

IN THE COURT OF APPEAL
ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA

ON THE 24TH DAY OF MARCH, 2023

BEFORE THEIR LORDSHIPS

MUHAMMED L. SHUABU - JUSTICE, COURT OF APPEAL
CORDELIA I. JOMBO-OFO - JUSTICE, COURT OF APPEAL
JAMES G. ABUNDAGA - JUSTICE, COURT OF APPEAL

APPEAL NO: CA/AK/EPT/GOV/04/2023

BETWEEN:

1. ADEGBOYEGA ISIAKA OYETOLA }
2. ALL PROGRESSIVES CONGRESS } CROSS APPELLANTS

AND

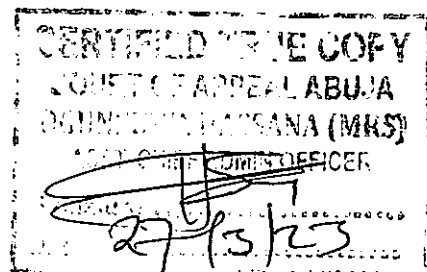
1. INDEPENDENT NATIONAL ELECTORAL }
COMMISSION (INEC) }
2. ADELEKE ADEBOLA JACKSON NURUDEEN }
3. PEOPLES DEMOCRATIC PARTY (PDP) } RESPONDENTS

JUDGMENT

DELIVERED BY MUHAMMED L. SHUAIBU, JCA

This is a Cross-appeal against part of the judgment of the Governorship Election Petition Tribunal, Osun State delivered on 27th January, 2023 wherein the tribunal found that the 2nd

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Cross-respondent had presented a forged certificate to the 1st Cross-respondent. Rather than hold that the 2nd Cross-respondent was not qualified to contest the Governorship Election of 16th July, 2022, the tribunal held that the 2nd Cross-respondent was still qualified to contest the election.

Dissatisfied, Cross-appellants appealed to this court through a notice of Cross-appeal filed on 9th February, 2023. Briefs were filed and exchanged in accordance with the extant Practice Directives.

In the Cross-appellants' brief, filed on 21st February 2023, the following two issues were nominated for determination and these are:

- 1. Whether in view of the Tribunal's decision that the Cross-appellants have proved the allegation of forgery of parts of Exhibits EC9 and file D, the 2nd Cross-respondent was not qualified from contesting the Osun State Governorship Election held on the 16th day of July, 2022.*
- 2. Whether the Tribunal was right in its reliance on Exhibits 2R. RW6, 2R. RW9 and evidence of RW3 to declare the 2nd Cross-respondent qualified to contest the Osun State Governorship Election of July 16, 2022.*

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The 1st Cross-respondent on its Brief of argument filed on 25th February, 2023 nominated a sole issue as follows:-

Considering the facts and circumstances of the petition before the lower Tribunal, whether the said Tribunal, was not correct in its decision of 27th January 2023 that the 2nd respondent was qualified to have contested the Osun State Governorship Election held on 16th July, 2022.

The 2nd Cross-respondent filed his brief on 25th February, 2023 also nominated two issues thus:-

- 1. Whether the finding in the judgment of the Tribunal that the appellants did not establish that the 2nd respondent was not qualified to contest the office of Governor of Osun State, was correct.*
- 2. Having found that the 2nd respondent was duly qualified to contest election for the office of Governor of Osun State, whether the Tribunal was correct not to disqualify the 2nd respondent.*

On the part of the 3rd Cross-respondent, a sole issue was nominated and it read thus:-

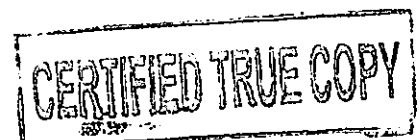
Whether the learned tribunal was right when it held that exhibits 2R.RW6 and 2R.RW9 attached to Exhibit EC9 submitted by the 2nd Cross-respondent to the 1st Cross-respondent satisfied the requirements of Sections 177 and



318 of the 199 Constitution, the Cross-appellants having failed to lead credible evidence to prove their allegation that the said exhibits 2R.RW6 and 2R.RW9 were forged and consequently held, that the 2nd respondent was duly qualified to contest the governorship election held on 16th July, 2022 for Osun State?

Upon careful consideration of the above issues vis-à-vis the record of appeal; the sole issue nominated by the 3rd cross-respondent is preferred for being apt and quite apposite for the just determination of the cross-appeal. I shall, in the circumstance, determine the cross-appeal utilizing the sole issue of the 3rd Cross-respondent.

