IN THE COURT OF APPEAL
(IN THE PRESIDENTIAL ELECTION PETITION COURT)
HOLDEN AT ABUJA

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

PETITION NO: CA/PEPC/05/2023

BETWEEN:

1. ABUBAKAR ATIKU
2. PEOPLES DEMOCRATIC PARTY (PDP) } **PETITIONERS**

AND

1. INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC)
2. TINUBU BOLA AHMED
3. ALL PROGRESSIVES CONGRESS (APC) } **RESPONDENTS**

2ND RESPONDENT'S FINAL WRITTEN ADDRESS

1.0 PREPARATORY NOTES

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 in their petition is that this time around, while the presidential election was peacefully conducted all over the country (as corroborated by their primary witnesses; that is, the Presiding Officers-POs) 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 (respondent) did not score 25% (or one-quarter) of the votes recorded in the Federal Capital Territory, Abuja (FCT); while the petitioners have also tersely alluded to the respondent's non-qualification, without providing any fact of same in the body of their petition.

2.0 INTRODUCTION

2.1 This written address is presented by the respondent in his defence to the petition against his emergence at the presidential election conducted on 25th February, 2023.

3.0 BRIEF STATEMENT OF FACTS

3.1 The respondent, a member of the 3rd respondent participated, amongst 17 other candidates, in the election conducted by the 1st respondent into the office of President of the Federal

Republic of Nigeria on 25th February, 2023, and at the end of the election, he was rightly returned as President of the Federal Republic of Nigeria, having won a total of 8,794,726 votes ahead of the petitioners, who were his closest rival, though trailing at a distance with the total of 6,984,520 votes. The respondent garnered more than 25% of the total votes cast in 29 States of the Federation, while the petitioners managed to secure same in 21 States of the Federation. Ironically, the same 1st petitioner who scored 16.13 % of the votes cast at the FCT, as against the higher 19.76% scored by the respondent in the same FCT, is not only praying this Honourable Court to declare him as the winner of the election, but also, making a supplication that the election of the respondent be annulled on the ground that respondent did not score 25% of the votes cast at the FCT. This is just one of the schemes of the petitioners manifesting approbation and reprobation all through.

3.2 Largely, the election went very peacefully, under a free and fair atmosphere, without proof in Court of violence, ballot box snatching and such other electoral irregularities and vices; a state of affairs, to which the petitioners' witnesses all testified. In fact, the election was conducted in substantial compliance with the principles of the Electoral Act, the INEC Regulations and Manuals for the election. The unchallenged evidence on record, particularly, the sole witness called by the respondent, is that the 1st petitioner has bided, unsuccessfully, for the office of President of Nigeria severally, even till 2019. Coincidentally, a host of the witnesses called by the petitioners corroborated the unstable and or unpredictable nature of technological devices/applications within the Nigerian terrain, as this will be demonstrated anon.

3.3 The petition in itself is, with all respect, without any form or substance. It is characterized by repetitions, contradictions and confusion. The petitioners have cynically alleged non-compliance with the provisions of the Electoral Act, on the flimsy ground that the polling unit results were not electronically transmitted and uploaded on the IREV (where collation does not take place) in real time; meanwhile the petitioners did not deny the fact that it is the actual results in the respective polling units that were legitimately transferred to the ward collation centers, through to the local government collation centers, State collation centers and the national collation center. Interestingly, all their witnesses were *ad idem* in their admission of this sequence of transmission.

3.4 The petitioners also claim that the respondent did not emerge with the highest number of lawful votes cast. However, throughout the petition and during trial, at no portion did they state what they considered as the lawful votes cast for both parties and the number of unlawful votes added to the respondent's, or the number of votes unlawfully deducted from their own votes.

4.0 SUMMARY OF EVIDENCE

4.1 The petitioners called a total of 27 witnesses (respectively labelled as PW1-PW27), whose evidence can at best, be described as a panoply of hearsay, admissions against interest, and irrelevancies on the part of the petitioners. Without fear of contradiction, the petitioners have no single witness whose evidence could be described as useful or manageable to their case.

