IN THE COURT OF APPEAL
HOLDEN AT ABUJA

IN THE MATTER OF THE ELECTION TO THE OFFICE OF THE PRESIDENT OF THE FEDERAL REPUBLIC OF NIGERIA HELD ON THE 25TH DAY OF FEBRUARY, 2023

PETITION NO: CA/PEPC/03/2023

BETWEEN:

1. MR PETER GREGORY OBI
2. LABOUR PARTY } **PETITIONERS**

AND

1. INDEPENDENT NATIONAL ELECTORAL COMMISSION
2. SENATOR BOLA AHMED TINUBU
3. SENATOR SHETTIMA KASHIM
4. ALL PROGRESSIVES CONGRESS } **RESPONDENTS**

2ND AND 3RD RESPONDENTS' FINAL WRITTEN ADDRESS

1.0 PREPARATORY NOTE

1.1 The petition in issue in this address is very novel in the sense that it is not a petition *stricto senso*, familiar to our electoral jurisprudence, as the petitioners are not, this time around, complaining about election rigging, ballot box snatching, ballot box stuffing, violence, thuggery, vote buying, voters' intimidation, disenfranchisement, interference by the military or the police, and such other electoral vices. The crux of their grouse this time around, is that while the presidential election was peacefully conducted all over the country (as corroborated by their primary witnesses) and the results accurately recorded in the various Form EC8As, some unidentified results were not uploaded electronically to the INEC Election Result Viewing (IREV) Portal. The other remote contention of the petitioners is that the 2nd respondent did not score 25% (or one-quarter) of the votes recorded in the Federal Capital Territory, Abuja (FCT); while the petitioners have also alluded to the respondent's non-qualification, without any fact known to law.

2.0 INTRODUCTION

2.1 The 2nd and 3rd respondents (respondents) present this written address in their defence to the petition against their emergence as President and Vice-President, respectively, at the presidential election conducted on 25th February, 2023.

3.0 BRIEF STATEMENT OF FACTS

3.1 The respondents who are members of the 4th respondent participated in the presidential election conducted by the 1st respondent into the office of President of the Federal Republic of Nigeria on 25th February, 2023. At the end of a freely contested election, they were declared winners

and respectively returned as President and Vice-President, respectively, having polled a total of **8,794,721,** ahead of the candidate of the Peoples Democratic Party (PDP) who came second with a total of number of **6,984,520 votes,** while the 1st petitioner came a distant third with a total of **6,101,533 votes.** The 2nd respondent polled more than 25% of the total votes cast in 29 States of the Federation and the FCT, while the petitioners only secured 25% in 16 States, the FCT inclusive. Ironically, the 1st petitioner who came a distant third in the election, is praying this Honourable Court to declare him as the winner!

3.2 The petitioners' main grouse with the election was that the results were not electronically uploaded to the IREV and, according to them, the election should be voided, on the claim that same was not conducted in compliance with the provisions of the Electoral Act, 2022 (EA). Further, the petitioners query the candidature of the 2nd respondent on the ground, according to them, that the 3rd respondent who was the associate of the 2nd respondent at the election, was not properly nominated, as, according to them, he was at the point of his nomination, a senatorial candidate of the 4th respondent for Borno Central Senatorial District. Further, the petitioners purported to challenge the qualification of the 2nd respondent to contest the election, embarking, as it were, on some fishing expeditions relating to some purported forfeiture proceedings in the United States of America (US).

3.3 At the buildup to the elections, the 2nd petitioner had instituted an action at the Federal High Court, Abuja, against the 1st respondent, in Suit No: FHC/ABJ/CS/1454/2022- Labour Party v. INEC, praying the court to declare that the 1st respondent could only transmit or transfer the result of the elections electronically. However, by a reasoned judgment delivered on 23rd January, 2023, the Federal High Court dismissed the 2nd petitioner's claim in its entirety, holding that the 1st respondent was at liberty to prescribe the manner the election results will be transmitted, in view of the clear provisions of the EA, the Manual and Regulations. While the 2nd petitioner did not appeal and has not appealed the said judgment, it has raised and continues to ventilate the same contention and course before this Honourable Court, under the guise of an election petition. The said judgment was tendered before this Honourable Court as **Exhibit X1**.

3.4 On 26th May, 2023, the Supreme Court delivered a judgment in Appeal No: SC/CV/501/2023- Peoples Democratic Party (PDP) v. Independent National Electoral Commission (INEC) & 3 Ors. (Exhibit RA23), relating to the same issues being contended against the candidature of the 3rd respondent, including, but not limited to whether or not he was duly nominated as the associate of the 2nd respondent for the office of Vice-President; whether or not he suffered double nomination by being the Senatorial candidate for the Borno Central Senatorial District of the 4th respondent, as at the time the 2nd respondent nominated him as his associate; whether

he duly withdrew from being a Senatorial candidate or whether a primary election needed to be conducted before his nomination. All the forms and documents which the petitioners relied on in this petition to query or challenge the qualification of the 3rd respondent were part of the processes clinically considered and pronounced upon by the Supreme Court in the said judgment, which has been tendered before this Honourable Court as **Exhibit RA 23**. Meanwhile, the petitioners called 13 witnesses and dumped tons of documents on this Honourable Court in a failed attempt to prove their case. Both the evidence in chief and the evidence extracted from the witnesses under cross-examination are against the case of the petitioners. On the side of the respondents, they tendered certified true copies of various documents, emanating from within and outside the country to establish the fact that neither of the respondents suffers any disqualifying element, whether constitutionally or statutorily. The respondents also called a sole witness whose evidence covers every aspect of the respondent's case.

3.5 It is also the contention of the petitioners that the 2nd respondent did not score 25% of the votes cast at the FCT and as such, should not have been returned as President of Nigeria. Apart from their failed attempt at skewing the clear provision of the Constitution on the requirement for election to the office of President, they were unable to point to any law in support of this point of theirs. Meanwhile, the 1st petitioner as of 24th May, 2022, was still a member of the PDP and in fact, a presidential aspirant on the platform of that party. This was corroborated by the evidence of PW12, who confessed to have joined the Labour Party on 20th May, 2022, much before the 1st petitioner. It is also the uncontradicted evidence of the respondents' sole witness that the 2nd petitioner held its primary election to nominate its presidential candidate on 30th May, 2022 and that 30 days before that time, the 1st petitioner was not a member of the 2nd petitioner. Exhibit RA18, was tendered by the respondents which clearly reveals that the 1st petitioner's name was not in the register of members of the 2nd petitioner, and till the close of trial, no scintilla of evidence was produced to establish the date that the 1st petitioner joined the 2nd petitioner.

4.0 SUMMARY OF EVIDENCE

4.1 The petitioners called a total of 13 witnesses, all of whose evidence were characterized by hearsay, irrelevancies and even ironically, facts in support of the respondents' defence. With the evidence led in support of the petition, it was obvious that the petitioners woefully failed to discharge the burden of proof legally imposed on them as persons seeking the intervention of the court. This, notwithstanding, the respondents called one witness, who is not only a long standing associate of the respondents, but also, an Attorney and Counsellor at Law in the US, with the requisite capacity to authoritatively state the position of US laws, including as it

relates to the purported forfeiture proceedings in the US. Due to the limited space available for this address, we shall make intermittent references to the evidence of these witnesses in the course of arguments.

5.0 ISSUES FOR DETERMINATION

5.1 Shorn of all irrelevancies, in the opinion of the respondent, the issues that arise for determination in this petition at the end of trial, are as follows:

i. Having regard to the relevant provisions of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the salient provisions of the Electoral Act, 2022, the judgment of the Federal High Court, in **Suit No FHC/ABJ/CS/1454/2022, between Labour Party v. INEC, delivered on 23rd January, 2023 (Exhibit X1)**, as well as admissible evidence on record, whether the election of the 2nd respondent into the office of President of the Federal Republic of Nigeria on 25th February, 2023, was not in substantial compliance with the principles and provisions of the Electoral Act, 2022.

ii. In view of the clear provisions of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the Electoral Act, 2022 and plethora of judicial precedents on the criteria for qualification of candidates for election to the office of President, coupled with the Unreported decision of the Supreme Court in **SC/CV/501/2023-Peoples Democratic Party v. Independent National Electoral Commission (INEC) & 3 Ors., delivered on 26th May, 2023 (Exhibit RA23),** whether the 2nd and 3rd respondents were/are not eminently qualified to contest the presidential election of 25th February, 2023.

iii. Upon a combined reading of **sections 134 and 299**, as well as other relevant provisions of the Constitution of the Federal Republic of Nigeria, 1999 (as amended**), section 66 of the Electoral Act, 2022** and other relevant statutes, whether the 2nd respondent has not satisfied the necessary constitutional and statutory requirements to be declared winner of the presidential election of 25th February, 2023, and returned as President of the Federal Republic of Nigeria.

iv. Considering the constitution of the petition and the terse evidence adduced, whether this Honourable Court can accede to any of the reliefs being claimed by the petitioners.

ARGUMENTS ON THE ISSUES

6.0 ARGUMENTS ON ISSUE 1

6.1 A good starting point is to reproduce section 135(1) of the Electoral Act, 2022 (**the Electoral Act/EA**), which provides thus: ***"An election shall not be liable to be invalidated by reason of non-compliance with the provision of [the] Act, if it appears to the Election Tribunal or Court that the election was conducted substantially in accordance with the principles of [the] Act and that the non-compliance did not affect substantially the result of the election***."

6.2 May we first draw the court's attention to the fact that the word "shall" has been deliberately applied by the legislature, connoting the fact that the invalidation of an election for remote and

unsubstantiated reasons, is mandatorily forbidden. The law is well settled that whenever the legislature employs the use of the word "shall" in any enactment, what is to be done or forbidden to be done, is mandatory, peremptory, not allowing for any discretion. See **Ugwu v. Ararume (2007) 12 NWLR (Pt.1048) 367 at 441 – 442 and Diokpa F. Onochies & Ors v. Ferguson Odogwu &Ors (2006) 6 NWLR (Pt. 975) 65 at 89.** The subsection is also broken into different limbs or compartments, the first one being the admission by the legislature that there is no institution created by man that is perfect, thus, prohibiting in the first limb, the invalidation of any election by reason of non-compliance with the provisions of the Act itself. The second limb takes off from the first, as it provides an exception in the sense that "**if it appears…"** May we draw your Lordships' attention to the phrase "**if it appears..."** This phrase is very simple, unambiguous and elementary, literally meaning that in the unlikely event of any petitioner proving non-compliance, the court will disregard the proof "***if it appears to the court that the election was conducted substantially in accordance with the principles of [the] Act***." In **Abubakar v. Yar'Adua (2008) 19 NWLR (Pt.1120) 1 at 163**, the apex court succinctly described the said provision of the Electoral Act, in the following words: **"The operative words in section 146(1) are "if it appears …"**

6.3 May we further draw the attention of the court to the fact that within the last limb of the provision, the clause "**in accordance with the principles of this Act…**" is applied, meaning that it is not a question of strict adherence to the Act itself, but the court will be guided by the principles of the Act. In ascertaining whether the presidential election under reference was conducted substantially in compliance with the principles of the EA, it is then important to first identify its principle. In this connection, we are guided by the settled judicial authorities, including **Skye Bank Plc v. Iwu (2017) 16 NWLR (Pt. 1590) 24 at 94**, to have resort to the long title to the Electoral Act, 2022, which describes it as "an Act…to regulate the conduct of Federal, State and Area Councils in the Federal Capital Territory elections; and for related matters." When this is read side by side with section 135 of the Act, it becomes obvious that the central concern, nay principle of the EA, is the substantial conduct of elections and declaration of winners through plurality of votes, as demonstrated by the plebiscites of the voters.

6.4 Not done yet, we submit that even if any election has not been conducted substantially, in accordance with the principles of the Act, the section then requires the petitioner has to establish how the non-compliance has affected, not just ordinarily, but substantially, the result of the election. The word "substantial" is defined by the Black's Law Dictionary, 11th Edition, page 1729 to mean: "***Considerable in extent, amount, or value; large in volume and number***"; while the **New Lexicon Webster's Dictionary of the English Language (1988**

Edition), at **page 987**, defines it as "***having real existence; not imaginary; firmly based; relatively great in size, value or importance.***" The essence of these definitions is to demonstrate that for any non-compliance to be substantial enough, or raised to the degree of invalidating an election, it must be of a high nature or degree, as opposed to mere conjecture or gainsaying. Before applying judicial authorities to this section, may we submit that all over the Commonwealth, this section is a recurring decimal in the *corpus juris*, with slight variations in their wordings. It is also our further submission that since the first Republic, similar sections have been in our respective statutes, as contained in section 93 of the Electoral Act, 1962, section 123 of the Electoral Act, 1982, section 52 of the Presidential Election (Basic Constitutional and Transitional Provisions) Decree,1999, section 121 of the Electoral Act, 2001, section 135 of the Electoral Act, 2002, section 146 of the Electoral Act, 2006 and section 139 of the Electoral Act, 2010.

