

IN THE COURT OF APPEAL
IN THE AKURE JUDICIAL DIVISION
HOLDEN AT AKURE

APPEAL NO: CA/AK/
PETITION NO: EPT/OS/GOV/01/2022

BETWEEN:

INDEPENDENT NATIONAL ELECTORAL
COMMISSION (INEC)APPELLANT

AND

- | | | |
|---|---|-------------|
| 1. ADEGBOYEGA ISIAKA OYETOLA | } | RESPONDENTS |
| 2. ALL PROGRESSIVES CONGRESS (APC) | | |
| 3. ADELEKE ADEMOLA JACKSON NURUDEEN | | |
| 4. PEOPLES DEMOCRATIC PARTY (PDP) | | |

NOTICE OF APPEAL

TAKE NOTICE that the Appellant, being dissatisfied with the decision of the Governorship Election Petition Tribunal, Holden at Osogbo, Osun State in Petition No. **EPT/OS/GOV/01/2022: Adegboyega Isiaka Oyetola & Anor. V. Independent National Electoral Commission (INEC) & Ors.** as contained in the Judgment delivered by Justice T. A. Kume, and signed by Rabi Bashir (Chief Magistrate) on **27th January, 2023**, doth hereby appeal to the Court of Appeal upon the grounds set out in paragraph 3 and will at the hearing of the appeal seek the reliefs contained in paragraph 4.

AND the Appellant further states that the Names and Addresses of the persons directly affected by the appeal are as set out in paragraph 5.

2. PART OF THE DECISION COMPLAINED OF

All the decisions rendered against the case presented by the Appellant.

Handwritten notes and stamps:
M/A - # 5,000
FF - # 100
M/F - # 2,500
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Pen No: 212676320

3. GROUNDS OF APPEAL

GROUND ONE

ERROR IN LAW

The lower Tribunal erred in law when they failed to consider and rule on the various preliminary objections filed by the 1st Respondent/Appellant challenging the competency of the petition and jurisdiction of the Election Petition Tribunal to hear the Petition but proceeded to determine the merit of the Petition.

PARTICULARS OF ERROR

- i. It is trite law that preliminary objections that touch on the competency of the petition and the jurisdiction of the Tribunal is a threshold issue which must be determined before the Tribunal can assume jurisdiction to determine the merit of the Petition.
- ii. The preliminary objections filed by the 1st Respondent/ Appellant were adjourned to be delivered alongside the judgment on the Petition.
- iii. The Honourable Tribunal ought to determine the preliminary objections of the 1st Respondent before going into the merit of the Petition.
- iv. Failure of the Tribunal to consider and deciding the preliminary objections of the 1st Respondent/Appellant amounts to a denial of fair hearing and occasioned a miscarriage of justice as the objections would have terminated the life of the Petition in limine.

GROUND TWO

ERROR IN LAW

The judgment delivered by the lower Tribunal for the conduct of the Osun state Governorship Election Petition Tribunal sitting at Osogbo on Friday the 27th day of January, 2023 is a nullity.

PARTICULARS OF ERROR

- i. The judgment is not a complete judgment of the said Election Petition.

- ii. Tribunal Member 2 was one of the members of the said Tribunal who heard the Petition but did not reduce her judgment or opinion in writing capable of being delivered on the day fixed for the delivery of the judgment.
- iii. Each of the members of the Tribunal must express his/her opinion in writing.
- iv. The judgment is a breach of Section 294 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).
- v. The Judgment delivered by HON. TERTSEA AORGA KUME J., was jointly signed on the last page of the judgment by the Tribunal Member 2 RABI BASHIR (Chief Magistrate).
- vi. Section 294 (1) and (2) of the Constitution of the Federal Republic of Nigeria does not admit of joint judgments.
- vii. The judgment of the Tribunal herein is incurably a nullity for being in breach of the said Section 294 (1) and (2) of the Constitution of the Federal Republic of Nigeria.

GROUND THREE

ERROR IN LAW

The lower Tribunal erred in law when it delivered the decision of Hon. Justice T.A. Kume, which was signed on the last page of the judgment jointly by Rabi Bashir (Chief Magistrate), as a majority decision.

PARTICULARS OF ERROR

- i. Section 294 (2) of the 1999 Constitution (as amended) makes it mandatory for all judges that sat in the hearing of a matter or election petition to express their individual opinion in writing at the time of judgment and to make pronouncement on same.
- ii. The provisions of Section 294 (2) of the 1999 Constitution (as amended) is applicable to any court or tribunal that sits in a panel of two or more members.
- iii. Member 2 failed to either express her individual opinion in writing at the time of the judgment nor make any pronouncement in support of Member 1 or the Chairman of the Tribunal.
- iv. The Judgment of the lower Tribunal was titled "Judgment (Delivered by Honourable Justice Tertsea Aorga Kume)"

- v. The name of Member 2 was not included on the title of the judgment of the lower Tribunal.
- vi. The decision of Hon. Justice T.A Kume, which was signed by Member 2, is not a majority decision.

GROUND FOUR

ERROR IN LAW

The judgment delivered by the lower Tribunal for the conduct of the Osun state Governorship Election Petition Tribunal sitting at Osogbo on Friday the 27th day of January, 2023 is unconstitutional for non-delivery of any judgment by Tribunal Member 2, Rabi Bashir (Chief Magistrate).

PARTICULARS OF ERROR

- i. Section 294 (2) Of the 1999 Constitution (as amended) makes it mandatory for all judges that sat in the hearing of a matter or election petition to not only express their individual opinion in writing but also at the time of judgment to make pronouncement on same by herself or another panel member.
- ii. The provisions of Section 294 (2) Of the 1999 Constitution (as amended) is applicable to any court or tribunal that sits in a panel of two or more members.
- iii. Tribunal Member 2 (Rabi Bashir Chief Magistrate) failed to either express her individual opinion in writing at the time of the judgment nor make any pronouncement in support of Member 1 or the Chairman of the Tribunal during the judgment on Friday January 27, 2023.
- iv. The Judgment of the lower Tribunal was titled "Judgment (Delivered by Honourable Justice Tertsea Aorga Kume)"
- v. The name of Member 2 was not included on the title of the judgment of the lower Tribunal.

GROUND FIVE

ERROR IN LAW

The lower Tribunal erred in law, breached the doctrine of stare decisis and reached a wrong decision when they failed to follow and be bound by the decision of the Apex Court in **Sokoto & Anor V. INEC (2022) 3 NWLR (pt. 1818) 577**.

PARTICULARS OF ERROR

- i. The decision of the Supreme Court in **Sokoto & Anor V. INEC (2022) 3 NWLR (pt. 1818) 577** was cited to the lower Tribunal but the Lower Tribunal in its Judgment failed to follow same.
- ii. Under the doctrine of stare decisis, the Supreme Court decision, as well as the Court of Appeal decisions are binding on the Lower Tribunal.
- iii. Rather than applying the said Supreme Court decision and follow same, the Lower Tribunal in its Judgment ignored same.
- iv. The decision of the Lower Tribunal occasioned injustice.

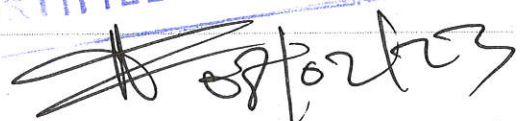
GROUND SIX

ERROR IN LAW

The lower Tribunal erred in law when in the Judgment delivered it held thus:

“Exhibit RC 1 and RC 2 are receipts for payment issued by 1st Respondent for certification of various forms EC8 Series contained in exhibit SCH1 SCH2, SCH3 and BVR exhibit RC1 and RC2 are dated the 20th day of July 2022 and 3rd day of August 2022 respectively. The said exhibits are in respect of the contents of exhibits SCH1, SCH2, and SCH3, together with exhibit RC1 and RC2 with BVR, unlike the facts in the state of Sokoto V INEC Supra, relied on by each of learned counsel for the Respondents. RC1 and RC2 post date the dates of the various forms in exhibits SCH1, SCH2 and SCH3 does not makes them inadmissible. Set section 157 Evidence Act (Supra). The text of admissibility it should be noted is relevancy..... in any event, exhibit RC1, RC2 and BVR are document made by the 1st Respondent. There is a presumption of regularity in favour of those exhibits. See 168(11) of the Evidence Act (Supra), ... the burden to rebut the presumption of regularity in favour of the said exhibits rest on the 1st Respondent.”

