for withdrawal of candidates and the cases of Wada vs. Bello (2016) 17 NWLR (part 1542) 374 @ 453 and PDP vs. Sylva (2012) 13 NWLR (part 1316) 85 @ 121 – 122 and submitted that in the absence of proof of their withdrawal as candidates, the 2nd and 3rd Petitioners are still the candidates of the Petitioner. I agree with this submission. Withdrawal of the 2nd – 4th Petitioners from the petition cannot be equated with the withdrawal of their candidacy, which is governed by a separate procedure under the Electoral Act.

On the reliefs claimed in an election petition, Mr. Ogunwuniju submitted on the authority of Faleke vs. INEC (2016) that reliefs in election petitions inure to the benefit of the political party and not the candidate and therefore the withdrawal of the 2nd – 4th Petitioners is irrelevant to the reliefs sought by the Petitioner. He urged the Tribunal to discountenance the submissions of the 2nd and 3rd Respondents on this point.

On the de-registration of the Petitioner, learned senior counsel argued that there is no evidence before the Tribunal that the Petitioner has been de-registered. He took objection to exhibit P24 tendered by the 3rd Respondent on the ground that being a computer printout the provisions of section 84 of the Evidence Act on the admissibility of computer generated evidence has not been satisfied before the said exhibit was tendered and admitted. He cited and relied on Kubor vs. Dickson (2013) 4 NWLR (part 1345) 534 @ 577 – 578. He submitted that the document ought to have been certified by

the 1st Respondent and not by the Secretary of this Tribunal as can be seen from the front page. Secondly, it is submitted that receipt evidencing certification had not been tendered along with the document, thus, rendering it inadmissible. The Tribunal is referred on this submission to the cases of Tabik Investment LTD vs. GTB PLC (2011) 17 NWLR (part 1276) 240 @ 246; Nata Ala vs. Gabappa (2028) LPELR – 45379 (CA); Okafor vs. Okafor & Ors (2014) LPELR – 23561 (CA) P. 42. He submitted that there is no endorsement from any Officer showing that he/she certified the document which renders the document a worthless document. He further argued that long after the purported de-registration of the Petitioner, the 1st Respondent admitted at paragraph 5 of its reply to the petition that the Petitioner is a registered political party. The Tribunal is urged to hold that there is no evidence to show that the Petitioner has been de-registered.

In the alternative, learned senior argued that even if the Petitioner has been de-registered, the de-registration cannot affect the rights already vested in her prior to the de-registration as the deregistration was done after the election in question. The following cases are cited in aid of this submission: Eleran vs. Aderonpe (2008) LPELR – 3711 (CA); Gusau vs. APC (2019) 7 NWLR (part 1670) 183 @ 198 and Hope Democratic party vs. Obi (2012) ALL FWLR (part 612) 1620 @ 1634.

On the Judgment of the Federal High Court relied upon by the 3rd Respondent, learned senior counsel submitted that the Courts merely declared that the 1st Respondent had the power to de-register political parties but never affirmed any de-registration. What is more, the two judgments are now the subject matters of appeal and therefore *sub judice.*

On the oral evidence of de-registration given by PW1 while being cross-examined by the 3rd Respondent, it is submitted that no oral evidence of the content of a document is admissible as the de-registration was an act of Government which can only be established through properly certified document and not by a manufactured computer print-out. I am urged to resolve this issue in favour of the Petitioner.

That the Petitioner has been de-registered by the 1st Respondent is outside the realm of argument. Mr. Ogunwumiju, SAN, has himself admitted in his address that the Petitioner and other political parties were de-registered, leading to litigation, with an appeal now pending before the Court of Appeal. That is not all. In responding to the reply of the 3rd Respondent to the petition wherein he stated that the Petitioner has been de-registered, the Petitioner stated at paragraph 9 of her reply that that the Federal High Court has ordered a stay in the matter challenging the de-registration. To cap it all, Chief Charles Ogboli, the National Chairman of the Petitioner deposed on oath in paragraph 3 (xviii) of an affidavit dated 21/04/2020 filed in opposition to the 3rd Respondent's motion on notice that:

> *"That I know that the purported de-registration of the 1st Petitioner was made on the 6/2/2020 months after the conduct of the Bayelsa Governorship Election held on the 16/11/2019 and the 1st Petitioner (as 2nd Applicant) had challenged the purported de-registration as a result of which the Federal High Court, Abuja Division made an interlocutory order against the 1st Respondent…"*

What further evidence of de-registration does one need over and above the admission on oath by the National Chairman of the Petitioner that the

Petitioner had been de-registered? Therefore, even though exhibit P24, an uncertified Computer print-out, did not satisfy the requirement of admissibility under section 84 of the Evidence Act and is hereby expunged, I hold that there is more than enough evidence and admission before me establishing that the Petitioner was de-registered by the 1st Respondent. Having been de-registered on 06/02/2020 and without any Court order setting aside the de-registration, in the eyes of the law the petitioner is considered dead, it ceases to exist with effect from the date of the de-registration. Consequently, this petition filed on 26/02/2020 by a dead entity is incompetent for want of locus standi. Just like the Petitioner herself, in the eyes of the law this petition does not exist, it is dead even before arrival at the Registry of the Tribunal.

On the Petitioner's argument that the de-registration did not take away her vested right to file and prosecute this petition which accrued after the election and the declaration of result, I wish to state respectfully that this is not a situation in which vested right can inure to the Petitioner. By de-registration, the Petitioner has totally and completely been abrogated and uprooted without heirs, representatives, assigns or successors-in-title as there is no rights, liabilities and obligations to pass to anybody. All rights that may have accrued to the Petitioner before the de-registration are completely extinguished by the act of de-registration, so that the legal principle of vested right cannot apply to and benefit the Petitioner herein.

The decision just rendered above was my position as at the time this petition was fought by the parties and Judgment prepared. However, on 13th August, 2020, learned senior counsel for the Petitioner submitted to the Tribunal, certified true copy of the Judgment of the Court of Appeal in

Appeal No. CA/ABJ/CV/507/2020, between Advanced Congress of Democrats (ACD) & 21 Others vs. Attorney General of the Federation & Anor delivered on 10th August, 2020. In that Judgment, the Court of Appeal set aside the de-registration of the Appellants, which included the Petitioner herein. By this Judgment, the decision of this Tribunal supra to the effect that the Petitioner is dead and non-existent has been set aside even before it is rendered. In the eyes of the law, the Petitioner was and still is in existent and therefore qualified to contest the Bayelsa State Governorship election. Whether or not the Petitioner's challenge of the outcome of the election, by way of this petition, is competent, is a completely different consideration altogether. For now, I shall proceed on the premise that the Petitioner is not dead but alive.

By an Amended Time-Table and Schedule of Activities for Kogi and Bayelsa States Governorship Election dated 16th May, 2019 which is exhibit P22 before the Tribunal, the 1st Respondent, in item 5 thereof, fixed the last date for submission of Forms CF 001 and CF 002 at 9th September, 2019. By a Press Release dated 5th September, 2019, the 1st Respondent reiterated that 9th September, 2019 is the last date for submission of the list of nominated candidates. That Press Release is exhibit P23. By exhibits P10 and P11, the Forms CF 001 for the Governorship and Deputy Governorship candidates of the Petitioner was received by the 1st Respondent on the last date, i.e. 9th September, 2019. The list of nominated candidates of the Petitioner, exhibit P9, though dated 9/9/2019 was received by the 1st Respondent on 11/09/2019. The 1st Respondent informed the Petitioner by a letter dated 13th September, 2019 that her Deputy Governorship Candidate, David Peter Esinkuma's nomination was invalid because he was

below the statutory age for the position. By a letter dated 21st September, 2019, exhibit P18, the Petitioner replaced David Peter Esinkuma with Miss Inowei Janet as her Deputy Governorship candidate, and in response, the 1st Respondent wrote exhibit P8 to the Petitioner that it was not possible for the Petitioner to make fresh nomination as the date line for submission of list and particulars of candidates has expired on 9th September, 2019. That since the party has not made valid nomination as at the close of nomination on 9/9/2019, she can no longer make any substitution of her invalid candidate. Exhibit P8 is dated 27/09/2019 and by it, the 1st Respondent informed the Petitioner of its decision not to put the name and logo of the Petitioner on the ballot.