6.5 In **Ogboru v. Okowa (2016) 11 NWLR (Pt. 1522) 84 at 148**, the apex court, while appreciating the fact that it is impossible to have a perfect election anywhere in the world, held that in the proof of an allegation of non-compliance, the petitioner must do the following: "**Where however the petitioner contends that an election or return in an election should be invalidated by reason of corrupt practices or non-compliance, the proof must be shown forth:-**

(i) that the corrupt practice or non-compliance took place; and

(ii) that the corrupt practice or non-compliance substantially affected the result of the election.

The quantum of measurement and consideration is not to show that there was a proof of non-compliance, as it is almost impossible to have a perfect election anywhere in the world. The measure however, is whether the degree of non-compliance is sufficient enough so as to vitiate the credibility of the election held. The reason for the proof on the balance of probability is not farfetched therefore." Andrew v. I.N.E.C (2018) 9 NWLR (Pt. 1625) 507 at 553.

6.6 Against the foregoing background, it is our submission that the petition, both as presented, as well as the lean evidence adduced, cannot be described as a **petition**, *stricto senso*, within the meaning and context of the EA, as the complaint expressed is not strictly in relation to non-compliance with the provisions of the Act, but with very remote events after the conclusion of election, even as admitted by their witnesses; that is, that election was primarily concluded at the polling unit level, when, after the PO has sorted the ballots in the full glare of the party agents and the public, counted the votes, announced the results to the hearing of everyone, recorded the scores of each party in Form EC8A, signed same himself, and called on the agents as well as the security officers present to sign as well. The law is well settled and the Act has not changed the principle that Form EC8A forms the foundation of the pyramid for election results. See **Agagu v. Mimiko (2009) 7 NWLR (Pt. 1140) 342 at 488, Ukpo v. Imoke (2009) 1 NWLR (Pt. 1121) 90 at 168.** In fact, **paragraph 91(i) of the Regulations and Guidelines**

for the Conduct of Elections, 2022, provides thus: "***Voting takes place at polling units. Therefore, Forms EC8A and EC 60E are the building blocks for any collation of results.***" Arising from this provision, it is our submission that collation of results happens on ground, in the full glare of everybody, and neither in the air nor in the 'cloud'.

6.7 The amoebic nature of the petition, leaves even the petitioners' own most sympathetic reader more confused than ever. While in one breath, these petitioners claim that there were no transmission and upload through the BVAS, the same petitioners have in the other breadth, claimed that by the transmission and upload through the BVAS, they actually won the election (See paragraphs 53 and 71 of the petition). These averments, as antithetical and self-contradictory, and they have been repeated hook, line and sinker by PW12 in paragraphs 54 and 72 of his witness statement. However, from the evidence of the other witnesses invited by the petitioners, it would seem that they eventually made up their minds to situate their complaint within the context of failure to electronically transmit and upload to the IREV in real time. The evidence of PW9, PW10 and PW13 is very instructive, as they eventually all agreed under crucible of cross-examination, that the voting and counting went well, while admitting that the forms EC8As were duly signed by the presiding officer and the party agents. This is a clear case of admission against the interest of the petitioners, as the said PW9, PW10 and PW13 would not have made these statements, against their own interests, if it was not true. We submit that admission against interest is binding on the party against whom the admission is made. See **Nwabuba v. Enemuo (1988) 5 SCNJ 154 at 286-287; ADEGBOYE v. AJIBOYE (1987) 3 NWLR (PT. 61) 432 at 444; Ojukwu v. Onwudinwe (1984) 1 SCNLR 247 at 284.**

6.8 We again invite this Honourable Court to the evidence of **PW4**, who gave evidence that it is the image of the form EC8A that is usually uploaded to the IREV, while the hardcopy is taken to the ward collation center. The witness agreed that the statutory channel for collation of votes commences from the polling unit to the ward collation center, Local Government collation center and State collation center, before getting to the national collation center. It was also his evidence, that the fact that the uploaded result is blurred or not (as contained in the 18088 purportedly downloaded results from the IREV Exhibits PCE1-PCE4), or that the uploading fails or not, will not change the result entered into the appropriate Form EC8A at the polling unit and that the IREV is not a collation center. The evidence of these witnesses, who incidentally, are those of the petitioners themselves, as well as the evidence of INEC's witness, who indicated that the outlook of the printed forms from the IREV will have no impact on the hardcopy of the result as contained in the Form EC8A, set the tone for an interrogation of the bogus claims made by these petitioners, who seem to suggest that the validity or otherwise of

an election is determined by the success of electronic transmission or upload to the IREV. We submit with the greatest respect to the petitioners, that this position being advanced by them is not reflected under any law whatsoever. At this point, we respectfully invite this Honourable Court to the provision of **section 60(5) of the Electoral Act**, which provides that "***the presiding officer shall transfer the results including total number of accredited voters and the results of the ballot in a manner as prescribed by the Commission.***"

6.9 A proper appreciation of the provision of section 60(5), with respect to INEC's prerogative to prescribe the mode of transfer of results, will contextualize the several provisions of the Manual and Regulations. Before carrying out a consideration of the said provisions, we must quickly indicate that the provisions of the Regulations and Guidelines on the one hand, and those of the Manuals on the other hand, are largely similar, hence, space will hinder us from reproducing from both documents. Paragraph 19 of the Regulation provides the procedure for accreditation, while paragraph 35 provides the procedure for sorting of votes after election. May we refer the court to the clear provision of paragraph 38 of the Regulations, and submit that the said provision do not support the contention of the petitioners; rather, it provides for multiple/hybrid procedures, whether manually or electronically.

6.10 We urge the court to note that it is not the petitioners' case that there was no electronic transmission and upload at all, but that same was not done immediately. Even more critical is the fact that the petitioners did not allege that any of the other procedures of the election, starting from the accreditation, voting, sorting, counting of votes, entry into the relevant forms, and manual transmission was not complied with. In fact, the testimonies of PW9, PW10 and PW13 are very instructive, as despite being witnesses for the petitioners, they all testified to the fact that the only issue with the entire web of processes was that of electronic transmission and upload to the IREV through the BVAS in real time. The point must be made that it is not their claim that the results were not uploaded at all, but that since INEC was constrained not to be able to upload it immediately, during the election, then the election must be impeached. This line of reasoning finds no place within the circumference of logic or law, particularly, when the witnesses, including PW4, clearly admitted that it is merely the image of the form EC8A that is usually uploaded to the IREV, while the hardcopy is taken to the ward collation center; and that the statutory channel for collation of votes commences from the polling unit to the ward collation center, Local Government collation center and State collation center, before getting to the national collation center. In fact, this witness added that the fact that the uploaded result is blurred or not, or that the uploading fails or not, will not change the result entered into the appropriate Form EC8A at the polling unit, while also admitting that the IREV

is not a collation center. Interestingly, DW1, a Deputy Director in the ICT Department of the 1st respondent restated these points made by PW4.

6.11 It was PW9's testimony that from his observation of the election, voting and counting went well and that the form EC8A referenced by him in paragraph 7 of his witness statement was duly signed by the presiding officer and the party agents. In further admission against the interest of the petitioners, he indicated that the polling unit officials went with the Form EC8As in the polling unit to the ward collation center where same was eventually collated. PW10, in his own testimony stated that there were no other issues in the conduct of the election and that the scores of the election were properly entered into the Form EC8As, while the results were properly announced and the physical copies of the Form EC8As duly taken to the ward collation center. PW13 on his part, equally admitted that as a presiding officer on the day of the election, he manually recorded the results in the prescribed form, signed same, alongside all the other party agents and that at the end of the election, he gave copies of the polling unit results to all party agents present.

6.12 Having, concurred that in line with paragraph 38 of the Regulations, the litany of "Polling Unit voting and results procedures" as contained in paragraphs 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, were duly complied with, it, therefore, defeats the principle/idea of substantial compliance that the results will be questioned, on the simple basis that it was not uploaded 'electronically' on the IREV "in real time." The petitioners gave no evidence that the results which were eventually computed at the ward collation center for the respective polling units were different from what was delivered to the ward collation center from the polling unit; or that the results collated at the local government collation centers were different from the ones submitted from the respective wards; or that the results collated at the respective State collation centers were different from the ones submitted from the respective local government collation centers; or finally, that the results collated at the national collation center were different from the ones submitted from the respective State collation centers.

6.13 We urge the court to observe that the petitioners have harped on electronic transmission of results as though the same Regulations did not contemplate manual transfer. We submit that right from the polling unit to the national collation center, there are ample provisions for the transfer of results through the manual process, hence the use of the phrases "**Electronically transmit**" or "**transfer**" as employed in paragraphs 38 and 50 of the Regulations and "**transmit**" or "**transfer**" as used under paragraph 54(xii) of the Regulations. A clear understanding of the distinction between the words "**transmit**" and "**transfer**", will definitely operate to exfoliate the petitioners' misgivings. According to the **Merriam Webster**

Dictionary, "**transmit**" connotes **"to cause (something, such as light or force) to pass or be conveyed through space or a medium" and "to send out (a signal) either by radio waves or over a wire.**" **The Collins Dictionary** puts it in a much clearer form when it states that "**When radio and television programmes, computer data, or other electronic messages are transmitted, they are sent from one place to another, using wires, radio waves, or satellites**." On the other hand, however, "**transfer**" is defined by these same dictionaries as "**to move to a different place, region, or situation**" and "**to convey or remove from one place, person, etc., to another**." The distinctions are very clear to the effect that while "transmit" connotes electronic activities, "transfer" infers a physical activity.

6.14 Our clear submission is that all the provisions of the Regulations created the alternative between electronic transmission and transfer, with the use of the article "or". For instance, paragraph 38(i), which deals with movement from the polling unit states that "on completion of all the Polling Unit voting and results procedures, the Presiding Officer shall: (i) Electronically transmit **or transfer** the result of the Polling Unit, direct to the collation system as prescribed by the Commission." Paragraph 50(xx) provides that "the Registration Area/Ward Collation Officer shall: **Electronically transmit or transfer** the result directly to the next level of collation as prescribed by the Commission." Paragraph 53(xii) provides that "the Local Government/Area Council Collation Officer for the Presidential Election shall **Electronically transmit or transfer** the result directly to the next level of collation, as prescribed by the Commission." To further demonstrate our position on the etymological implication of the words and to corroborate the fact that "electronic" is disjunctively applicable only to "transmit", we refer to paragraph 54(xii) which completely dispenses with the use of "electronically", by simply providing that "the State/FCT Collation Officer for the Presidential election shall: Transmit or transfer the result directly to the next level of collation as prescribed by the Commission." For each of the above level of collation, provisions are clearly made for taking of original copy of the forms EC8A, 8B, 8C and 8D, respectively, from the different level of collation to the upper level, in a tamper-evident/tamper-proof envelop, for upward transfer in the company of police officers and party agents. See also, paragraph 3.4.5 of the Manual. In fact, the first step the ward collation officer is to take, by virtue of paragraph 4.2.2 of the Manual, is to "***take delivery of the original copies of Forms EC8A, EC8A(I), and EC8A(II) for the Presidential Election***", while the tenth step is for him to "***Collate the votes entered in Forms EC8A, EC8A(I) and EC8A(II), for the Presidential Election.***"

6.15 Not done yet, **paragraph 92 of the Regulations**, further provides that "**at every level of collation, where the INEC copy of collated results from the immediate lower level of**

collation exists, it shall be adopted for collation." **Paragraph 93** then goes further to provide for the only circumstance where electronic copy will become relevant, being where there is no hard copy of collated result. From this paragraph, it is clear that insofar as the Regulations and Guidelines are concerned, the relevance of electronic transmission in the order of things, are extremely tertiary in ranking, and that the Regulations and Guidelines, clearly contemplate its absence, where it directs a fall back on hard copies of collated results already given to the Nigeria Police or agents of political parties, where the ones from the immediate lower level of collation whether from the PO or the IREV, do not exist.

6.16 So, from the above provision of the Regulations and Guidelines, before recourse will be made to the electronically transmitted result or results from the IREV portal, the INEC hardcopy of collated results from the immediate lower level of collation must first have been confirmed to be non-existent. It is important to indicate that none of the witnesses fielded by the petitioners have alleged that this was the case at any level of collation centers. In any event, the absence of the electronically transmitted results or results from the IREV portal does not necessarily create a brick wall in the absence of INEC hardcopy of collated results. The same paragraph creates a solution, to the effect that the collation officer may resort to the duplicate hardcopies issued by INEC to the police and the party agents. To now further accentuate the place of the hardcopy of the electoral forms, particularly, the Forms EC8As, which the petitioners' witnesses all agree were delivered to the ward collation center, **paragraph 91(i) of the Regulations** insists that Forms EC8A and EC60E "**are the building blocks for any collation of results**." An aggregation of these clearly shows that it is either the petitioners have, with all respect, naively overestimated the electronically transmitted results, or they have simply decided to throw tantrums as a result of their frustration at the polls.