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PARTICULARS OF ERROR

- i. The learned Tribunal failed to identify any nexus between exhibits RC1 and RC2 with Exhibit SCH1, SCH2 and SCH3 and BVR.
- ii. **Exhibit BVR** was certified on **27th day of July, 2022** and certificate of compliance was also made on **27th July, 2022**.
- iii. Receipt of payment **Exhibit RC1** is dated **28th July, 2022**.
- iv. **Exhibit RC1** does not refer to the certification on **Exhibit BVR**, neither did the certification on **Exhibit BVR** refer to **Exhibit RC1**.
- v. Exhibit RC2 bears the date of 31st day of August 2022 whereas the Exhibits for which it purports to be evidence of certification were made between 30th day of May 2022 and 21st day of August 2022, contrary to Section 104 (1) of the Evidence Act 2011.
- vi. Section 104 of the Evidence Act, 2011, specifically states that public documents will be issued to an applicant upon payment of the requisite fees and not before.
- vii. The Supreme Court decision in **Sokoto V INEC (2022) 3 NWLR Pt 1818 P.577** is binding on the Honourable Tribunal and on all fours with the objection raised by the 1st Respondent/ Appellant in respect of Exhibits RC1 and RC2 in relation to Exhibits SCH1, SCH2 and SCH3 and BVR.
- viii. The facts in the case of **Tabik Investment Ltd & Anor Vs GTB (2011) 17 NWLR Pt 1276 P.240** is not applicable to the objection raised by the 1st Respondent/Appellant in respect of Exhibits RC1 and RC2 in relation to Exhibits SCH1, SCH2 and SCH3 and BVR.
- ix. The facts of the case before the Lower Tribunal is on all fours with the celebrated recent decision of **AHMED ALIYU SOKOTO & ANOR. VS. INEC & ORS. (2022) 3 NWLR (PT. 1818) 577**.
- x. **The lower Court refused to follow and be bound by the decision of AHMED ALIYU SOKOTO & ANOR. VS. INEC & ORS. (2022) 3 NWLR (PT. 1818) 577.**

GROUND SEVEN

ERROR IN LAW

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The Lower Tribunal in the Judgment delivered erred in law and occasioned grave miscarriage of justice when they held thus:

“In any event, exhibits RC1, RC2 and BVR are documents made by the 1st Respondents. There is a presumption of regularity in favour of those exhibits...The burden to rebut the presumption of regularity in favour of the said exhibits rest on the 1st Respondent.”

PARTICULARS OF ERROR

- i. It is trite that before presumption of regularity can inure in favour of any document, the said document must be admissible first.
- ii. Any presumption of regularity in favour of exhibits RC1, RC2 and BVR were duly rebutted by the fact that Exhibit RC1 did not refer to the certification on Exhibit BVR, neither did the certification on Exhibit BVR refer to Exhibit RC1.
- iii. Presumption of regularity inures for exhibit RBVR and RWC.
- iv. RW1 gave unchallenged and uncontradicted evidence that exhibit RBVR issued when synchronisation had taken place by August 22, 2022 superceded exhibit BVR which had not been updated and synchronised.
- v. Exhibits RC1, RC2 postdate Exhibit BVR, which was held inadmissible by the Supreme Court in AHMED ALIYU SOKOTO & ANOR. VS. INEC & ORS. (2022) 3 NWLR (PT. 1818) 577.
- vi. Exhibit RC2, as rightly submitted by learned counsel for the Respondents, is in favour of “ALL PROGRESSIVE CONGRESS PARTY”. The said “ALL PROGRESSIVE CONGRESS PARTY” is not synonymous with the 2nd Petitioner in this petition. It is not apparent from Exhibit RC2 that the ALL-PROGRESSIVE CONGRESS PARTY” is a juristic person.
- vii. The Lower Tribunal breached the fundamental right of the Appellant to fair hearing.

GROUND EIGHT

ERROR IN LAW

The Lower Tribunal erred in law and occasioned grave miscarriage of justice when in the Judgment delivered it made case for the 1st and 2nd Respondents thus:

“Exhibit RC2, as rightly submitted by learned counsel for the Respondents, is in favour of “ALL PROGRESSIVE CONGRESS PARTY”. The said “ALL PROGRESSIVE CONGRESS PARTY” is not synonymous with the 2nd Petitioner in this petition. It is not apparent from Exhibit RC2 that the ALL-PROGRESSIVE CONGRESS PARTY” is a juristic person. Nevertheless, the name appearing on exhibits RC2 amounts to a misnomer, which does not detract from the import from the said exhibit RC2, and, we hereby so hold.”

PARTICULARS OF ERROR

- i. ALL PROGRESSIVE CONGRESS PARTY appeared on the face of Exhibit RC2.
- ii. ALL PROGRESSIVE CONGRESS PARTY is not a juristic personality.
- iii. All PROGRESSIVE CONGRESS PARTY is different from the 2nd Respondent.
- iv. There was no application before the Lower Tribunal to amend the name ALL PROGRESSIVE CONGRESS PARTY to the 2nd Respondent and no such amendment was made during the Pre-hearing and hearing of the Petition.
- v. The 1st and 2nd Respondents had all opportunities to take steps for the said amendment if it was necessary.
- vi. The lower Tribunal in its Judgment descended into the arena to make a case for the 1st and 2nd Respondents.
- vii. The Lower Tribunal had no competence to grant prayers not sought by the 1st and 2nd Respondents.

GROUND NINE

ERROR IN LAW

The lower Tribunal in its judgment erred in law and occasioned grave miscarriage of justice when they held thus:

“We thus, see no merit in the various objections to exhibits RC1, RC2 and BVR. The said Objections are hereby dismissed. The exhibits in question were correctly admitted.”

PARTICULARS

- i. The finding of the lower Tribunal is against the weight of evidence.
- ii. Exhibits RC1, RC2 and BVR are inadmissible.
- iii. The objections are deeply rooted in law and ought to be upheld.
- iv. Inadmissible documents cannot be basis for judgment in favour of the Petitioners.
- v. The Tribunal by a general statement without justification dismissed several objections.

GROUND TEN

ERROR IN LAW

The lower Tribunal in its judgment erred in law and occasioned grave miscarriage of justice when the Judgment delivered held thus:

“On exhibits PUBL 1-3, the Respondents have not disclosed the cancellation, alteration or markings which detracted from the material questions of the rights and interest of the parties in this petition in the said exhibit PUBL 1-3. It is not enough to contend that there are alterations, cancellations on the said document. The party alleging such cancellations, alterations or marking must proceed to prove how such facts have affected the rights of the parties or the legal effect in the said documents. See Section 160 of the Evidence Act (Supra). There is no such proof by the Respondents to this petition. As such, the objection to the admissibility of exhibit PUBL 1-3 is equally hereby dismissed. The said exhibit PUBL 1-3 was therefore correctly admitted. See Section 52 read with Section 105 of the Evidence Act (Supra).”

PARTICULARS OF ERROR

- i. Exhibits PUBL 1-3 are computer-generated document.
- ii. Exhibits PUBL 1-3 shows clearly that Exhibit “CER” has been made in violation of Section 84 of the Evidence Act, 2011.
- iii. Exhibits PUBL 1-3 are inadmissible.

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- iv. **Exhibit PUBL 1-3** has markings and alterations/ cancellations on their faces which have been done in ink and marker by some unidentified person(s) after it was printed.
- v. The Honourable Tribunal failed to take into consideration the provisions of paragraph 46(4) of the schedule to Electoral Act (2022) which allows the Tribunal to have a look at and examine all documents before it and cancellations.
- vi. The alterations on the face of the documents are material that affects the legal right of the 1st Respondent/Appellant.
- vii. The status of **Exhibits PUBL 1-3**, which are computer print outs, were altered by the ink on the face of same.

GROUND ELEVEN

ERROR IN LAW

The lower Tribunal in its judgment erred in law and occasioned grave miscarriage of justice when it held thus:

“The question for determination in the objection is not whether the judgment of the Court of appeal has been reported in any law report, the material question as argued by learned counsel for the petitioners in his reply to the objection of learned counsel for the Respondents is whether the said documents being public document certified in the manner provided by law. We have examined the said Exhibit 2R. RW4 and 2R.RW5 the said exhibit 2R.RW4 is in breach of the authority of Bredeco (NY) Ltd (Supra) and Jalo & anor Vs Garbo & ors (Supra) cited by learned counsel for the petitioners in his address to the said documents. The said objection is hereby sustained Exhibit 2R.RW4 is hereby marked “REJECTED” accordingly.”

PARTICULARS OF ERROR

- i. **Exhibit 2R.RW4** is the Judgment of the Court of Appeal.
- ii. The Lower Tribunal is mandated by the Evidence Act 2011 to take judicial notice of **Exhibit 2R.RW4**.

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- iii. The content of Exhibit 2R.RW4 was shown to have been reported as contained in the final written addresses of the Respondents, yet the lower Tribunal ignored the said decision.
- iv. The Lower Tribunal ought to take judicial notice of the judgment of the Court of Appeal in Appeal no. CA/A/362/2019, and where it is also reported in the case of Senator Ademola Adeleke V. Wahab Adekunle (2019) LPELR (CA) 48729.
- v. Suit Number FHC/A/BW/CV/122/2018 which initiated the decision of the Court of Appeal was filed by members of the 2nd Respondent.
- vi. The said Exhibit 2R.RW4 is relevant, pleaded and complied with the provisions of the law as regards certification.
- vii. Exhibit 2R.RW4 is not in breach of the authority of Bredeco NY Ltd (Supra) and Jalo & anor Vs Garbo & ors.
- viii. The failure of the Lower Tribunal to consider and be bound by Exhibit 2R.4W4 occasioned grave miscarriage of justice on the Appellant.
- ix. Exhibit 2R.RW4 is not a photocopy of the Judgment in CA/A/362/2019.
- x. Exhibit 2R.RW4 was duly reported and was cited to the Tribunal which is not entitled to ignore the judgment of the Court of Appeal which was final on the subject matter.

GROUND TWELVE

ERROR IN LAW

The lower Tribunal in its judgment erred in law, which occasioned miscarriage of justice, when it erroneously held as unchallenged and proved, that:

“It is not in doubt that there were no network hitches on the day of the election to render it difficult in transmitting to the “back-end server” domiciled in 1st Respondent the result of the election in the 3366 Polling Units of Osun State. It is also apparent that the “send” button was engaged by the presiding officers in transmitting, the results of the election from each Polling Units in Osun State to the “back-end server aforesaid”.