The Petitioner's complaint is that her name and logo was not on the ballot as attested to by exhibit P13, thus her validly nominated candidates were unlawfully excluded from the election. The decision of the 1st Respondent to exclude the Petitioner from the election was taken on 27th September, 2019, vide exhibit P8. The Petitioner admitted through PW2 that she did not challenge that decision before any Court. By Section 285 (14) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) the decision by the 1st Respondent to exclude the candidates of the Petitioner is a pre-election matter. See particularly section 285 (14) (c) which I have earlier quoted in this Judgment. Being a pre-election matter, section 285 (9) of the Constitution mandates a political party that wishes to challenge such a decision by INEC to file a suit before a regular Court within 14 days of the decision complained of. The Petitioner having not done so, I hold that this petition is statute-barred as it was filed after the election and five (5) months after the decision of the 1st Respondent to exclude the Petitioner

from the election. In so holding, I adopt all the legal analysis made by me when deciding on the motion of the 1st Respondent at pages supra.

Permit me to observe that if the ground of the petition was founded on post-election matter, the petition, in my considered view, would not have been statute-barred in view of the fresh declaration made by the 1st Respondent in its Press Release dated 14th February, 2020, which is exhibit P14 before the Tribunal.

The National Chairman of the Petitioner who is a Legal Practitioner by profession could not have been oblivious of the provisions of section 285 (9) (14) (c) of the Constitution, as amended. But even if he is not aware of the provisions, ignorance of the law cannot be an excuse for the Petitioner's tardiness in taking prompt action to challenge the decision of the 1st Respondent at the appropriate forum or venue.

I wish to further observe that by specifically defining the exclusion of a political party or its candidate by INEC as a pre-election matter, the Constitution has rendered the provision of section 138 (1) (d) of the Electoral Act, which permits a political party or its candidate to challenge their exclusion before a Tribunal, inapplicable. The provision of the Electoral Act in section 138 (1) (d) is in clear conflict with the provisions of sections 285 (9) (14) (c) of the Constitution. We all know the consequence of such conflict but I resist the urge to inflict the said consequence on section 138 (1) (d) of the Electoral Act by making a pronouncement to that effect in view of the very limited jurisdiction of an Election Petition Tribunal. I believe the appropriate pronouncement would soon be made as regards the legality of section 138 (1) (d) of the Electoral Act by the appropriate Court, as was

done to section 138 (1) (e) of the Electoral Act in the cases of Atiku Abubakar & Anor vs. INEC & Others (Unreported) Appeal No. SC.1211/2019; Adekunle Abdulkabir Akinlade & Anor vs. INEC & Others (Unreported) Appeal No. SC. 1438/2019 and Jeremiah Timbut Useni & Anor vs. INEC & Others (Unreported) Appeal No. SC. 1501/2019. I refrain from saying more on this.

Being a pre-election matter, the Petitioner, with her Legal Practitioner chairman ought to know that this Tribunal lacks jurisdiction to entertain the petition on the sole ground presented. Yet, the Petitioner proceeded to file the petition on 26/02/2020 after the decision to exclude her name and logo on the ballot was communicated to her on 27th September, 2019. Nothing can be more frivolous and vexatious as this. I do not have the slightest hesitation in resolving issue 1 against the Petitioner and in favour of all the Respondents.

ISSUE 2

"Whether the Petitioner has validly nominated candidates but were unlawfully excluded by the 1st Respondent from the Bayelsa State Governorship election of 16th November, 2019."

I shall start my discussion of this issue by stating from the outset that from the pleadings of the parties and the evidence led, it is not in dispute that the candidates of the Petitioner, the name and symbol or logo of the Petitioner were excluded from the Bayelsa State Governorship election of 16th November, 2019. This much has been confirmed by the 1st Respondent's letter to the Petitioner dated 27th September, 2019 and the

sample of ballot papers tendered before the Tribunal. The letter and the ballot papers are exhibits P8 and P13 respectively. I shall therefore not bother myself with the lengthy submissions of learned counsel for the parties on whether or not there was exclusion, as same has been established as well as admitted. The contested issues before me are:

(1) Whether there was valid nomination of candidates by the petitioner and;
(2) Whether the exclusion of the petitioner and her candidates was unlawful.