6.17 Hence, assuming without conceding that the non-transmission through electronic means, is at all, a non-compliance, the obligation of the petitioners would still remain to answer the question, "how then has the non-transmission affected the result of the election?" By the decision of the apex court in **Ucha v. Elechi (2012) 13 NWLR (Pt. 1317) 330 at 359**, "***where a petitioner complains of non-compliance with provisions of the Electoral Act,2010 (as amended), he has a duty to prove it polling unit by polling unit, ward by ward and the standard required is proof on the balance of probabilities and not on minimal proof. He must show figures that the adverse party was credited with as a result of the non-compliance. Forms EC8A, election materials not stamped/signed by Presiding Officers. He must establish that non-compliance was substantial, that it affected the election result. It is only then that the respondents are to lead evidence in rebuttal.***"

6.18 It is also important to draw this court's attention to the decision of the Supreme Court in **Abubakar v. Yar'Adua (2009) All FWLR (Pt. 457) 1**, which settles every issue, whether raised by the petitioners or imagined by them in this petition, and more particularly, at **page 156** of the report, where the Supreme Court held that: ***"If there is evidence that despite all the non-compliance with the Electoral Act, the result of the election was not affected substantially, the Election Tribunal must, as a matter of law, dismiss the petition, and that accords with section 146(1) of the Electoral Act (now section 139(1)*.**"

6.19 The effect of the above authority, is that for whatever it is even worth, assuming without conceding that there was non-compliance with the Electoral Act, once there is a consensus, as it is the case in this petition, that the result of the election was not substantially affected (not to talk of this case, where the petitioners' witness all agreed that the results were not affected at all), this Honourable Court, as a matter of law, has the duty of dismissing the petition forthwith and we urge the court to so do. In **Ejiogu v. Irona (2009) 4 NWLR (Pt. 1132) 513 at 560** this Honorable Court described a valid vote as ***"a vote cast at an election by a registered and duly accredited voter, which is in compliance with the provisions of the Electoral Act"*** and that **"*such a vote is a valid and/or lawful vote for the purpose of collating or computing the total or majority of lawful votes cast at the election"*.** The petitioners have not been able to prove a single vote that did not pass the litmus test of a valid vote and we submit that their case on real time transmission of results to the IREV portal which is subsequent to the casting of valid votes cannot be a basis to nullify or invalidate valid votes already/previously cast as intended in this petition when such votes are entitled to be collated and were indeed collated.

DE MINIMIS RULE

6.20 In the course of the proceedings, we recall that this Honourable Court applied the *de minimis* rule in overruling an application urging it to discountenance a process filed by a party, which inconsequentially exceeded the prescribed pagination. The court dismissed the invitation *brevi manu*. In like manner, while we do not concede that the petitioners have queried the election and return of the respondents on any substantial point or issue, we submit that **section 135 of the EA** also takes into cognizance the *de minimis non curat lex* rule, literally meaning that "***of small things, the law knows no cure***." See **Garba v. FCSC (1988) 1 NWLR (Pt. 71) 449 at 453 and Baker Marine (Nig.) Ltd. v. Chevron (Nig) Ltd. (2000) 12 NWLR (Pt. 681) 393 at 413**.

6.21 This leads us to the decision of the Supreme Court in the celebrated case of **Awolowo v. Shagari (1979) NSCC 87 at 102**, where the petitioner, just like the petitioners herein complained that the respondents did not secure 25% of the votes cast in Kano State, when the petitioner therein scored far less than the respondents in the said Kano State. The apex court

found that **section 34(a)(1)(c)(ii) of the Decree** was complied with (equivalent of **section 134 of the Constitution**); that the 1st respondent secured more votes throughout the country than each of his challengers, including the petitioner, who he was ahead of by 772,206 votes (here, the 2nd respondent is ahead of the 1st petitioner by **2,693, 229** votes); that the 2nd respondent secured at least 25% of the votes in 12 2/3 States out of the 19 States of the federation (here, the 2nd respondent secured 25% of the votes in 29 States); that the country wide votes referred to are more geographically spread than those of any of the other four candidates (the 2nd respondent's votes are far more geographically spread than those of any other candidate who participated at the election); that the percentage of 19.94 scored by the 1st respondent in Kano State falls short by only 5.06% (assuming without conceding that the FCT is independent of the other States of the federation, the percentage of 18.99% of votes scored by the 2nd respondent at FCT, only falls short of 25% by 6.01.).

EVIDENCE OF PW2, PW4, PW7, PW8 & PW12 CONSIDERED

6.22 The evidence of these witnesses essentially centers round the function of the BVAS and IREV and ultimately seek to impeach the veracity of INEC's explanation about the technological glitches that occurred on the day of the election and its implication on the overall results of the election. Without equivocation, it is our respectful submission that the petitioners have woefully failed in this adventure of theirs and this will be seen through the direct analysis of their respective evidence. The evidence of **PW2** is largely irrelevant for the benefit of the petition, as his witness statement on oath only attempted to outline the various features and functions of the BVAS; the involvement of the Amazon Web Service (AWS) and its corporate profile; as well as the description of the IREV, its workings and configurations. However, despite the supposed authoritative assertions of this witness in respect of the BVAS and the IREV, under cross examination, he confessed that he is not familiar with the applications on the BVAS device and that as a software engineer, he has never designed any software that was applied for the conduct of any general election. Though this witness had made several assertions in respect of the AWS in his witness statement, in all fairness to him, he opened up that he is not a staff of AWS. Similarly, the witness confessed that he was not aware of the number of software that makes the components that INEC used for the 2023 general election, as he is not an INEC staff, admitting that he never had any of the materials he used for his supposed findings before the court, but on his laptop which was not made available to the court. The irony about this witness is that despite his bogus claim and the bravado exhibited in the statements regarding the various technological issues, he virtually claimed not to be aware of anything at the end of everything. This exposes the witness' limited or total lack of knowledge of the facts in respect of which he pretended to be asserting authority and by the

decision of the apex court in **Emoga v. State (1997) 9 NWLR (Pt. 519) 25 at 34**, it impacts on his overall credibility and further demonstrates why this Honourable Court cannot take his depositions seriously.

6.23 Perhaps, seeing the damage that this witness has caused to their case, including his confession of not being a staff of AWS, the petitioners now proceeded to invite **PW7**, who claimed to be a cloud engineer and a member of staff of AWS. Though this witnesses intended demonstrating to the court that the AWS server was beyond any form of reproach, it would take only a few questions under cross examination to expose the futility of this theorem. Starting with Exhibits PCJ1 and PCJ2, which were the only documents the witness attempted to employ in proving the fact of her connection with AWS, both documents were unsigned and this goes to the relevance and even admissibility of the documents. We respectfully urge this Honourable Court to hold that the said documents are totally worthless, being not only inadmissible, but of no evidential value whatsoever. See **Tsalibawa v. Habiba (1991) 7 NWLR (Pt. 174) 461 at 475-477 and Nammagi v. Akote (2021) 3 NWLR (Pt. 1762) 170 at 194-195.**

6.24 Additionally, Exhibit PCJ2, which would have established her connection with AWS, as the latter's staff, was without an author, thus, leaving to doubt, the assertion that same emanated from the AWS. The end result of this will be that against the admonitions of the courts in **Abubakar & Anor. v. INEC & Ors. (2019) LPELR-49492(CA) at 9-10 and Gitto Costruzioni Generali (Nig.) Ltd. V. Jonah (2017) LPELR-43487(CA) at 16-17,** she was unable to properly identify herself as a staff of AWS, and this Honourable Court ought to discountenance the entire evidence of this witness on this basis. In any event, the witness admitted that though the report she tendered relates only to AWS infrastructure, the subpoena she brought before the court was not delivered to Amazon but to her in person and that she was not in court on the authority of AWS. On this account, we submit that the evidence of this witness cannot be treated as the evidence of AWS or taken with any seriousness at all.

6.25 The predicament of PW7 and indeed the petitioners did not end there, this supposed witness was unable to present her letter of employment by AWS as the supposed unsigned letter of confirmation of employment was only manufactured by her, on **19th June, 2023** (as per the date on the document), a day before the tendering of same, indicating that this document was made by a party interested, during the pendency of litigation, for the mere purpose of litigation, thus, rendering same inadmissible. See **section 83(3) of the Evidence Act**. This Honourable Court will further appreciate that this witness was a party interested, when it observes that she is a card carrying member of the 2nd petitioner, who in fact, contested election to become a member of the House of Representatives, representing Cross River State, under the banner of the 2nd petitioner, where she lost the election. The interesting thing about her political

involvement, however, is that, in her quest to secure the admission and publication of her name by INEC for the National Assembly election, she had averred before the Federal High Court that she made several efforts to upload her name on the INEC network site, but because of network failure, her efforts proved abortive, as the INEC site crashed-this she wholly admitted under cross examination. This evidence corroborates the respondents' case of a technological glitch on the day of the election and flattens the petitioners' insinuation of the impregnability of any of the technological components. More so, this witness admitted the several incidents of glitches and outages on the AWS sites (including the fact that as at 2021, the AWS has had over 27 episodes of outages), while identifying that if these could happen in 2021 and time past, they could happen anytime, as according to her, "anything is possible." This admission by her, evaporates the entire suggestion by her, that the AWS server was beyond any form of reproach.

6.26 Meanwhile, the reports supposedly tendered by this witness were admittedly merely downloaded on the website of AWS. Therefore, the witness was not the maker of same and could in fact, not have validly withstood cross-examination in relation to the said document. These documents which was eventually admitted and marked as Exhibits PCJ3 (A-F) and PCJ4, however, did not indicate any key to assist this Honourable Court in identifying the connotations of the various characters on the purported reports. Without mincing words, the evidence of this witness, including the purported reports are worthless, meaningless, of no value whatsoever and fit only for the trashcan.

6.27 The evidence of PW4 was basically a comparison of the uploads to the IREV and the declared result by INEC. We have earlier in this address, established the fact that the relevance of upload on the IREV, as far as the extant legal framework currently stands, occupies a tertiary place in the pecking order, and does not have any impact on the election, as the actual building blocks of the election are the Forms EC8A and EC 60E. Beyond this, however, this witness who tendered bundles of documents described as his reports, admitted that he was procured by the Labour Party to produce the report and that the primary source of his data was the IREV portal, going by his term of reference, as contained in paragraph 3 of his witness statement. Paragraph 3 of the witness statement is very instructive. Therein, the witness had suggested that his terms of reference were: (a) Carry out data analysis on the election results State by State; (b) Determine whether the result to be announced by the Independent National Electoral Commission (INEC) at the conclusion of the election of the election on 25th February, 2023 match with the results uploaded on INEC Result Viewer (IREV) portal; and (c) Determine INEC compliance with the Electoral Act, 2022 and the INEC Regulation and Guidelines for Conduct of Elections, 2022.

6.28 Primarily, these terms of reference serve as the basis for the relevance of whatever this witness has submitted to this Honourable Court. To start with, his first term of reference had required him to carry out data analysis on the election result "State by State". However, he admitted under cross examination that he only gave consideration to, or merely tendered reports in respect of two States, that is Benue and Rivers. Therefore, not only could his report not have been accurate and in tandem with the overall result on a State by State consideration, the second term of reference is also automatically defeated, as the two States' consideration could not have sufficed in determining "whether the result [] announced by [INEC] at the conclusion of the election of the election on 25th February, 2023 match with the results uploaded on INEC Result Viewer (IREV) portal." The point being made is that an isolated consideration of two States out of the 36 States of the Federation and the FCT could not ground an empirical analysis of accuracy of the overall results, whether on IREV or actual declaration. In any event, this incongruency was exposed when the witness tendered Exhibit PCE1-PCE4 which are the over 18088 blurred polling unit results, claimed to have been downloaded from the IREV. It is noteworthy that the witness himself admitted under cross examination that the totality of the said polling units both in Rivers and Benue, where he claimed to have considered, would not amount to 18,088 polling units. In effect, therefore, as far as the evidence of this witness was concerned, it is without any foundation or structure. Lastly, engaging an acclaimed professor of Mathematics to determine whether INEC had complied with the provisions of the Electoral Act, as well as the Regulations and Manuals, took the petitioners' undermining of the authority of this Honourable Court too far. Without over flogging the issue, this witness lacked the requisite capacity to so do, and if the petitioners should advance arguments to the contrary, then they could as well be suggesting that the witness has done the job for this Honourable Court only to rubber stamp or that their approaching this Honourable Court is merely to fulfil all righteousness, since their professor of Mathematics had already determined INEC's compliance with the Electoral Act. Of course, the lack of capacity of this witness who has no background or learning in law is obvious. The totality of these analysis, demonstrate that even the terms of reference, which is the foundation upon which the entire activities are predicated, are crooked and devoid of firmness.