PARTICULARS OF ERROR

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- i. There is evidence before the Honourable Tribunal by the 1st Respondent/Appellant that transmission of data from the BVAS machines from the various polling units in Osun state to the “backend server” Osun state can be affected by network hitches.
- ii. There is evidence before the Honourable Tribunal that the various presiding officers at each of the various polling units must engage the said buttons before the results in each of the said polling unit can be transmitted to the “backend server”.
- iii. The burden of proof oscillate between parties in a declaration action.
- iv. The Appellant having shown that the transmission of results from polling units to backend sever is reliant on availability of network (2) and the need for the presiding officers to press the “SEND” button to transmit results from the polling units to the “backend” server, the burden of proof now shift to the Petitioners/1st and 2nd Respondents to prove that there was no network hitches in Osun state on the day of the election and that the SEND button were engaged by all the presiding officers. There was no such proof by the Petitioner/Respondents.
- v. The 1st and 2nd Respondents called only two witnesses who did not give valid evidence on this vital issue.
- vi. The issue of availability of network must be proved by evidence of credible witnesses which 1st and 2nd Respondents failed to produce at the Tribunal.

GROUND THIRTEEN

ERROR IN LAW

The lower Tribunal in its judgment erred in law and occasioned grave miscarriage of justice when it held thus:

“A clear reading of the above reproduced section of the Criminal Code and exhibit EC9 reproduced above reveals that EC9 tells a lie about itself. See ACN vs. Lamido (2011) LPELR – 91741 (CA) 1 at 79-80 paras C-A, and 80-81 paras F-A. In that regard, forgery of the said documents presented by the 2nd Respondent to 1st Respondent has been proved. The same consequence applies

to FILED in so far as the content therein relates to “Osun State” that was not in existence before 1991.”

PARTICULARS OF ERROR

- i. It is trite law that to prove whether a certificate was forged or not the party making the averment must present the genuine certificate/attestation with the alleged forged certificate/attestation.
- ii. It's not every discrepancy or mistake in a document that is forgery.
- iii. For forgery to be proved there must be genuine proof of forgery.
- iv. The Petitioners failed to prove how the Petitioner got to know that the document was forged, who told him and the particulars of the person, what are the details as to time, place and circumstances of the information.
- v. The Petitioners/Respondents failed to produce any evidence from the said institution that the said certificate/ attestation was forged.
- vi. The Petitioners/Respondents did not call evidence of the authority that issued the certificate/attestation that same was not issued by it.
- vii. The documents which were allegedly forged were the same documents which formed the basis of the 1st and 2nd Respondents' contention that the Appellant was not qualified and presented a forged certificate to the 3rd Respondent.
- viii. CA/A/362/2019 is a Judgment in rem on the matter of qualification of the Appellant for the office of Governor of Osun State.
- ix. The judgment of the Court of Appeal Suit No. CA/A/362/2019 with respect to the documents alleged in the Petition to be forged estopped the 1st and 2nd Respondents from re-litigating the same documents in the Petition.
- x. A crime of forgery cannot be proved by assumption or presumption on the face of Exhibit EC9 or FILE D that any alleged forgery was committed by the 2nd Respondent/Appellant.
- xi. Errors or mistakes in the content of a document cannot be treated as forgery or false information.
- xii. The errors or mistakes in the content of exhibit EC9 and File D being documents not authorized by the 2nd Respondent cannot be held against him as proof of forgery or presentation of false information.

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- xiii. There is no evidential basis for the finding that exhibits EC9 and File D were forged by the 2nd Respondent.
- xiv. Court of Appeal has already determined the subject matter relitigated before the lower Tribunal.
- xv. In SENATOR ADEMOLA ADELEKE v. MR. WAHAB ADEKUNLE RAHEEM & ORS (2019) LPELR-48729(CA), Per EMMANUEL AKOMAYE AGIM, JCA held at Pp. 106-109 thus:

It is noteworthy that this testimony of the principal that there are lots of errors in the school leaving testimonial is not challenged or contradicted by the 1st and 2nd respondents. It is trite law that uncontradicted and unchallenged evidence must be accepted by the Court and acted upon as establishing the facts stated therein.

In any case as the Principal of the School and the custodian of the school records, he is in the best position to say that the school leaving testimonial which he identified as issued from his school has errors in it or not. If he says, as he has done, that there are lots of errors on its face, he must be believed and Exhibit PL6 (AA2) the statement of result, his affidavit, the WAEC confirming affidavit and the accompanying Ledger (Details of results) show that it is reasonable to believe him.

Errors or mistakes in the contents of a document cannot be treated as false information as the 1st and 2nd respondents characterised the errors in the testimonial in paragraph 16 of their affidavit in support of the originating summons. To prove false information in a document requires more than pointing out errors or mistakes or incongruities or discrepancies in the document or asserting that the document is forged on account of the errors without more. I think that the appellant should have returned the testimonial back to the school for the errors in the school leaving testimonial issued to him to be corrected before he submitted same to the 4th respondent for the purpose of election or to

anybody for any transaction. He did not do so and rather recklessly chose to use it as it is and thereby exposed himself the situation he has now found himself. Be that as it is such errors are of no moment because Exhibit PL6 and the West African Examination Council (WAEC) confirming affidavit and Ledger show that he satisfied the requirements of S.177(d) of the 1999 Constitution and is therefore qualified to contest the election of Governor of Osun State. As held by the Supreme Court in AGI v. PDP (2017) 17 NWLR (PT.1585) 386 at 454-455 Even in situations where a Governorship candidate makes inconsistent statements in Form CF001 and such a candidate is nonetheless qualified to contest the election under the provision of Section 177 of the 1999 Constitution, he would not be disqualified to contest the election ."

.....
.....*He submitted the statement of result to show that he attended secondary school and wrote the secondary school certificate examination without passing. What the 1st and 2nd respondents did by their suit is to exploit the mistakes in the contents of the school leaving testimonial to create the impression that he gave false information that he attended Ede Muslim High School Ede and sat for the May/June 1981 West African School Certificate Examination (WASCE), even though he failed the examinations. The West African Examination Council (WAEC) confirming affidavit and accompanying Ledger confirmed the statement of result submitted to 4th respondent as true that he sat for the said examinations at Ede Muslim High School, Ede."*

xvi. The issue in respect of the testimonial of the 3rd Respondent herein has been resolved in SENATOR ADEMOLA ADELEKE v. MR. WAHAB ADEKUNLE RAHEEM & ORS (Supra).

xvii. The Lower Tribunal failed to rely on the decision of the Court of Appeal in SENATOR ADEMOLA ADELEKE v. MR. WAHAB ADEKUNLE RAHEEM & ORS (Supra).

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- xviii. The decision of the Court of Appeal in SENATOR ADEMOLA ADELEKE v. MR. WAHAB ADEKUNLE RAHEEM & ORS (Supra) is a judgment in REM.
- xix. The decision of the Court of Appeal in SENATOR ADEMOLA ADELEKE v. MR. WAHAB ADEKUNLE RAHEEM & ORS (Supra) has become estoppel per rem judicata.
- xx. The 1st and 2nd Respondent did not prove the argument of forgery beyond reasonable doubt.

GROUND FOURTEEN

ERROR IN LAW

The lower Tribunal in its judgment erred in law and occasioned grave miscarriage of justice when it held thus:

“The question, however, is whether having found forgery in parts of exhibit EC9 and FILED.....”

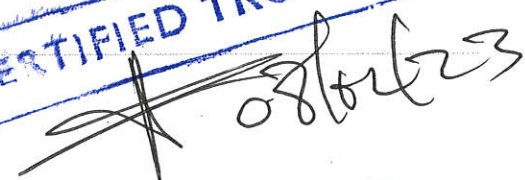
PARTICULARS OF ERROR

- i. The 1st and 2nd Respondent did not prove the allegation of forgery beyond reasonable doubt.
- ii. The case of SENATOR ADEMOLA ADELEKE v. MR. WAHAB ADEKUNLE RAHEEM & ORS (2019) LPELR-48729(CA) had decided that the 3rd Respondent did not forge the same content of Exhibit FILED and Form EC9.
- iii. There is no fact in support of the findings of the lower Tribunal in the Judgment.
- iv. The decision of the Court of Appeal in SENATOR ADEMOLA ADELEKE v. MR. WAHAB ADEKUNLE RAHEEM & ORS (Supra) is a judgment in REM.
- v. The decision of the Court of Appeal in SENATOR ADEMOLA ADELEKE v. MR. WAHAB ADEKUNLE RAHEEM & ORS (Supra) has become estoppel per rem judicata.

GROUND FIFTEEN

ERROR IN LAW

The lower Tribunal in its judgment erred in law and occasion a grave miscarriage of justice when it held thus:

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“The said exhibit 2R. RW5 has no probative value to the question of the qualification of the 2nd Respondent to contest the said election, moreso, that exhibits 2R. 3R1 and 2R. 3R2, being photocopies of a public document, uncertified, are inadmissible evidence. Thus, the said exhibits 2R.3R1 and 2R.3R2 are hereby expunged from the record of the Tribunal.”