Kehinde Ogunwumiju, SAN, learned counsel for the Petitioner, submitted with the aid of decided authorities, such as Egolum Vs. Obasanjo (1999) 7 NWLR (Pt 611) 355; Effiong Vs. Ikpeme (1999) 6 NWLR (Pt 606) 260 and Gogwim Vs. Abdulmalik & Ors (2008) LPELR – 4218 (CA) that in proving that it validly nominated candidates but was unlawfully excluded from the election, the Petitioner is required to establish the following: -

1. That there was a valid nomination.
2. That an election was conducted.
3. That a winner was declared
4. That the name/logo of the Petitioner was not on the ballot papers used at the election.

I note that points 2, 3, and 4 above are not in dispute, and as I stated earlier, I shall not concern myself with arguments of counsel tending to show or disprove the holding of the election, the declaration of result and the absence of the Petitioner's name and logo on the ballot paper, as these matters are not in dispute between the parties. For now, I shall restrict

myself to the validity or otherwise of the nomination and later; the unlawfulness or otherwise of the exclusion.

Learned senior counsel for the Petitioner submitted at paragraph 4.09 of his composite address thus:

> *"Section 31 and 87 of the Electoral Act, 2010 (as amended) regulate the procedure for the nomination of candidates for election. From these sections of the Electoral Act, the Court of Appeal and Supreme Court have laid down the requirements for establishing a valid nomination, which are that a party must show that upon the conduct of a primary election and the emergence of its candidates, it forwarded the requisite statutory forms to the 1st Respondent within the time allowed by the Electoral Act and the guidelines set by the 1st Respondent. In other words, a valid nomination is established once a political party forwards the name of his candidates to INEC within the time prescribed in the Act and the INEC timetable."*

On this submission, he placed reliance on Shinkafi vs. Yari (2016) (Pt. 1511) 340 @ 396 – 397; Kubor vs. Dickson (2013) 4 NWLR (Pt. 1345) 534 @ 574 – 575 and Emeka vs. Chuba-Ikpeazu (2017) 15 NWLR (Pt. 1589) 345 @ 378. He contended that the requirements for valid nomination has been fulfilled in the case of David King-George and David Peter Esinkuma. He referred to the evidence of PW2 at paragraphs 15 – 18 where he stated the holding of primary election and the submission of the names of the Petitioner's candidates to the 1st Respondent on 09/09/2019 together with

their respective Forms CF 001. It is the argument of learned Senior Advocate for the Petitioner that none of the Respondents questioned PW2 on the conduct of primary election, the submission of the names of David King-George and David Peter Esinkuma on 09/09/2019 and the fact that the Petitioner's nomination process was complete upon the forwarding of her candidates' names to the 1st Respondent. He submitted that since the evidence of valid nomination adduced by the Petitioner has not been challenged by the Respondents, the validity of nomination of the Petitioner's candidates has been established. It is further submitted in reply to the argument of the respondents, that evidence of valid nomination is not the result sheet of the primary election, rather, it is the duly submitted nomination form showing that direct/indirect primaries were conducted by the party and a duly completed Form CF 001. Learned senior counsel submitted that going by the fact that the Respondents' defence only attacked the petition on the basis of non-qualification of the Petitioner's candidates, they cannot at this stage make an issue out of the primary election which produced the candidates. He conceded that the nomination of Janet Inowei was invalid as same was done contrary to section 33 of the Electoral Act. He submitted that the 1st Respondent lacked the statutory power to disqualify a candidate as it purported to do in this case. He cited Action Congress vs. INEC (2007) 12 NWLR (Pt. 1048) 222 @ 265, in support of this submission.

Learned counsel for all the Respondents are at one that the onus of proof of valid nomination and unlawful exclusion from an election is squarely on the Petitioner, and I agree with them on this.