6.29 In any event, though the witness agreed that it is the image of the form EC8A that is usually uploaded to the IREV, he surprisingly admitted that he never sighted the hardcopies. On this account, the purported analysis of the result cannot be taken with any seriousness, as the professor admittedly refused to accord any cognizance to the primary data, being the form EC8A. In other words, premised on our earlier established position of the primary essence of the hardcopy of the Form EC8As, there is nothing before the court to ascertain that the forms

purportedly downloaded from the IREV, making a total of 18088 blurry documents, appear in the same manner in the hardcopy of the Form EC8A, as anything, including the intervention of printers, toners and the likes, could have accounted for blurriness of a document which had undergone printing. More so, and to corroborate our submission on the superior place of the hardcopy, the witness admitted that the IREV is not capable of collating scores and that the fact that the uploaded result is blurry or not, or whether the uploading fails or not, will not change the result entered into the appropriate Form EC8A at the polling unit, while confessing that the IREV is not a collation center. Worse still, the witness was shown Exhibit PCD2 (with respect to Rivers State), for him to identify a particular polling unit in Degema Local Government Area where he had earlier alleged there was over-voting. Contrary to the content of the purported report, where over-voting had been alleged in respect of the said polling unit, amongst several others listed, the number of accredited voters and total votes cast tallied at 40, where the witness also dramatically admitted that there is no over-voting at the polling unit. With respect to this Honourable Court, this suffices to puncture the evidence of this witness as all his summations and computations have been shown to be inaccurate on account of his random lumping of polling units. Of equal importance also, is the fact that this witness who said he was engaged by the petitioners prior to the election, admitted that he concluded his assignment on 19th March, 2023, prior to the filing of the petition. While this was in anticipation of the proceedings with the attendant evidential consequences of inadmissibility [see section 83(3) of the Evidence Act], it must also be added that same ought to have come with the petition and not forming part of a subpoena at the middle of the hearing, with the aim of springing surprises on the respondents and furtively introducing polling units, which hitherto, were not part of the petition. In any event, the polling units forming part of the said purported reports were not pleaded in the petition, thereby, amounting to the fact that the entire evidence is irrelevant to the petition, since evidence without pleading goes to no issue. See **I.N.E.C v. Abubakar (2009) 8 NWLR (Pt. 1143) 259 at 289 and Akpoti v. I.N.E.C. (2022) 9 NWLR (Pt. 1836) 403 at 428.**

6.30 PW8 is another witness who ostensibly was introduced in the course of the petitioners' panic to remedy the damage done to and by the evidence of PW7. The purpose of his own testimony, as appearing on his witness statement on oath, was to react to INEC's claim about the technological hitches experienced in the course of the election. He, however, did this, more through weblinks and codes. As the court will see through his witness statement, a larger portion was made up of weblinks, of which he indicated that he never intended for the court to comb the links to access and download the documents in the recess of its chambers. It then becomes imperative to question the motive behind the submission of the various links. Again,

though this witness had claimed that he considered the uploads on the IREV with the aim of impeaching the credibility of the process, just like the witness before him, he admitted that he did not examine the physical copies of the form EC8As of the polling units referenced in his witness statement and that from his examination of his meta-data, he could not ascertain whether the results of the respective polling units were properly collated in the forms EC8As, as all he did were on his computer. This witness also admitted that he did not physically examine any of the BVAS machines and that he did not personally interrogate Festus Okoye, whose statement he had reacted to in his report. The low credibility of the witness was exposed when he claimed that the meta-data annexed as Exhibit A to his witness statement and admitted in evidence as Exhibit PCK1 were not codes, but readable documents. However, this document is very obvious to this Honourable Court as consisting of unreadable/encrypted codes. For instance, we respectfully refer this Honourable Court to the first page of the document where the following inscriptions are contained:

Anambra-04-08-12-001 metafile
"polling_unit" : {
"Status" : ACTIVE
"generation" : 1,
"db_generation": 1,
"is_accredited": 1,
"_id": "4f0f4770c440353badb0fd4c"

6.31 With immense respect to the petitioners, it would have reasonably been expected that this witness who had reeled out a long resume, ought to have decrypted these codes for the appreciation of not just this Honourable Court, but the respondents also. In **Ogidi v. State (2005) 5 NWLR (Pt. 918) 286 at 330**, the Supreme Court held that the *lingua franca* of the court is English language and that the court will not be addressed in any language other than the English language-not even through undecrypted codes or meta-data. See **also Abubakar v. INEC (2022) 8 NWLR (Pt. 1833) 463 at 477**. Since his entire evidence is predicated on this meta-data, it follows that the witness did not intend for this Honourable Court to make any use of his testimony which are made up majorly of weblinks and codes. To further demonstrate the inconsistencies in the evidence of this witness, the witness admitted that he only made reference to three States in his witness statement, that is Anambra, Bauchi and Rivers, whereas, the last three pages of his meta-data refer to Benue State, thereby, amounting to a material inconsistency. This witness also admitted that out of about over 176, 000 polling units in the presidential election constituency, there are only eight polling unit referenced and attached to his witness statement. Not only is the evidence of this witness inconsequential, assuming this Honourable Court even considers same, it would not have the

requisite substantiality to impact on the election of the 2nd respondent and we urge the court to so hold.

6.32 **PW12**, gave the omnibus evidence in respect of the entire petition for the petitioners. Apart from the material admissions against the interest of the petitioners made by this witness, his evidence was basically that of hearsay and irrelevancies. Under cross examination, he admitted that apart from his polling unit and the situation room, he was nowhere else on the day of the election, while adding that he was neither a polling unit agent nor a collation agent for his party on the day of the election. Shown the certified true copy of the judgment of the Federal High Court in Labour Party v. INEC in Suit No: FHC/ABJ/CS/1454/2022, which was admitted by the court in evidence as **Exhibit X1.** The implication of this judgment will be addressed in succeeding paragraphs of this address. Shown the petition, the witness also admitted that he was unable to see any figure of unlawful votes credited to the 2nd and 3rd respondents and that his political party had only a total of 133,000 agents nationwide, out of 176, 974 polling units in the country. While confirming that he joined the Labour Party on 20th May, 2022, he stated that he joined the party before the 1st petitioner, while the primary election held on 30th May, 2022. The point to be noted from this piece of evidence is that even from the petitioners' evidence, the case has been made that the 1st petitioner was not a member of INEC, even as at 10 days to the conduct of the primary election, whereas, the register of members were required to have been submitted to INEC at least, 30 days to the primary election. The Register of members submitted on 25th April, 2022 and admitted in evidence as Exhibit RA18 corroborated this fact and the respondents' witness, under cross examination, stated categorically, that the name of the 1st petitioner was nowhere to be found on the register of members for the 2nd petitioner.

6.33 The witness also admitted to the various unpredictability and imperfection of technological devices, including his telephone, generator and even power supply in Nigeria. This buttresses the point that the BVAS, being a technological device could be subject to any of these vagaries. The witness was referred to paragraph 100 of his witness statement where he had alleged that unlawful votes were credited to the 2nd respondent. Asked of the number of the unlawful votes credited to the 2nd respondent, he was unable to mention. Similarly, he was referred to the reliefs claimed in his witness statement to show that though he wanted the court to return the petitioners who came third, the petition had sought such relief, without joining the candidate of the PDP, who came second and has not been made a party to the petition, despite the fact that such relief will adversely impact on his interest. The witness was also referred to the portion of the witness statement which reproduced the alternative relief (4), where he urged the court to hold that his candidate scored the highest number of valid votes scored. The

witness admitted that he never knew what the referenced "highest number of valid votes" were. This witness also admitted that he did not open the various envelopes dumped on the court, because there was no time, and as such, he only opened some. Accordingly, we respectfully urge this Honourable Court to take note of the fact that the petitioners only succeeded in dumping their documents before this Honourable Court, without the requisite demonstration and linkage with the relevant portion of the case. The witness also admitted that several of the documents which he was relying upon in his witness statement were not tendered before the court. We urge the court to observe that this petition has been prosecuted without the relevant documents, in respect of which the court could have taken a decision in their favour. Meanwhile, though the witness stated that he was going to rely on the report of the expert, we urge the court to note that this report was only made in May, 2023, while he had already made his statement since March, 2023. The same thing applies to the report of the forensic expert, which was allegedly made in April.

FHC/ABJ/CS/1454/2022-LABOUR PARTY v. INEC DELIVERED ON 23RD JANUARY, 2023

6.34 Before we round off on this issue, may we draw the court's attention to a direct decision of the Federal High Court on the subject, that is the Unreported decision of the Federal High Court, Abuja Judicial Division, *per* Nwite, J., in **FHC/ABJ/CS/1454/2022-Labour Party v. Independent National Electoral Commission**, delivered on **23rd January, 2023**. For ease of reference, the question for determination in the Originating Summons is as follows: **"Whether having regard to combined effect of Section 47(2), 50(2), 60(5) and 62(1)(2) and other relevant provisions of the Electoral Act, 2022 the Respondent can still insist on manual collation of results in the forthcoming general election."** Declaratory reliefs were subsequently sought in line with the main question for determination. After considering the relevant provisions of the Electoral Act, the Regulations and Guidelines, as well as the Manuals, the learned trial judge held as follows: **"Now a close reading of section 50(2) has provided for voting and transmission of results, to be done in accordance with the procedure to be determined by the Commission. This is to say that the Commission is at liberty to prescribe or choose the manner in which election results shall be transmitted…In view of the foregoing, can the act of the defendant in collating and transferring election results manually in the forth coming 2023 general elections be said to be contrary to the relevant provisions of the Electoral Act, 2023? The answer can only be in the negative, as there is nowhere in the above cited sections where the Commission or any of its agents is mandated to only use an electronic means in collating or transferring of election results. If any, the Commission is only mandated to collate and transfer election results and number of accredited voters, in a way and manner deemed fit by it…By the provisions of section 50(2) and 60(5) of the Electoral Act, 2022, the correct interpretation of the said statute is that INEC is at liberty to prescribe the manner in which election results will be transmitted, and I so hold."**

6.35 While we admit that the above is a decision of the Federal High Court, we submit that it is a judgment in *rem*, which under **section 287(3) of the Constitution**, should be complied with

by every power and authority in Nigeria, and also enforced throughout Nigeria. This is more particularly so, as the 1st petitioner and INEC are recurring parties, both in that case and in this petition. A similar situation as this, arose in **Labour Party v. I.N.E.C. (Suit No. FHC/ABJ/CS/399/2011)**, where the Federal High Court, per Kolawole, J (as he then was, now JCA), nullified **section 141 of the Electoral Act**, **2010** and no appeal to the Court of Appeal was lodged against that judgment, until it was relied upon at the Supreme Court in **Wada v. Bello (2016) 17 NWLR (Pt. 1542) 374 at 433,** by one of the parties. The Supreme Court invoked the decision and stated that the apex court itself, was bound by it, until set aside on appeal. May we also refer your Lordships to the celebrated case of **Rossek v. ACB Ltd. (supra) at 434-435**, where the Supreme Court held that a judgment of any court of record is binding on all parties and persons, unless it is set aside by an appellate court. Interestingly, the judgment was also tendered as Exhibit X1, before this Honourable Court, through PW12.

6.36 Of more particular debilitating effect against the case of the petitioners, is the fact that this particular case was instituted by them before the elections, praying precisely, through declaratory reliefs for the same contentions which they have mounted before this Honourable Court. Judgment was given against them and that judgment is binding for all intents and purposes. The judgment is both *in personam* and *in rem*. Rather than obeying and complying with the judgment as mandatorily enjoined under **section 287(3) of the Constitution**, they have come before this Honourable Court, under the guise of a petition to be parading and ventilating the same issues. They are not only taunting the court, but they have demonstrated outright disregard for the institution of the judiciary. Their petition is not only abusive, but also scandalous. See in **Saraki v. Kotoye (1992) 9 NWLR (Pt. 264) 156 at 188.** In **Rosseck v. ACB** (supra), the Supreme Court, per Bello, CJN and Ogundare, JSC, hammered on the proposition that no party or citizen is allowed to treat the judgment of any court with disdain or disrespect, and that if that is allowed, it will amount to invitation to anarchy. Our submission is that the petitioners are inviting anarchy by their ventilation of this issue of non-compliance based on non-transmission of results electronically, by INEC. The subject is also caught by the doctrine of *res judicata*, particularly, against the petitioners. See **Akoma v. Osenwokwu (2014) 11 NWLR (Pt. 1419) 462 at 490-491 and Onyeabuchi v. INEC (2002) 8 NWLR (Pt. 769) 417 at 435-436.** The point must be well situated that the parties and the course are the same, both in Exhibit X1 and before this Honourable Court and by the parties, we mean the petitioners, who were/are the plaintiffs in each of the cases. The law is also well crystallized that when the issue of abuse of process arises, it is the latter case that will be dismissed. This petition, being the latter case, is the one bound to be dismissed and we so urge. See **A.-G., Kwara State v. Lawal (2018) 3 NWLR (Pt. 1606) 266 at 289.** In **Arubo v. Aiyeleru(1993)**

3 NWLR (Pt. 280) 126 at 146, it was held that abuse of process is a very serious vice which demands no other treatment than dismissal. The situation in the celebrated case of **Ojukwu v. Governor of Lagos State (1986) 1 NWLR (Pt. 18) 621** is not even as serious as what we have here, particularly, the reference to disobedience of, or non-compliance with judgment or order of a lower court by a party, who keeps on taunting the courts with further applications or supplications on the same subject.