PARTICULARS OF ERROR

- i. Exhibit 2R. RW5 is the Originating Process of the suit commenced before the FCT High Court by members of the 1st Respondent, against the 3rd Respondent on the same subject matter that was ventilated before the lower Tribunal.
- ii. Exhibit 2R. RW5 led to the Court of Appeal decision in SENATOR ADEMOLA ADELEKE v. MR. WAHAB ADEKUNLE RAHEEM & ORS (2019) LPELR-48729(CA), which had decided the subject matter brought by the 1st and 2nd Respondents before the lower Tribunal.
- iii. Exhibits 2R. 3R1 and 2R. 3R2 are judgment Orders in Charge No. FHC/ABJ/CR/50/2018 and Federal High Court Ruling in Charge No. FHC/CR/150/2018 dated 29/5/2020.
- iv. Exhibits 2R. 3R1 and 2R. 3R2 clearly showed that the 3rd Respondent was not convicted by Court of Record for forgery or any other offence.
- v. **The Lower Tribunal** ought to take judicial notice of processes and judgment of Court.
- vi. **The said Exhibits 2R.3R1 and 2R. 3R2 were admissible evidence.**
- vii. Exhibit 2R. RW4 is not a photocopy of the Judgment in CA/A/362/2019.
- viii. Exhibit 2R. RW4 was duly reported and was cited to the Tribunal which is not entitled to ignore the judgment of the Court of Appeal which was final on the subject matter.

GROUND SIXTEEN

ERROR IN LAW

The lower Tribunal in its judgment erred in law when it held thus:

“Similarly, the several preliminary objections to the competency of the 1st Petitioner as a candidate in the election, and the jurisdiction of this Tribunal to

determine the said petition are hereby dismissed. In other words, this Tribunal has jurisdiction to determine the petition herein.”

PARTICULARS OF ERROR

- i. The above quoted decision of the Lower Tribunal does not represent a ruling on the several preliminary objections filed by the 1st Respondent/Appellant and which rulings were adjourned to be delivered along with the judgment in the main Petition.
- ii. The Lower Tribunal descended into the arena by making case for the 1st and 2nd Respondents.
- iii. The Lower Tribunal did not consider and rule on each of the several preliminary objections filed by the Appellant before going into the merit of the case.
- iv. The Lower Tribunal did not give fair hearing to 1st Respondent/Appellant.
- v. There were 2 sets of objections at the Tribunal. The objections to documents and objections to the Petition.
- vi. The Tribunal heard arguments on objections to the Petition and reserved Ruling to be delivered along with the Judgment and never did.
- vii. The Tribunal delivered Ruling on objections to documents.
- viii. The judgment of the Lower Tribunal is invalid.

GROUND SEVENTEEN

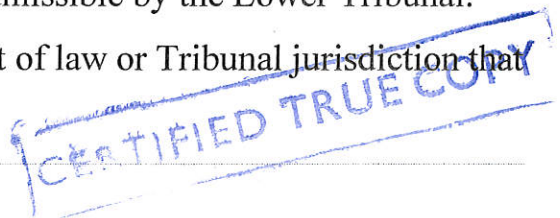
ERROR IN LAW

The Lower Tribunal in its judgment erred in law and occasioned grave miscarriage of justice when it held thus:

“Exhibit FILE D is in original form and does not require certification. See Section 102 of the Evidence Act (Supra). The submission of learned counsel for the 1st Respondent to the contrary is erroneous on Exhibit FILED D. It is hereby dismissed.”

PARTICULARS OF ERROR

- i. Exhibit FILE D contain photocopied documents annexed to Form CF 001 that require Certification before same can be admissible by the Lower Tribunal.
- ii. Parties cannot by consent give onto a Court of law or Tribunal jurisdiction that it lacks in the first instance.



iii. The lower Tribunal erred in law to have dismissed the objection raised on Exhibit File D.

GROUND EIGHTEEN

ERROR IN LAW

The Lower Tribunal in its judgment erred in law and occasioned grave miscarriage of justice when it held thus:

“Similarly, the submission that the Petitioners did not exhaust the internal resolution mechanism provided by the 1st Respondent before filing this petition is untenable. The internal resolution mechanism provided by the 1st Respondent in the Electoral Act (Supra) are inferior to the Constitutional provision in Section 285 (2) of the said Constitution of Nigeria (Supra). The Petitioners are therefore obligated by law, to bring this petition, without first exhausting the internal resolution mechanism of the 1st Respondent. The submission of learned counsel for the 1st Respondent to the contrary is hereby dismissed.”

PARTICULARS OF ERROR

- i. The Lower Tribunal misunderstood the case of the 1st Respondent/Appellant.
- ii. It is a condition precedent to meet up all preconditions stated in the constitution of a political party before an action can be competently brought before any Court or Tribunal.
- iii. Meeting up with a precondition to bring an action does not conflict with Section 285 (2) of the Constitution (Supra).

GROUND NINETEEN

ERROR IN LAW

The Lower Tribunal in its judgment erred in law and occasioned grave miscarriage of justice when it held thus:

“Besides, certain paragraphs of the petition, which objections were raised against, cannot be read independently of, and in isolation from the other paragraphs of the petition. The said paragraphs are interwoven with each other and would be read as a whole. To do otherwise, would amount to a denial of the

right of the Petitioners to be held on vital issues which those paragraphs seeks to proof in the petition. The objection to the said paragraphs is also dismissed.”

PARTICULARS OF ERROR

- i. Election Petitions are sui generis.
- ii. The rules of pleadings in civil matters is not applicable to an Election Petition.
- iii. It is trite that a Petition shall be divided into paragraphs each of which shall be confined to a distinct issue or major facts of the Election Petition.
- iv. It is also trite that every paragraph of a Petition shall be numbered consecutively.
- v. Every paragraph in a Petition is independent of itself.
- vi. No paragraph of a Petition can be interwoven with other paragraph (s).
- vii. The Lower Tribunal failed to advert his mind to Paragraph 4 (2) of the First Schedule to the Electoral Act, 2022.
- viii. The Lower Tribunal failed in its duty to deliver Ruling on each Preliminary Objection raised by the 1st Respondent/Appellant.
- ix. The judgment of the Lower Tribunal judgment is a nullity no matter how well conducted.

GROUND TWENTY

ERROR IN LAW

The Lower Tribunal in its judgment erred in law and occasioned grave miscarriage of justice when it held thus:

“Learned counsel for the 1st Respondent turned his attention to the Court of Appeal decision in CA/A/304/2019, viz Adeleke v. Raheem. The said judgment, as earlier indicated in this judgment is inadmissible and has been marked exhibit 2R.RW4 rejected. In this regard, there is no evidence on which the argument of learned counsel for the 1st Respondent would be predicated, and we hereby so hold.”

PARTICULARS OF ERROR

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- i. The Lower Tribunal descended into the arena to make case for the 1st and 2nd Respondents.
- ii. The decision in SENATOR ADEMOLA ADELEKE V. MR. WAHAB ADEKUNLE RAHEEM & ORS (2019) LPELR-48729(CA), IS A BINDING PRECEDENT.
- iii. Striking out of exhibit 2R.RW4 does not overrule or diminish the potency of the Court of Appeal decision over the Lower Tribunal.
- iv. The decision of the Court of Appeal in CA/A/304/2019, which was relied upon by all the Respondents and cited by the 3rd Respondent at paragraph 3.19 of the 3rd Respondent's final written address, was ignored and rejected by the Lower Tribunal.
- v. The case of SENATOR ADEMOLA ADELEKE V. MR. WAHAB ADEKUNLE RAHEEM & ORS (2019) LPELR-48729(CA), which was cited by the 1st Respondent/Appellant was not given due effect by the Lower Tribunal.
- vi. The decision of the Court of Appeal in SENATOR ADEMOLA ADELEKE v. MR. WAHAB ADEKUNLE RAHEEM & ORS (Supra) is a judgment in REM.
- vii. The decision of the Court of Appeal in SENATOR ADEMOLA ADELEKE v. MR. WAHAB ADEKUNLE RAHEEM & ORS (Supra) has become estoppel per rem judicata.

GROUND TWENTY-ONE

ERROR IN LAW

The lower Tribunal in its judgment erred in law and occasioned grave miscarriage of justice it held thus:

"We also wish to observe that the exhibits speak for themselves. See Aiki v. Idowu (2006) 9 NWLR (pt. 984) 48 at 90. The failure to call the Polling Units agents and presiding officers for the said election is therefore immaterial. The reason is not farfetched. The exhibits tendered and admitted contain enough facts and materials from which this Tribunal would make an informed decision on the matters in dispute. The said documentary evidence would also be used as

a hanger to test the oral evidence of the parties in respect of the issues in dispute.”

PARTICULARS OF ERROR

- i. It is trite that he who asserts must prove.
- ii. When a Petitioner seeks a declaratory relief, like the instant case, such a declaratory relief must be proved on the strength of the Petitioners/1st and 2nd Respondents' case.
- iii. The Petitioners/1st and 2nd Respondents failed to call Polling Agent that witnessed the alleged infraction on the day of election at their various polling unit.
- iv. Exhibit BVR, that the lower Tribunal in its Judgment relied upon conflicted with both Exhibit R.BVR 1- 129 and Exhibit RWC (report of the physical extraction of data on the face of the BVAS Machine.
- v. Cases are authority for the facts they decided and cannot be pulled willy nilly on the ears to apply to Facts which are not similar to them.
- vi. All the cases cited by the Honourable Tribunal in respect of the above finding are not material to the facts of the case before it.
- vii. The Honourable Tribunal cannot decide which of the conflicting documentary evidence to choose without recourse to oral evidence.

