IN THE COURT OF APPEAL
AKURE JUDICIAL DIVISION
HOLDEN AT ABUJA

ON FRIDAY THE 24TH DAY OF MARCH, 2023

BEFORE THEIR LORDSHIPS:

MUHAMMED LAWAL SHUAIBU	-	JUSTICE, COURT OF APPEAL
CORDELIA IFEOMA JOMBO-OFO	-	JUSTICE, COURT OF APPEAL
JAMES GAMBO ABUNDAGA	-	JUSTICE, COURT OF APPEAL

APPEAL NO: CA/AK/EPT/GOV/03/2023

BETWEEN:

INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC)==== APPELLANT

VS.

1. ADEGBOYEGA ISIAKA OYETOLA)
2. ALL PROGRESSIVES CONGRESS (APC)) === RESPONDENTS
3. PEOPLES DEMOCRATIC PARTY (PDP))

J U D G M E N T

(DELIVERED BY CORDELIA IFEOMA JOMBO-OFO, JCA)

This appeal emanated from the judgment of the Election Petition Tribunal sitting at Osogbo, Osun State (hereinafter the Tribunal) in **Petition No. (EPT/OS/GOV/01/2022)**, delivered by **Hon. Justice T. A. Kume, J., (Chairman)** and signed by **Rabi Bashir (Chief Magistrate)**

CTC ₦1,000.00 paid 27-3-2023 DATE

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COURT OF APPEAL ABUJA
OLUNFUWA HASSANA (MRS)
ADMIN OFFICER
Signature
Date 27/3/23

(Member 2) on 27th January, 2023, which Judgment nullified the declaration and return of the 3rd respondent as the winner and duly elected Governor of Osun State in the Gubernatorial election held 16th July, 2022, upon a Petition filed by the 1st and 2nd respondents on 5th August, 2022. The Member 1 of the Tribunal **Hon. Justice B. A. Ogbuli, J.**, in his dissenting minority Judgment dismissed the Petition in its entirety.

BRIEF BACKGROUND FACTS

The election to the office of Governor of Osun State was conducted by the appellant at the end of which the said appellant returned the 3rd respondent, who was the candidate of the 4th respondent as elected and also the person who won the majority of the lawful votes cast at the election.

Dissatisfied with the election and return of the 3rd and 4th respondents, the 1st and 2nd respondents filed their petition at the tribunal on 5th August, 2022 challenging the election on 3 (three) grounds as set out at paragraph 19 of their Petition to wit:

a. The 2nd Respondent was at the time of the election, not qualified to contest the election;
b. The 2nd Respondent was not duly elected by majority of lawful votes cast at the election;

c. The election of the 2nd Respondent was invalid by reason of non-compliance with the provisions of the Electoral Act, 2022. (See page 4 vol. 1 of the record of appeal).

The 1st and 2nd respondents thereafter at paragraph 72 of their Petition prayed the Tribunal for declaratory reliefs as set out therein.

Upon service of the Petition, the appellant filed its Reply to the Petition along with a Notice of Preliminary Objection challenging the competence of the Petition. The 3rd and 4th Respondents on their part filed their respective Replies accompanied with Preliminary Objection to the Petition. The appellant as well as the 3rd and 4th respondents filed separate motions on notice challenging the competence of the Petition and the jurisdiction of the Honourable Tribunal to entertain the Petition as constituted and which were argued at the pre-hearing session. Rulings thereon were reserved for delivery along with the final Judgment pursuant to the provisions of section 285 (8) of the Constitution of the Federal Republic of Nigeria, 1999 as amended.

At the trial the 1st and 2nd respondents called 2 witnesses namely Isiaka Olarewaju (PW1) and Adeosun Rasaki (PW2). The PW1 gave evidence as a Special Assistant to the 1st Respondent who claimed to have led te team set up by the 2nd respondent to analyse the result of the election. He claimed that his inspection and analysis of the result revealed that in

749Polling Units across Osun State that the Presiding Officers at the Polling Units and the Collation Officers at the Collation Centres failed to comply with the provisions of the Electoral Act. That there was no proper accreditation of voters in many of the polling units and that the total number of votes as well as the total number of accredited voters recorded in the Forms EC8As for those 749 polling units on the one hand did not tally with the numbers of accredited and verified voters on the record of BVAS for the same polling units.

Under cross examination the PW1 admitted that he was not an agent of the 1st and 2nd respondents at the conduct of the election and could not confirm if the Forms EC8A series handed over to him by the 1st and 2nd Respondents and from which he conducted his examination were correct. PW1 further admitted that he never analysed or examined Forms EC40B, C, J, EC50C, EC40 G (1 – 3); and that he never examined the Voters Register used during the election. PW1 stated also that he made his report as directed by the 1st and 2nd Respondents and that he was part of those that wrote the Petition. PW1 also confirmed that the submission of the Report in BVAS machine is based on network. That one can capture on BVAS without network but can only submit what is captured on BVAS when there is network. Hence, if the official of the Appellant does not press "submit" button on the BVAS machine, the data captured will not be transmitted.

The PW2 on his side stated that he was the 1st and 2nd Respondents' Collation Officer who also alleged that the 3rd respondent was not qualified to have contested and that the said 3rd respondent did not score majority of lawful votes cast at the election. He also alleged various forms of non-compliance with the provisions of the Electoral Act, 2022 in 749 polling units.

PW2 confirmed under cross examination to be a Special Assistant to the 1st respondent. He stated that he was not a staff of Penn Forster High School and Atlanta Metropolitan State College which were the institutions that issued the certificate he alleged were forged by the 3rd respondent. He also admitted not to have the list of graduates from both institutions or the admission policy of the schools. PW2 admitted not to have ever written to any of the institutions he claimed the 3rd Respondent forged their certificate in order to verify his claim neither did he produce any record of proceedings or order convicting the 3rd Respondent for forgery of certificate. PW2 further confirmed that Exhibit BVR Is the basis of the complaint of over voting. That the polling unit agents told him what he deposed to in his witness statement on oath.

The appellant on its part called one witness (DW1 Mrs. Abimbola Oladunjoye, Deputy Director, ICT of the appellant) who tendered some documents, while the 3rd respondent called two witnesses who equally

tendered some documents. The 4th respondent did not call any witness but it tendered a few documents. At the close of the case of the parties, they filed and exchanged and consequently adopted their respective written addresses. Judgment was thereafter delivered on 27th January, 2023. (See pages 11,891 to 11,997, vol. 16 of the record of appeal).

The lower Tribunal in its judgment dismissed the respective preliminary objections raised by the appellant on the one hand and the 3rd and 4th respondents on the other. See particularly page 11922, vol. 16 of the record of appeal). At the end of hearing and in their considered and majority judgment jointly signed by them, Hon. Justice T. A. Kume (Chairman) and Chief Magistrate Rabi Bashir (Member 2) nullified the declaration and return of the 3rd and 4th Respondents as the winner of the Osun Governorship election held 16th July, 2022, while Hon. Justice B. A. Ogbuli, J., delivered a minority judgment wherein he dismissed the Petition.

Piqued by the said majority Judgment of the Tribunal, the appellant [Independent National Electoral Commission (INEC)] has appealed to this Court vide a Notice of Appeal dated 30th January, 2023 and filed 8th February, 2023. (See pages 12,006 to 12,034 vol. 16 of the record of appeal).

With due transmission of the record of appeal, parties filed and exchanged briefs of argument. The Appellant's Brief of Argument and the Appellant's Reply Brief to the 1ST and 2ND Respondents' Brief of Argument filed 15th February, 2023 and 23rd February, 2023 respectively were both settled by **Oluwole Jimi-Bada, Esq.** The 1ST and 2ND Respondents' Brief of Argument filed 21st February, 2023 was settled by **Muhydeen Adeoye, Esq.** and other 1ST and 2ND respondents' Counsel. Furthermore, the 1st and 2nd Respondents brought a Notice of Preliminary Objection pursuant to Order 10 Rule 1, Order 8, Rule 7 (d) of the Court of Appeal Rules, 2021 and a Motion on Notice pursuant to Order 7 Rules 2(3), 3 and 6 also of the Court of Appeal Rules, 2021. Both processes were filed 21st February, 2023. The appellant in reaction to the Preliminary Objection filed a counter affidavit of 4 paragraphs and Written Address in Opposition to the Motion on Notice on 27th February, 2023.

It is primordial that Preliminary Objection be determined first before wading into the substance of an appeal if need be. This is given the possibility of the Preliminary Objection determining the appeal *in limine*. I shall in this vein proceed first with the determination of the Preliminary Objection as filed by the 1st and 2nd respondents

The Motion on Notice in this regard is praying this court for:

1. AN ORDER striking out grounds 2, 3, 4, 13 and 14 of the Appellant's Notice of Appeal dated 30th January, 2023 but filed 8th February, 2023 in Appeal No: CA/AK/EPT/GOV/03/2023 and issue 5 (five) formulated thereon for being repetitive prolix, verbose, argumentative and vague.
2. AN ORDER striking out grounds 12, 18 and 44 of the Appellant's Notice of Appeal dated 30th January, 2023 and filed 8th February, 2023 in Appeal No: CA/AK/EPT/GOV/03/2023 for being abandoned having not canvassed arguments on them in the Appellant brief.
3. AN ORDER striking out ground 40 of the Appellant's Notice of Appeal dated 30th January, 2023 and filed 8th February, 2023 in Appeal No: CA/AK/EPT/GOV/03/2023 and issue 8 formulated thereon for being incompetent.
4. AN ORDER striking out grounds 7, 9, 10, 11, 12, 13, 14, 15, 17, 18, 19, 20, 21 and 25 of the same notice of appeal and issues 2, 3, 4, 5 and 6 encompassing the grounds for being incompetent.

The grounds upon which the application is brought include that:

Grounds of appeal must be elegantly couched with avoidance of prolixity, verbosity, repetition, argument and vagueness and any ground that offends this principle is liable to be struck out;

Grounds 2 3, 4, 13 and 14 of the appellant's notice of appeal are incompetent for being repetitive, prolix, verbose, argumentative and vague and liable to be struck out.

Grounds 7, 9, 10, 11, 12, 13, 14, 15, 17, 18, 19, 20, 21 and 25 are also incompetent for alleging error in law and miscarriage of justice together as done in each ground.

A valid ground of appeal should attack a specific finding of fact or a specific holding on a point of law, not a mere obiter dictum.

A mere expression of opinion by a Judge amounts to nothing and it is not appealable, as it is not a *ratio decidendi*.

Ground 40 of the appellant's Notice of Appeal is incompetent as it is a complaint against the obiter dictum of the trial Tribunal.

The said ground 40 is incompetent and is liable to be struck out.

Issue for determination of an appeal must flow from a valid and competent ground of appeal;

The appellant's issues 1, 5 and 8 as contained in the Appellant's Brief of Argument filed on the 15th February, 2003 formulated from the incompetent grounds are liable to be struck out for being incompetent.

It is in the interest of Justice to strike out the aforesaid Appellant's grounds 2, 3, 4, 12, 13, 14, 18, 40 and 44 and issues 1, 5 and 8, for being incompetent.

In support of the application is an affidavit of 6 paragraphs deposed to by one Adebayo Adediran, while the appellant filed a 4 paragraph affidavit deposed to by one Miss Adetumi Temilade.

The 1st and 2nd respondents/objectors formulated a lone issue for the determination of the application and the issue reads thus:

> **Whether in the light of the procedural law regulating appeals, this application ought to succeed.**

On the side of the appellant she found the following issue as apt for the determination of the application:

> Whether the 1st and 2nd respondents' application for striking out of the appellant's grounds of appeal and issues for determination ought not be dismissed for being misconceived and lacking in merit.

In arguing the application, the learned counsel for the objectors submitted that grounds 2, 3, 4, 13 and 14 of the appellant's notice of appeal are incompetent for being repetitive, prolix, verbose, argumentative and vague and issues 1, 5 and 8 are incompetent. He submits that grounds 2, 3 and 4 which are repetitive and vague are not

cognizable in law. Learned counsel contends that while ground 4 is repetitive of ground 3 in many respects to wit: particulars (i) – (v) of ground 4 is repetitive of particulars (i) – (v) of ground 3. That grounds 2, 3 and 4 of the appellant's notice of appeal all border on the issue of the judgment of the trial tribunal being a nullity on the ground that Member 2 of the panel did not express her individual opinion in writing at the time of the judgment. See Engr. David Nonogo vs. Arc. Austin Achado CA/ABJ/CV/1199/2022 (Unreported).

Submits that ground 13 and particulars thereto run through over 4 (four) pages and can pass as a Brief of Argument to the extent of supporting their submissions with a decided authority of Adeleke vs. Raheem (supra). That ground 14 of the Notice of Appeal is vague, illusive, ambiguous, broad, debatable, disputable, evasive and inexact. He further canvassed that the particulars did not demonstrate the flaw in the relevant aspect of the judgment.