6.37 It is for the foregoing submissions that we urge the court to resolve this issue in favour of the respondents and against the petitioners.

7.0 ISSUE 2

7.1 This issue addresses the petitioners' strange complaint about the respondents' qualification to contest election to the office of President and Vice-President of the Federal Republic of Nigeria, respectively. The ground on qualification is obviously bifurcated. The first leg of the ground claims that the 2nd respondent's nomination of the 3rd respondent as his running mate/associate is invalid on account of the fact that the said 3rd respondent had initially been nominated as the 4th respondent's senatorial candidate for the Borno Central Senatorial District election. The second arm of the ground claims that the 2nd respondent had at some proceedings in the US, forfeited some amounts to the US government and that consequently, he is disqualified from contesting election into the office of President. It is pertinent to forthwith, refer this Honourable Court to the clear provisions of sections 131 and 137 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), which outline the qualifying and disqualifying parameters for election into the office of President. It is our submission that upon a calm consideration of both provisions, this Honourable Court will realize that the entire allegations contrived by the petitioners are nothing but frivolous and only intended to scandalize the respondents because of the petitioners' loss at the at the polls.

THE US PROCEEDINGS

7.2 We must at this point, indicate that the sole basis for the petitioners' vituperation in relation to the purported US forfeiture proceedings, is Exhibit PA5 (the US judgment) tendered by them. Without prejudice to the case made in respect to the inadmissibility of the said Exhibit PA5 series, we note that the two witnesses that purported to give evidence in respect of the allegation and the said Exhibit PA5 series, were PW1 and PW12. However, **PW1** was unable to point to a single mention of the word "fine" in any of the documents forming part of the proceedings tendered as Exhibit PA5, which he admitted had not been registered in Nigeria in line with the clear provisions of section 3 of the **Reciprocal Enforcement of Foreign Judgments Ordinance and Foreign Judgment (Reciprocal Enforcement) Act**. The essence of registration before it can be activated or applied in Nigeria at all, is that the

Nigerian court must satisfy itself that within the laws of Nigeria, it can give such a judgment. Upon registration, it becomes a Nigerian judgment by virtue of the order for registration, and can then be enforced, relied upon, or put in use. See **Grosvenor Casinos Ltd. v. Halaoui (2009) 10 NWLR (Pt. 1149) 309 at 347, Ogidi v. State (2005) 9 NWLR (Pt. 918) 256, Sonnar v. Partenreedri M.S. Norwind (1987) 9-11 SC 121; The Fehmrn (1958) 1 All E.R 333.**

7.3 Not only that, both witnesses could not provide any "certificate purporting to be given under the hand of a police officer" from the US, "containing a copy of the sentence or order and the finger prints of the [2nd respondent] or photographs of the finger prints of the [said 2nd respondent], together with evidence that the finger prints of the person so convicted are those of the [2nd respondent]." These are the strict prescriptions under **section 249 of the Evidence Act**, for the proof of previous conviction of a person outside the Nigerian jurisdiction. Not only did the petitioners fail to meet the requirement for proof of conviction outside Nigeria, even the general proof as stated under **section 248 of the Evidence Act**, which is even minimal, with respect to simply providing the certificate of conviction under the hand of the registrar or such other relevant officer of the court where the conviction was made, was not met. See **PML (Nig.) Ltd. v. F.R.N. (2018) 7 NWLR (Pt. 1619) 448 at 493**. It goes without saying that the petitioners have failed to prove this portion of their petition beyond reasonable doubt, as required under and by virtue of **section 135 of the Evidence Act**. See **Ogboru v. Ibori (2006) 17 NWLR (Pt. 1009) 542 at 588.** In any event, PW1 confirmed that the proceedings in Exhibit PA5 series are civil proceedings, while equally admitting that he never mentioned anything about charge in the proceedings and he does not have one. The implication of the evidence of this witness is that not only is there a clear admission of the fact that the proceedings being referenced by them is not criminal in nature and would not have amounted to a conviction under section 137 of the Constitution, assuming without conceding that same amounts to a conviction, then the conditions precedent for the proof of the criminal allegations are far from being met by these petitioners. Meanwhile, while PW1 admitted that he had only visited the US once in his life in 2003, thus, subjecting his capacity to testify on the subject to doubt, respondents' witness, a US attorney and counsellor at law, gave very cogent evidence on the state of the US law, while indicating that under the US law, just like in Nigeria, there cannot be a conviction without a charge, plea and an indictment and that the said US proceedings were totally civil in nature. The flimsiness of this allegation and the irrelevance of Exhibit PA5, notwithstanding, the respondents tendered in evidence, Exhibit RA9 which is a document proceeding from the US authorities to the Nigerian authorities, attesting to the fact that upon a thorough combing of the Federal Bureau of Investigation (FBI) National Crime

Information Center (NCIC), it is evident that the 2nd respondent maintains a clean criminal record in the US. The letter even goes on to state for the avoidance of doubt, that "the NCIC is a centralized information center that maintains the record of every criminal arrest and conviction within the United States and its territories." We submit that in the face of this conspicuous exoneration, which authenticity and relevance remain unchallenged, the petitioners ought to have apologetically dropped this arm of their petition, while withdrawing the petition in its entirety.

NON-CONVICTION BASED FORFEITURE (NCBF)

7.4 Without prejudice to the foregoing submissions, Exhibit PA5 can be classified juridically as a Non-Conviction Based Forfeiture (NCBF), that is, a forfeiture not associated with criminal conviction or sentencing. **Article 54(1) (C) of the United Nations Convention Against Corruption** states: **"Each State Party, in order to provide mutual legal assistance pursuant to article 55 of this Convention with respect to property acquired through or involved in the commission of an offence established in accordance with this Convention, shall, in accordance with its domestic law…(c) Consider taking such measures as may be necessary to allow confiscation <u>of such property without a criminal conviction in cases in which the offender cannot be prosecuted…</u>"** (Underlining for emphasis). NCBF is statutorily codified under Nigerian Law. **See sections 13(1)(d) and 24 of the Economic and Financial Crimes Commission (Establishment) Act 2004 (EFCC Act); section 48 of the Corrupt Practices and Other Related Offences Act, 2000; section 17 of the Advance Fee Fraud and Other Fraud Related Offences Act 2006.** NCBF is distinct from Conviction Based Forfeiture. With the latter, forfeiture is prescribed as a punishment for an offence in accordance with the provisions of **section 36 (12) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) (Constitution)**. See **section 28 of the Economic and Financial Commission (Establishment) Act 2004 (EFCC Act).**

7.5 NCBF is typically the outcome of an *in rem* proceedings. See: **Oti v EFCC (2020) 14 NWLR (Pt. 1743) 48, 90 - 91**. It does not involve trial or conviction for an offence. The distinction is inherent in the EFCC Act. While **sections 13 (1)(d) and 24 of the EFCC Act provide for NCBF, sections 20 and 30 of the EFCC Act** make provision for forfeiture pursuant to a conviction. See: **Nwaigwe v F.R.N. (2009) 16 NWLR (Pt. 1166) 169, 200 – 201; Lawal v E.F.C.C. (2020) 14 NWLR (Pt. 1744) 193, 245**. See **TS Greenberg et al, A Good Practice Guide For Non-Conviction Based Asset Forfeiture (World Bank 2009) 13**, where the authors opine: "**Where criminal and NCB asset forfeiture differ is in the procedure used to forfeit assets. The main distinction between the two is that criminal forfeiture requires a criminal trial and conviction, whereas NCB asset forfeiture does not. In addition, there are a number of procedural**

differences that generally characterize the two systems…Criminal forfeiture is an in personam order, an action against the person (for example, State v John Smith). It requires a criminal trial and conviction, and is often part of the sentencing process."

7.6 See also **SD Cassella, 'Nature and Basic Problems of Non-Conviction Based Confiscation in the United States' (2019) 16 (34) Veredas do Direito, 41, 53 – 54,** where the author opines: **"NCB forfeiture cases are actions against the property itself, not against the property owner… The custom in the United States is to name the property that is subject to forfeiture in the caption of the case; that is why our NCB cases have names such as United States v. Real Property Located at 475 Martin Laneor, United States v. One Red 2003 Hummer H2 that some may consider odd or unusual… NCB forfeiture is simply procedural device – an in rem action."** At **pages 54 – 55**, the author states: **"The important thing to know about civil or NCB forfeiture is this: it does not require a conviction or even a criminal case; a forfeiture action may be commenced before a related criminal case is filed, while one is pending, after one is concluded, or if there is no related criminal case at all… <u>In the case of facilitating property, the owner of the property does not have to be the wrongdoer…"</u>** *(underlining ours for emphasis)*

7.7 In addition to the foregoing, and assuming without ever conceding that Exhibit PBF1 is remotely connected with criminal forfeiture, **section 137 (1) (e) of the Constitution** gives an expiration period of a maximum of 10 years for the subsistence of that conviction and sentence, after which the convict could contest an election to the office of President of Nigeria. Be it noted that the said section talks of conviction and sentence, a situation which is graver and more potent than a purported civil forfeiture in a foreign land. In effect, within the Nigerian law, Exhibit PA5, purportedly delivered in 1993, 30 years back, has become effluxed by virtue of the constitutional provision. Not done yet, and in order not to leave anyone in doubt that he has no criminal record in the US at all, the respondents tendered Exhibits RA13-RA16, all to the effect that throughout all these past years, the 2nd respondent has always enjoyed rights of ingress and egress to and from the US, a right which anyone who is burdened by a criminal forfeiture cannot enjoy. *Res ipsa loquitor* is the applicable maxim in this regard.

NOMINATION OF THE 3RD RESPONDENT

7.8 In their concerted efforts to fish for errors where none exists, the petitioners also alleged that the 3rd respondent suffers from multiple nomination, as a result of which his nomination by the 2nd respondent is invalid. It is their contention that as at the time of the said 3rd respondent's nomination for the position of vice-presidential candidate, he was still a senatorial candidate for Borno Central Senatorial District of Borno State. These are obvious misplacement of facts and we state with the greatest respect to the petitioners that they have done this, either out of

innocent ignorance of facts or clear mischief, with the aim of misleading this Honourable Court; and this has been amply demonstrated in the course of evidence. For the avoidance of doubt, however, the 3rd respondent who was *ab initio*, a senatorial candidate of the 4th respondent for Borno Central Senatorial District, had earlier on 6th July, 2022, vide a letter delivered to the 2nd respondent on the same date (ExhibitRA22), notified the party of his withdrawal from the election as the latter's senatorial candidate for the 2023 general election. The said letter reads thus:

"I KASHIM SHETIMA of the above address, vying for Senator of Borno…. Hereby voluntarily withdraw my candidacy from the contest scheduled to hold on 25th of FEBRUARY, 2023.
My withdrawal is in the best interest of our great party, the All Progressives Congress (APC).
Thank you.
Name: KASHIM SHETIMA
Sign:

7.9 The 4th respondent, immediately upon this development notified INEC of its intention to conduct a fresh primary election for the replacement of the 3rd respondent, following his voluntary withdrawal. The primaries were eventually conducted and monitored by the 1st respondent, whereat, one Barr. Kaka Shehu Lawan emerged in the 3rd respondent's stead as the 4th respondent's senatorial candidate and his name and personal particulars were submitted to the 1st respondent. It was not until 14th July, 2023, that the 3rd respondent was eventually nominated as the 2nd respondent's running mate as well as the 4th respondent's vice-presidential candidate, before his name and personal particulars were later submitted to INEC the same day, vide Exhibit PA4

EXHIBIT RA23-JUDGMENT OF THE SUPREME COURT

7.10 From the above chronicle of facts, it becomes glaring that both in law and in fact, as at 14th July, 2023, when the 3rd respondent's name was submitted to INEC as the 4th respondent's running mate, he had already (since 6th July, 2023) ceased to be the senatorial candidate of the 4th respondent for Borno Central Senatorial District and could not have been rightly alleged of having double/multiple nomination at any time. This notwithstanding, one of the political parties who were then billed to contest the presidential election (the Peoples Democratic Party/PDP) approached the Federal High Court in Suit No: FHC/ ABJ/CS/1734/2022, whereat, it alleged that the 4th respondent's nomination was invalid, on the ground, according to it, that he had concurrent nominations, both as the 4th respondent's senatorial candidate for Borno Central Senatorial District and the 3rd respondent's running mate. The Federal High Court, coram: Ekwo, J. identified the fact that the said action bordered strictly on the 2nd respondent's internal affairs and thus, proceeded to strike out the action on the ground that the PDP lacked the locus standi to interrogate the question. Upon appeal to the Court of Appeal in Appeal No:

CA/ABJ/CV/108/2022-Peoples Democratic Party v. Independent National Electoral Commission & 3 Ors., this Honourable Court, coincidentally, presided over by the Honourable Presiding Justice, the Honourable Justice H.S. Tsammani, affirmed the decision of the Federal High Court, while dismissing the appeal in its entirety. A further appeal was lodged to the Supreme Court in SC/CV/501/2023-Peoples Democratic Party (PDP) v. Independent National Electoral Commission (INEC) & 3 Ors. Again, the appeal suffered the same fate as it did before this Honourable Court, but this time around, not without the apex court, as a policy court, putting the substance of the matter in proper perspective. The judgment of the apex court was admitted in evidence before this Honourable Court as Exhibit RA23.