GROUND TWENTY-TWO

ERROR IN LAW

The lower Tribunal in its judgment erred in law when it held thus:

“It should be noted that, PW1 and PW2 were not cross-examined by learned counsel for any of the Respondents on their evidence that, they examined the forms EC8A, EC8B, EC8C and EC8D as contained in Exhibit SCH1, SCH2, and SCH3. They were not confronted with any contrary evidence to the evidence contained in the said forms EC8A, EC8B, EC8C, and EC8D and exhibit BVR. Specifically, the attention of PW1 and PW2 were not drawn to exhibit RWC, R.BVR1-29, 2R.RW2, R.BVM and R. BVM1 series, to deny or confirm the fact in the said exhibits.”

PARTICULARS OF ERROR

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- i. The Lower Tribunal by this finding shifted the burden of proof of the complaint/allegations in the Petition on the 1st Respondent/Appellant.
- ii. The PW1 and PW2 gave hearsay evidence on the entries in Forms EC8 series in Exhibits SCH1, SCH2, SCH3, RWC, R.BVR1-29, 2R.RW2, RBVM and R.BVM1.
- iii. The PW2 under cross-examination by 1st Respondent/ Appellant counsel on 22nd November 2022 admitted thus: *“The agents told me what I did in my statement on oaths as the state collation agent.”*
- iv. The PW1 and PW2 were cross examined by learned Counsel for each of the Respondents on their evidence on Forms EC8 series as contained in SCH1, SCH2, & SCH3 contrary to the finding of the Lower Tribunal that they were not cross examined.
- v. The PW1 and PW2 were confronted with contrary evidence by each of the Respondents/Appellants Counsel to the evidence contained in Forms EC8 series and exhibit BVR.
- vi. The 1st Respondent/Appellant had a choice on what to cross examine in the evidence of PW 1 and PW 2.
- vii. The said documents before the Tribunal spoke for themselves.
- viii. The Lower Tribunal did not rely on the Forms EC8 series which were the result sheets completed before all parties and security agents and they signed as the true reflection of what transpired at each of the polling units.
- ix. Exhibit BVR is a secondary information on the backend server of INEC as at the date of obtaining it, which was July 27, 2022.

GROUND TWENTY-THREE

ERROR IN LAW

The Lower Tribunal erred in law when it held that the Form EC8 series, exhibits BVR, RWC, and R.BVR will be evaluated notwithstanding the fact that the polling units' agents and presiding officers who were at the said polling units did not testify at the petition.

PARTICULARS OF ERROR

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- i. Paragraph 46(4) of the first schedule to Electoral Act 2022 is not an exemption to the inadmissibility of the evidence of PW1 and PW2.
- ii. The polling unit agents and presiding officers who were at the said polling units are the witnesses who can give direct evidence on the said form EC8 series, and exhibit BVR.
- iii. The nature of the dispute determines how the justice of the case is to be met, and in this case the Petitioners could not satisfactorily prove their case without oral evidence of those who were at the various polling units on the day of election.
- iv. The grounds of over-voting and/or non-compliance which forms the basis of the Petition were not founded upon in Form EC8 series, but on exhibit BVR, which is an inchoate document.
- v. The Lower Tribunal failed to rely on the Form EC8 series, exhibits BVR, RWC, and R.BVR. It rather held that it relied only on exhibit BVR on which there was uncontradicted and overwhelming evidence that it was incomplete.
- vi. There was uncontradicted evidence that exhibit BVR relates to the entire 3369 polling units in Osun State and not 749 Polling units.
- vii. There was uncontradicted and unchallenged evidence before the Lower Tribunal that exhibit BVR was incomplete and needed continuous update as at July 27, 2022 when it was issued.
- viii. There was uncontradicted and unchallenged evidence before the Lower Tribunal that exhibit BVR in the state it was on July 27, 2022, has irregularities in 1751 polling units in Osun State and that if the Lower Tribunal deducted the said 1751 polling units, the 2nd and 3rd Respondents at the Tribunal will win by 21980 votes and satisfy the constitutional spread.
- ix. The Lower Tribunal discarded exhibits R.BVR and RWC and relied only on exhibit BVR in 744 polling units just to give undeserved victory to the 1st and 2nd Respondents herein.

GROUND TWENTY-FOUR

ERROR IN LAW



The lower Tribunal in its judgment erred in law when they relied on the testimonies of PW1 and PW2 in arriving at its decision in favour of the Petitioners despite its earlier finding thus:

“Consequently, in the scores recorded against the parties herein, exhibits EC8D takes precedent over the scores stated by the PW1 and PW2 in their pleading and evidence in court.”

PARTICULARS OF ERROR

- i. It is trite law that parties are bound by their pleading and evidence at variance with the pleadings go to no issue and ought to be rejected by the Tribunal.
- ii. Once the scores contained in exhibit EC8D is not pleaded and given in evidence by PW1 and PW2, the Tribunal cannot rely on the scores in form EC8D to find for the Petitioners/1st and 2nd Respondents.
- iii. By the above findings of Lower Tribunal, the evidence of PW1 and PW2 are deemed unreliable.
- iv. PW1 and PW2 being the only two witnesses called by the Petitioners then means that there was no evidence supporting the Petition and same ought to have been dismissed.

GROUND TWENTY-FIVE

ERROR IN LAW

The lower Tribunal in its judgment erred in law when it held thus:

“Similarly, the 17th day of July 2022 stated by the witness of the petitioners as to when exhibit BVR was issued and obtained, being inconsistent with the date on the said exhibit BVR is hereby discountenance”.

PARTICULARS OF ERROR

- i. PW1 stated unequivocally in paragraph 5 of his Witness Statement on Oath before the Tribunal that he relied on the BVR report obtained on 17th day of July 2022.
- ii. PW1 admitted under cross-examination that exhibit BVR tendered by the petitioners was obtained on 27th July 2022.

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- iii. PW1 also under cross-examination by the 2nd Respondent/Appellant Counsel stated that he maintained his evidence contained in his Witness Statement on Oath.
- iv. The BVR dated 17th July 2022 relied upon by the PW1 before the Tribunal was never tendered.
- v. The case of the Petitioners was not based on Exhibit BVR which was purportedly certified on 28th July, 2022.
- vi. Exhibit BVR is strange to the testimony of PW1 and PW2.
- vii. The Tribunal in its judgment adjusted the evidence of PW1 and PW2 in order to align same with Exhibit BVR, thereby descending into the arena and unjustifiably making case for the Petitioners.
- viii. The Lower Tribunal did not give any reason for discountenancing the non-tendering of the BVR dated 17th day of July, 2022.
- ix. The Petitioners/Respondents made references to two separate BVAS reports dated 17th July 2022 and one dated 27th July, 2022 in their pleading, oral and documentary evidence before the Tribunal.

GROUND TWENTY-SIX

ERROR IN LAW

The lower Tribunal in its judgment erred in law when it held thus:

“The said exhibit BVR does not contained the words “inchoate and “Unsynchronized”. Similarly, exhibit R. BVR1-29 does not indicate on it that it is superior to exhibit BVR. The exception indicated in the proviso to Section 128(1) of the Evidence Act (supra), are not apparent on exhibit BVR. The Electoral Act (supra), exhibit 1, and the extant regulation made for the conducts of Elections have no provision for synchronization of accreditation and election result. What Section 64(4) of the Electoral Act (Supra), provide for is updating of results.”

PARTICULARS OF ERROR

- i. The definition of the word synchronization quoted by the Honourable Tribunal includes, to link data files between one computer or mobile device and another so that information in the files on both machines is the same.

- ii.PW2 confirmed that “BVAS machines work with the availability of Network.”
- iii.RW1 confirmed that BVAS machine does not need network for accreditation, but need network to transmit the information from it to the backend server. And if there is no network, accreditation data will not be uploaded.
- iv.1st RW1 confirmed that as at the date exhibit BVR was issued, the 1st Respondent/Appellant has not synchronized the data in the BVAS machine and the backend server and the physical extraction of data from BVAS machines.
- v.RW1 in her evidence testified that *“After the election, we had to do synchronization process to ensure that what we have on the BVAS machine is transmitted to the backend server. That is what synchronization is all about”*.
- vi.RW1 gave unchallenged, uncontradicted and undisputed evidence that exhibit RBVR is the synchronised report and that it SUPERCEDE Exhibit BVR which was not synchronised or updated.
- vii.“Synchronization” and “updating means the same thing in respect of the backend server which is to bring the backend server up to date with the data contained in the BVAS machine.
- viii.Exhibit BVR is not the primary evidence upon which the result of the election was declared.
- ix.The Electoral Act 2022 does not need to use the specific words, inchoate or synchronisation.
- x.Section 62 (2) of the Electoral Act 2022 used the words compile, maintain, update and continuously.
- xi.The evidence of the RW1 on the process of synchronization remains unchallenged by the Petitioners/Respondents.
- xii.Section 64 (4) of the Electoral Act cited by the Tribunal is not relevant for this purpose.
- xiii.Section 62 and 152 of the Electoral Act 2022 which is relevant empowers INEC to compile, maintain and update, on a continuous basis a register of elections in an electronic format, which includes the electronic version of the Register of Voters.

xiv. INEC has a duty to say that exhibit BVR is inchoate or unsynchronised.

xv. The Petitioners have the statutory duty to verify the state of the CTC they obtained before they erroneously based their Petition on a CTC that needed continuous update.

xvi. The Petitioners were presumptuous, speculative and unserious.

xvii. The Lower Tribunal ought to have dismissed the Petition even on this score.