Learned objector canvassed further that grounds 12, 18 and 44 of the notice of appeal are not covered by any issue formulated in the appellant's brief of argument and the appellant did not canvass argument on them. The appellant's ground 40 is premised on the tribunal's remark in its judgment that the 3rd respondent cannot *"go lo lolo lo" and "Buga won"* as the elected Governor of Osun State in the

election conducted 16th July, 2022. Learned counsel submitted that the foregoing remarks upon which ground 40 and issue 8 therefrom are predicated is merely an obiter dictum of the judgment of the tribunal. See **Trade Bank Plc. vs. Pharmatek Ind. P. Ltd. (2020) 8 NWLR Pt. 1725, pg. 124, 157, paras. F- H.** Counsel re-state the trite position of the law which is that where in the course of determining a course or matter, a Judge expresses an opinion which does not decide the live issue in the matter, such opinion is said to be an obiter.

Relying on the authorities of **Akibu vs. Oduntan (2000) 13 NWLR Pt. 685, pg. 446; and A.G., Kwara State vs. Lawal (2018) 3 NWLR Pt. 1606, pg. 266 at 286, paras. E-G**; the learned objector submitted that grounds 7, 9, 10, 11, 12, 13, 14, 15, 17, 18, 19, 20, 21 and 25 are incompetent and should be struck out. He further argued that there is no ground of appeal which should quarrel about an error in law and occasioning of gross miscarriage of justice at the same time. Such a ground is decidedly incompetent and liable to be struck out. See **Elendu vs. Ekwoaba (1995) 3 NWLR Pt. 386, pg. 704 at 719**.

Learned counsel urged that if the court finds and holds that grounds 2, 3, 4, 12, 13, 14, 18, 40 and 44 of the Notice of Appeal are incompetent, then issues 1, 5 and 8 formulated thereon are consequently incompetent

having been affected by the incompetent grounds as a virus capable of contaminating the issues distilled therefrom.

On their own part the learned counsel for the appellant submits forcefully that all the grounds of appeal in the appellant's notice of appeal are competent. Relying on the authority of **Waziri vs. Geidam (2016) LPELR-40660(SC) pg. 63, paras. B-C**, he submitted that contrary to the argument of the respondents/applicants, grounds 2, 3, 4, 13 and 14 of the appellant's notice of appeal are all competent and are not repetitive, prolix, verbose or vague. He argued that while grounds 2, 3 and 4 of the notice of appeal relate to the nullity of the Judgment of the Tribunal, same was challenged under different grounds which is to say that they each proffer different reasons why the judgment of the Tribunal cannot and should not stand. Learned counsel submitted that it is the grounds of appeal which show the complaint of the appellant that will be considered in order to decipher if the grounds of appeal are repetitive or not and not the particulars in support of such grounds. See **Arulogun vs. Aboloyinjo (2018) LPELR-44076(CA), pgs. 46-47, para. B; Ibrahim vs. Abdul (2019) LPELR-49191(CA), pgs. 19-20, paras. F-F and Ukoh vs. Ukoh (2020) LPELR-49956(CA), pgs. 11-12, para. E.**

The appellant submitted in the long run that grounds 7, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19 20, 21 and 25 are competent and not liable to be

struck out. Appellant urged on us to dismiss the 1st and 2nd respondents' application as grossly misconceived and lacking in merit.

RESOLUTION OF THE PRELIMINARY OBJECTION

As a matter of fact, grounds of appeal must not be verbose, argumentative and vague as these factors are likely to leave the adverse party in doubt of what the appellant's complaints are. Now the grouse of the 1st and 2nd respondents' objectors are targeted at the grounds of the appeal numbers 2, 3, 4, 7, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19 20, 21, 25, 40 and 44 which they claim to be either repetitive, vague, verbose, inchoate, argumentative etc. and as such are incompetent and liable to be struck out along with issues arising therefrom.

I have taken time to go through the grounds of appeal and their respective particulars as set out by the appellant in their Notice of Appeal filed 8th February, 2023 and spanning through pages 12,006 – 12,051 vol. 16 of the record of appeal).

I am satisfied in the first instance that grounds 12, 18 and 44 of the notice of appeal are not covered by any of the issues formulated by the appellant in his brief of argument. The said grounds are therefore deemed abandoned for which they are struck out. See **Maobinson Interlink Ltd. vs, UTC Nig. Plc (2013) 9 NWLR Pt. 1359, pg. 197 at 205,**

paras. G-A; and Oseni vs. Mohammed (2015) 3 NWLR Pt. 1445, pg. 100 at 125, para. A.

Regarding grounds 2, 3, 4, 13 and 14 which the objectors claim to be repetitive, prolix, verbose argumentative and vague -- I have found that the grounds are really centred on the issue of the Judgment of the Tribunal being a nullity given that Member 2 of the Panel did not express his individual opinion about the Judgment in writing. Be that as it may, the said Judgment of the lower tribunal seem to me to be challenged based on different reasons, hence the grounds may be repetitive of each other. In the case of **Arulogun vs. Aboloyinjo (supra)** where a similar situation arose, this court held at para. B that:

> **Grounds 4 and 5 are repetitive of ground 1 while ground 5 is repetitive of grounds 1 and 4. ....., there is no doubt that there are repetition in the particulars of the grounds of appeal which make them prolix, and appear argumentative.**
>
> **However, they effectively convey the precise complaint of the appellant against the Judgment of the trial Court.**
>
> **On the other hand, I do not think that the repetition in the particulars in the ground of appeal can constitute sufficient reason(s) to strike out such grounds of appeal since appeals are argued not on the grounds but on the issues distilled from them.**

See Osadare vs. Liquidator Nig. Paper Mill Ltd. (2012) 12 NWLR Pt. 652, pg. 1784. What is more is that it is easy to collapse the repeated grounds of appeal into one issue for the argument of appeal. See Ayangoke vs. Keystone Bank Ltd. (2013) LPELR-21806(CA).

Also in the case of **Ibrahim vs. Abdul (2019) LPELR-49191(CA), pg. 19-20, paras. E-F** this court found and held as follows:

> **The preliminary objection of the 3rd cross-respondent essentially is that grounds 1 and 2 of the cross-appeal and indeed the entire cross-appeal is incompetent. The salient argument of the learned counsel to the 3rd cross-respondent is that the grounds of the cross-appeal are needlessly repetitive and prolix and as such, cease to be grounds of appeal and ought to be struck out. I agree with the 3rd cross-respondent's position that the grounds in the cross-appeal are needlessly repetitive. The Courts have on occasions had cause to condemn unnecessarily verbose grounds of appeal as well as unnecessarily numerous grounds. Such have been described as poor advocacy since the success of an appeal is not dependent on the number of grounds of appeal. See per Mukhtar, JSC., in the case of G.K.F. Investment (Nig.) Ltd. vs. NITEL Plc. (2009) LPELR-1294(SC). However, a rash of grounds of appeal**

would not lead to the grounds being struck out if the grounds arise from the judgment appealed against. The 3rd cross-respondent has not complained that the grounds of appeal do not arise from the judgment of the trial Tribunal. Much as I agree that the grounds of appeal are verbose and unnecessarily numerous, the fact remains that they spring from the judgment appealed against. That being the case, I cannot strike them out. (Underlining supplied).

Following in the heels of the foregoing authorities, much as I agree with the submission of the learned counsel for the 1st and 2nd respondents in the instant appeal that grounds 2, 3, 4, 13 and 14 of the appellant's notice of appeal are repetitive, verbose, prolix and argumentative and narrative in nature and some even running through almost four pages of the record of appeal, I do not deem them enough to warrant the striking out of the said grounds and by extension the issues arising therefrom. This is more so as the said grounds touch on complaints resonating from the Judgment of the trial Tribunal. The reasons for the complaint of the appellant in these grounds are particularized in the various particulars, albeit in quite lengthy and argumentative manner in the supporting particulars. Notwithstanding the inelegant manner of crafting those grounds of appeal and their particulars, the 1st and 2nd respondents/objectors were not lost in the message or complaint that

they seemed to convey, hence they reacted accordingly in their Respondents' Brief of Argument. After all appeals are argued not on the grounds of the appeal but on the issues arising therefrom. The effect is that the said grounds 2, 3, 4, 13 and 14 are spared and thus allowed.

Touching on ground 40 which the learned objector claims to be a complaint against an obiter dictum of the trial Tribunal and so not appealable – it is indeed trite that not every utterance or view expressed by the Court in the course of a proceeding is appealable. Only the consideration and findings of trial court necessarily based on the pleadings and evidence on such pleadings and the applicable laws that give rise to appealable decisions. Thus, any ground(s) of appeal and issue(s) purportedly arising from such grounds which have evolved from an opinion or remarks or sentiment expressed off hand and not based on pleaded facts and or evidence before the trial court are appealable. In the case of **Rabiu vs. T, A, Hammond Projects Ltd. (2007) LPELR-8328(CA), pg. 21, paras. B-D, per Ogunbiyi, JCA, (as he then was) had this to say:**

> **A Judge serves as an umpire and his duty is to adjudicate between parties. Any extension of this frontier would legally amount to a constitutional aberration. The consequential effect is to act without jurisdiction. The function of a Judge is not extended to**

being an adjudicator and at the same time serving as an advocate. This certainly would violate the principles of natural justice, equity and good conscience. The court ought to be impartial and seen to act as such.

Lastly, the learned objector had canvassed that grounds 7, 9, 10, 11, 12, 13, 14, 15, 17, 18, 19, 20, 21 and 25 are also incompetent and liable to be struck out for alleging error in law and miscarriage of Justice together in each of the grounds. The apex court in the authority of **Aigbobahi vs. Aifuwa (2006) LPELR-267(SC), pgs. 10-11, per Onnoghen, JSC** (as he then was) had this to say:

...., the position in my humble view, is that once it is possible to make sense out of a ground of appeal that complains both of error in law and misdirection in fact, the ground of appeal is valid, the defect in its form notwithstanding. The rationale behind this lies in the shift in emphasis from technical justice to substantial justice – from form to substance. In other words, though a ground of appeal that complains of an error in law and misdirection in fact may be inelegant in drafting and thereby defective in form, that defect alone is not sufficient to have it struck out provided the complaints therein are clear- see pages 265-266 of Aderounmu vs. Olowu (supra) per Ayoola, JSC. Ground 3 clearly

exposes the complaint of the appellants. What makes a ground incompetent is not whether it is framed as an error of law and a misdirection in fact but whether by so stating it, the other side is left in doubt and without adequate information as to what the complaint of the appellant actually is. Once it is possible to make sense out of a ground of appeal that complains both of error in law and misdirection on the facts of the ground of appeal as in this case, the ground of appeal is valid.

Alleging both error in law and miscarriage of Justice together in a ground of appeal only impugns the form of the ground as opposed to the substance and thus would not occasion a miscarriage of Justice as is being suggested by the learned counsel for the 1st and 2nd respondents. The submission of the 1st and 2nd respondent is in this vein discountenanced. Grounds 7, 9, 10, 11, 12, 13, 14, 15, 17, 18, 19, 20, 21 and 25 are therefore competent and not liable to be struck out.

The Motion on Notice dated and filed 21st February, 2023 shall be granted in terms of relief 2 only, whilst the rest of the reliefs i.e. reliefs 1, 3 and 4 are dismissed for want of merit.

Now to the merit or otherwise of the appeal.

From the 44 (forty-four) grounds of appeal, the appellant crafted the following 9 (nine) issues for determination:

1. Whether the judgment of the Tribunal delivered on 27th January,2023 by Hon. Justice T. A. Kume and signed by Rabi Bashir (Chief Magistrate) is not a nullity due to the failure of Rabi Bashir (Chief Magistrate) to separately express her opinion in writing or orally make any pronouncement in the open Court. (Distilled from Grounds 2, 3 and 4 of the Notice of Appeal).
2. Whether the failure of the lower Tribunal to deliver RULING on each of the various preliminary objections filed and argued by the Appellant as well as the 3rd and 4th Respondents does not amount to a breach of fair hearing and a miscarriage of justice. (Distilled from Grounds 1, 16 and 19 of the Notice of Appeal).
3. Whether the Tribunal was right not to have rejected in evidence Exhibits RC1, RC2 and BVR, Exhibits SCH1, SCH2, SCH3 and Exhibit PUBL 1-3 tendered by the 1st and 2nd Respondents. (Distilled from Grounds 5, 6, 7, 8, 9 and 10 of the Notice of Appeal).
4. Whether the Tribunal was right in rejecting and marking as rejected in evidence Exhibits 2R.RW4, 2R.RW5, 2R.3R1, 2R.3R2 and rejecting being bound by the decision of the Court of Appeal in Suit No. CA/A/362/2019 (2019) LPELR-48729-(CA) (Distilled from Grounds 11, 15, 20 of the Notice of Appeal).
5. Whether the Tribunal was right in its holding that the 1st and 2nd Respondents were able to prove their allegation of forgery

against the 3rd Respondent which had become res judicata in rem and ought not be entertained by the Tribunal. (distilled from Grounds 13, 14 and 17 of the Notice of Appeal).

6. Whether the Tribunal was right in its holding that there was substantial non-compliance in the Osun State Gubernatorial Election conducted on 16th July, 2022 by the Appellant. (Distilled from Grounds 21, 22, 23, 24, 25, 26, 29, 31, 33, 34, 35, 36, 37, 38, 41, 42 and 43 of the Notice of Appeal).
7. Whether the Tribunal was right in its holding that the 3rd Respondent was not elected by majority of lawful votes cast at the Osun State Governorship election held on 16th July, 2022. (Distilled from grounds (sic) 39 of the Notice of Appeal).
8. Whether the Tribunal was right to have descended into the arena of conflict and openly display prejudice against the 3rd Respondent. (Distilled from Ground 40 of the Notice of Appeal).
9. Whether the Tribunal was right in its decision that Exhibit BVR does not contain the words, "inchoate" and "unsynchronized" and similarly Exhibit R.BVR1-29 does not indicate on it that it is superior to Exhibit BVR and proceeded to determine the Petition based on Exhibit BVR. (Distilled from Grounds 27, 28, 30 and 32 of the Notice of Appeal).