7.11 The Supreme Court, in fact, made very critical findings in respect of the facts, identifying that the 3rd respondent did not at any point have multiple nominations. The apex court found that the 3rd respondent duly withdrew his candidacy at the Borno Central Senatorial District contest on 6th July, 2023, when he gave a notice of voluntary withdrawal to his political party, the 4th respondent, which said voluntary withdrawal, created a vacancy that was eventually filled through the submission of Barr. Kaka Shehu Lawan's name to INEC as the 2nd respondent's candidate for the senatorial election in Borno Central Senatorial District. The Supreme Court which was apparently displeased by the frivolous nature of the action qua appeal, described same at page 39 of the leading judgment, as "an unnecessary fool's errand." Instructively, the above decision of the Supreme Court was reached prior to the opening of the petitioners' case and it ought to have served as a cue for the petitioners to, with immense apology, immediately drop this leg of their claim; alas! this was not the case. For a glimpse of the court's accurate statement of the fact, we respectfully refer this Honourable Court to page 11 of the decision of his Lordship, Ogunwumiju, JSC, where the court clarified thus: **"This Notice of withdrawal is dated 6/7/2022 and in accordance with the law was submitted to his party- 2nd Respondent on that day. It can be argued factually that since the 4th Respondent was only obliged to hand over his withdrawal letter to his party which he did on 6/7/22, his withdrawal was complete on 6/7/22 and the party having accepted same, the erstwhile candidate could not renege from it even if he wanted to. It therefore follows that before 14th day of July when the 4th respondent was nominated as the Vice-Presidential candidate of the 2nd respondent, the 4th respondent was no longer the 2nd Respondent's candidate for Borno Central Senatorial election."**

7.12 For clarity, the 2nd respondent referenced in that judgment, is the 4th respondent herein, while the 4th respondent therein, is the 3rd respondent herein. It is our very respectful but firm submission that the 3rd respondent is statutorily empowered to withdraw his candidacy for any office at all, in the manner allowed by the Electoral Act. This submission is anchored on the clear provision of **section 31 of the Electoral Act.** What is deducible from this provision of the Electoral Act is that the Electoral Act recognizes a person's freedom of choice to elect

whether to continue with participation in an electoral contest, or to resile from participating in the contest. The wording of the provision is unambiguous, as it says "***a candidate may withdraw his or her candidature…***"As already indicated in the earlier part of this address, the judgment of the apex court, which has somewhat become the *locus classicus* on the subject, remains a reference point on critical themes of the discourse, and again, we shall refer to **page 13 of the decision of his Lordship, Ogunwumiju, JSC.**, who restated the right of choice of the candidate and his political party to withdraw from an election in the following words: "**Where a candidate has already been nominated by a party for an elective position and the party desires to substitute that candidate for another, neither the Electoral Act nor the Constitution forbids such an act. In fact, the withdrawal of a candidate and substitution with another is permissible by the Electoral Act as already stated above**."

7.13 With the greatest respect to the petitioners, nothing can be more expressive of the 3rd respondent's right to freedom of choice than the above pronouncement of the apex court. This unarguably accords with his constitutional right to hold and maintain opinions and the petitioners could not have seriously suggested that this right ought to have been impeded, particularly, when same is being exercised within the ambit of the law. Having settled the 3rd respondent's right of withdrawal, it is equally necessary to appreciate the appropriate procedure for the exercise of such right of withdrawal. Just like in the resolution of the preceding poser, the first port of call again, is the clear provision of **section 31 of the Electoral Act,** which prescribes that the appropriate mode is "***by notice in writing signed by him [the 4th respondent] and delivered personally by the candidate [the 4th respondent] to the political party that nominated him.***" We have earlier in this address, reproduced **Exhibit RA22**, indicating the fact that as at **6th July, 2022**, the 3rd respondent had not only written a notice which he personally signed, he had also delivered same, personally to the 4th respondent, clearly conveying his desire to withdraw from the senatorial contest and to resile from the earlier nomination. Most respectfully, it must be appreciated that the decision to withdraw from participating in an election or to abdicate one's nomination is a personal one and as such, it crystalizes upon the exercise of the statutorily imposed personal obligation. In effect, therefore, by **6th July, 2022**, upon the personal delivery of the written notice personally signed by the 3rd respondent, to the 4th respondent, he automatically ceased to stand in the position of the 3rd respondent's candidate for the senatorial election.

7.14 The necessary point to appreciate is that, at that point of the express manifestation of a contrary intention, the 3rd respondent could not be compelled, whether by the 1st or 4th respondent, to remain the candidate of the 4th respondent for the particular contest, and this point was repeatedly emphasized by the apex court in its judgment, particularly, at **pages 4-6 of his**

Lordship, Agim. JSC's judgment and pages 809 of his Lordship, Okoro, JSC's judgment all in Exhibit RA23.

7.15 The foregoing clearly demonstrates that a complete withdrawal is achieved once there is a submission of the notice in writing by the resiling candidate. With this understanding, we respectfully submit that contrary to the suggestion of the petitioners through their petition, what took place on 15th July, 2022, as shown on INEC Form EC11C (**Exhibit PA3**), was not the withdrawal itself, but the conveyance of the development to INEC; and this is very glaring from the wordings of section 31, which states that ***"the political party shall convey such withdrawal to the Commission not later than 90 days to the election.***" See **pages 5 and 6 of Agim, JSC's judgment in Exhibit RA23.**

7.16 As eloquently expressed in the decision of the apex court above-reproduced, it is extremely immaterial that the withdrawal was communicated to INEC on 15-7-2022, insofar as the said communication occurs not later than 90 days before election. The petitioners' misconception, of course, proceeded from the premise that the withdrawal was incomplete until same is communicated to INEC. Having, therefore, established in consonance with the Electoral Act and prevailing decision of the apex court that the petitioners are grossly wrong in their hypothesis, it invariably follows that the 3rd respondent's subsequent nomination as vice-presidential candidate by the 2nd respondent on or about 14th July, 2022, does not suffer from any factual or legal impediment or malady, whatsoever. Same is in strict adherence with the provision of section 142(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and we urge the court to so hold.

7.17 On account of the foregoing, we respectfully urge this Honourable Court to resolve this issue in favour of the respondents and against the petitioners.

8.0 ISSUE 3

8.1 While we have premised this issue on the combined reading of sections 134 and 299 of the Constitution, and section 66 of the EA, in the course of arguments, several other provisions of the Constitution and statutes will be referenced. It is apt to submit right from get-go that election is about votes and voters, and when votes and voters are mentioned in any part of the world, there is no superiority of votes or voters, as all votes and voters are equal. The word '**votes**' is defined as *"**the expression of one's preferences or opinion in a meeting or election by ballot, show of hands, or other type of communication***", while the word *'**voter'*** is also defined as *"**someone who engages in the act of voting***" (see **Black's Law Dictionary, 11th Ed**., **pages 1887 and 1889**, respectively). Within the Nigerian context, there is no superiority between the votes from voters secured in either Lagos or Kano, which are the most populous States and Bayelsa, Ebonyi and Ekiti, which are the least populous States. In the US for

example, where the Electoral College system appears more potent than the popular ballot in some circumstances, the District of Columbia (Washington DC) which houses the capital city, has 3 Electoral College votes, while the smaller States like Rhode Island, North Dakota, Wyoming, Hawaii, Washington State itself and Arkansas, have **4, 3, 3, 4, 12 and 6** Electoral College votes, respectively. For larger States like Florida, Texas and California, they have electoral votes of **30, 40 and 54**, respectively. These Electoral College votes are shared according to the respective populations of the States, without any preference being allocated to Washington DC, which is the State capital.

8.2 Coming back to Nigeria, it is our submission that the wordings **of sections 134 and 299 of the** Constitution are clear. While **section 3(1) of the Constitution** specifically lists the 36 States by their respective names, the **sidenote** reads thus: "**States of the Federation and the Federal Capital Territory, Abuja**." **Section 299**, for ease of reference and clarity, provides thus: **"The provisions of this Constitution shall apply to the Federal Capital Territory, Abuja <u>as if it were one of the States of the Federation</u>…"** The phrase '**as if**' has been defined in **Corpus Juris Secundum**, **page 298** as connoting "***in the same manner and to the same extent***."

8.3 **Section 134(2)(b) of the Constitution** provides that:

"**A candidate for an election to the office of President shall be deemed to have been duly elected where, there being more than two candidates for the election-**

(a) he has the highest number of votes cast at the election; and

(b) he has not less than one-quarter of the votes cast at the election each of at least two-thirds of all the States in the Federation and the Federal Capital Territory, Abuja."

8.4 May we draw the attention of the court to the fact that there is no punctuation (comma) in the entire section 134(2)(b) of the Constitution, particularly, immediately after the '**States'** and the succeeding '**and'** connecting the Federal Capital Territory with the States. In essence, the reading of the subsection has to be conjunctive and not disjunctive, as the Constitution clearly makes it so. Pressed further, by this constitutional imperative, the FCT is taken '**as if'** it is the 37th State, under and by virtue of **section 299 of the Constitution**.

8.5 With much respect, any other interpretation different from this will lead to absurdity, chaos, anarchy and alteration of the very intention of the legislature. Our courts have always adopted the purposeful approach to the interpretation of our Constitution, as exemplified in a host of decisions, including but not limited to **Nafiu Rabiu v. State (1980) 12 NSCC 291 at 300-301, Marwa v Nyako (2012) 6 NWLR (Pt. 1296) 199, 306 – 307, ADH Limited v AT Limited (2006) 10 NWLR (Pt. 986) 635, 649, Awolowo v. Shagari (supra), Abraham Adesanya v. President, Federal Republic of Nigeria (1981) 12 NSCC 146 at 167-168; A.G Abia v. A.G Federation (2002) 6 NWLR (Pt. 763) 265 at 365.**

8.6 Coincidentally, these sections of the Constitution were considered by the Supreme Court in the celebrated case of **Buhari v. Obasanjo (2005) 13 NWLR (Pt. 941) 1 at 105** and the apex court held thus: **"This provision appears clear to me. Where a candidate wins the highest number of votes cast in at least two-thirds of the 36 States in the Federation and the Federal Capital Territory Abuja, he is deemed to be elected ...I do appreciate any ambiguity in the provision and even if there was one, this court is bound to adopt a construction which is just, reasonable and sensible. (See Maxwell on the Interpretation of Statutes, 12th Edition, Chapter 10). In my view, it would lead to absurdity and manifest injustice to nullify the election for the entire nation because of the nullification (sic) of the election of one State, some Local Government Areas, Wards and Units. Such a devastating result could hardly have been contemplated by the framers of the Constitution. It is my conclusion therefore that the cancellation of the election in Ogun State and the other smaller components does not substantially affect the election of the 1st and 2nd respondents. In the event, this petition fails and same is dismissed with costs which I assess at N5,000 in favour of each set of respondents."**

8.7 The court went on to hold thus, at **page 242 of the report: "The purport of section 134(2)(b) of the 1999 Constitution, which stipulates that where there are more than two candidates for an election to the office of President of the Federation, a candidate shall be deemed to have been elected where he has not less than one-quarter of the votes cast at the election in each of at least two- thirds of all the states and the Federal Capital territory of the Federation, is that a winning candidate should have the required majority. Consequently, once a winning candidate has attained the required majority, it cannot be argued that because there was no election in one State, or because the election in a State is voided, the entire election must be voided unless where the result in that State, had then been an election, would have affected the final result of the election. In the instant case, the fact that the election in Ogun State was voided by the Court of Appeal did not mean the entire election was invalid. The Court of Appeal was therefore right when it did not invalidate the entire election."**

8.8 At **page 274** of the report, Edozie, JSC.,further held thus: **"In my view, the words of Section 134(2)(b) of the 1999 Constitution are clear precise and unambiguous. The invalidation of election in any number of states does not affect the basis of the calculation of 2/3 of all the states in the Federation and the FCT, Abuja. The contention of the learned Senior Counsel for the appellants is with respect erroneous"**

8.9 Arising from the foregoing, are very salient and fundamental constitution takeaways, as sanctioned by the apex court:

i. That even if results of elections are cancelled in more than one State (including the FCT), that election is not rendered invalid, provided, the winning candidate meets the constitutional requirements of one-quarter of the votes cast in two-thirds of the 37 States contemplated.

ii. Anything to the contrary would be devastating, and such was never contemplated by the framers of the Constitution.

iii. All the winning candidate needs, is majority of the votes, and even if there was no election in one State (including the FCT), or even if the election of a State/States (including the FCT) is/are voided, the entire election cannot be voided or cancelled.