Making reference to sections 177 and 187 (2) of the Constitution, learned counsel for all the Respondents submitted that the fact that the Petitioner's Deputy Governorship candidate, David Peter Esinkuma was only 34 years old and therefore not qualified to contest the election is not contested by the Petitioner both before and after the election, including in this petition. They submitted that by reason of the age disqualification of both David Peter Esinkuma and Janet Inowei there was no due, proper or lawful nomination of candidates by the Petitioner, and the Tribunal is urged to so hold. They submitted that the Petitioner agreed with the 1st Respondent and that was why she substituted David Peter Esinkuma with Inowei Janet, who was also not qualified by virtue of her being 34 years old. Reference is made to the Petitioner's letter dated 21/09/2019, exhibit P18, and received by the 1st Respondent on 23/09/2019, outside the time prescribed in the Amended Time Table of Activities. Learned counsel for all the Respondents submitted that there cannot be valid nomination outside the time prescribed by the 1st Respondent's Time table. It is submitted that it amounts to approbation and reprobation for the Petitioner, after substituting David Peter Esinkuma with Inowei Janet, to turn around and say that its Deputy Governorship candidate is David Peter Esinkuma. It is further submitted on the authority of Lau Vs. PDP (2018) 4 NWLR (Pt. 1608) 60 @ 107 that where the nomination of a candidate is invalid, such a candidate cannot be substituted as there is no candidate in existence that can be substituted.

Respondents' counsel argued that the 1st Respondent did not disqualify the Petitioner's candidates, rather it is the Petitioner that submitted unqualified candidates to the 1st Respondent.

The Tribunal is also referred to the case of Agwai Vs. INEC (2019) LPELR – 48762 (CA) on what constitute valid nomination. It is argued, particularly by learned counsel for the 2nd & 3rd Respondents that the provision of section 285 (14) (c) of the Constitution appears to have abrogated the proviso to section 31 (1) of the Electoral Act by empowering INEC to disqualify a candidate of a political party from participating in an election. The Tribunal is urged to strike down the proviso in section 31 (1) of the Electoral Act as same is now incompatible and runs contrary to section 285 (14) (c) of the Constitution.

At paragraphs 7, 8, 11, 13 of the Reply of the 1st Respondent; paragraphs 5 and 12 of the Reply of the 2nd Respondent and paragraphs 6, 8, 9, 14 of the Reply of the 3rd Respondent, all the Respondents challenged the alleged valid nomination of the Petitioner's candidates and their unlawful exclusion. The Respondents having put the validity of the nomination of the Petitioner's candidates in issue, the burden of establishing the validity of the nomination rests squarely on the Petitioner.

In a bid to prove the valid nomination of her candidates and their unlawful exclusion, the Petitioner called two witnesses and tendered 25 exhibits. The Amended Time Table of Activities released by the 1st Respondent, i.e. exhibit P22, fixed the 9th day of September, 2019 as the last day for submission of list of nominated candidates and their forms CF 001 and CF 002. The Petitioner waited till the last day before she submitted the Form CF 001 in respect of David King-George and David Peter Esinkuma, her Governorship and Deputy Governorship candidates respectively. Upon scrutiny, the 1st Respondent found that in the declaration of age in respect of David Peter Esinkuma his date of birth is stated to be 10th February, 1985

while his West African Senior School Certificate carries October 2nd, 1985 as his date of birth. Despite the contradiction in the date of birth, David Peter Esinkuma still did not attain the constitutional age limit for contesting election into the office of Deputy Governor. 1st Respondent informed the Petitioner in a letter dated 13/09/2019 that Mr. Esinkuma's nomination was invalid on account of his not attaining the age of 35. In apparent acceptance of the stance taken by the 1st Respondent, the Petitioner wrote exhibit P18 dated 21/09/2019 substituting Mr. Esinkuma with Miss Inowei Janet, who, from exhibit P12 was also below 35 years of age as she was born on 26th November, 1984. In a letter dated 27/09/2019, exhibit P8, the 1st Respondent informed the Petitioner that nomination having closed on 09/09/2019 at a time when the Petitioner does not have a valid Deputy Governorship candidate, it is no longer possible for the Petitioner to submit fresh nomination. By the said exhibit, the 1st Respondent informed the Petitioner that her name and logo would not be on the ballot. The Petitioner responded on 03/10/2019 through exhibit P27 urging the 1st Respondent to rescind its decision otherwise the Petitioner will resort to legal action. The 1st Respondent did not rescind its decision and the Petitioner did not live up to its threat of challenging the decision in any Court.