On the part of the 1st and 2nd Respondents they formulated the following 9 (nine) issues as well:

i. Whether the trial Tribunal failed to determine the preliminary objections raised by the appellant the petition? (Grounds 1, 16, 18, 19 and 28).

ii. Whether the Judgment of the trial Tribunal is a nullity? (Grounds 2, 3 and 4).

iii. Whether the Tribunal failed to give proper consideration to the case of SOKOTO & ANOR. VS. INEC (2022) 3 NWLR Pt, 1818, pg. 577 relied on by the appellant on the issue of admissibility of receipts obtained for certified true copies of documents? (Ground 5).

iv. Whether the Tribunal was not right to admit and give effect to the Certified True Copies of the documents tendered by the petitioners? (Grounds 6, 7, 8 and 9).

v. Whether the Tribunal did not rightly reject Exhibits 2R.RW4 and not rightly held that forgery was proved with regards to Form EC.9 and File D? (Grounds 10, 11. 13. 14. 15, 17 and 20).

vi. Whether in the light of the materials in the record, the Tribunal was not right in its consideration of and the findings it made on Exhibits BVR, R.BVR, R.BVR1-29, 2R.RW2, R.BVM, R.BVM1, and other documentary evidence placed before the Tribunal by the parties? (Grounds 12, 22, 29, 34, 35, 36, 39, 41 and 43).

vii. Whether having regard to the totality of oral and documentary evidence placed before the Tribunal and relevant law, the Tribunal rightly reached the conclusion that over-voting was proved, thus entitling the petitioners to the reliefs sought in the petition? (Grounds 21, 23, 24, 25, 26, 27, 29, 33, 37, 42 and 44).

viii. Whether the Tribunal rightly gave effect to the contents of the tables presented by the 1st and 2nd respondents whose contents were derived from the evidence, oral and documentary, placed before the Tribunal, and rightly granted the reliefs sought by the 1st and 2nd respondents? (Grounds 30, 31, 32 and 38).

ix. Whether having regard to the materials in the record and the applicable law, the allegation of bias made against the Tribunal by the appellant is sustainable? (Ground 40).

Upon a thorough examination of the issues formulated by the parties on both sides for determination, I observe that the issues are interwoven in substantial material particulars. However, I shall adopt and determine the appeal based on the issues formulated by the appellant being the aggrieved party and the issues are so adopted.

ISSUE 1 (ONE)

Whether the judgment of the Tribunal delivered on 27th January, 2023 by Hon. Justice T. A. Kume and signed by Rabi Bashir (Chief

Magistrate) is not a nullity due to the failure of Rabi Bashir (Chief Magistrate) to separately express her opinion in writing or orally make any pronouncement in the open Court.

Learned counsel for the appellant submits that the decision or judgment of the lower Tribunal is covered by section 152 of the Electoral Act, 2022 and Rule 19 of the First Schedule thereto and that the said Judgment was a nullity due to the failure of Member 2 Rabi Bashir (Chief Magistrate) to separately express her opinion in writing and in compliance with the provisions of section 294 (2) and (3) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). Relying on the authorities of **Nyesom vs. Peterside (2016) LPELR-40036(SC); Nwagboso Ubani-Ukoma vs. Seven-Up Bottling Coy. Plc (2022) LPELR-58497(SC); Anyaoke vs. Dr. Felix Adi (1985) 1 NWLR Pt. 2, pg. 342 at 350**, the learned counsel submitted that the finding of the Supreme Court in the foregoing authorities is binding on subordinate Courts such as this Court. Learned counsel further pointed out that apart from not expressing her individual opinion in writing, the Member 2 i.e. Rabi Bashir (Chief Magistrate) did not even pronounce in open court that she agrees with the decision delivered by the Chairman of the panel after delivery of same. Rather, she completely kept mute and after counsel on both sides had expressed their appreciation to the Tribunal, she offered a vote of thanks on behalf of the Tribunal. Counsel argued that ex-facie the Judgment of the lower

Tribunal as constituted, it is difficult to tell whose opinion the judgment represents as between the Chairman of the panel and Member 2, the two members having jointly signed one Opinion constituting a judgment. He contended that the principle of severance is unknown Judgment. Learned counsel urged that we resolved the issue in favour of the appellant.

The learned counsel for the 1st and 2nd respondents in reaction submitted that the provisions of section 294 (1) and (2) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) (to be referred to occasionally simply as the Constitution), are irrelevant in the circumstances and facts of this case. Learned counsel contends that where the language of a statute is clear and explicit, the court must give effect to it for in that case the words of the statute speak the intention of the legislation. See **Global Excellence Communication Ltd. vs. Mr. Donald Duke (2007) LPELR-1323(SC)**. It is their contention is that the requirement of individual Judge giving separate Judgment in a decision is only applicable to the Court of Appeal and the Supreme Court as per the provisions of section 294 (1) and (2) (supra). Learned counsel relies on the doctrine of *expressio unius es exclusion alterius* meaning that express mention of one thing is to the exclusion of others. See **Udoh vs. Orthopedic Hospital Management Board (1993) SCNJ 436**, upon which they submit that there is no requirement for a separate written opinion

by individual members of the Tribunal. That once the Judgment is signed by the members of the Tribunal, such Judgment cannot be rendered invalid, null and void simply because other members of the Tribunal did not write their separate decisions. Thus, the majority Judgment of the trial Tribunal having been clearly signed by both Honourable Justice Tertsea Aorge Kume and Rabi Bashir (Chief Magistrate) is a common or joint opinion of the Chairman and Member 2 of the panel and is therefore valid. See **Amache vs. Bako (2019) LPELR-55316, pg. 18, 21, paras. D-E(CA), per Nimpar, JCA., Ehinlanwo vs. Mimiko (2013) LPELR-20321(CA); and NDP vs. INEC (2012) LPELR-19722(SC).** The learned counsel for the 1st and 2nd respondents canvassed that the pronouncement of **Honourable Justice Kekere-Ekun, JSC.**, at pages 504-505 of the said Judgment on the provision of section 294(1) and (2) of the Constitution, shows that same is nothing but an obiter dictum which in law is not a reason for the decision and therefore lacks binding force. The signature of Member 2 on the Judgment shows that both him and the Chairman co-owned the said Judgment.

Learned counsel for the 1st and 2nd respondents contended that the argument of the appellant is in the realm of technicality and this Court and the Apex Court have moved away from allowing technicality to defeat the end of Justice. He urged on us to resolve this issue against the appellant.

The appellant in his reply on Points of Law submitted that the case of **Nasko vs. Bello** (supra) another decision of the apex court has totally destroyed the hollow arguments of the 1st and 2nd respondents that the decision if **Nyesom vs. Peterside (supra)** is an obiter. He argued further that the interpretation given by the Supreme Court to the provisions of section 294(1) and (2) of the Constitution remain binding on every Court below. Learned counsel urged on us to discountenance the submissions and the inapplicable cases relied upon by the 1st and 2nd respondents and hold that the Judgment of the Tribunal delivered 27th January, 2023 is a nullity.

RESOLUTION OF ISSUE 1 (ONE)

> **Whether the judgment of the Tribunal delivered on 27th January, 2023 by Hon. Justice T. A. Kume and signed by Rabi Bashir (Chief Magistrate) is not a nullity due to the failure of Rabi Bashir (Chief Magistrate) to separately express her opinion in writing or orally make any pronouncement in the open Court.**

In the decision of **Nyesom Wike vs. Peterside (2016) LPELR-40036(SC) pgs. 20-22, paras. A, per Kekere-Ekun. JSC.**, held as follows:

> **Section 294 (1) and (2) of the 1999 Constitution (as amended) provides thus: (1) Every Court established under this Constitution**

shall deliver its decision in writing not later than ninety days after the conclusion of evidence and final address and furnish all parties to the cause or matter determined with duly authenticated copies of the decision within seven days of the delivery thereof. (2) Each Justice of the Supreme Court or the Court of Appeal shall express and deliver his opinion in writing, or may state in writing that he adopts the opinion of any other Justice who delivers a written opinion: Provided that it shall not be necessary for the Justices who heard a cause or matter to be present when Judgment is to be delivered and the opinion of a Justice maybe pronounced or read by any other Justice whether or not he was present at the hearing.

A decision of a Court consisting of more than one Judge shall be determined by the opinion of the majority of its members.

See also **Nwagboso Ubani-Ukoma vs, Seven-Up Bottling Coy. Plc. (2022) LPELR-58497(SC); and Sokoto State Government vs. Kamdex (Nig.) Ltd. (2007) 7 NWLR Pt. 884, pg. 427, 489.**

It is crystal clear from the holding of the apex court in the above cited authority of **Nyesom vs. Peterside (supra)** that where a panel of Justices hear a cause or matter, each of them must express and deliver his OPINION IN WRITING. Be that as it may, the provision of the said section

294 (1) and (2) refers specifically to Justices of the Supreme Court and the Court of Appeal. Its principle is totally inapplicable to any other Court or even to a TRIBUNAL THAT SITS IN A PANEL OF TWO OR MORE MEMBERS. The principle is limited to the Supreme and Court of Appeal. If it were to be otherwise it would have been so expressed. I shall therefore resist the temptation of reading into the law what is not there.

My conclusion is that no individual member of a Tribunal such as sat over the cause that gave rise to this appeal, is required to write separate opinion or decision. With the appendage of the signature of both the Chairman and that of Member 2 on the Judgment, that was enough to validate it as the majority Judgment of the Tribunal. I do agree with the submission of the learned counsel for the 1st and 2nd respondents (petitioners) and I also rely on the doctrine of *expressio unius es exclusion alterius* meaning that express mention of one thing is to the exclusion of others. See **Udoh vs. Orthopedic Hospital Management Board (1993) SCNJ 436**. Once the Judgment is signed by the members of the Tribunal, such Judgment cannot be rendered invalid, null and void simply because other members of the Tribunal did not write their separate decisions.

The decision in **Nyesom vs. Peterside (supra); Nasko vs. Bello (supra); and Sokoto State Government vs. Kamdex (Nig.) Ltd. (supra)** are distinguishable from the circumstances of the instant case.

On the whole the Judgment of the trial Tribunal delivered 27th January, 2023 is a nullity since the same was not in compliance with the constitutional requirement. It is on this backdrop that I shall resolve issue 1 (one) for determination and it is so resolved in favour of the 1st and 2nd respondents and against the appellant.

Irrespective of my earlier findings and holdings above, I shall still go forth to determine the rest of the issues slated in this appeal lest I am flawed upstairs.

ISSUE 2 (TWO)

Whether the failure of the lower Tribunal to deliver RULING on each of the various preliminary objections filed and argued by the Appellant as well as the 3rd and 4th Respondents does not amount to a breach of fair hearing and a miscarriage of justice.

Appellant submits herein that the holding of the Tribunal that it has jurisdiction to entertain the Petition filed by the 1st and 2nd Respondents despite its failure to rule on the various preliminary objections filed by the said Appellant as well as those filed by the 3rd and 4th Respondents amount to a breach of fair hearing which led to a gross miscarriage of Justice. Learned counsel canvassed that the legal effect of the failure of the Tribunal to determine the applications in question is that the Judgment of the Tribunal is a nullity, no matter how well the proceedings

were conducted. See **Abe vs. Unilorin (2013) All FWLR Pt. 697, pg. 682 at 691-692; Agbareh vs. Mimra (2008) All FWLR Pt. 409, pg. 3; Onyemeh vs. Egbuchulam (1996) 4 SCNJ 237; and Yaro vs. Arewa Construction Ltd. (2007) 6SCNJ 418, (2008) All FWLR Pt. 400, pg. 603.**

Relying also on the authority of **General Mohammed A. Garba Rtd. Vs. Mustapha Sanni Mohammed (2016) LPELR-40612(SC); and Ojogbue vs, Nnubia (1972) All NLR (2) 226, 231-232**, the learned counsel for the appellant submitted that the lower Tribunal like any other court of Law, has a legal duty to consider all applications before it no matter how downright stupid and rule on same and to fail and or default to do so, is a default and or failure to discharge an official duty and a breach of the right to fair hearing of the injured party qua Appellant. Counsel submitted that the three preliminary objections raised by the Appellant at the lower Tribunal were never given the attention of a separate and dispassionate consideration by the Tribunal below. The Tribunal rather glossed over the Preliminary Objection as if same was of no moment and thereby denied the Appellant fair hearing which in turn rendered the proceedings and judgment thereof nullities.