4.2 However, out of the abundance of caution, the respondent called a sole witness, whose evidence covered the field. This witness demonstrated undoubted competence to testify in respect of the subjects submitted before the court, including issues surrounding the US proceedings, himself, being a US practicing attorney and counsellor at law. Also, being a law maker, who participated in the enactment of the Electoral Act, 2022, he stated the position and intention of the legislature, particularly, as it relates to the appropriate mode of transmission as well as transfer and collation of results. Constrained by space, the respondent seeks the indulgence of this Honourable Court to make intermittent references to the evidence of the witnesses, as they apply to the arguments in the body of this written address.

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. Considering the relevant provisions of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) (**the Constitution**), the salient provisions of the Electoral Act, 2022, 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/or provisions of the Electoral Act, 2022.

ii. In view of the clear provisions of the Constitution, 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 peculiar circumstances of this petition (wherein the petitioners pleaded no fact in support of their allegation of non-qualification of the 2nd respondent), whether the 2nd respondent was/is 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, 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 ISSUES 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 provides further that 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 what it challenges is not strictly against 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 Assuming without conceding that the presentation of the petitioners regarding the non-uploading of already collated results signed by the POs and attested to by all the polling agents, including their own witnesses, among who are **PW12, PW13, PW14, PW15, PW16, PW17, PW18, PW23, PW24 and PW25**, electronically to IREV amounts to, in their opinion, non-compliance, our submission is that this assumption is a *faux pas* or *non sequitur*, for several reasons which will be addressed hereunder. May we submit straightaway that both the EA and the Regulations made thereunder, make provisions for multiple/hybrid methods of transmission of results from the polling unit, just as it does for voting itself.

6.8 Instructively, the petitioners have not denied this fact, particularly, through their petition and the evidence made available to this Honourable Court by them. We take our bearing from paragraph 18 of the petition, where the petitioners have alleged that "the election was not conducted in compliance with the provisions of sections 47(2) & (3), 60(1), (2) & (5), 64(4) (a)&(b), 64(4),(6),(7)&(8), 71 and 73 of the Electoral Act, Paragraphs 3.3.0 and 3.4.0 of the 1st Respondent's Published Manual for Election Officials, 2023…and Paragraphs 19, 35, 38, 40, 41, 42, 43, 47, 48, 50 and 62 of the 1st Respondent's Published Regulations and Guidelines for the Conduct of Elections 2022…" It is important to briefly consider each of these provisions in order to determine whether this Honourable Court can accord the petitioners any form of seriousness at all. We respectfully make this point considering section 47(2) & (3), which provides for accreditation with the use of the card reader or any other technological device; section 64 (4) (a) and (b) which mandates the PO to reconcile the votes cast with the number of accredited voters; 64(4),(6),(7)&(8), which provides for

the procedure for resolving dispute or discrepancies in the collation of results; section 71, which mandates the signing and stamping of the results at the different levels of collation; and section 73 which prescribes for the types of forms to be used for the election. While we appreciate that the centerpiece of the petitioners' grouse is that the results were not electronically transmitted and uploaded to the IREV "in real time", suffice it to state that neither the provisions highlighted by the petitioners, nor any provision of the Electoral Act at all, provides for the mandatory electronic transmission of results or mandatory upload to the IREV "in real time." Meanwhile, we invite this Honourable Court to the provision of section 60(5) of the Electoral Act, which provides that "the PO 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 The only grouse expressed by the petitioners through their evidence was that the results were not electronically transmitted to the next level of collation and upload to the IREV "in real time" or immediately. 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 **PW4, PW11, PW12, PW13, PW14, PW15, PW16, PW17, PW18, PW19, PW20, PW22, PW23, PW24 and PW25** are very instructive, as despite being witnesses for the petitioners, 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 PW22, the petitioners' star witness clearly admitted under cross examination that failure to transmit the result on the IREV will not change the content of the result entered in the Form EC8A; and the fact that PW12, PW13, PW14, PW15, PW16, PW17, PW18, PW23, PW24 and PW25 all agreed under cross-examination that not only did they conduct the accreditation as required by the law, the voting went successfully, the votes were sorted and entered into the appropriate form EC8A, the presiding officers signed the results along with the party agents, the results were announced at the respective polling units, party agents and police officers were respectively given their copies, while the respective presiding officers submitted their copies to the ward collation centers, again, in the company of the party agents. In fact, they all agreed that they had snapped the result with the BVAS and that the offline transmission function had been activated.