8.10 Be it further noted that **Buhari v. Obasanjo** (supra), was an affirmation of the judgment of the Court of Appeal, regarding the interpretation of **section 134(2)(b) of the Constitution** and the result of the presidential election in Ogun State, where the erstwhile President, Chief Olusegun Obasanjo hails from, was voided, meaning that the presidential candidate himself did not have any vote from his State, including his own vote. It is our further submission that the constitutional provisions afore-quoted are very straightforward, direct, clear and simple; thus, they call for no extraneous interpretation, other than applying the literal rule of interpretation. See **Awolowo v. Shagari** (supra). It is further submitted that the legislature is presumed not to make any law that intends what is unreasonable. According to **Maxwell, on the Interpretation of Statutes, 12th edition, by P. St. J. Langan (Tripath) page 199** *"An intention to produce an unreasonable result is not to be imputed to a statute.***"** The author goes further to state that *"**if there is nothing to modify, alter or qualify the language which the statute contains, it must be construed in the ordinary and natural meaning of the words and sentences*. See Attorney-General v. Mutual Tontine Westminster Chambers Association Ltd. (1876) 1 Ex. D. 469 and Bradlaugh v. Clarke (1883) 8 App. Cas. 354.**

8.11 In **Nokes v. Doncaster Amalgamated Collieries Ltd. (1940) A.C. 1014 (P.C.) at page 1022,** it was held that: ***"Judges are not called upon to apply their opinions of sound policy so as to modify the plain meaning of statutory words, but where, in construing general words the meaning of which is not entirely plain there are adequate reasons for doubting whether the legislature could have been intending so wide an interpretation as would disregard fundamental principles, then we may justified in adopting a narrower construction."*** Similarly, in **Magor and St. Mellons Rural District Council v. Newport Corporation (1952) A.C. (H.L.) 189 at 191,** the court held that: ***"The duty of the court is to interpret the words that the legislature has used; those words may be ambiguous, but even if they are, the power and duty of the court to travel outside them in a voyage of discovery are strictly limited."*** The nagging question arises, going by the petitioners' posture, that is, assuming a candidate scores majority of the votes cast in all the 36 States and does not secure 25% in the FCT, does the Constitution then expect the absurdity that such a candidate will not be declared the winner? The answer will naturally be in the negative.

8.12 In the celebrated case of **Bush v. Gore 531 U.S. 98 (2000)**, where the US Supreme Court was faced with the task of pronouncing on whether or not a manual recount of the votes in Florida should be ordered as already pronounced by the Supreme Court of Florida, the court, while upturning the decision of the Florida Supreme Court, held that that decision went against the "**legislative wish**", and that the particular legislation in issue was/is very simple, calling only for a literal and definitive interpretation to bring about the true intention and will of the

legislature. At **page 114-115,** the court held thus: ***"Isolated sections of the code may well admit of more than one interpretation, but the general coherence of the legislative scheme may not be altered by judicial interpretation so as to wholly change the statutorily provided apportionment of responsibility among these various bodies…The Florida Supreme Court's interpretation of the Florida election laws impermissibly distorted them beyond what a fair reading required, in violation of Article II. This inquiry does not imply a disrespect for state courts but rather a respect for the constitutionally prescribed role of state legislatures. To attach a definitive weight to the pronouncement of a state court, when the very question at issue is whether the court has actually departed from the statutory meaning, would be to abdicate our responsibility to enforce the explicit requirements of Article II."*** Be it noted that in this particular election in the USA, Bush, narrowly defeated Gore with 1784 votes in the popular ballot in the contested State of Florida, whereas, in the present instance, the respondent beats the petitioners to a distant third position by a whooping **2,693,193 votes**.

8.13 In order to appreciate the fact that the Constitution never intended or intends that the States should be inferior to the FCT, may we draw the attention of the Court to several specific provisions of the Constitution buttressing this truism. While the States have Governors who are christened Chief Executives by the Constitution and who are elected by the electorate of their respective States, the FCT has a Minister who is appointed by the President under Section 302 of the Constitution, just as he also appoints other Ministers under section 147(2) of the Constitution; while the Governor of each State has a constitutional term of 4 years, subject to reelection for another term of 4 years under Section 180(2) of the Constitution, the FCT Minister has no such constitutional tenure and can be hired and fired by the President at any time, just as the Governor can hire and fire any of his commissioners at any time. The FCT Minister cannot even appoint commissioners; while the Constitution makes similar provisions for qualification and disqualification of President and Governors, the only qualification for appointment as FCT Minister is if he is qualified to contest election into the House of Representatives. See sections 131, 177 and 147(5) of the Constitution, respectively; while a state Governor enjoys constitutional immunity from prosecution for any offense while in office under section 308 of the Constitution, the FCT Minister does not have such immunity and can be prosecuted while in office; while the constitution provides that all States shall have equal number of three Senators per State by virtue of section 48 of the Constitution, only one is provided for the FCT; while each State has an Attorney-General who is the Chief Law Officer of the State, a position so created by section 195 of the constitution, the FCT has no such a Chief Law Officer, and it is the Attorney-General of the Federation that covers its prosecution; while a State Governor is empowered by section 271(1) of the Constitution to appoint a Chief Judge and Judges for a State upon approval by the State House of Assembly, it is the President

who appoints for FCT under section 256(1) of the Constitution; while each State has a House of Assembly created by the Constitution to make laws for the State, it is the National Assembly made up of persons from the States that makes laws for FCT. See section 299 of the Constitution; in a federating system of government like the one Nigeria runs, it is the federating States that come together to form a federation, ceding part of their powers and donating them to the center. See. **Attorney General of Ogun State v. Aberuagba & Ors. (1985) 1 NWLR (Pt. 3) 395 at 405**; section 9(2) of the Constitution, which permits amendment to the Constitution itself by an Act of the National Assembly only with the approval by the votes of not less than two-thirds of all the States, without recourse to the FCT. In short, it cannot be imagined that the FCT is superior to the States, in terms of votes or voters or any other consideration whatsoever.

8.14 More specifically, it has been held by our superior courts in a litany of decisions that the FCT is not superior by any means to any State of the federation. See **Ibori v. Ogboru (2005) 6 NWLR (Pt.920) 102 at 137-138 (CA)**, **Bakari v Ogundipe & 3 Ors. (2021) 5 NWLR (Pt. 1768) 1 at 37 (SC).** By parity of reasoning, it has also been held in several decisions that the FCT High Court enjoys similar status or recognition like the High Court of any other State**.** See **Mailantarki v. Tongo (2018) NWLR (Pt. 1614) 69 at 86-87, Audu v. APC (2019) 17 NWLR (Pt.1702) 379 at 398, 399, and 400** and **Dalhatu v. Turaki (2003) 15 NWLR (Pt. 843) 310 at 338.**

8.15 Now, section 66 of the **EA** which refers to **sections 133, 134, and 179 of the Constitution** speaks of election to the office of President or Governor, meaning that the position at the Federal level, as anticipated and contemplated by the Constitution rhymes with what obtains at the State level, including the votes cast at each of the State capitals, without any discrimination, as between the votes and voters in each State capital and the votes and voters outside the State capitals. By the imperative of this statutory provision, it cannot be argued that the votes and voters at the FCT are more superior than those of other voters in other States of the federation, since the Constitution does not so provide. While the petitioners did not even discharge the burden placed on them to demonstrate their assertion that a candidate in a presidential election should win 25% of the votes in the FCT before he can be declared winner, the respondents tendered Exhibit RA19 titled Report of the Committee on the Location of the Federal Capital Territory, to demonstrate the fact that no such thing was ever contemplated. See also **section 179(2)(b) of the Constitution**.

8.16 In concluding our arguments on this issue, we urge the court to hold that any election where the electorate exercise their plebiscite, there is neither a '**royal'** ballot nor '**royal'** voter; and that residents of the FCT do not have any special voting right over residents of any other State

of the federation, in a manner similar to the concept of preferential shareholding in Company Law. We urge this court to resolve this issue against the petitioners and in favour of the respondents.

9.0 ISSUE 4

9.1 May we draw the attention of the court to the fact that this petition substantially challenges the results of the election in the States where the respondents did not win the presidential election, even as borne out by the petition itself. In paragraphs 72 and 73 of the petition, the petitioners challenge the election results in States like Lagos, Taraba, and Plateau, where they won, while also challenging States like Gombe, Katsina, Kaduna, Kano, Osun, Yobe, where the PDP and NNPP won. May we further draw the attention of the court to the fact that these paragraphs are under ground 2 of the petition, alleging that "the election of the 2nd respondent was invalid by reason of corrupt practices and non-compliance with the provision of the Electoral Act, 2022." We respectfully lay emphasis on the phrase "election of the 2nd respondent", meaning that the petitioners are deliberately zeroing in on the election of the 2nd respondent, as against section 134(1)(b) of the EA, which provides as one of the grounds thus: "the election was invalid by reason of corrupt practices or non-compliance with the provisions of this Act." There is a world of difference between "the election of the 2nd respondent", as pleaded in the petition and prayed for in the relief and "the election" as provided for in **section 134(1)(b) of the EA**. We submit that the EA envisages a situation where a petitioner will complain about results of the election in places where the overall winner did not win, hence, the provision of **paragraph 49 of the First Schedule to the EA**, which permits the petitioner to join two or more candidates as respondents.

9.2 May we also draw the attention of the court to the witness statement of PW22, which reproduces the entire petition, including the foregoing paragraphs. It is our submission that it is not the intention of the legislature, that the respondents should be made willy-nilly, to defend the outcome of elections in places where he did not win, including Imo State, where the petitioners themselves won by over 77%. In like manner, the respondents cannot be made to defend whatever might have gone wrong in the States where the petitioners won the election, including Bauchi, Katsina, Kebbi and Taraba States, where the PDP and the NNPP won. The point being made is that it will be against the Fundamental right of the respondents, as well as the spirit, tenor and intention of the EA, to make the respondents defend whatever is assumed to be wrong with the election, in the States where they did not win. Neither the EA, nor the Constitution contemplates the doctrine of vicarious liability in this regard. Arising from the foregoing, is the fact that the petition is improperly constituted, and, as such, at the end of evidence/trial, it is clear that it does not vest jurisdiction in this Honourable Court to entertain

it, and more particularly, to grant the reliefs sought. The essence of all these is that in the absence of the PDP and its candidate, the NNPP and its candidate, the grounds of the petition, the paragraphs making allegations against the parties and any evidence extracted during trial become incompetent and inadmissible in the absence of those parties. See the recent decision of the Supreme Court in **Jegede v. INEC (2021) 14 NWLR (Pt. 1797) 409 at 577-578, Olumesan v. Ogundepo (1996) 2 NWLR (Pt. 433) 628 at 645.**

9.3 Without prejudice to the foregoing, it is our submission that there is no admissible evidence before this Honourable Court that will make it void or set aside the election of the 2nd respondent. May we submit straightaway that the petitioners have not produced any evidence before this Honourable Court to warrant voiding or setting aside of the respondent's election. While the petitioners called 13 witnesses, it is our submission that substantially, the cumulative effect of the terse evidence produced by them is against the petitioners. We further draw the attention of the court to the fact that most of the witness came to rehash the evidence of others before them. In essence, the end result of their evidence is the alleged non-transmission of already collated and entered results on form EC8A, to IREV portal. We adopt our arguments under issue 1, insofar as they relate to the evidence of witnesses and are appropriate for this issue. While we have already raised and argued preliminary objections to the petition itself, it is our further submission that every criminal allegation contained in the petition has not been proved, assuming without conceding that petitioners have not abandoned them. See **Anasodo v. Audu (1999) 4 NWLR (Pt. 600) 530 at 546, Gbadamosi v. Azeez (1998) 9 NWLR (Pt. 566) 471 at 474-475.**