The question for me to answer is whether the nomination of a candidate who did not satisfy the constitutional threshold as provided in sections 177 and 182 of the Constitution can be regarded as a valid nomination. Whether the nomination of an under-aged child of say 10 years, for the election to the office of a Governor or Deputy Governor will be considered a valid nomination. The word ***"Valid"*** has been defined to mean ***"legally binding due to having been executed in compliance with the law."*** It also

means ***"legally or officially acceptable."*** I note the cases of Shinkafi vs. Yari (supra); Kubor vs. Dickson (supra) and Emeka vs. Chuba-Ikpeazu (supra) cited by learned senior counsel for the Petitioner and wish to observe that the facts of those cases are completely different from the facts in the instant petition. None of those cases deals with the submission of names of candidates who did not satisfy the constitutional threshold for the office they were contesting. I hold the view that where a nominated candidate did not satisfy the constitutional requirement for the office he is vying, his nomination cannot be said to be valid or legally binding or done in accordance with the law, due to the constitutional infringement. Here, the Petitioner, whose National Chairman is a Legal Practitioner, decided to nominate and field a candidate who did not attain the constitutional age limit to contest election in to the office of Deputy Governor, and is impressing on this Tribunal to hold that the nomination of such candidate is a valid nomination. It will amount to bastardising the meaning of the word ***"valid"*** for this Tribunal to hold, in the face of violent disregard for section 177 (b) of the Constitution, that the nomination of David Peter Esinkuma or even that of Miss Inowei Janet by the Petitioner as her Deputy Governorship candidate(s) is valid. I hold that the said nomination was null and void *ab initio* for contravention of the constitutional age requirement as enshrined in section 177 (b) of the Constitution. And once a nomination is held to be invalid, as I just did, an exclusion grounded on invalid nomination cannot be said to be unlawful. What I am trying to say is that there cannot be unlawful exclusion of a candidate who, in the first place, is not validly nominated. Put in another way, for an exclusion to be unlawful, the excluded candidate must have been validly nominated. In the

circumstance, I hold that the Petitioner and her candidates, though excluded from the election, are not unlawfully excluded.

The next question is whether the 1st Respondent possess the vires to invalidate the nomination of the Petitioner's Deputy Governorship candidate. In attempting to answer this poser, I shall start by reproducing the provisions of section 31 (1) of the Electoral Act and section 285 (14) (c) of the Constitution. Section 31 (1) of the Electoral Act provides:

> *"31 (1) Every political party shall, not later than 60 days before the date appointed for a general election under the provisions of this Act submit to the Commission, in the prescribed forms, the list of the candidates the party proposes to sponsor at the elections, provided that the Commission shall not reject or disqualify candidates(s) for any reason whatsoever."* (Underlining for emphasis).

Section 285 (14) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) provides:

> *(14) For the purpose of this section, "pre-election matter" means any suit by –*
> *(a).....*
> *(b).....*
> *(c) a political party challenging the actions, decisions or activities of the Independent National Electoral Commission disqualifying its candidate from participating in an election or a complaint that the provisions of the Electoral Act or*

any other applicable law has not been complied with by the Independent National Electoral Commission in respect of the nomination of candidates of political parties for an election, timetable for an election, registration of voters and other activities of the Commission in respect of preparation for an election" (Underlining mine, for emphasis).