GROUND TWENTY-SEVEN

ERROR IN LAW

The lower Tribunal in its judgment erred in law when they relied on a meaning of synchronization which is contrary to the unchallenged evidence of RW1 by holding that:

“synchronization therefore means to cause something to happen in a plan way at exact time.

PARTICULARS OF ERROR

- i. The definition relied upon by the Tribunal is contrary to the process of synchronization as narrated by RW1 who testified on the process of synchronization, amongst others.
- ii. The explanation of the process of synchronization by the RW1 is the same with the definition number two in Oxford advance learners dictionary New 9th Edition at page 1589 cited by the Tribunal.
- iii. The exemptions to section 128(1) of Evidence Act (2011) applies to exhibit BVR.
- iv. The evidence of RW1 is in line with the provisions of section 64(4) of the Electoral Act 2022.
- v. Synchronisation is a technical word in the context of this case and ought to be given its technical meaning.
- vi. RW1 in her evidence testified that *“After the election, we had to do synchronization process to ensure that what we have on the BVAS machine is transmitted to the backend server. That is what synchronization is all about”*.

- vii. "Synchronization" and "updating means the same thing in respect of the backend server which is to bring the backend server up to date with the data contained in the BVAS machine.
- viii. The evidence of the RW1 on the process of synchronization remains unchallenged by the Petitioners/Respondents.
- ix. Section 64 (4) of the Electoral Act cited by the Tribunal is not relevant for this purpose.
- x. Section 62 and 152 of the Electoral Act 2022 which is relevant empowers INEC to compile, maintain and update, on a continuous basis a register of elections in an electronic format, which includes the electronic version of the Register of Voters.
- xi. INEC has a duty to say that exhibit BVR is inchoate or unsynchronised.
- xii. The Petitioners have the statutory duty to verify the state of the CTC they obtained before they erroneously based their Petition on a CTC that needed continuous update.
- xiii. The Petitioners were presumptuous, speculative and unserious.
- xiv. The Lower Tribunal ought to have dismissed the Petition even on this score.

GROUND TWENTY-EIGHT

ERROR IN LAW

The Lower Tribunal in its judgment erred in law when it held that *issue two and three for determination in this petition is whether there was over-voting in the election conducted on the 16th day of July 2022 in Osun state.*

PARTICULARS OF ERROR

- i. Ground two of the petition was that the 2nd Respondent/ Appellant was not duly elected by the of lawful votes cast at the election which is different in law to ground 3 of the Petition which is that the election of the 2nd Respondent/Appellant was invalid by reason of non-compliance with the provisions of Electoral Act 2022.
- ii. The facts in support of grounds 2 and 3 are at variance and inconsistent with the Grounds which they purportedly support.

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- iii. There are no facts supporting the allegations of non-compliance under Ground 3 of the Petitioners/ Respondents Petition.
- iv. The 1st Respondent/Appellant filed Preliminary Objection on this point which the Tribunal failed duly determine.

GROUND TWENTY-NINE

ERROR IN LAW

The lower Tribunal erred in law when it held that **the present Electoral Act 2022, did not make voters register part of the requirement of accreditation and voting in the election and thereby failed to apply all the good authorities cited by the Respondents/ Appellants on the mandatory use of voters register.**

PARTICULARS OF ERROR

- i. Clauses 14(a), 18(a), 19(b)(iv), 19(d)(i), E(ii) and 20(iii) in the Regulations and Guidelines for the Conduct of the Election 2022 made the use of voters register compulsory in the accreditation process in the present Electoral system.
- ii. No law was referred to by the Lower Tribunal that abolished the use of Register of Voters in the present Electoral system.
- iii. Section 47(1) makes provisions for any intending voter to go to the polling units where her or she was registered before such intending voter can vote.
- iv. The petitioners ought to have tendered the Register of Voters to proof their case.
- v. There is the requirement for ticking the appropriate box at the right-hand margin beside the voter's details on the Voters Register for a voter that is verified and at the left margin for a voter whose accreditation has failed.
- vi. When as in this case there is dispute as to accreditation figures, the issue will be resolved by a combination of the entries in the BIVAS machines, the Voters Register and Form EC8 series.
- vii. Exhibit BVR does not contain information on failed accreditation.

GROUND THIRTY

ERRO IN LAW

The lower Tribunal in its judgment erred in law when it failed to ascribed the proper meaning to

“seeming over-voting” used by the RW1 in her evidence thereby wrongly treating same as an admission of the fact of over-voting.”

PARTICULARS OF ERROR

- i. Admission should be unambiguous, unequivocal and unconditional.
- ii. The RW1 in her re-examination explained that she used “seeming over-voting because any comparison should take place between Form EC8A, the Voters Register and the physical BVAS machines.
- iii. By the 1st Respondent/Appellant Guidelines and Regulations, voter’s accreditation figure is taken from physical BVAS machine and written on Form EC8A.
- iv. The Honourable Tribunal failed to take cognizance of the response of the RW1 under re-examination before coming to the conclusion that RW1 admitted over-voting in her testimony.
- v. Seeming over voting cannot and does not mean admission of over voting.

GROUND THIRTY -ONE

ERROR IN LAW

The lower Tribunal in its judgment erred in law when it held that:

“The fact that the claims in this petition are declaration in nature does not detract from the said admission”.

PARTICULARS OF ERROR

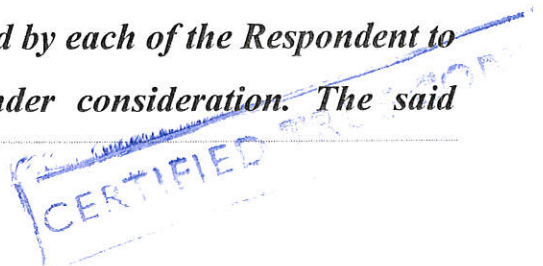
- i. The relief sought by the Petitioners/Respondents are declaratory in nature and the law enjoins the petitioner to rely on the strength their case.
- ii. Declaratory reliefs cannot be proved by admission or any perceived weakness in the defence of the Respondents.
- iii. The Petitioners failed woefully in proving the Petition.

GROUND THIRTY -TWO

ERROR IN LAW

The lower Tribunal erred in law when it held thus: “The

“synchronization” of the documents made by the 1st Respondent, and physical inspection of same done by the 2nd and 3rd Respondents, as shown in the table herein reproduced, run riot to the defences raised by each of the Respondent to this petition in respect of issue 2 and 3 under consideration. The said



“synchronization”, rather rhyme with each other are inconsistent and contradictory. The said Exhibit tendered by the respondents have not rebutted the presumption of regularity in favour of Exhibit BVR and the other documents tendered by the petitioners in this petition”.

PARTICULARS OF ERROR


- i. All the documents certified by the 1st Respondent enjoyed the presumption of regularity
- ii. Exhibit BVR being an inchoate document cannot be expected to rhyme with Exhibit 2R.RWC which is a data obtained through physical inspection of the BVAS machine.
- iii. The 976 BIVAS machines tendered are by the Electoral Act 2022 documents and are taken as read.
- iv. The fact of the true accreditation figures in the BIVAS machines were neither contradicted nor challenged and ought to be relied upon by the Tribunal.
- v. The Lower Tribunal did not make any finding that exhibit 2R.RWC which is a report of the physical inspection of the BVAS machine does not rhyme with the entries in form EC8A series.
- vi. The Petitioners did not tender any credible evidence before the Tribunal showing over-voting warranting victory for them.
- vii. The Tribunal did not state how and where synchronisation and physical inspection report exhibit RWC ran riot as to warrant discountenancing same.
- viii. Exhibit RWC rhymes with Form EC8A except in 6 Polling Units out of the 3366 Polling Units in Form EC8As.
- ix. The un-pleaded and unsubstantiated generalisation of the exhibits herein running riots occasioned injustice.

GROUND THIRTY -THREE

ERROR IN LAW

The lower Tribunal in its judgment erred in law when it held that:

“the inference drawn from the facts established by the evidence on record is that, the election conducted on the 16th day of July 2022 was done with

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substantial non-compliance with the provisions of the Electoral Act 2022 and the extant Regulation made thereunder.”

PARTICULARS OF ERROR

- i. The Petitioner failed to prove substantial non-compliance with the provisions of the Electoral Act 2022 and the extant Regulation made there under.
- ii. There are no sufficient facts pleaded by the petitioners to establish non-compliance.
- iii. The Lower Tribunal cannot use the fact in support of the ground alleging that the 2nd Respondent did not score of lawful votes to prove allegation of non-compliance with the provisions of Electoral Act 2022 as raised by the petitioners in their pleadings.

GROUND THIRTY-FOUR

ERROR IN LAW

The lower Tribunal in its judgment erred in law when it held that **the Exhibits tendered by the Respondents after Exhibit BVR were thought of after the declaration of result on the 17th of July 2022.**

PARTICULARS OF ERROR

- i. The Tribunal had earlier held that the Exhibits tendered by the Respondents were not made in anticipation of pending proceedings.
- ii. The Tribunal had earlier held in its judgment that the Exhibits tendered by the 1st Respondent/Appellant were made in it's official capacity.
- iii. There is no difference between Exhibit BVR obtained for the purpose of Presenting and maintaining the petition and the Exhibits tendered by the Respondents in defence of the Petition.
- iv. By the nature of BIVAS machines the facts in them remain unaltered for the election it was used for.
- v. The Tribunal and the Petitioners saw and examined the 976 BIVAS machines tendered at the Tribunal and were satisfied.
- vi. There is no basis for afterthought as stated by the Tribunal.
- vii. Exhibits BVR, RBVR and RWC were the state of facts as at the date of their issue, they neither contradict each other nor ran riot.