In the converse the learned counsel for the 1st and 2nd respondents submit that the contention of the appellant that the trial Tribunal failed to consider its preliminary objection and breach its fair hearing is

misconceived and unfounded. See the Judgment which incorporate the Tribunal's ruling on the preliminary objection in due fidelity to section 285(8) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). See also pages 32 and 33 of the Judgment at page 11,921 to 11,922 of volume 16 of the record of appeal wherein crucial findings and resolution of the preliminary objections were made by the lower Tribunal. The learned counsel contended that the Tribunal was not only well seized and conscious of the various issues of jurisdiction raised by the Appellant but also addressed and resolved same appropriately in its Judgment. He argued that all the cases cited by the Appellant are inapplicable to facts and circumstances of this case. That the Tribunal clearly and very succinctly identified the preliminary objections challenging the Tribunal's jurisdiction and related issues, and being very aware of the importance and primacy of jurisdiction as the livewire of any suit which ought to be resolved at the court's earliest convenience, indeed, determined same accordingly, but against the appellant.

Learned Counsel for the 1st and 2nd Respondents argued that the complaint of the Appellant on this issue is essentially on form and style adopted by the Tribunal, rather than the substance of the determination. Relying on the provisions of section 285 (8) of the 1999 Constitution and section 137 (4) of the Electoral Act, 2022, he submitted that the Tribunal did not err at all. Counsel also canvassed that the appellant has not

suffered any injustice by reason of the manner the Tribunal determined the preliminary objections. Counsel argued that the conclusion of the Tribunal as reached at page 11,922 of the record of appeal that it has the jurisdiction is all pervading as nothing was left undecided on question of jurisdiction. He urged that the complaint of the appellant is misconceived and should be dismissed as such and also resolve the issue against the appellant.

In their reply on point of law, the appellant emphasized that her complaint has nothing to do with the form or style adopted by the Tribunal in dealing with the preliminary objections but on the Tribunal's failure to decide on the various objections. Appellant also argued it raised in its motion dated 29th September, 2022 and filed 1st October, 2022 raised the ground that the Tribunal lacked the jurisdiction to countenance the petition as the reliefs claimed by the 1st and 2nd respondents were not grantable. The Appellant specifically sought an order of the Tribunal to strike out reliefs (a), (b), (c), (d), (e), (f), (g), (h) and (i) of the 1st and 2nd Respondents' Petition dated 5th August, 2022. That the 3rd Respondent also in its Motion on Notice filed 1st October, 2022, apart from asking that specific paragraphs of the Petition be struck out also asked that Ground 2 of the Petition be struck out as same was not supported by pleadings. That all these and more were never at any

point addressed by the Tribunal in its Judgment. They urged on us to resolve the issue in favour of the Appellants.

RESOLUTION OF ISSUE 2 (TWO)

The 1st respondent filed a Notice of Preliminary Objection on 7th October, 1922 praying the Tribunal to strike out/dismiss the Petition for want of locus standi (See pages 10,351 – 10,357 vol. 15 of the record of appeal). 1st respondent again filed a Motion on Notice 1st October, 2022 seeking a striking out of the Petition some enumerated paragraphs and striking out/dismissal of the Petition for being incompetent, nebulus, defective and not vesting jurisdiction on the Tribunal. (See pages 10,287 – 10,295 vol. 15 of the record of appeal). 1st respondent also filed another Motion on Notice also on same 1st October, 2022 seeking an order of the Tribunal striking out or dismissing the Petition for being incompetent or in the alternative strike out some paragraphs of the Petition in limine. (See pages 10,297 – 10,305 vol. 15 of the record of appeal). These Motions were heard and Ruling reserved along with the Judgment.

Now being that preliminary objections touch on the competence of the Petition as well as the jurisdiction of the Tribunal hence a threshold issue, the same must by law be determined before the Tribunal would go into the merit of the Petition where it finds that it has the jurisdiction so to do. Failure of the Tribunal to first consider and decide the preliminary

objections of the 1st respondent before wading into the merit or otherwise of the Petition will bring about a miscarriage of Justice.

By the provisions of section 285 (8) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended:

(8) **Where a preliminary objection or any other interlocutory issue touching on the jurisdiction of the tribunal or court in any pre-election matter or on the competence of the petition itself is raised by a party, the tribunal or court shall suspend its ruling and deliver it at the stage of final judgment.**

In the authority of **General Mohammed A. Garba Rtd. vs. Mustapha Sanni Mohammed (2016) LPELR-40612(SC) pgs. 6-9, paras. C-F**, the Supreme Court cautioned that:

> **Where a Preliminary objection challenging the Court Jurisdiction is heard along with the substantive suit or application, the Court must give a ruling on the objection before proceeding to determine the substantive suit. In the instant case, the trial Court committed its first error by referring to the notice of preliminary objection filed on 09/03/15, which it had already struck out. Secondly, beyond a brief reference to the preliminary objection in the introductory part of the Judgment, there was no other reference to the preliminary objection throughout the Judgment**

until the concluding part where the Court declared that the preliminary objection had failed. The lower court had this to say on this unfortunate state of affairs:

> **In the instant case, the trial Court at the beginning of its Judgment referred to the notice of preliminary objection that it had struck out and its grounds. It then proceeded to determine the merit of the originating summons and at the tail end of its Judgment without giving any modicum of consideration to the preliminary objection in the body of the Judgment, concluded as follows: 'The plaintiff case succeeds while 1st defendant's preliminary objection fails'.**

The Tribunal delivered Judgment 27th January, 2023 and the portion of the Judgment touching on the various preliminary objections as set out read as follows:

> **Besides, certain paragraphs of the petition, which objections were raised against, cannot be read independent 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 (sic) to proof (sic) in the petition. The objection to the said paragraphs is also dismissed.

Similarly, the several preliminary objections to the competence 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 the jurisdiction to determine the petition herein. (See page 11,922 vol. 16 of the record of appeal).

Granted that there is no standard form or dogmatic style on how a Judge or Court is to write a Judgment or ruling, the apex Court did set out some vital ingredients of a valid Judgment or ruling. These factors as listed by the Supreme Court in the authority of Nwokoro vs. Ashue (2023) LPELR-59744(SC), pgs. 11-12, para. F are as follows:

... Irrespective of the style adopted however, the following essential components are expected to be situated somewhere in every good Judgment:

a) Introduction of issues between the parties.
b) Cases of either side to the litigation going by the pleadings processes.
c) Evidence adduced by either side.
d) Resolution of the issues of fact and law.

e) **The Court's decision and reason for arriving at the decision.**

See Ogboru & Anor. vs. Uduaghan & Ors. (2012)LPELR-8287(SC); PDP vs. Okorocha (2012) LPELR-7832(SC; and Ogba vs. Onwuzo (2005) LPELR-2272(SC).

A Judgment of the Court must demonstrate a full and dispassionate consideration of the issues properly raised and heard and must reflect the result of such exercise. See **Ojogbue vs. Nnubia (1972) All NLR (2) 226, 231-232.**

The foregoing sweeping pronouncement regarding the preliminary objections is bereft of the required minimum standard as set out by the apex Court in **Nwokoro vs. Ashue (supra)** and does not amount to proper consideration and determination of the preliminary objections. The learned trial Tribunal am afraid, failed to determine specific and individual ruling to each of the applications and this posture of the said Tribunal impugns the Judgment as a whole. In **Ovunwo vs. Woko (2011) 17 NWLR, Pt. 1277, pg. 522 at 546, 547, paras. G-C**, the Supreme Court held as follows:

> **It is a court's duty to pronounce on every issue properly placed before it for consideration and determination before arriving at a decision and where it has failed to do so, it leads to a miscarriage of Justice apart from, as in the instant case breaching the right to**

fair hearing. The Court's duty to pronounce on every issue raised before it is fundamental. The Supreme Court demands of and admonish the lower Courts to pronounce as a general rule, on all issues properly placed before them for determination in order, apart from the issue for fair hearing not to risk the possibility that the only issue or issues decided by them could be faulted on appeal. A deliberate failure to do so has been characterized as amounting to failure to perform its statutory duty. (Emphasis supplied).

With the terse and scanty reference to the various preliminary objections properly laid before the learned Tribunal and the lumping together of same without giving them individual and dispassionate consideration and determination, the Tribunal has failed in the performance of its statutory duty. Because issue of jurisdiction as raised in the preliminary objections constitute the livewire and access to the consideration and determination of the substantive issues before the trial Tribunal, the said Tribunal ought to have done better. The appellant as well as the 3rd and 4th respondents are in the circumstances robbed of their right to fair hearing and a miscarriage of Justice, which is capable of rendering the proceedings and Judgment of the Tribunal a nullity and of no effect. Issue 2 (two) is accordingly resolved in favour of the respondents and against the appellant.

ISSUES 3 (THREE) AND 4 (FOUR) ARE DETERMINED TOGETHER

Whether the Tribunal was right not to have rejected in evidence Exhibits RC1, RC2 and BVR, and Exhibits PUBL 1-3 tendered by the 1st and 2nd Respondents.

AND

Whether the Tribunal was right in rejecting and marking as rejected in evidence Exhibits 2R.RW4, 2R.RW5, 2R.3R1, 2R.3R2 and rejecting being bound by the decision of the Court of Appeal in Suit No. CA/A/362/2019 (2019) LPELR-48729-(CA).

In their submissions herein, the learned counsel for the appellant submitted that the Tribunal was wrong not to have rejected Exhibits RC1, RC2, BVR and Exhibit PUBL 1-3 tendered by the 1st and 2nd respondents in evidence. Their contention is that in the course of trial, the 1st and 2nd Respondents as Petitioners tendered in evidence a total of three Schedules containing different sets of documents. The said schedules were admitted in evidence and marked as Exhibits SCH 1, SCH 2 and SCH 3 respectively which all contained purported certified copies of Forms EC8As, EC8Bs, EC8Cs, EC8D, EC8E and EC9 of the 3rd Respondent along with some other electoral documents. To purportedly show proof of payments for the Certified True Copies (CTC) of all the above mentioned, CTCs, the 1st and 2nd Respondents/Petitioners tendered in evidence

Exhibits RC 1 and RC 2. While Exhibit RC 1 is the purported receipt of payment for BVR, Exhibit RC 2 is a purported receipt of payment for CTC of various electoral documents listed in SCH 1, SCH 2 and SCH 3. The 1st and 2nd Respondents further tendered Exhibit PUBL 1-3 (being Printout from the Website of Atlanta Metropolitan College) while Exhibit CER (Certificate of Compliance) containing markings and alterations which distorted the documents.

The Appellant along with the 3rd and 4th Respondents raised objections to the tendering of the said exhibits. The objection of the Appellant on Exhibits RC1, RC2 and BVR were on two fronts – first is that Exhibits RC1 and RC2 have no nexus with the said Exhibit BVR and the documents contained in Exhibits SCH 1, SCH 2 and SCH 3.

Exhibit RC 1 which is dated 28th July, 2022 purported to be the receipt of payment for the CTC of Exhibit BVR which was certified 27th July, 2022 while Exhibit RC2 which is dated 3rd August, 2022 purported to be the receipt of payment for CTC of various electoral forms certified between 30th May, 2022 and 2nd August, 2022. Secondly is that Exhibit RC2, clearly shows that it was not issued to the 1st and 2nd respondents but to a non-juristic person who was not before the Honourable Tribunal. The learned Tribunal overruled the appellant and admitted the processes in evidence. (See the Tribunal's ruling on the objections is contained at

pages 11,904 – 11,905 of the record of appeal vol. 16). Learned counsel submits that it was erroneous of the trial Tribunal to find and hold that there was nexus between Exhibits RC1 and RC2 with the BVR and that the dates in Exhibits RC1 and RC2 which post-date the dates on the various Forms in Exhibits SCH1, SCH2 and SCH3 does not make them inadmissible. See **Garba vs. Director General, Bureau of Lands, Kwara State (2019) LPELR-47722(CA), pgs. 22-23, paras. A-A; and Oluyemi vs. Asaolu (2010) All FWLR Pt. 522, pg. 1682, 1725**. Counsel contends that payment for certified true copies of electoral documents is made and processed before certifications are carried out and not certification before payment. See **Sokoto vs. INEC (2022) 3 NWLR Pt. 1818, pg. 577**. Learned counsel also canvassed that the name on Exhibit RC2 which is "ALL PROGRESSIVE CONGRESS PARTY" clearly shows that the said RC 2 was not issued to the 1st and 2nd Respondents and the Tribunal ought to have discountenanced same having come to the conclusion that the name on the said Exhibit RC 2 was not synonymous with the 2nd respondent.

Learned counsel also contends that the holding of the Tribunal that Exhibits RC1, RC2 and BVR are documents made by the appellant and the burden to rebut the presumption of regularity in favour of the exhibits rest on the appellant, is erroneous as that burden to rebut the

presumption of regularity can only shift to the appellant if the documents have "certified" all the conditions for admissibility.

Regarding Exhibit PUBL 1-3, learned counsel for the appellant canvassed that the markings and alterations /cancellations have altered the original document printed from the computer to the extent that statement in Exhibit "CER" tells a lie. See sections 82 (2)(d) and 160 (1) of the Evidence Act, 2011 and the cases of **Omisore vs. Aregbesola (2015) NWLR Pt. 1482, pg. 205 at 294, paras. F-G; and Bayo vs. Njdaa (2004) 8 NWLR Pt. 876, pg. 544 at 622, paras. A-E**, upon which learned counsel urged on us to resolve this issue in favour of the appellant and reject the said Exhibits RC1, RC2, BVR. PUBL1-3 and CER in evidence and expunge them from the record of the Honourable Tribunal.