6.11 Having, therefore, agreed 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 and 37, were duly complied with, it, therefore, flattens the contention of the petitioners on non-compliance, more particularly, that it is not their case 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.

6.12 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 transmission. 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.

6.13 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.***"

6.14 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. For clarity, it is important to reproduce this paragraph to demonstrate 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.

6.15 So, from the above provision of the Regulations and Guidelines, before recourse will be had 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 overrated

the electronically transmitted results, or they have simply decided to throw tantrums as a result of their frustration at the polls.

6.16 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.***"

6.17 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)."**

6.18 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 hold. 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".** The Court went on to hold 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.

6.19 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 respondent 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**.

6.20 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 respondent did not secure 25% of the votes cast in Kano State, when the petitioner therein scored far less than the respondent 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 respondent is ahead of the 1st petitioner by **1,810,206** votes); that the respondent secured at least 25% of the votes in 12 2/3 States out of the 19 States of the federation (here, the 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 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 respondent at FCT, only falls short of 25% by 6.01.)

EVIDENCE AND REPORTS OF PW21 & PW26 ON ALLEGED IRREGULARITIES

6.21 We also note that during the hearing of this petition, the petitioners invited a certain Mr. Samuel Oduntan (PW21), who introduced himself as a certified statistician, with the intention of giving evidence on allegations bordering on over-voting, non-stamping or signing of electoral results and alteration of results. By all standards and parameters, the evidence of this witness is not worthy of consideration by this Honourable Court. The said reports which were tentatively admitted in evidence as Exhibit PAH1 series, relate to a total of 30, 348 polling units. In the same vein, one Mr. Hitler Ewunonu Nwala (PW26), who described himself as a forensic expert claimed to have examined a controversial number of BVAS devices used for the election in some polling units across Area Councils in the FCT. He also provided some contrived reports tentatively admitted as Exhibit PAR1. None of these polling units in both reports were referenced in the petition to have enabled the respondent put up a proper reply in the course of the preparation of his reply filed on 12th April, 2023. The net implication of this is that the purported evidence of these witnesses, apart from other manifest maladies plaguing same, have also been adduced in respect of facts that are not pleaded. The law on this is settled that in litigation, evidence elicited without predicate 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.**

6.22 A clear explanation for this is that the petitioners intended overreaching the respondents, such that as at the time allegations in respect of the said polling units are submitted through the statistician's report, the respondent will be left to only grasp for breath, without the opportunity of a reaction. Therefore, neither the testimony of this witness, nor any other witness, including PW19, PW22 and PW26, can validly give evidence in respect of any of the polling units which were not expressly pleaded in the petition. We submit that litigation is not a game of hide and seek, and parties must act with transparency and *bona fide* in the presentation of their case. See **Ajide V. Kelani (1985) 2 NWLR (Pt. 12) 248 at 269 and Adeogun & Anor V. Fashogbon & Ors (2011) 2 -3 SC (Pt. II) 90 at 98.** In **Abubakar v. YarAdua (2008) 19 NWLR (Pt. 1120) 1 at 147**, the Supreme Court has clearly emphasized on the cardinal place of precision in the presentation of pleadings. In the words