9.4 Starting from PW1 through to PW13, each of them admitted the correctness of the polling unit results. The law is trite that polling unit results constitute the foundation of an election. See **Ucha v. Elechi (2012) 13 NWLR (Pt. 1317) 33 at 359, PDP v. INEC (2022) 18 NWLR (Pt. 1863) 653 at 693, Uduma v. Arunsi (2012) 7 NWLR (Pt. 1298) 55 at 119, Udom v. Umana (2016) 12 NWLR (Pt. 1526) 179 at 253.** A successful challenge to the accuracy of a polling unit result is a condition precedent to the challenge of transmission of such result, whether to the ward level, Local Government level, State level or national level, whether manually or electronically. Right from the old case of **Nwobodo v. Onoh (1984) 15 NSCC 1 at 23**, the Supreme Court has held that election issues end at the polling booths where results are recorded in FEDECO forms (now form EC8A), and that even if any issue arises, those forms and the results therein can be added. In the words of the Supreme Court: "**Polling stations are the concrete foundation on which the pyramid of an election process is built."**

9.5 Both the law and statute on this position have not changed, whether with the introduction of BVAS or transmission to IREV. With much respect to the petitioners, one would have

expected them to have a rethink on proceeding further with this petition after the delivery of the decision of the Supreme Court in **Adegboyega Isiaka Oyetola & Anor. V. Independent National Electoral Commission & 2 Ors. (Unreported) Appeal No: SC/CV/508/2023, delivered on 9th May, 2023**, now reported as **(2023) LPELR-60392 (SC)**, a decision which covers the field and clinically considers all issues which the petitioners are now agitating before this Honourable Court, including their failure, not only to tender, but identify or attempt to examine through any of their 'experts', or witnesses any of the BVAS machines deployed by INEC in the course of the election. In the same judgment, the Supreme Court stated that the use of the Voters' Register has not been discarded under the new dispensation. In this connection, most of the witnesses called by the petitioners testified to the proper, seamless and effective use of the voters' registers as well as the BVAS machines.

9.6 In **Ojukwu v. Onwudiwe (1984) 1 SCNLR 247 at 284**, the Supreme Court held that: ***"Another principle deeply enshrined in our jurisprudence is that admissions made do not require to be proved for the simple reason, among others that out of the abundance of the heart, the mouth speaketh and that no better proof is required than that which an adversary wholly and voluntarily owns up to."*** In this particular petition, nearly all the witnesses of the petitioners gave evidence which is against their interest, or which does not advance their case at all, but rather, diminishes it. Their evidence constitute(s) admission against interest. See **Obawole v. Coker (1994) 5 NWLR (Pt. 345) 416 at 434, Offodile v. Offodile(2019) 16 NWLR (Pt. 1698) 189 at 211.** Besides, the petitioners have not given any evidence, nor demonstrated before this Honourable Court, first, that the non-transmission or uploading of primary results to IREV in real time, affected any of the results generated and recorded at any of the polling units and, second, how the alleged non-transmission electronically, has affected their scores, as against the final figure or results declared, giving details and specifics of what they ought to have scored as against what the respondents should have lost; or what the respondents have gained. While we have raised objections to documents tendered by the petitioners, may we further submit that all the electronically generated evidence/exhibits tendered by the petitioners have been dumped on the court and that the position of the law remains that the court cannot countenance them. In **Dickson v. Sylva (2017) 8 NWLR (Pt. 1567) 167 at 199**, the Supreme Court held that: "***one may ask if electronically generated evidence already an exhibit before the trial tribunal or court…was not to be demonstrated or played. What was the purport of admitting it in evidence? Was it simply to dump it on the lower tribunal, which is the roundabout effect and which will in effect, side tract the provision of paragraph 46 of the First Schedule of the Electoral Act, 2010?***" See the old case of **Duriminiya v. Commissioner of Police (1961) NRNLR 71**. See the old case of

Duriminiya v. Commissioner of Police (1961) NRNLR 71 and **Wada v. INEC (2022) 11 NWLR (Pt. 1841) 293 at 328**, to the effect that none of the petitioners' witnesses, including PW12 had the capacity to demonstrate any of the documents tendered, as they were not the maker of the said documents.

9.7 Lastly, the uncontroverted evidence before this Honourable Court is that the respondents won majority of the lawful votes cast at the election, scoring 25% in a minimum of 29 States, while his political party (APC) presently has 20 States Governors, 59 Seats in the Senate, 162 seats in the House of Representatives, controlling most of the Houses of Assembly in the States, etc. By virtue of section 145(1)(2) and (3) of the Evidence Act mandating the court to presume the existence of similar facts to similar circumstances, we urge this Honourable Court to hold that it would have been most improbable for the petitioners to win the presidential election and also most improbable for the respondents to lose it, drawing comparisons from the performances of all the political parties across board in the general elections. **See Highgrade Maritime Services Ltd. v. First Bank Ltd (1991) LPELR-1364 (SC) at 26 and Anyawu & Ors. v. Uzowuaka & Ors. (2009) LPELR0515(SC) at 26.**

PETITIONERS' RELIEFS ADDRESSED AFTER CLOSE OF TRIAL

9.8 It is pertinent to juxtapose the petitioners' reliefs as couched in paragraph 102 of their petition, with the evidence (if any), produced before this Honourable Court, more particularly, against the background of the evidence of PW12, whose witness statement merely reproduced the petition, including the reliefs. The contention and/or simple answer of this witness to a pertinent question under cross-examination regarding how many votes were lost by the petitioners, as a result of purported failure to transmit election result to the IREV electronically was that he could not say. When asked how many votes then sauntered to the advantage of the respondents as a result of the said non-electronic transfer, his answer also followed the same pattern. When reminded that the petitioners won the presidential election in 12 States and what he would want the court to do with the said election, he was evasive. Again, when he was reminded that Alhaji A.A. Atiku, the candidate of the PDP came second in the election and he should tell the court what he wanted done with his votes, his answer was that the said votes be cancelled, notwithstanding the fact that the said Alhaji A.A. Atiku is not a party to the petition.

9.9 Aside from the foregoing, relief 1(i) which prays this court to declare the respondents as unqualified to contest the election is now a non-issue, having been settled categorically by the Supreme Court in Exhibit RA23. Reliefs 1(ii) and (iii), flow from the said relief 1(i), and with respect, the same decision of the Supreme Court has taken effective care of the said reliefs. As for relief 2, may we draw the attention of the court to section 134 (2)(a)(b)(3). In view of relief 2 and for ease of reference, we shall reproduce section 134(3), which provides thus: **"In default**

of a candidate duly elected in accordance with subsection (2) of this section, there shall be a second election in accordance with subsection (4) of this section at which the only candidate shall be –

(a) the candidate who scored the highest number of votes at any election held in accordance with the said subsection (2) of this section; and

(b) one among the remaining candidates who has a majority of votes in the highest number of States, so however that where there are more than one candidate with majority of votes in the highest number of States, the candidate among them with the highest total of votes cast at the election shall be the second candidate for the election."

9.10 From the foregoing, the 1st petitioner is constitutionally barred from participating in any election, in the very unlikely event that the election of 25th February, 2023 is voided, as the only candidates constitutionally prescribed to contest any subsequent election shall be the 2nd respondent and the candidate of the PDP who came second, by scoring the next majority of votes in the highest number of States (19 States), to the 1st petitioner's 16 States, and also coming second by plurality of votes, having scored 6,984,520, far and above 1st petitioner's 6,101,533 votes. In effect, the petitioners have no *locus standi* to ask for relief 2, both constitutionally and legally; constitutionally, because he is barred from contesting; legally, because he has no benefit to derive from the said relief, assuming it is granted. See **Thomas V. Olufosoye (1986) 1 NWLR (Pt. 18) 669 at 682**. The law is settled that "***a party prosecuting an action would[only] have locus standi where the reliefs claimed would confer some benefits on such a party***", **See Oloriode v. Oyebi (1984) 1SCNLR 390 at 400**; otherwise, the action will be an exercise in futility. See **Sehindemi v. Gov., Lagos State (2006) 10 NWLR (Pt. 987) 1 at 39 and 43** and **Olaniyan v. Adeniyi (2007) 3 NWLR (Pt. 1020) 1 at 25-26**. The same argument neutralizes relief 3, which has been made in the alternative. As for reliefs 4(i) and 4(ii), we again, draw the attention of the court to the evidence of PW12, as well as the arid evidence before this court, to the effect that the majority of votes purportedly scored by the petitioners still remains in the realm of their imagination. Relief 4(iii) and (iv), even by the petitioners' showing, are unconstitutional. Relief 5(i) has been subsumed under our arguments on issue 1 and we only restate that the said relief is *non-sequitur*. Relief 5(ii) gives the petitioners out, as it prays for cancellation of the election and an order mandating the 1st respondent to conduct a fresh election, without suggesting who the participants or candidates at the said election will be. Most humbly, the court cannot decree an order for a fresh election, outside the provisions of the Constitution.

9.11 In any event, the 1st petitioner has failed to comply with the law of the land, by first making himself a member of the 2nd petitioner, before proceeding to purportedly contest election and even file a petition. We again, refer to the uncontradicted evidence of the respondents' sole witness, who observed that the name of the 1st petitioner is nowhere located in Exhibit RA18.

We respectfully rely on the decision of the apex court in **George v. Dominion Flour Mills Ltd. (1963) 1 All NLR 71 at 74**, to the effect that it is the duty of the courts to administer the laws of the land and that the court will not help a plaintiff who breaches it.

9.12 Arising from the foregoing, the court is also urged to resolve this issue against the petitioners and in favour of the respondent.

10.0 EXHIBITS RA20 & RA21 CONSIDERED

10.1 In paragraph 83 of the respondent's reply, it has been pleaded that the votes scored by him in Kano State was discounted by **10,929;** Exhibits RA20 and RA21 were tendered before this Honourable Court and the sole witness called by the respondents was made to speak to them, identifying the figures relevant to the pleading as appearing in column 9 of each of the exhibits, that is, the votes recorded in RA20(Form EC8D) was discounted by **10,929** in **Exhibit RA21 (Form EC8D(A)**. It was a mere arithmetical error which is apparent on the two exhibits. Thus, the court has the power and jurisdiction to add the discounted figure of **10,929** to the final votes of **8,794,726**, recorded for the respondent, to make his votes come to a total of **8,800,369,** in conformity with Exhibits RA20 and RA21. We urge the court to so hold. See **Adun v. Osunde (2003) 16 NWLR (Pt. 847) 643 at 666**, **Sam v. Ekpelu (2000) 1 NWLR (Pt.642) 582 at 596** and **Agbaje v. Fashola (2008) 6 NWLR (Pt. 1082) 90 at 147-148**.

11.0 CONCLUSION

11.1 Based on the arguments and submissions contained in this address, we urge this Honourable Court to dismiss this petition as totally lacking in merit, substance and *bona fide*. It has been glaringly shown and demonstrated by the presentation of the petition itself and the evidence presented by the petitioners, including the evidence of PW12, that the petition itself is not only frivolous, but also amounts to a crass abuse of the process of court. In concluding this address, may we draw your Lordships' attention to the memorable pronouncement of the Supreme Court in **Elias v. Omo-Bare (1982) 5 SC 13 at 22,** where **Udo-Udoma, JSC.**, opined thus: ***"If there was ever any case completely starved of evidence this is certainly one. This case clearly cries to high heavens in vain to be fed with relevant and admissible evidence. The appellant woefully failed to realise that judges do not act like the oracles of Ife, which is often engaged in crystal gazing and thereafter would proclaim a new Oba in succession to a deceased Oba. Judges cannot perform miracles in the handling of civil claims, and at least of all manufacture evidence for the purpose of assisting a plaintiff win his case."***

11.2 In every material particular, the above excerpt from the Supreme Court judgment describes this petition in very clear terms.

Dated this 14th day of July, 2023.

✓ **Chief Wole Olanipekun, CFR, SAN, FCIArb.**

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85. Uduma v. Arunsi (2012) 7 NWLR (Pt. 1298) 55 at 119.
86. Ugwu v. Ararume (2007) 12 NWLR (Pt.1048) 367 at 441 – 442.
87. Ukpo v. Imoke (2009) 1 NWLR (Pt. 1121) 90 at 168.
88. Wada v. Bello (2016) 17 NWLR (Pt. 1542) 374 at 433.