On the issue of whether the Honourable Tribunal was right in rejecting and expunging from its record Exhibits 2R.RW4, 2R.3R1 and 2R.3R2 which are decisions of the Court of Appeal in Suit No. CA/A/362/2019 (2019) LPELR-48729-(CA), the learned counsel for the appellant submitted that the said exhibits are admissible in accordance with the law and contrary to the holding of the trial Tribunal. The Tribunal was thus wrong in rejecting them in evidence and expunging them from the record of the Tribunal on the erroneous ground that they are photocopies of certified true copies and were not certified in a manner

provided by law. Learned counsel contrasted and distinguished the cases of **Bredeco (Nig.) Ltd. vs. Shyantor (Nig.) Ltd., and Jalo vs. Gambo (2019) LPELR-49208(CA, heavily relied on by the trial Tribunal with the Supreme Court authority of Magaji vs. Nigerian Army (2008) LPELR-1814(SC), pg. 69, paras. A. See also Edo State Govt. vs. Eholor (2022) LPELR-58255(CA), pgs. 35-37, paras. D-D, per Orji-Abadua, JCA; Cril Osakue vs. Federal College of Education, Asaba (2010) 10 NWLR Pt. 1201 1; and CBN vs. Messrs. Hybrid Engineering Co. Ltd. (2021) LPELR-5468(CA), pg. 12, paras. B.**

Counsel urged on us to resolve this issue in favour of the appellant and set aside the holding of the Tribunal rejecting in evidence and expunging from its record Exhibits 2R.RW4, 2R.3R1 and 2R.3R2 and rather admit them in evidence.

In reaction, the learned counsel for the 1st and 2nd respondents submit that within the provisions of section 104 (1) and (2) there is no mandatory requirement for issuance of receipt for certification of documents. Thus receipt cannot be used to determine the validity of certified true copy of a document. He relied on the trite principle of law that, express mention of one thing is to the exclusion of others. See **Udoh vs. Orthopedic Hospital Management Board (1993) SCNJ 436; and Sani vs. President F.R.N. (2020) 15 NWLR Pt. 1746, pg. 151 at 179.** Learned

counsel contended that the appellant being the authority that issued the certified true copies of the documents being challenged in this appeal has not denied that payments were made for the document it issued as certified true copies, nor has appellant denied stamping PAID as shown on each of the documents. He submitted that by the provisions of section 168(1) of the Evidence Act, 2011 presumptions of regularity to the effect that necessary payments for the issuance of certified true copies of Electoral Forms and Exhibit BVR (read with Exhibit RC1) enured in favour of the documents and the appellant as the issuing authority, has not made any case or attempt to rebut the presumption by showing that it did not collect any money for the certification of the relevant documents. Counsel canvassed that the stamps PAID on the documents is an admission by the appellant that payments for certification were made. Learned counsel submits that the facts of the case in **Sokoto vs. INEC (supra)** are distinguishable from the facts and circumstances of the instant matter. Learned counsel submitted that the decision of the Tribunal in distinguishing the case of **Sokoto vs. INEC (supra)** cannot be faulted and we are thus urged to resolve this issue against the appellant. Counsel went on to submit that the Tribunal was right in admitting and relying on Exhibits RC1 and RC2 being receipts issued to the 2nd respondent by (INEC) the appellant upon payment for certification of the BVAs Report for the Osun Governorship election held 16th July, 2022 and

copies of form EC8A, EC8B, EC8C, EC8D, EC8E series, manual and guidelines respectively.

RESOLUTION OF ISSUES 3 (THREE) AND 4 (FOUR) TOGETHER

Whether the Tribunal was right not to have rejected in evidence Exhibits RC1, RC2 and BVR, and Exhibits PUBL 1-3 tendered by the 1st and 2nd Respondents.

AND

Whether the Tribunal was right in rejecting and marking as rejected in evidence Exhibits 2R.RW4, 2R.RW5, 2R.3R1, 2R.3R2 and rejecting being bound by the decision of the Court of Appeal in Suit No. CA/A/362/2019 (2019) LPELR-48729-(CA).

In the course of proceedings at the Tribunal, the 1st and 2nd Respondents/Petitioners tendered three schedules containing different sets of documents. The said schedules were admitted in evidence as SCH 1, SCH 2 and SCH 3 respectively. These schedules were said to contain certified true copies of some electoral documents such as Forms EC8As, EC8Bs, EC8Cs, EC8Cs, EC8D, EC8E and EC9. To show proof of payment of certification of these mentioned documents, the 1st and 2nd respondents produced Exhibits RC1 and RC2. The 1st and 2nd respondents further tendered Exhibit PUBL 1-3 being Printout from the Website of Atlanta Metropolitan College and another Exhibit CER which carried some

markings and alterations. The appellant along with the 3rd and 4th respondents raised objections to the admittance of the documents in evidence, claiming that Exhibits RC1 and RC2 have no nexus with Exhibit BVR and the documents contained in Exhibits SCH 1, SCH 2 and SCH 3 and again that Exhibit RC1 which is dated 28th July, 2022 predates Exhibit BVR dated 27th July, 2022. Also that Exhibit RC2 dated 3rd August, 2022 and purports to be receipt of payment for certification of some electoral documents which certification was done between 30th May, 2022 and 2nd August, 2022, and that RC2 shows that it was not issued to 1st and 2nd respondents but to a non-juristic entity who was not before the Tribunal. Having considered the objections thereto, the learned Tribunal went on to hold as follows:

> **Exhibits RC1 and RC2 are receipts for payments issued by the 1st Respondent (INEC) for certification of various forms EC8 Series contained in Exhibits SCH1, SCH2 and SCH3. Exhibits RC1 and RC2 are dated the 28th 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 BVR. There is therefore a nexus between the said Exhibit RC1 and RC2 with BVR, unlike the facts in the case of Sokoto vs. INEC (supra) relied on by each of learned counsel for the Respondents. The fact that the date in Exhibit RC1 and RC2 post-date the dates on the various**

forms in Exhibits SCH1, SCH2 and SCH3 does not make them inadmissible. See section 157 of the Evidence Act (supra). The test of admissibility it should be noted is relevancy. See sections 4 and 5 of the Evidence Act (supra). See also the cases of Omatseye vs. FRN (2017) LPELR-42719(CA) 1 at 7 – 8. Para. A; Ajose-Adeogun & Anor. vs. Olojede & Ors. (2018) LPELR-43683(CA) 1 at 14 – 15, para. E; Obiagwu & Ors. vs. Okorafor (2019) LELR-46689(CA) 1 at 35 – 37, paras. A-B; and Etim & Anor. vs. Akpan & Ors. (2019) LPELR-48681(CA) 1 at 10 – 12, paras. D-B.

In any event, Exhibits RCI, RC2 and BVR are documents made by the 1st Respondent. There is a presumption of regularity in favour of those exhibits. See section 168(1) of the Evidence Act (supra). See also Shamo & Ors. vs. Abuul (2020) lpelr-49947(CA) 1 at 24 – 25. The burden to rebut the presumption of regularity in favour of the said exhibits rest on the 1st Respondent. See section 145 of the Evidence Act (supra). See also Ojo vs. Kamalu (2005) 18 NWLR Pt. 958, pg. 523 at 565; and Daudu vs. NNPC (1998) 2 NWLR Pt. 538, pg. 355 cited by learned counsel for the Petitioners in his processes filed in response to the said objections to the admissibility to the said exhibits.

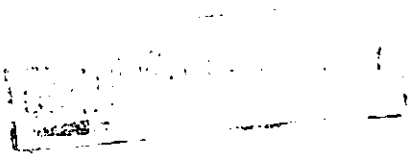

Exhibit RC2 as rightly submitted by learned counsel for the Respondents, is in favour of "ALL PROGRSSIVE CONGRESS PARTY". The said "ALL PROGRESSIVE CONGRESS PARTY" is not synonymous with the 2nd Respondent in this Petition. It is not apparent from exhibit RC2 that the "ALL PROGRESSIVE CONGRESS PARTY" is a juristic person. Nevertheless, the name appearing on Exhibit RC2 amounts to a misnomer, which does not detract from the import from the said exhibit RC2, and, we hereby so hold. (See pages 11,904 – 11,905, vol. 16 of the records of appeal).

It seems to me that the learned Tribunal was right in its finding that there exists a nexus between Exhibits RC1 and RC2 with the BVR, irrespective of the fact that the dates in Exhibits RC1 and RC2 post-date the dates on the various forms housed in Exhibits SCH1, SCH2 and SCH3. The disparity in date would however, not make them inadmissible in evidence. In the worst case scenario, it will affect the evidential weight attachable to the said Exhibits RC1, RC2 and BVR if at all. Unlike in the case of Sokoto vs. INEC (supra) where the interval between the date of certification and the date as shown on the face of receipt of payment for the certification was about one month apart, in the instant case it is only a question of a day's interval. Exhibit BVR was certified 27th July, 2022 while payment for the certification was made the next day 28th July, 2022 as shown on the face of Exhibit RC1. For the Form EC8A Series, they were certified on 1st and

2nd August, 2022 while the receipt of payment for their certification was done on 3rd August, 2022 as shown on the face of Exhibit RC2. Exhibit RC1 ex facie shows that it is a receipt issued for BVR relating to the Osun State Governorship election held 16th July, 2022. Exhibit RC2 on its part shows that it is payment receipt for the certification of some electoral forms EC8A, EC8B, EC8C, EC8D and EC8E series issued to "ALL PROGRESSIVE CONGRESS PARTY". The wrong representation or expression of the name of the 3rd Respondent to read "ALL PROGRESSIVES CONGRESS PARTY" instead of "ALL PROGRESSIVES CONGRESS (APC) is obviously a slip or mistake in form and nomenclature and so does not detract from the fact that the payment reflected thereon was received from "ALL PROGRESSIVE CONGRESS (APC)" i.e. 2nd respondent. The narratives on the face of Exhibits RC1 and RC2 without doubt show that they are yoked or linked with Exhibit BVR.

Though the facts of **Sokoto vs. INEC (supra)** are distinguishable from the facts in the instant case, all the same they espoused the same principles of law. The lower Tribunal was therefore right in admitting and relying on Exhibits RC1, RC2 being receipts issued to the 2nd respondent by the appellant (INEC) as evidence of payment for the BVAs Report for the said Osun State Governorship election. INEC on her side did not deny making or issuing the receipts and failure on their part to state accurately the name of the 2nd Respondent on those processes will not render them

inadmissible in evidence. By the provisions of section 104 (1) and (2) of the Evidence Act, 2011 all that is required is payment of the legal fees for certification. It is irrelevant as to who made the payment or when it was made hence these Exhibits RC1 and RC2 and the BVR were rightly admitted in evidence by the Tribunal.

It is also pertinent to note that all the forms EC8A Series were marked "PAID" showing that the appellant was in receipt of the legal fees for certification and in compliance with section 104 of the Evidence Act (supra). It is indeed a gross misconception on the part of the appellant to argue that the only admissible evidence regarding payment of the prescribed fees for certification of public documents is a receipt issued in the name of the party intent on relying on same and that the party also to be known or regarded as a legal or juristic person. This to my mind will be stretching the provisions of section 104 of the Evidence Act too far beyond its boundaries. The lower Tribunal was however, not in error when it admitted Exhibits RC1, RC2 and BVR in evidence and held further that the failure of the appellant to state accurately the name of the 2nd Respondent on the processes did not render them inadmissible. Needless to state that the principle of interpretation of documents is that where the language used by the parties in couching the said document is clear and unambiguous, the Court must give the operative words therein there simple, ordinary and actual grammatical meaning.

See **Union Bank of Nigeria Plc. vs. Ozigi (1994) 3 NWLR Pt. 333, pg. 385; Isulight (Nig.) Ltd. vs. Jackson (2005) 11 NWLR Pt. 937, pg. 631; and Williams vs. Williams (2014) LPELR-22642.** In compliance with the demand of section 104 of the Evidence Act, the 1st and 2nd respondents made payments on demand by the appellant hence the said appellant impressed on the documents the word "PAID" to show that they received payment accordingly.

The learned Tribunal was justified in overruling the objections to the admissibility of Exhibits RC1 and RC2 which documents were duly issued to the 2nd Respondent by the Appellant as proof of payment for certification.

As for the forms EC8A Series and the BVAs Report (Exhibit BVR) they remain admitted or admissible in evidence, irrespective of whether payment for certification was made before or after the certification. The point remains that there was payment by the 2nd respondent and which payment was accepted and acknowledged by the appellant. Section 104 (1) and (2) of the Evidence Act, 2011 did not state that payment of the prescribed legal fees for certification of public documents must be done before or after the certification. What is required of a party that demands for a certified true copy of a public document is to make payment of the prescribed fees. The question of how and when the

receipts for the certification are issued is purely administrative. Thus, in the case of **Tabik Investment Ltd. vs. GTB (2011) 17 NWLR Pt. 1276, pg. 240**, the ultimate court of the land directed the appellants who had initially failed to pay the fees for certification, to proceed and pay the required fees and thereafter the trial will commence.