of the apex court, per Tobi, JSC: "**One basic principle of pleadings is that the facts pleaded must be exact, precise and should not give rise or room for speculation or conjecture. The facts pleaded must be concise and not rigmarole. Applying this basic principle to paragraph17(b)(xiii) of the petition, the words "and numerous other States" do not satisfy the principle of good pleadings. The word "numerous" means many thus relating to a great number. Subtracting part of Benue State from the other States, including the Federal Capital Territory, will leave us with thirty five States, probably two-thirds of Benue State as the paragraph deposed to only one senatorial district, which is one third (see section 48 of the Constitution) and the whole of the Federal Capital Territory, which for this purpose qualifies as a State. How will a court of law determine the number to satisfy the averment in paragraph 17(b)(xiii) of the petition.**" See also **Wada v. I.N.E.C. (2022) 11 NWLR (Pt. 1841) 293 at 320**.

6.23 May we point out that the petitioners' elusive approach, with all respect, is deliberate and intended, as they have under several paragraphs of their petition, made reference to their statistician's report, not only as the fulcrum of their claim, but also as the repository of the details of their allegations. We respectfully refer the court to **paragraphs 44, 81, 91, 92, 115, 116, 117, 119, 121, 124 and 127** of the petition. To give the court a clearer picture of the point being made, we refer the court to **paragraphs 121 and 126 of the petition**, where sundry unproven allegations have also been made, premised on the statistician's report.

6.24 It beats every reasonable imagination that in litigation, a party will make a blanket allegation in his pleading and now urge the respondent to watch out for the particulars of the allegations after the said respondent must have filed his own reply. This is a fair hearing issue, and we urge the court to discountenance the said report on this basis. Further, the implication of several references to the report, even without making them available shows that they are documents which were made in anticipation of litigation and cannot be admitted or accorded any evidential value by this Honourable Court. The fact that the said documents/reports were made in anticipation of litigation, and that they have been concluded even at the time of filing the petition, is gleanable from the evidence of **PW19**, who admitted under cross examination that the said Mr. Samuel Oduntan was with them at their situation room on the day of the election and that the preparation of the report commenced on **March 1**, whereas, the petition was filed on **March 20**. As basis for his analysis, this witness claimed that he inspected Forms EC8As, 8Bs, 8Cs, 8Ds and 8Es.

These are the same document which have been tendered by the petitioners as Exhibits PA, PC, PC1-36. Not only that, he was not the maker of the documents he claimed to have examined, neither was he anywhere close to their making (polling units) on the day of the election, but that he was at the petitioners' situation room. To worsen the case of this supposed expert witness, he admitted under cross examination that he was handsomely compensated for the job. Hence, not only does he have affinity with the petitioners, having been with them in their situation room right from the election, he also has some pecuniary interest to protect in the petition. We respectfully submit that everything gives out the report of this witness as inadmissible and we refer to the very recent 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) 28-30**, where a situation that was not half as bad as this, came to the Supreme Court for its determination. In affirming this Honourable Court's decision on the worthlessness of the said expert analysis report, the Supreme Court held thus, at **pages 28- 29 of the judgment**:

"The listing of the Expert Analysis Report in the petition among the documents to be relied on to prove the petition show it was made in anticipation or contemplation of the petition to be filed. The report having been made by PW1 as a person interested in the subject matter of the report when the petition was anticipated to establish that the election was invalid is not admissible evidence by virtue of Section 83(3) of the Evidence Act, 2011… He admitted that his analysis was based on his examination of the content of the Form EC8As for the 744 polling units and the BVR. It is obvious that the same documents were in evidence before the Tribunal and that therefore, it was bound to review and evaluate and analyze the same documents and make its of inferences from them and cannot adopt the opinion of PW1 based on his inferences from the documents as its own. The court cannot adopt the opinion of a person concerning a documentary evidence before it without itself considering that evidence and drawing its own inferences from it. Such opinion on the content of a document (Form EC8A) not made by the person expressing it (PW1) is hearsay and not admissible.… The expert analysis report does not fall within the exceptions in Sections 68-76 of the Evidence Act, 2011. It is inadmissible in evidence.