- viii. These exhibits were issued pursuant to the provisions of Sections 62, 64, 74, 154 of the Electoral Act 2022, which were cited and explained to the Tribunal.
- ix. RW1 gave evidence that she certified exhibits BVR, RBVR and RWC, and that exhibit RBVR superceded exhibit BVR and this evidence remains unchallenged and uncontradicted.

GROUND THIRTY-FIVE

ERROR IN LAW

The Tribunal in its judgment erred in law and occasioned a gross miscarriage of justice when it held as follows:

“The 2nd Respondents also applied to inspect and the Tribunal granted the said application, and a physical inspection of the BVAs Machines was done by the 2nd Respondent as indicated in exhibits R.BVR1-129 and RWC... We find these pieces of evidence unchallenged and therefore proved”.

PARTICULARS OF ERROR

- i. There is no evidence on record that the 2nd Respondent sought for and obtained an Order for physical inspection for the production of Exhibit R.BVR 1 - 129.
- ii. Exhibit R. BVR 1 - 129 predates exhibit RWC.
- iii. Exhibit RWC which was for the physical inspection of the BVAS machines was obtained in order to afford the Tribunal with the best evidence of the entries for accreditation made at the Polling Units on the day of the Governorship election.
- iv. Exhibit RWC was issued pursuant to the orders of the Tribunal.
- v. The Tribunal grossly misconstrued and devastated the case presented by the parties when it contrary to the records distorted admitted facts and grouped Exhibit RWC with Exhibit R.BVR 1 – 129 and thereby occasioned grave injustice.
- vi. The Tribunal and the parties are bound by its record.

GROUND THIRTY-SIX

ERROR IN LAW

The lower Tribunal in its judgment erred in law when it held that

“the conduct of the 1st Respondent amount to tampering with official records by issuing multiple accreditation reports contrary to its avowed declaration to conduct free, fair and credible election.”

PARTICULARS OF ERROR

- i. The said finding of the Tribunal has no basis in the evidence before the Tribunal and law.
- ii. The 1st Respondent acted in its official capacity in issuing accreditation report on request and on the order of the Honourable Tribunal.
- iii. The 1st Respondent/Appellant conducted a free, fair and credible election in Osun state on 16th July 2022.
- iv. Exhibit BVR, RBVR and RWC were the state of facts as at the date of their issue, they neither contradict each other nor run riot.
- v. These exhibits were issued pursuant to the provisions of Sections 62, 64, 74, 154 of the Electoral Act 2022, which were cited and explained to the Tribunal.
- vi. RW1 gave evidence that she certified exhibits BVR, RBVR and RWC, and that exhibit RBVR superceded exhibit BVR and this evidence remains unchallenged and uncontradicted.
- vii. INEC never tampered with any record.
- viii. The 976 BIVAS machines were tendered and inspected at the Tribunal and are still in the custody of the Tribunal.
- ix. Tampering is a criminal act which must be proved beyond reasonable doubt and no such proof was tendered at the Tribunal.
- x. There is no basis for such finding.

GROUND THIRTY-SEVEN

ERROR IN LAW

The lower Tribunal erred in law when it found as a fact that:

“over-voting occurred in the election conducted on 16th July 2022 in the manner stated in the table in paragraph 6.19 of the petitioners written address.”

PARTICULARS OF ERROR

- i. The said Tables were not pleaded by the petitioners in the pleadings of the petitioners.
- ii. The address of a counsel no matter how beautiful cannot take the place of evidence prove and demonstrated before the Tribunal.

- iii. There was no over voting as held by the Tribunal.
- iv. Exhibits BVR, RBVR and RWC were the state of facts as at the date of their issue, they neither contradict each other nor ran riot.
- v. The RW1 in her re-examination explained that she used “seeming over-voting because any comparison should take place between Form EC8A, the Voters Register and the physical BVAS machines.
- vi. By the 1st Respondent/Appellant Guidelines and Regulations, voter’s accreditation figure is taken from physical BVAS machine and written on Form EC8A.
- vii. The Honourable Tribunal failed to take cognizance of the response of the RW1 under re-examination before coming to the conclusion that RW1 admitted over-voting in her testimony.
- viii. Seeming over voting cannot and does not mean admission of over voting.
- ix. RW1 never admitted over voting as pleaded by the 1st and 2nd Respondents.
- x. When RW1 was cross examined with BVAS Report in only four out of 749 Polling Units she answered that with respect to those four Polling Unit there was SEEMING over-voting.
- xi. The nature of the dispute determines how the justice of the case is to be met, and in this case the Petitioners could not satisfactorily prove their case without oral evidence of those who were at the various polling units on the day of election.
- xii. The grounds of over-voting and/or non-compliance which forms the basis of the Petition were not founded upon in Form EC8 series, but on exhibit BVR, which as an inchoate document.
- xiii. The Lower Tribunal failed to rely on the Form EC8 series, exhibits BVR, RWC, and R.BVR. It rather held that it relied only on exhibit BVR on which there was uncontradicted and overwhelming evidence that it was incomplete.
- xiv. There was uncontradicted evidence that exhibit BVR relates to the entire 3763 polling units in Osun State and not 749 Polling units.

- xv. There was uncontradicted and unchallenged evidence before the Lower Tribunal that exhibit BVR was incomplete and needed continuous update as at July 27, 2022 when it was issued.
- xvi. There was uncontradicted and unchallenged evidence before the Lower Tribunal that exhibit BVR in the state it was on July 27, 2022, had irregularities in 1751 polling units in Osun State and that if the Lower Tribunal deducted the said 1751 polling units, the 2nd and 3rd Respondents at the Tribunal will win by 21980 votes and satisfy the constitutional spread.
- xvii. The Lower Tribunal discarded exhibits R.BVR and RWC and relied only on exhibit BVR in 744 polling units just to give undeserved victory to the 1st and 2nd Respondents herein.

GROUND THIRTY-EIGHT

ERROR IN LAW

The lower Tribunal in its judgment erred in law when they used the table produced by the petitioners in their final written address to determine perceive over-voting and to deduct perceive invalid votes from the scores of the 2nd Respondent.

PARTICULARS OF ERROR

- i. There is no pleading in the petitioner petition to support the tables in the petitioner's final written address relied upon by the Tribunal.
- ii. The tables in the evidence of PW1 and PW2 as contained in the respective Witness Statement on Oath are at variance with tables in Petitioner's final Written Address relied upon by the Tribunal.
- iii. The Lower Tribunal failed to rely on the Form EC8 series, exhibits BVR, RWC, and R.BVR. It rather held that it relied only on exhibit BVR on which there was uncontradicted and overwhelming evidence that it was incomplete., inchoate and un-updated.
- iv. There was uncontradicted evidence that exhibit BVR relates to the entire 3763 polling units in Osun State and not 749 Polling units.

- v. There was uncontradicted and unchallenged evidence before the Lower Tribunal that exhibit BVR was incomplete and needed continuous update as at July 27, 2022 when it was issued.
- vi. There was uncontradicted and unchallenged evidence before the Lower Tribunal that exhibit BVR in the state it was on July 27, 2022, had irregularities in 1751 polling units in Osun State and that if the Lower Tribunal deducted the said 1751 polling units, the 2nd and 3rd Respondents at the Tribunal will win by 21980 votes and satisfy the constitutional spread.
- vii. The Lower Tribunal discarded exhibits R.BVR and RWC and relied only on exhibit BVR in 744 polling units just to give undeserved victory to the 1st and 2nd Respondents herein.
- viii. Exhibit RWC is the extract of the figures on the BIVAS machines based on the orders of the Tribunal and it tallied with the accreditation figures on exhibit EC8A to 8E, based on which the result was declared.

GROUND THIRTY-NINE

ERROR IN LAW

The lower Tribunal in its judgment erred in law when it held that:

“the 2nd Respondent did not score a majority of lawful votes cast at the election, thereby declaring the declaration and return of the 2nd Respondent as null and void.”

PARTICULARS OF ERROR

- i. From the totality of evidence before Election Petition Tribunal the 2nd Respondent scored majority of lawful votes cast in the Osun state Gubernatorial election held on 16/7/2022 and duly returned.
- ii. The Petitioners/ 1st and 2nd Respondents failed to prove in law that the 3rd Respondent did not score majority of lawful votes cast in the Osun state Gubernatorial election held on 16/7/2022.
- iii. The Petitioners called only 2 witnesses, the State Collation Agent and another witness who appeared to be an expert witness yet he did not plead any fact as an expert.