The appellant further argued about markings, alterations or cancellations on Exhibits PUBL 1-3 and CER which according to them rendered the said exhibits inadmissible. However, the appellant failed to substantiate the claim by producing and placing side by side the original documents with the admitted Exhibit PUBL 1-3. That way the appellant will show the Tribunal that Exhibit PUBL 1-3 was not in that state or condition when it was printed out from the computer. The case of **Bayo vs. Njidaa (2004) 8 NWLR Pt. 876, pg. 544 at 622, paras. A-E**, is quite instructive in this regard. This court therein held as follows:

> **Let me break off here a while to affirm that the tribunal was perfectly correct. The submission of learned counsel for the cross-appellant that the tribunal was wrong in scrutinizing the school certificate tendered in evidence before it to detect the fault therein is totally misconceived. That document was in issue. There was no denying it that it contained alterations which neither the cross-appellant whose document and evidence it is,**

nor his witness was able to explain to the tribunal the origin of, and person who effected the alteration. When questioned about the alteration in cross-examination, RW1, the witness of the 1st respondent who called him, replied that he was not the one who altered it.

Like any evidence before a trial court, a document tendered in court is subject to scrutiny on the lines of the evidence proffered in court, to ascertain its evidential value. It is my respectful but firm view that the tribunal as part of its duty to evaluate evidence before it was entitled to examine the document. In my view it did not descend into the arena as complained by the respondent. ..... In the face of section 128 (1) of the Evidence Act, (supra) that certificate is a worthless document with the unexplained alterations therein.

The trial Tribunal in the instant case was not expected to go on a voyage of discovery, searching for the clean copy from which respondent made Exhibit PUBL 1-3 which version was purportedly altered. A party cannot say that something is bad without producing the good one for purposes of comparison. The Tribunal was therefore right in holding that:

On Exhibit PUBL 1-3, the Respondents have not disclosed the cancellations, alteration or markings which detract 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 (7) of the Evidence Act (supra). There is no such proof by the respondent 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).

In the wake of all that I have said herein, it seems to me and I so hold that the Tribunal was right not to have rejected in evidence Exhibits RC1, RC2 and BVR, and Exhibits PUBL 1-3 tendered by the 1st and 2nd respondents. Issue 3 (three) is thus resolved in favour of the respondents and against the appellant.

On whether the Tribunal was right in rejecting and marking as rejected in evidence Exhibits 2R.RW4, 2R.RW5, 2R.3R1, 2R.3R2 and rejecting being bound by the decision of the Court of Appeal in Suit No. CA/A/362/2019 (2019) LPELR-48729-(CA)—it is pertinent to note that Exhibit 2R.RW4 is the Judgment of this Honourable Court in Suit No.

CA/A/362/2019 (2019) LPELR-48729-(CA): Adeleke vs. Raheem & Ors. tendered in evidence by the 3rd respondent. This Court held in the Judgment that the Letter of Attestation and Testimonial from Ede Muslim High School being challenged by the petitioners was not a forged document. Exhibits 2R.3R1 and 2R.3R2 are enrolled Order/Ruling of the Federal High Court in Charge No. FHC/ABJ/CR/50/2018 dated 29th May, 2020 which was tendered by the 3rd respondent to support his contention that the allegation of forgery of his Testimonial submitted to the appellant had been determined conclusively by this Court in Appeal No. CA/A/304/2019, wherein the court held that the said testimonial and letter of attestation was not forged. The said Exhibits 2R.RW4, 2R.3R1 and 2R.3R2 are photocopies of certified true copies of the Judgment of the Court of Appeal and 2 Rulings of the Federal High Court in Appeal No. CA/A/304/2019 and FHC/ABJ/CR/50/2018 and FHC/ABJ/CR/2018 respectively.

Now the question that is begging for answer is whether the Tribunal was right in rejecting and marking as rejected in evidence Exhibits 2R.RW4, 2R.RW5, 2R.3R1, 2R.3R2 and rejecting being bound by the decision of the Court of Appeal in Suit No. CA/A/362/2019 (2019) LPELR-48729-(CA).

By way of a rehash, the learned counsel for the petitioners at the trial Tribunal whilst relying on the authorities of **Bredeco (Nig.) Ltd. vs.**

Shayontor Nig.) Ltd. (supra); and Jalo vs. Gambo (2019) LPELR-49208(CA), raised objection to the admissibility of Exhibits 2R.RW4 and 2R.RW5 arguing that they are photocopies of Certified True Copies of the said documents.

The learned trial Tribunal in its wisdom ruled thus inter alia:

> **We have examined the said exhibits 2R.RW4 and 2R.RW5. The said Exhibit 2R.RW4 is in breach of the authorities of Bredeco (Nig.) Ltd, (supra) and Jalo vs. Gambo (supra) cited by the learned counsel for the Petitioners in his address to the objections in respect of the said documents. The said objection is hereby sustained. Exhibit 2R.RW4 is hereby marked "REJECTED" accordingly. Exhibit 2R.RW5, is however, certified in accordance with the law. The objection to it is hereby dismissed.** (See pages 11,908 and 11,911 vol. 16 of the record of appeal respectively).

It follows that Exhibits 2R.RW4, 2R.3R1 and 2R.3R2 being the Judgment in Appeal No. CA/A/304/2019 and the Rulings of the Federal High Court in FHC/ABJ/CR/50/2018 and FHC/CR/150/2018 respectively, were erroneously jettisoned by virtue of their being photocopies of certified true copies and were not certified in the manner provided by law. Indeed, looking at the proceedings before the Tribunal it is obvious that

there was no objection as to the said documents not being certified in a manner provided by law.

It is trite that the current position of the law touching on the admissibility of photocopy of a certified true copy is that such photocopy of certified true copy of public document is admissible in evidence without the need to re-certify same. See again the **Supreme Court authority in Magaji vs. Nigerian Army (supra)** where it was espoused thus:

> **Exhibit 1 though a photocopy, is/was certified. It is now settled that photocopies of documents must be certified. See section 111-112 of the Evidence Act. In the case of Daily Times Ltd. vs. Williams (1986) 4 NWLR Pt. 36, pg. 526 referred to by the Court below as Iheonu vs. FRA Williams, it was held that a photocopy of a certified document is admissible. So this authority, also puts to rest, the complaint in the appellant's brief about the admissibility of the appellant's Statement or Exhibit 1. As a matter of fact, in the case of International Bank Nig. Ltd. vs. Dabiri & 2 Ors. (1998) 1 NWLR Pt. 583 284 at 297 C.A., it was held that photocopies of a Certified True Copy of a public document, needs no further certification under section 111(1) of the Evidence Act.**

In the light of the foregoing and resting on the doctrine of *stare decisis,* it follows that all subordinate Courts, more so the Tribunal are bound by

the superior decision of the ultimate Court of the land. The Honourable Tribunal was wrong to have relied on **Bredeco (Nig.) Ltd. vs. Shyantor (Nig.) Ltd. (supra); and Jalo vs. Gambo (supra)** rather than towing the line of **Magaji vs. Nig. Army (supra)**; and the recent decision in **Ajibola vs. Talabi (2022) LPELR-57353(CA) pg. 41-44, para. A.**

Again relying on the authorities of **Cyril O. Osakue vs. Federal College of Education, Asaba (2010) 10 NWLR Pt. 1201, pg. 1; CBN vs. Messrs. Hybrid Engineering Co. Ltd. (2021) LPELR-56468(CA) pg. 12, para. B., and Tetfund vs. Anas (2022) LPELR-58704(CA) pg. 45-46, paras. B.**, it behoves the trial Tribunal to take judicial notice of the decision of this court in Appeal No. CA/A/304/2019 Between Adeleke vs. Raheem (supra). The Tribunal had no discretion in the instance not to follow and apply the judicial precedent cited to it as Judgment which enjoys a binding effect on the said Tribunal. Judicial notice is a question of law thus by virtue of section 73 of the Evidence Act, no fact of which the court must take judicial notice of need be proved. See **M.W.T. (Nig.) Ltd. vs. P.T.F. Ltd. (2007) 15 NWLR Pt. 1058, pg. 451 at 487, paras. A-B.** Consequently, the holding of the learned Tribunal rejecting in evidence Exhibits 2R. RW4, 2R, 3R1 and 2R.3R2 as well as failing to take judicial notice of and be bound by the decision of the Court of Appeal in Appeal No. CA/A/362/2019: **Between Adeleke vs. Raheem (supra)** is hereby set aside, whereas its holding on Exhibit 2R.RW5 is sustained. The end result

is that issue 4 (four) is resolved in favour of the appellant and against the respondent.

RESOLUTION OF ISSUE 5 (FIVE)

> **Whether the Tribunal was right in its holding that the 1st and 2nd Respondents were able to prove their allegation of forgery against the 3rd Respondent which had become res judicata in rem and ought not be entertained by the Tribunal.**

The 1st and 2nd Respondents (as Petitioners) had alleged in ground (a) of their petition that the 3rd Respondent was at the time of the election, not qualified to contest for the Osun State Governorship election held 16th July, 2022 and that he submitted forged documents in aid of his qualification for the election. It seems to me that this issue does not call for lengthy discuss. This is because the allegation of forgery of letter of attestation and testimonial levied by the 1st and 2nd respondents against the 3rd respondent is now *res judicata in rem* thereby putting the issue to rest. The issue was canvassed and settled conclusively by this Court in the matter of Appeal No. CA/A/304/2019: Adeleke vs. Raheem & Ors., certified true copy of which was tendered before the Honourable Tribunal as Exhibit 2R.RW4, though the said Tribunal chose to shut its eyes to it. The decision was reported as Senator Ademola Adeleke vs. Wahab Adekunle (2019) LPELR-48729(CA). Recalling the issue back for

re-litigation is a sheer abuse of the court's process. As it stands the case of Adeleke vs. Raheem (supra) constitutes *estoppel per rem judicata,* thereby ousting the jurisdiction of the Tribunal or even of this Court to re-litigate the said issue. This Court as it were in the said Judgment i.e. Exhibit 2R.RW4 affirmed the status of the 3rd Respondent's School Attestation, Testimonial and School Certificate as well as the fact that he was/is educationally qualified to contest the election within the provisions of section 177 (d) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). I think it will not be out of place to also refer to the authority of **Igwemma vs. Obidigwe (2019) LPELR-48112(SC)** which I find highly instructive and which seems to be on all fours with the current case. The Supreme Court enjoined as follows in the case:

> **I totally agree with the two Courts below that Judgment in OT/194/2018 was a Judgment in rem which binds the parties in the litigation and others having anything to do with the status of the 2nd Respondent so declared and pronounced by the Anambra State High Court. The Judgment in suit No. OT/194/2018 is a Judgment of a competent Court and a Judgment in rem which has determined the status of the 1st Respondent. As was rightly held by the two Courts below, a re-litigation of the same issue of the falsification of age of the 1st Respondent by the Appellants cannot be justified as members of his party had earlier done so. See Flow**

Farm Industries Ltd. vs. University of Ibadan (1993) NWLR Pt. 290, pg. 719 at 724; and Cole vs. Jibunoh & Ors. (2016) LPELR-40662(SC), pgs. 16-17, paras. D-A. I agree with the two Courts below that sut No. FHC/AWK/CS/2018 was an abuse.

Touching on the aspect of the 3rd Respondent being educationally qualified as envisaged by section 177 (d) (supra), this Court in Adeleke vs. Raheem (supra) at page 67 thereof had this to say:

The decision of the Osun State High Court in the earlier suit No. HOS/M/103/2018 in keeping with the decision of the Supreme Court in Kakih vs. PDP (2014) 15 NWLR Pt. 1430, pg. 374; that the Appellant having attended the Muslim Grammar School, Ede, a Secondary School Certificate Level School has satisfied the requirement of section 177 (d) of the 1999 Constitution and is therefore qualified to be candidate for the election of Governor of Osun State and need not have any certificate at all or pass any paper at school certificate level to be so qualified is a judgment in rem. It determines the legal status of his educational qualification as candidate for election of Governor of a State. Being a judgment for (sic) in rem, it binds the world at large and not only the parties to the suit on the issue of whether this level of education of the

Appellant meets the requirement of section 177 (d) of the 1999 Constitution.

The Court further held at page 71 of the Judgment that:

The Judgment on this issue operates as estoppel per rem judicata to bar any further suit by anybody on this issue of the educational qualification of Appellant to be candidate in the election of Governor. So the Judgment binds the 1st and 2nd Respondents who are Claimant in the suit leading to this Appeal even though they were not parties in the suit at Osun High Court. It equally binds the High Court of the Federal Capital Territory and robs it of jurisdiction to try the issue of qualification of the Appellant to be candidate in the election of Governor by virtue of the operation of the principle of estoppel per rem judicata. So in view of the Judgment of Osun State High Court in suit No. HOS/M/103/2018 that the level of education of the Appellant meets the requirements to be candidate in the election of Governor of Osun State and that he need not to have any certificate at all or so qualified, a suit cannot be brought in another High Court to litigate again the same issue.

The foregoing Judgment in Adeleke vs. Raheem (supra) has by nature assumed the status of a law and so ought to be interpreted and given the simple and ordinary meaning it bears.