The entire testimony of PW1 in examination in chief was, as admitted by him, based on his examination and analysis of the said Forms EC8A and BVR. He had no personal knowledge of the facts of the case. He was not present in the election in any of the polling units. He was

not a polling agent of the 2nd appellant. He was only engaged as the leader of the appellant's team to coordinate the analysis of the Form EC8As and BVR…."

6.25 The above judgment of the apex court resolves the tenuous agitation of the petitioners herein. The situation in this petition is even worse because the petition dated **20th March, 2023**, referred in paragraphs of the petition (including 121) to polling units in the statistician's report (and not stated in the petition), which report (exhibits PAH2-PAH4) is dated **10th June, 2023**. Thus, not only was the petition futuristic and referring to facts to be generated after the 21-day limit for the filing of a petition, the said report was obviously tailored to fulfil the objective which had been earlier set for it before it existed. Put differently, the report was tailor made to align with what the petitioners had already stated in their pleadings about it before it was made and it was obviously custom made towards a predetermined purpose or answer. Meanwhile, in relation to his admission of being handsomely rewarded by the petitioners for the preparation of the reports, we urge the court to in this basis, treat the evidence of this witness with disdain, in the manner admonished by the apex court in **Akeredolu v. Mimiko (2014)1NWLR (Pt. 1388)402 at 439-440,** where the court clearly held thus:

"Appellant's case rests largely on the evidence of PW34 and PW35, the alleged experts who were found by the trial tribunal and affirmed by court below to be bereft of expertise on the issue on which they gave evidence. The court is not bound to accept the evidence of any expert, even one who has not disclosed incentive or motive other than helping the court in the quest for justice. Therefore, when an expert witness, by his own *ipse dixit,* portrays himself as one hawking his evidence or a mercenary who would fight any man's battle for a fee as it were, gives evidence in court, the court has a duty to treat his evidence with the disdain it deserves. After all, as the saying goes, "he who pays the piper dictates the tune of the music"

6.26 In any event, the evidence of this witness suffered material and irreparable damage under cross-examination, where it was shown that his primary data were both inaccurate and incomplete, in the same manner as his methodology was grossly erroneous. Particularly, it was shown that the witness merely isolated some States, while leaving out the others, yet, he wants the court to alter the overall results on account of his selective analysis. Not only that, though the witness had given a 'verdict' of over-voting in respect of several polling units, it took the 1st respondent to confront him with the result of one of the polling units

which he had listed in his report, to realize that there was no such thing as over-voting. Yet, that polling unit, just like several others, form the final analysis which the petitioners have submitted to the court through this witness, with the intention of disturbing the election and return of the 2nd respondent. In **Adelakun v. Oruku (2006) 11 NWLR (Pt. 992) 625 at 644**, the court held that "***there is no magic wand in the testimony of an expert whose opinion could be rejected if it is not credible***"; and that "***a court is not bound to accept and act upon an expert opinion which is not in accord with common sense***."

6.27 The evidence of PW26, Mr. Hitler Nnunonu Nwala, who claimed to be a digital forensic analyst, also suffers from the same infirmity as the evidence of PW21. Of course, his evidence was targeted at casting aspersion on INEC's explanation about the technical state of the BVAS on the day of the election. Despite the very critical allegations made by this witness in respect of the BVAS, he did not tender the BVAS or the device which he claims was used in his investigation of the BVAS. The various inconsistencies in the evidence of the witness and the purported report are very instructive, as, in one breath, he claimed to have inspected 110 BVAS machines, and in another breath, he claimed to have inspected 100 BVAS machines. In any event, whether 110 or 100 BVAS machines were used by him, this witness did not bring any with him to court. As if that was not enough, he was confronted with the fact that the FCT in respect of which he restricted his investigation, has 2,822 polling units, while 3163 BVAS devices were deployed by INEC for the election; and that his sample only amounts to 3% of the BVAS device employed in the FCT and 0.06% of the BVAS device deployed nationwide. Even more damaging to the evidence of this witness is the fact that in the course of cross-examination by INEC, despite failing to provide BVAS machines in proof of his assertion, he was given one of the BVAS machines which he claimed to have inspected, and in respect of which he alleged deletions were made, for him to confirm his assertion, but the witness blatantly refused to budge, claiming that he could not touch the BVAS machine. While the court will see from his demeanor that the witness is not a witness of truth and that he was unnecessarily evasive, his further evasion of the BVAS machine, casts a very serious discredit upon his evidence, as the tendering of the BVAS machine is very relevant to his testimony. Again, on this issue, we respectfully refer this Honourable Court to **Oyetola & Anor v. INEC & 2 Ors.** (supra), where at **pages 18-19 of the judgment** as follows: **"The BVAS devices for each**