The Cross-appellants' contention is that by virtue of Section 177 of the 1999 Constitution, a person may be qualified to contest a governorship election having met the four basis requirements contained therein, such a person may still be disqualified from contesting such an election where he is found to have committed any infractions contained in Section 182 (1) of the Constitution. Counsel submit, that once it is proved that a candidate has presented a forged Certificate to INEC, it voids his candidature and the forgery cannot be redeemed or cancelled out by any other document the candidate may have presented along-side the forged document



relying on **PDP Vs DEGI-EREMIENYO (2021) 9 NWLR (Pt 1718) 274 AT 292.**

Still in argument, counsel submit that contrary to the holding that the 2nd Cross-respondent was qualified to contest the election; the tribunal ought to have held that notwithstanding Exhibits 2R.RW6 and 2R.RW9, the 2nd respondent was disqualified from the election having regard to Section 182 (i) (j) of the 1999 Constitution. He referred to **SALEH VS ABAH (2017) 12 NWLR (pt 1578) 100 AT 132-123** to the effect that the fact that the 2ND Cross-respondent now presented some other documents for the election of 16th July, 2022 does not relieve him of the burden of bearing the consequence of his earlier iniquity. In effect, he must not be allowed to profit from his fraud.

In further argument, counsel submit that the finding that a person who was declared winner of an election has presented a forged document to INEC is disqualified of such a person from participating in the election. That once the court made a statement of its finding principles, it was bound to follow them. In aid, he relied on **OYEYEMI VS IREWOLE LOCAL GOVERNMENT (1999) 1 NWLR (PT 270) 462 AT 477.**

On the part of the 1st Cross-respondent, counsel submit that the finding of the lower tribunal with respect of forgery being without jurisdiction for failure to abide by judicial

precedent of **ADELEKE VS ADEKUNLE** ,cited to the lower court, the said finding is null and void and cannot be the basis of any right to the Cross-appellants. He referred to **USUNG VS NYONG (2020) 12 (NWLR) (PT 11777),83 AT 108 PARAS C-D**, to the effect that the decisions of Superior Courts are binding on the lower courts.

He submit further that the tribunal's finding on forgery despite binding precedent cited to it on the same issue, being a finding without jurisdiction is null and void and hence the cross-appellants cannot seek to legitimize a null finding. And the testimonial submitted by the 2nd Cross-respondent is not a forged document, as the issue was finally settled in **ADELEKE VS ADEKUNLE (2019) LPELR - 48729 (CA)** which decision was neither been upturned nor pending before any court of law.

In his response, counsel to the 2nd Cross-respondent submit that the Cross-appellants did not discharge the burden imposed on them to impugn the certificates presented by the 2nd Cross-respondent in his Form EC9 to establish his qualification to INEC. He reiterated that the Court of Appeal in CA/A/362) 2019 (supra) had already determined that the 2nd Cross-respondent was qualified for the office for which he contested. Thus, that decision presents a bar which cannot be surmounted.

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Aligning with other Cross-respondents, learned counsel for the 3rd Cross-respondent submit that the evidence of PW1 and PW2 as it relates to forgery of Exhibits 2R.RW6 and 2R.RW9 remained unproved and abandoned. Thus, the cross-appellants failed to discharge the burden of proving beyond reasonable doubt and the lower tribunal was right in its finding that the 2nd Cross-respondent was qualified to contest the governorship election held on 16th July, 2022 for Osun State having satisfied the requirement of Section 177 of the Constitution.

The key issue in the Cross-appeal is whether the lower tribunal had conclusively adjudged the 2nd Cross-respondent to have presented forged documents to INEC. Put different; whether the petitioners, at the lower tribunal had proved forgery against the 2nd respondent culminating to his disqualification.

The provision of Section 177 (1) of the Electoral Act, 2022 provides that a person shall be qualified for election to the office of Governor of a State if he is educated up to atleast School Certificate or its equivalent. However, by virtue of Section 182 (i) (j) of the 1999 Constitution (as amended), no person shall be qualified for election to the office of Governorship of a State if he has presented a forged Certificate to INEC. It is settled that where the court finds that a person

has presented a forged document, the only order to make, after determining that the information is false, is an order disqualifying the candidate from contesting the election. See **IBEZIM VS ELEBEKE (2022) 4 NWLR 1 AT 39.**

The Cross-appellants' contention here is that the presentation by the 2nd respondent of his Form CF 001 to the 1st respondent in 2018 where he declared in the attestation at page 6 thereof that he had fulfilled all the requirements for qualification into the office he was seeking to be elected amounts to presenting a false Certificate to INEC within the contemplation of Section 182 (1) (j) of the Constitution.