Being a closed matter, the 1st and 2nd Respondents again missed the mark when they came up with the issue of forgery regarding the letter of attestation issued on behalf of the 3rd Respondent, his testimonial and school certificate, as if they were not settled in the said Judgment. I need not say more on this. Since the issue of forgery has become a closed issue, as same has been determined by this Court in Adeleke vs. Raheem (supra), the 1st and 2nd Respondents have lost the legal right to re-open same for re-litigation under any guise. The subject matter has become res judicata in rem and can no longer be entertained by the Tribunal. It is against this backdrop that issue 5 (five) is resolved in favour of the appellant.

RESOLUTION OF ISSUE 6 (SIX)

Whether the Tribunal was right in its holding that there was substantial non-compliance in the Osun State Gubernatorial Election conducted on 16th July, 2022 by the Appellant.

The Appellant's first grouse herein is that paragraphs 52 – 67 of the 1st and 2nd Respondents' Petition are vague and suffer from lack of specificity. This is in the face of the provisions of section 4 (1) (d) of the

First Schedule to the Electoral Act which demands for clarity and specificity.

The 1st and 2nd respondents/petitioners in paragraphs 52 – 57 of the Petition sought that the election of 16th July, 2022 be declared invalid for non-compliance with the provisions of the Electoral Act and that the election in 749 polling units across 10 local government areas in Osun State was characterized by widespread non-compliance with the provision of the Electoral Act, 2022 and INEC regulations.

In paragraphs 58, 59, 61 and 62 of the pleadings the 1st and 2nd Respondents claimed that there was no proper accreditation in many of the Polling Units and election was conducted in many of the Polling Units without accreditation with the BVAs.

In Asogwa vs. Ugwuegede (2015) LPELR-40673(CA), pgs. 19-25, para. F. this Court per Bolaji-Yusuff, JCA., held thus:

> **The general principle of law as rightly submitted by the learned counsel for the respondents is that the pleadings of a party must state precisely and adequately the case which his adversary is to meet. In Udom vs. PDP (2015) 6 NWLR Pt. 1456, pg. 527 at 565, A-C, the Supreme Court stated the essence of pleadings as follows: Paragraph 4 (1), (2) and (3) of the First Schedule to the Electoral Act stipulates the content of a Petition. It is reproduced below.....**

In order to appreciate the position of the Tribunal and this Court, it is necessary to state the pleadings under the particulars..... (1) "In most polling booths the electoral materials for the election were not delivered within the prescribed period. (2) There was also non-disclosure of the number of accredited voters to the electorates. (3) The commencement of the aforesaid election was unduly delayed by the 3rd, 4th and 5th respondents because they failed to deliver the complete materials to the various polling stations within the stipulated time especially the result sheets (form EC8A). (4) There was harassment of petitioners' agents at the polling booths and security agents were used in many cases to chase away the petitioners' agents to bar them from being at the polling booths. (5) The 3rd, 4th and 5th respondents failed, refused and neglected to cause proper identification of the voters and there were multiple voting in the booths where the purported or sham election held even after voting period. (6) The accreditation of voters in the wards was not carried out by the agents at 3rd, 4th and 5th respondents as neither the card readers were used nor the incident forms used where card readers failed. (7) The 3rd, 4th and 5th respondents did not stop the people in military or police uniforms from molesting agents of the petitioners and bastardizing the elections. (8) Collation of results

for House of representative for Igbo-eze South/Nsukka Federal Constituency were done at undisclosed place outside the designated places without the presence of the party agents of the petitioners. (9) The irregularities and malpractices undermined the elections materially and grossly affected the results of the elections to the greatest disadvantage of the petitioner. (10) The petitioner and his agents were denied fair hearing by the 3rd, 4th and 5th respondents in their administrative decisions against the rights and interest of the petitioner during the elections and no report lodged to the 3rd respondent was investigated upon"

The Tribunal struck out paragraphs 1-10 (a-g) of the petition and 1 – 10 of the particulars. In essence the Tribunal struck out the entire petition. However, the Tribunal also considered the merit of the case and dismissed the petition. The appellants in their petition made allegations of irregularities "in the polling booths", "in most polling booths", "failure to deliver materials to various polling stations", -- no specific ward, polling booths, agents, security agents and places were mentioned. From the plethora of authorities on election petitions, the requirements of precision of pleadings in an election petition is higher than in order (sic) civil matters. Pleadings in election matters must condescend on details and particulars with precision. In an election petition

general averments on material facts would not meet the requirements of the law.

See further the authorities of **Belgore vs. Ahmed (2013) 8 NWLR Pt. 1355, pg. 60 at 95-96, paras. G-C; Ashiru Noibi vs. Fikolati & Ors. (1987) 3SC at 119; and Omorhorhirhi vs. Enatevwere (1988) 1 NWLR Pt. 73, pg. 746** wherein it was held as follows:

> **They (pleadings) must contain such details as to eliminate any element of surprise to the opposing party. In this case where the dispute involves the election in as many as 895 polling units the pleadings in the petition which alleged electoral malpractices, non-compliances and/or offences in some polling units "many polling units" or "several polling units" cannot be said to have met the requirements of pleadings as stipulated in Order 4 (1), 5 and 6 (1) of the Federal High Court (Civil Procedure) Rules, 2009. In an election petition, the facts and particulars in support of a ground of the petition must be clearly pleaded. Particulars of non-compliance, malpractices, the scores of all the candidates that contested the election and particulars of falsification of result must be pleaded.** (Underlining supplied).

As indeed submitted by learned counsel for the appellant and rightly too, an allegation dealing with non-compliance with provisions of Electoral

Act is distinct from that alleging that the Respondent did not score majority of lawful votes cast at the election in question and therefore cannot be used interchangeably. See section 134 (1) of the Electoral Act, 2022 which is reproduced hereafter for better appreciation:

134 (1) An election may be questioned on any of the following grounds–

(a) a person whose election is questioned was, at the time of the election, not qualified to contest the election;

(b) the election was invalid by reason of corrupt practices or non-compliance with the provisions of this Act; or

(c) the respondent was not duly elected by majority of lawful votes cast at the election.

The allegation that the Respondent was either not qualified to contest the election, is distinct and separate from the allegation that the election lacked validity by reason of corrupt practices or non-compliance with the provisions of the Electoral Act (supra) or that the said Respondent failed to score majority of the lawful votes cast at the election. Being separate and distinct grounds with separate particulars to support each of the grounds, the Tribunal will be acting erroneously where it goes off its way to use the particulars in support of a given ground to cushion or even substitute or sustain the particulars meant for another ground of the petition. Thus, an allegation that a Respondent was not duly elected by

majority of lawful votes cast at the election challenges the legality or lawfulness of the votes cast in the said election, while the allegation of non-compliance with the provision of the Electoral Act, 2022 or the Guidelines deals with specific and mandatory acts which ought to have been carried out during the conduct of the election but were not done and which omission substantially affected the outcome of the election. In essence, the facts needed to support either of the two grounds, the ingredients and standard of proof of each of the two grounds are distinct and cannot be interchanged so as to make the provision of section 137 of the Electoral Act, (supra) applicable to the Petition in view. For purposes of clarity Section 137 which deals with effect of non-compliance is reproduced hereafter:

137. It shall not be necessary for a party who alleges non-compliance with the provisions of this Act for the conduct of elections to call oral evidence if originals or certified true copies manifestly disclose the non-compliance alleged.

Thus, it may not be necessary for a petitioner who pleads non-compliance with the provisions of this Act to call oral evidence, provided there is in existence original or certified true copies of documents which manifestly disclose the non-compliance alleged. The 1st and 2nd Respondents in the instant Petition were bound to call oral evidence to

prove their allegation of the appellant not been elected by majority of lawful votes cast at the election.

The petitioners alleged as one of the grounds of their petition against the Osun Governorship election that the 2nd respondent was not duly elected by majority of lawful votes cast at the election. The extant position of the law provides for accreditation by way of verification, confirmation or authentication of voters by means of Smart Card Reader or any other technological device as may be prescribed by the appellant (INEC). Hence, the introduction of the technological device known as Bimodal Voter Accreditation System (BVAS) by the appellant for use to conduct accreditation. See section 47(2) of the Electoral Act (supra). BVAS therefore supersedes every other means of accreditation, to wit voters Register.

In proving the allegation of non-compliance, the petitioners fielded two witnesses (PW1 and PW2) and they tendered documents regarding the number of votes returned at the various polling units and BVAS Reports touching on the number of voters accredited at the election. See Forms EC8A series contained in Exhibits SCH 1, SCH 2 and SCH 3 and Exhibit BVR. The various Forms EC8As contained in Exhibits SCH 1, SCH 2 and SCH 3 are certified true copies of some polling units results while Exhibit BVR is the certified true copy of INEC's accredited voters report. The summary

of the evidence of PW1 and PW2 which can be found particularly at pgs. 537 – 658 vol. 1 include the fact that a team was set up under the leadership and supervision of the PW1 to carry out the analysis of the declared result and the accreditation recorded in the affected Polling Units numbering 749 Polling Units spread across 10 Local Government Areas of Osun State. The team relied on Form EC8As, Exhibit BVR and other relevant documents provided it by the appellant herein. The team's conclusion from its analysis is that the total number of votes returned from the various polling units in contention, are more than the number of accredited voters captured on Exhibit BVR thereby recording over voting in the disputed polling units. In order to determine whether there was over-voting, the team took into account the number of accredited voters, number of valid votes together with the number of rejected votes and compared same with the number reflected on the BVAS Report. The conclusion drawn up by the PW1 and PW2 was that there was no proper accreditation which thus contributed to over voting in the disputed polling units.

It is pertinent to note that the evidence of the PW1 and PW2 to the effect that the 3rd respondent herein was not duly elected by the majority of lawful votes cast in the election of 16th July, 2022 and that there was non-compliance with the Electoral Act, 2022 is however uncontroverted in the course of cross-examination.

On the defence side was the evidence of RW1 called by the Appellant herein. Exhibit R.BVR 1 – 129 being synchronized BVAS Report was produced by and tendered through her by INEC. RW1 admitted that there were over voting in the polling units shown to her. The number of accredited voters recorded in Exhibit R.BVR 1 – 129 differ from the number recorded in Exhibit RWC being the report of physical inspection of BVAS machines also tendered through her by INEC and are therefore in conflict with each other.

On the part of the RW2 a statistician admitted that there was over-voting when he was shown the accreditation figures in his report Exhibit 2R.RW2 vis-à-vis Exhibit R.BVR neither did it tally with Exhibit R.BVR 1-129 being the purported synchronized report which emanated from INEC. The contradictions and discrepancies apparent on the face of Exhibit 2R.RW2 and Exhibit R.BVR 1-129 are fatal to the case of the defence. It was on the face of these conflicting documentary evidence that the learned Tribunal rightly leaned to find and hold that by the nature and quality of the evidence proffered by the Petitioners, through their witnesses, that the Petitioners (1st and 2nd Respondents) satisfactorily discharged the burden of proof legally placed on them to the effect that there was over-voting.

The polling units result Forms EC8As in (Exhibits SCH 1, SCH 2 and SCH 3) and Exhibits BVR, R.BVR 1-129, RWC, RBVM and 2R.RW2 which are documentary evidence all add up to prove conclusively and manifestly disclosed the incidence of over-voting in the disputed polling units, thereby rendering it unnecessary for the Petitioners to call oral evidence. In further proof of their case, the 1st and 2nd Respondents as the Petitioners presented various tables in line with and as a summary of the evidence on record for the Honourable Tribunal to scrutinize and do the necessary arithmetical calculation of the affected votes cast in order to determine the actual valid votes cast in the said Osun Governorship election of 16th July, 2022. See the case of Hassan vs. Tumu (1999) 10 NWLR Pt. 624, pg. 700 at 710.

Furthermore, and by virtue of section 168 of the Evidence Act, 2011, there is a presumption of regularity and correctness attached to the content of public documents duly certified to be true copies of their originals. See pages 11,572 – 11,583 vol. 16 of the record of appeal for table presented by the Petitioners wherein in a summary form they inserted the figures showing that the total votes cast exceeded the total number of the accredited voters. In summation the question whether the Tribunal was right in its holding that there was substantial non-compliance in the Osun State Gubernatorial Election conducted on 16th

July, 2022 by the Appellant, is answered in the affirmative. The Tribunal was indeed right in its finding and holding that the Petitioners were unable to prove substantial non-compliance with the Electoral Act, 2022 in the Gubernatorial Election conducted 16th July, 2022. Issue 6 (six) is thus resolved in favour of the appellant and against the 1st and 2nd respondents.

RESOLUTION OF ISSUE 7 (SEVEN)

> **Whether the Tribunal was right in its holding that the 3rd Respondent was not elected by majority of lawful votes cast at the Osun State Governorship election held on 16th July, 2022.**

Sections 131 and 132 of the Evidence Act, 2011 places the burden of proving through cogent and credible evidence that the 3rd respondent was not elected by majority of the lawful votes cast at the election of the Osun Governorship election on the 1st and the 2nd Respondents who were the Petitioners at the trial Tribunal. See **Enterprise Bank Ltd. vs. Bola Oil (2019) LPELR-49427(CA)** where this Court at **pages 21-24, paras. E-F,** held thus:

> **Now, the law is that, the burden of proof is on the person who alleges the existence of or non-existence of particular facts. In Court cases, the ultimate burden of proof lies on the Plaintiff who desires that the Court gives judgment in his favour in respect of his rights which he alleges have been breached by the Defendant.**

This is captured in sections 131 and 132 of the Evidence Act, 2011 which stipulate that:

131 (1). Whoever desires any Court to give Judgment as to any legal right or liability dependent on the existence of facts which he asserts shall prove that those facts exist.