The proviso to section 31 (1) of the Electoral Act clearly prohibits the Independent National Electoral Commission from rejecting or disqualifying any candidate submitted to it by a political party for whatever reason. The implication of this proviso is that even where it is apparent from the Form CF 001 that a candidate submitted to it by a political party for election in to the Office of Governor of a State is not a citizen of Nigeria; or he did not attain the age of 35 years; or he is not educated up to school certificate level; or he has been elected to such office at any two previous elections; or he is a lunatic; or he has been convicted for an offence involving dishonesty in the last ten years; or he has been found guilty of contravention of the code of conduct; or he is an undischarged bankrupt; or he is a civil servant who has not resigned his appointment; or he is a member of any secret society; or he has presented a forged certificate, the Independent National Electoral Commission cannot under any of these constitutional constraints reject his nomination. This scenario appears absurd and practically inapplicable. As a way out, the new subsection 14 (c) of section 285 of the Constitution was introduced by the Legislature. In defining what constitute pre-election matters, the Constitution restores, by necessary legal implication, the power of INEC to disqualify and exclude a candidate or a political party from an election. The section anticipates that INEC may decide to disqualify a candidate from participating in an election. By taking

away the power of INEC to reject or disqualify candidates who did not satisfy the constitutional requirement for contesting such election, the proviso to section 31 (1) of the Electoral Act is on collision path with the provision of section 285 (14) (c) of the Constitution which recognises such power. That proviso must give way to the Constitution which is the Supreme law of the land, as it is void to the extent of its inconsistency with the provision of the Constitution. In the final analysis, I hold that the 1st Respondent has the power under the Constitution not only to prepare time table for election activities but also to reject and disqualify candidates who fail to satisfy the constitutional requirement for the office they are contesting.

On the whole, I resolve this issue against the Petitioner and in favour of the Respondents, by holding that the Petitioner and her candidates were not unlawfully excluded from the Bayelsa State Governorship election as the Deputy Governorship candidate(s) of the Petitioner was/were not validly nominated.

Assuming, however, that I am wrong in holding that the nomination of the Petitioner's Deputy Governorship candidate(s) is invalid and that the exclusion of the Petitioner and her candidates is not unlawful, this petition is still liable to be dismissed for the following reasons:

A) The petition is grounded on pre-election matter which robs this Tribunal of jurisdiction to entertain same.
B) The petition, filed on 26/02/2020, after the decision of the 1st Respondent to exclude the Petitioner from the election dated

27/09/2019, is statute-barred, having not been commenced within 14 days of the decision complained of.

Finally, before I conclude and sign off, it is important to state that assuming the final written address of the 1st Respondent which I held to be competent, is indeed incompetent, my decision on the merit of this petition based on the two issues formulated, discussed and analysed would still not have been different as all the issues canvassed by the 1st Respondent were equally canvassed by the 2nd and 3rd Respondents in their respective final addresses.

Having resolved the two issues in this petition against the Petitioner and in favour of the Respondents, I hold that this petition lacks merit and same is hereby dismissed by me.

HON. JUSTICE M. I. SIRAJO
CHAIRMAN
17/08/2020

APPEARANCES

- Kehinde Ogunwumiju, SAN for the Petitioner leading Tunde Babalola, Esq., Stephen Anichebe, Esq., Emmanuel Ugwuanyi, Esq., Sunday Onubi, Esq., Ademola Abimbola, Esq. and Lukman Saadu, Esq.;

- Ibrahim K. Bawa, SAN with Usman O. Sule, SAN, for the 1st Respondent, leading Sarafa Yusuff Esq, Sarki Baba Adam Esq. Ayi Obaseki, Ahmed Mohammed Jega Esq, Fadimatu Dauda Birma, Monsur Lawal, Esq, Colette Dogbo-Ogbedu, Allison E. J. Esq, Celine Omo-Igbinomwanhia, Esq,Tracy O. Ukpebor, Esq, Farida Ibrahim, Abdul Fatai Oyedele, Esq, MCIArb, Kwaivu Inua Saleh, Rabiu Alhassan Bawa Esq. and Mukaila Yahaya Mavo Esq;

- Emmanuel Enoidem, Esq., Adedamola Fanokun, Esq., O.J. Otokpa, Esq. and Nheoma Ndu Asobinuanwu, Esq. for the 4th Respondent;

- Chief Chris Uche, SAN with Gordy Uche SAN for 2nd Respondent, leading Inemoye Maxwell Brown Esq., Angel Uche Esq., Olakunle Lawal Esq., Francis Nsiegbunam Esq., Smart Ukoha Esq. and Abduljalil Musa Esq.;