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- iv. The 2 witnesses are neither Polling Unit Agents nor Presiding officers at the election.
- v. The Tribunal based the over voting on exhibit BVR which had not been updated pursuant to Section 62 (2) of the Electoral Act 2022.
- vi. The Lower Tribunal failed to rely on the Form EC8 series, exhibits BVR, RWC, and R.BVR. It rather held that it relied only on exhibit BVR on which there was uncontradicted and overwhelming evidence that it was incomplete., inchoate and un-updated.
- vii. There was uncontradicted evidence that exhibit BVR relates to the entire 3369 polling units in Osun State and not 749 Polling units.
- viii. There was uncontradicted and unchallenged evidence before the Lower Tribunal that exhibit BVR was incomplete and needed continuous update as at July 27, 2022 when it was issued.
- ix. There was uncontradicted and unchallenged evidence before the Lower Tribunal that exhibit BVR in the state it was on July 27, 2022, had irregularities in 1751 polling units in Osun State and that if the Lower Tribunal deducted the said 1751 polling units, the 2nd and 3rd Respondents at the Tribunal will win by 21980 votes and satisfy the constitutional spread.
- x. The Lower Tribunal discarded exhibits R.BVR and RWC and relied only on exhibit BVR in 744 polling units just to give undeserved victory to the 1st and 2nd Respondents herein.
- xi. Exhibit RWC is the extract of the figures on the BIVAS machines based on the orders of the Tribunal and it tallied with the accreditation figures on exhibit EC8A to 8E, based on which the result was declared.
- xii. The 3rd and 4th Respondents herein secured majority of the lawful votes cast at the Osun State Governorship Election held on July 16, 2022.

GROUND FORTY

ERROR IN LAW

The lower Tribunal in its judgment erred in law when it descended into the arena and showed bias against the 2nd and 3rd Respondents when it held and Justice T. A. KUME

demonstrated in the Tribunal while delivering judgment that the 2nd Respondent cannot “go lo lolo lo” and

“Buga won” as the elected Governor of Osun state in the election conducted on 16th day of July, 2022.”

PARTICULARS OF ERROR

- i. The said expression by the Lower Tribunal constitutes a descend unto the arena of dispute between the parties.
- ii. The said expression by the Lower Tribunal in its Judgment indicates strong likelihood of bias against the 3rd and 4th Respondents.
- iii. The said expression by the lower Tribunal in its Judgment cast aspersion on the credibility of the judgment.
- iv. Justice T. A. Kume went beyond the expression while delivering the judgment, he demonstrated the “buga sign” instead of “dance steps”.
- v. The chairman of the Tribunal ought not conduct himself in such manner.

GROUND FORTY-ONE

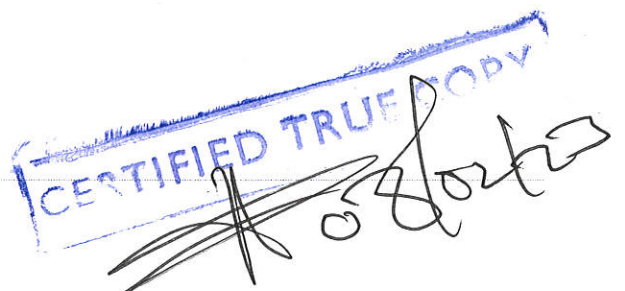
ERROR IN LAW

The lower Tribunal in its judgment erred in law when it failed to give effect to Section 62 (2), 64, 74 and 152 of the Electoral Act 2022 in determining this Petition.

PARTICULARS OF ERROR

- i. The provisions of Sections 62, 64, 74, and 152 of the Electoral Act 2022, which were cited and explained to the Tribunal were not followed by the Tribunal.
- ii. “Synchronization” and “updating means the same thing in respect of the backend server which is to bring the backend server up to date with the data contained in the BVAS machine.
- iii. The Electoral Act 2022 does not need to use the specific words, inchoate or synchronisation.
- iv. Section 62 (2) of the Electoral Act 2022 used the words compile, maintain, update and continuously.

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- v. RW1 gave unchallenged, uncontradicted and undisputed evidence that exhibit RBVR is the synchronised report and that it SUPERCEDE Exhibit BVR which was not synchronised or updated.
- vi. The evidence of the RW1 on the process of synchronization remains unchallenged by the Petitioners/Respondents.
- vii. Section 64 (4) of the Electoral Act cited by the Tribunal is not relevant for this purpose.
- viii. Section 62 and 152 of the Electoral Act 2022 which is relevant empowers INEC to compile, maintain and update, on a continuous basis a register of elections in an electronic format, which includes the electronic version of the Register of Voters.
- ix. INEC has a duty to say that exhibit BVR is inchoate or unsynchronised.
- x. The Petitioners have the statutory duty to verify the state of the CTC they obtained before they erroneously based their Petition on a CTC that needed continuous update.
- xi. The Petitioners were presumptuous, speculative and unserious.

GROUND FOURTY-TWO

ERROR IN LAW

The lower Tribunal in its judgment erred in law when they based its judgment on complaint on 744 Polling Units that is not backed by pleadings.

PARTICULARS OF ERROR

- i. There is no pleading based on 744 Polling Units.
- ii. The Petitioners complained about 749 Polling Units in 10 Local Government Areas.
- iii. The Petition was never amended during Pre-hearing or at any time until judgment.
- iv. There is no support on record for any judgment based on 744 Polling Units.
- v. The Tribunal has no jurisdiction to grant what was not pleaded and supported by evidence.

vi. The Tribunal cannot amend the Petition suo motu and proceed to base judgment on it.

vii. The judgment of the Tribunal was given without jurisdiction.

GROUND FORTY-THREE

ERROR IN LAW

The Tribunal in its judgment erred in law when it held as follows:

“The above reproduced sections of the Electoral Act (Supra), i.e. Sections 51(2) and 47(2) are clear and unambiguous. The said sections would be given their ordinary grammatical meaning. In that regard, the material issue is the number of accredited voters in a Polling Unit, being less than the number of votes cast in a Polling Unit. The said Sections 51(2) and 47(2) of the Electoral Act (Supra), did not make a voters register part of the requirement of accreditation and voting in the election aforesaid. This Tribunal will not import into the said Section 51(2) and 47(2) of the Electoral Act (Supra), what is not contained thereon. The sections aforesaid are different from Section 53(2) of the repealed Electoral Act, 2010.”

“Consequently, the submission by learned counsel for the Respondents that the failure to produce the voter's registers in the Polling Units under contention by the Petitioners is fatal to the case of the Petitioners is not correct. The reason is not farfetched. The facts and the law applicable in this petition are different from the facts and the law applicable in the authorities cited by learned counsel for the Respondents for the mandatory use of a voter's register in proof or otherwise of over-voting in an election in a Polling Unit. Accordingly, we hereby decline to apply the good authorities of law cited by learned counsel for the Respondents in the mandatory use of voter's register in respect of issues 2 and 3 herein. See Adegoke ...”

PARTICULARS OF ERROR

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- i. The Tribunal totally misconstrued Section 47(2) of the Electoral Act 2022, which must be read purposefully, communally and holistically to arrive at the true intention of the legislature and justice.
- ii. By Section 47(2) of the Electoral Act 2022, the Appellant is empowered to conduct the accreditation process using the BVAS "...in the manner prescribed by..." INEC.
- iii. The Petitioners tendered Exhibit 1, which in Regulations 14, 18, 19, and 20 prescribes that the Register of Voters shall be used in conjunction with the BVAS and each accredited voter indicated in the Register.
- iv. By the said INEC Regulations, provision is made for ticking in the appropriate box failed accreditations which Exhibit BVR did not provide.
- v. The said Regulations and Guidelines are procedural legislations with force of law binding on all parties and the Tribunal.
- vi. The Electoral Act 2022 and indeed its Section 51(2) did not exclude the use of the Register of Voters.
- vii. The BIVAS prescription by the Appellant has not done away with the Register of Voters.

GROUND FORTY-FOUR

The judgement of the lower Tribunal is against the weight of evidence.

4. RELIEFS SOUGHT FROM THE COURT OF APPEAL

- a. Allow the Appeal;
- b. **AN ORDER** setting aside the whole decision of the trial Tribunal;
- c. An Order dismissing and/or striking out the Petition for want of competence and jurisdiction.
- d. An Order dismissing the Petition of the 1st and 2nd Respondents in this Appeal as lacking in merit with substantial cost.

5. PERSONS DIRECTLY AFFECTED BY THE APPEAL

INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC)

INEC Headquarters

Plot 436 Zambezi Crescent

Maitama District, FCT, Abuja.

INEC office,
Gbongon Road,
Oshogbo.

2. ADEGBOYEGA ISIAKA OYETOLA

Hammed Oyetola Street
Behind Oke-Iragbiji Grammar School
Iragbiji
Boripe Local Government

3. ALL PROGRESSIVES CONGRESS

APC National Secretariat
40 Blantyre Crescent
Wuse II, Abuja

C/O

Osun State Secretariat
Beside GT Bank, KLM 3,
Gbongan Road, Osogbo.

4. ADELEKE ADEMOLA JACKSON NURUDEEN

C/O

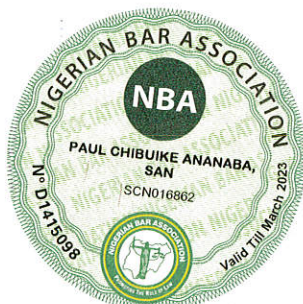
Ikpeazu Chambers,
Plot 10 Block IX,
David Dodo Street, Gwarinpa,
Federal Housing Estate, Abuja.

ikpeazulawfirm@gmail.com, 08033122202, 08055341468, 08036023784.

5. PEOPLES DEMOCRATIC PARTY (PDP)

PDP National Headquarters
WADATA House
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Dated this 30th day of January 2023



✓ PROF. PAUL C. ANANABA, SAN

Emeka Okpoko, SAN, FCI Arb.

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Gbongon Road,
Oshogbo.

FOR SERVICE ON:

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2. ALL PROGRESSIVES CONGRESS

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4. PEOPLES DEMOCRATIC PARTY (PDP)

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[Handwritten Signature]