131 (2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.

132. The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

From the above cited provisions of the Evidence Act, it is obvious that, the burden of proof generally, that is in the sense of establishing a case or claim lies squarely on the Plaintiff who instituted or initiated the suit. The principle is: *qui affirmit non el, qui negat incumbit probatio* (he who asserts must prove that which he has asserted). It therefore means that, the party who asserts in his pleadings the existence of a particular fact is required to prove same by credible evidence. Where declaratory reliefs are claimed as in the instant case, the Plaintiff is expected to succeed on the strength of his own case and not on the weakness of the defence. Accordingly, even where the defence does not file any defence, or where a defence has been filed but same is abandoned at the trial, the decision of the court would

depend on the strength of the evidence adduced by the Plaintiff. Thus, where the evidence led by the Plaintiff is weak or incredible, the claim would be dismissed.

I think that it may be pertinent to mention here that the Petitioners who are challenging the correctness of the results of the election in 749 polling units which cut across 10 Local Government Areas have the onus of proving the incorrection, more so as the election results as published by the appellant (INEC) enjoy a presumption of official regularity under section 168 (1) of the Evidence Act, 2011. See the authorities of **Fidelity Bank Plc. vs. The M.T. "Tabora" (2018) 12 NWLR Pt. 1632, pg. 135 at 148; and Nwobodo vs. Onoh (1984) All NLR, 1, 2** where the Supreme Court held as follows:

I think at this stage, I may say that I accept the submission of Chief Williams that there is in law rebuttable presumption that the result of any election declared by FEDECO is correct and authentic and the onus is on the person who denies its correctness and authenticity to rebut that presumption. In my view where such denial is based on allegation of crimes against FEDECO officials for the declarations of the results, the rebuttal must be proved beyond reasonable doubt.

In the event of the afore mentioned authorities, it is clear that the burden is on the Petitioners who are contesting the lawfulness or otherwise of the votes cast in the election to support their contention with credible and cogent evidence by way of tendering in evidence the Voters Register, the forms EC8A series, and even the BVAS machine used for accreditation and in transmitting the results from the respective polling units. In **Alhaji Atiku Abbubakar, GCON vs. Alhaji Umaru Musa Yaradua (2008) 19 NWLR Pt. 1120, pg. 1 at 173, para. E-G per Niki Tobi, JSC., (of blessed memory)** who said:

> **A Petitioner who contests the legality or lawfulness of votes cast in an election and subsequent result must tender in evidence all the necessary documents used at the election.**

Again the Petitioners must lead evidence to show that the perceived illegality or unlawfulness substantially affected the result of the election. It is trite that in the contestation of lawful or unlawful votes cast in an election it behoves the Petitioner to compare and contrast figures. The record or tabulation of the registered voters, the total number of votes cast and the votes scored by each candidate all become a prerequisite in establishing the complaint. In essence, it is incumbent on the 1st and 2nd respondents (petitioners at the Tribunal) who alleged that the 3rd respondent did not score majority of the lawful votes cast at the election

to ab initio plead facts leading to a vitiation of the votes, and then lead credible and cogent evidence (both oral and documentary) to support their claim. I am inclined to agree and I so agree with the submission of the appellant that the Petitioners indeed failed in the discharge of this burden placed on them by law. Perhaps I need add here that the absence of any of the Petitioners' Polling Agents, numbering over 3,763 of them who kept watch at the respective polling units, both disputed and undisputed ones, none of them was invited to testify before the Tribunal. This omission is indeed a big minus in the case of the Petitioners for in election litigation, the evidence of the polling agents is very material in establishing what happened at the respective polling units. Thus, in **Buhari vs. INEC (2008) 9 NWLR Pt. 1120, pg. 246 at 424, per Niki Tobi, JSC.**, (of blessed memory) had this to say regarding the importance of polling agents:

> **An agent is the representative of the candidate in the polling stations. He sees all the activities. He hears every talk in the station. He also sees all actions and inactions in the station. Any evidence given by a person who was not present at the polling units or polling booth like the appellant is certainly hearsay. And here, I so regard paragraph 16 of the witness statement or deposition of the appellant. After all, he was not there. He was given the information by the agents. The million naira question is**

why did these agents not make statement as witnesses? In my view, agents are in the most vantage point to give evidence of wrong doing in a polling unit or polling booth. Can the appellant say in reality that he proved his case without calling any agent?

See also **Agballah vs. Chime (2009) 1 NWLR Pt. 1122, pg. 373**, where the Court saw the failure of the appellant therein to call the party agents that represented and served as his representatives at the various polling units to give evidence as fatal to the petition. Indeed, the innovation introduced by the provisions of section 137 of the Electoral Act, 2022 does not relieve the Petitioner from calling in the evidence of Polling Units agent in proof of the allegation of the 3rd respondent herein not scoring majority of the lawful votes cast at the Osun State Governorship election conducted 16th July, 2022. Since the Petitioners have failed to prove that the 3rd respondent did not score majority of lawful votes cast at the election, there is thus no corresponding duty on the Respondents to lead further evidence in line with section 133 (2) of the Evidence Act (supra) to the effect that the 2nd and 3rd Respondents were duly elected by majority of lawful votes cast at the said election. I place reliance on **Funtua vs. Tijani (2011) 7 NWLR Pt. 1245, pg. 130 at 146** where it was held thus:

Be that as it may, and in any case, where a Petitioner fails to place before the Court or Tribunal cogent and reliable evidence in support of his case, the respondent will be relieved of any burden to call evidence to put on their own side of the scale as there is nothing left on the other side of the scale in terms of credible evidence in favour of the appellant. See Bella vs. Aruwa (1999) 8 NWLR Pt. 615, pg. 454.

On the whole the issue of whether the Tribunal was right in its holding that the 3rd Respondent was not elected by majority of lawful votes cast at the Osun State Governorship election held on 16th July, 2022 is answered in the negative. In other words, the learned Tribunal was wrong in its holding that the 3rd respondent was not elected by majority of lawful votes cast at the Osun State Governorship election conducted on 16th July, 2022. This issue is hereby resolved in favour of the appellant and against the respondents.

RESOLUTION OF ISSUE 8 (EIGHT)

Whether the Tribunal was right to have descended into the arena of conflict and openly display prejudice against the 3rd Respondent.

This issue has earlier been determined in this judgment. I can only reiterate my finding that the learned Tribunal did not necessarily jump

into the arena of conflict, neither did he openly display prejudice. The issue of descent into the arena came about as a result of the passing remark of the Tribunal that the 2nd respondent cannot "**go lo lolo lo**" and "**Buga won**" as the elected Governor of Osun State. This is merely a passing remark which did not leave any negative impression on his mind or even have any impact or import on the issues before him for decision. It is a mere obiter dictum of the judgment of the tribunal as same did not influence any aspect of the decision. See **Trade Bank Plc. vs. Pharmatek Ind. P. Ltd. (2020) 8 NWLR Pt. 1725, pg. 124, 157, paras. F- H. C.** It is a trite position of the law that where in the course of determining a cause or matter, a Judge expresses an opinion which does not decide the live issue in the matter, such opinion is said to be an obiter. I hold the strong view that being an innocent but unguarded utterance, it ought not to have found its way before us as a ground of appeal. The apex court in the case of **Onafowokan vs. WEMA Bank Plc. (2011) LPELR-2665(SC) at pg. 46, paras. B-F, per Muntaka-Coomassie, JSC.**, made it clear that:

> **Where an opinion is expressed obiter, such an opinion is not appealable. An appeal is fought on the basis of the decision of the court and is not taken against mere obiter. It is not every pronouncement made by a Judge that can be made the subject of an appeal.**

Since the law is that he who asserts prove, it was for the appellant to prove by way of admissible and credible evidence that the Tribunal made a case for any party by generating evidence not canvassed or adduced by witnesses to decide the matter. It cannot therefore be said that the Tribunal descended into the arena of conflict. See **Ikpeazu vs. Otti (2016) LPELR-40055(SC), pgs. 76-77, paras. F-B.** It is not enough to allege bias or even likelihood of bias without demonstration that the alleged bias is personal or based on some extra-judicial reasons. The appellant must also show and which she failed to show, that because of the vexed utterance from his exalted throne of Judgment, the learned Tribunal was not able to hold an even scale. Again, the appellant carries the burden of showing vide clear, direct, positive and unequivocal evidence that: (a) the Tribunal has a financial or proprietary interest in the outcome of the proceedings; or (b) the Tribunal displayed hostility of strong personal animosity towards the appellant; or (c) the existence of personal friendship, family or professional relationship.

Clearly the appellant failed to discharge the burden placed on it to establish bias or likelihood of bias against the Tribunal, nor did he show how the said Tribunal descended into the arena of conflict. I therefore resolve issue 8 (eight) in favour of the 1st and 2nd respondents and against the appellant.

RESOLUTION OF ISSUE 9 (NINE)

Whether the Tribunal was right in its decision that Exhibit BVR does not contain the words, "inchoate" and "unsynchronized" and similarly Exhibit R.BVR1-29 does not indicate on it that it is superior to Exhibit BVR and proceeded to determine the Petition based on Exhibit BVR.

In this regard the appellant is not obligated to state on the BVR that it is either inchoate or unsychronized at the time of issuance, neither does Exhibit R.BVR1-129 have to assert superiority over Exhibit BVR as perceived by the Tribunal. What is of importance at this juncture is as provided in section 62 (2) of the Electoral Act, 2022 and which is to say that the appellant shall compile, maintain and update, on a continuous basis, a Register of Election Results which shall be a distinct database or repository of polling unit by polling unit results including collated election results. To continuously update a record inadvertently depicts modification or synchronization, irrespective of the fact that the statute has not used the word "synchronization". The word synchronization as quoted by the learned Tribunal includes, to link data files between one computer or mobile device and another so that the information in the files on both machines are same. Synchronization and updating mean the same thing in respect of the backend server which aims at bringing the

back end server up to date with the data contained in the BVAS Machine. Technology as it were, requires continuous update. Incidentally the RW1 gave unchallenged evidence that as at the date Exhibit BVR was issued, the appellant (INEC) had not synchronized the data in the BVAS machine and the backend server and the physical extraction of data from BVAS machines.

The word "synchronize" is to my mind an administrative terminology, if I may so describe it which in actual sense has no place in the relevant statute. The word therefore need not attract any fuss or ado about its usage. Similarly Exhibit R.BVR 1 – 129 does not require any indication on it that it is superior to Exhibit BVR or vice versa. This is because none is superior to the other. By the unchallenged evidence of RW1 (Abimbola Oladunjoye), after the election, they had to do synchronization process to ensure that the information they had on the BVA Machines was transmitted to the back end server. According to the RW1 "that is what synchronization process is all about". The witness RW1) went on to state on oath that Exhibit BVR 1 – 129 supersedes Exhibit BVR because the former contains the physical data on the BVA machines as at the day of the election.

In all of these in my view, while Exhibit BVR contains data obtainable from BVAs machine while the BVA machine is continuously being

updated, is on-going, Exhibits R.BVR1-129 were issued after synchronization process of the data from the BVA machines must have been completed. It was therefore wrong of the trial Tribunal to determine the Petition based on Exhibit BVR which exhibit is amenable to continuous update. It is in this vein that I resolve this issue in favour of the appellant and against the respondents.

With the resolution of issues 1, 2 and 8 in favour of the respondents while 3, 4, 5, 6, 7 and 9 are in favour of the appellant, it follows that the appeal has succeeds.

Parties to bear their respective costs incurred in the course of hearing the appeal.

C. IFEOMA JOMBO-OFO,

JUSTICE, COURT OF APPEAL

CERTIFIED TRUE COPY
COURT OF APPEAL ABUJA
OGUNBUWA HASSANA (MRS)
ASST. CHIEF ADMIN OFFICER
Signature .....
Date 27/3/23

APPEARANCES:

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Nurtala Abdulrasheed, SAN,
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APPEAL NO: CA/AK/EPT/GOV/03/2023

MUHAMMED L. SHUAIBU, JCA

I had a preview of the Judgment just delivered by my learned brother, **CORDELIA IFEOMA JOMBO-OFO, JCA** and I agree with the reasoning and conclusion reached in allowing the appeal.

I also allow the appeal and abide by the consequential orders contained in the leading Judgment.

MUHAMMED L. SHUAIBU

JUSTICE, COURT OF APPEAL

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COURT OF APPEAL ABUJA
OGUNDIWA HASSANA (MRS)
ASST. CHIEF ADMIN. OFFICER
Signature.....
Date.....23/3/23...

APPEAL NO. CA/AK/EPT/GOV/03/2023.

JAMES GAMBO ABUNDAGA, JCA.

I have been privileged to read in draft the judgment just delivered by my learned brother, **CORDELIA IFEOMA JOMBO-OFO, JCA.** I adopt the conclusion reached therein as mine. In consequence I allow the appeal.

Parties are to bear their respective costs.

JAMES GAMBO ABUNDAGA,

Justice, Court of Appeal.

CERTIFIED TRUE COPY
COURT OF APPEAL ABUJA
(MRS)
Date 27/3/23