The question then is, did the Cross-appellants' as petitioners at the tribunal proved the allegation that the 2nd Cross-respondent presented forged document to INEC? An allegation that a party gives false information in his affidavit is firmly rooted in criminality which must be proved beyond reasonable doubt. It is not enough to make such allegation. The party alleging must go further to lead credible evidence to prove such allegation. See **ABUBAKAR VS INEC (2020) 12 NWLR (pt 1737) 37 AT 110.** In the instant case, the Cross-appellants who alleged forgery were duty bound to prove the allegation beyond reasonable doubt which they woefully failed to do.

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The next germane issue is, whether the lower tribunal rightly made a finding on the allegation of forgery against the 2nd Cross-respondent? A finding of fact by a court of law is that result or inference arrived by a Judge after a careful collection; study and synthesizing of facts and evidence or otherwise in support of such facts as pleaded by the parties See **ARISONS TRADING CO.LTD VS MILITARY GOVERNOR OF OGUN STATE & ORS (2009) LPELR – 554 (SC)**.

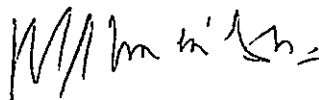
It was rightly posited that section 177 (d) of the Constitution does not require that the person must obtain a school certificate but he should be educated up to school certificate level or its equivalent. Where as in this case, the 2nd Cross-respondent submitted his transcripts from two different Universities, the tribunal must find that he satisfied the constitutional educational requirement to contest for governorship election.

In the present case, the cross-appellants having failed to prove forgery, the tribunal had no basis of making any findings on the 2nd Cross-respondent's qualification. This is even more compelling when the Court of Appeal had made a specific pronouncement on the same document. This Court's decision in Exhibit 2RW2, Appeal No CA/A/362/2019 is a Judgment in rem, which binds all persons and therefore relevant to any

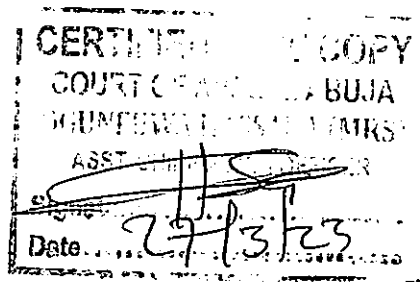
subsequent suit relating to the issue it decided. That being the case, the contrary finding of the tribunal was erroneous and has no utilitarian purpose to serve.

In the result, the Cross-appeal is meritless and it is hereby dismissed.

Parties shall bear their respective costs.



MUHAMMED L. SHUABU
JUSTICE, COURT OF APPEAL



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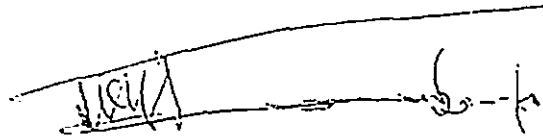
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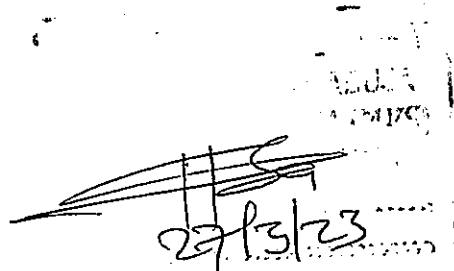
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CORDELIA IFEOMA JAMBO-OFO, JCA

I have had the advantage of reading in draft the judgment delivered by my learned brother, **MUHAMMED LAWAL SHUAIBU, JCA**. I agree that the cross-appeal lacks merit. It is accordingly dismissed.



CORDELIA IFEOMA JOMBO-OFO, JCA
JUSTICE, COURT OF APPEAL




29/3/23

APPEAL NO. CA/AK/EPT/GOV/04/2023.

JAMES GAMBO ABUNDAGA, JCA.

I have had the advantage of reading in draft the judgment delivered by my learned brother, **MUHAMMED LAWAL SHUAIBU, JCA.** I agree that the cross-appeal lacks merit. It is accordingly dismissed.


JAMES GAMBO ABUNDAGA,
Justice, Court of Appeal.