of the 744 polling units which the appellants solely relied on as the basis for grounds 2 and 3 of their petition were not produced and tendered by them as evidence in support of their case. Rather they sought to prove the record of accredited voters in the BVAS devices for each of the 744 polling units by means of a report of the examination of the INEC data base or back end server (exhibit BVR) said to contain the information on the number of accredited voters and number of votes cast in a polling unit transmitted by the BVAS to the said INEC data base during the election on election day. The record in the BVAS machine for each polling unit is the direct and primary record of the number of voters accredited in that polling unit on the election day in the process of the election."

6.28 We submit that just as the Supreme Court held the firm view that Exhibit BVR could not be employed to supplant the direct evidence from the BVAS, in the same vein, Exhibits PAR1, PAR1(a), (b), (c), (d), (e), (f) and (g), tendered through this witness, could not have overridden the direct content of the BVAS, more particularly, as he exposed himself to have come on a mission of misleading the court through inaccurate facts, which caused him to scamper upon the sight of the BVAS under cross-examination.

6.29 Most humbly, we reiterate our submission that the decision of the Supreme Court in Oyetola v. INEC (supra), covers the field insofar as the application of BVAS and other salient issues in this petition are concerned. Respectfully, it is our submission that this Honourable Court is enjoined to follow and apply that decision under and by virtue of section 287(1) of the Constitution. Under the doctrine of stare decisis, that decision of the apex court is also binding on this Honourable Court. See **Osakue v. F.C.E., Asaba (2010) 10 NWLR (Pt. 1201) 1 at 36, Okulate v. Awosanya (2000) 2 NWLR (Pt. 646) 530 at 543.**

6.30 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."**

6.31 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 INEC is a recurring party, 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 **Rosseck v. ACB Ltd. (1993) 8 NWLR (Pt. 312) 382 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; and failure by any person or authority to regard such judgment will only lead to anarchy. Beyond this, may we humbly draw the attention

of the court to the fact that the judgment was also tendered as Exhibit X1, before this Honourable Court, through the respondent's sole witness.

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

7.0 ISSUE 2

7.1 We have formulated this issue, out of abundance of caution, because, despite the hype on it by the petitioners, it is clear that on the pleadings alone, the issue is deemed abandoned by the petitioners. While ground 4 of the petition is headed "NON-QUALIFICATION", it is clear from paragraph 146 that the petitioners clearly abandoned it. For ease of reference, paragraph 146 of the petition reads thus: "**146. The Petitioners aver that the 2nd Respondent was at the time of the election, not qualified to contest the election, not having the constitutional threshold."**

7.2 What has been reproduced is a mere heading without any particulars. In an election petition, it is mandatory, by virtue of **paragraph 4(2) of the First Schedule** to the **EA** that "***the petition shall be divided into paragraphs, each of which shall be confined to a distinct issue or major facts of the election petition, and every paragraph shall be numbered consecutively.***" The law is well crystalized that evidence led in support of facts not pleaded go to no issue. See **Sommer v. F.H.A. (1992) 1 NWLR (Pt. 219) 548 at 561, Reptico S.A. Geneva v. Afribank (Nig.) Plc, (2013) 14 NWLR (Pt. 1373) 172 at 217.** These decisions are on the conventional civil proceedings; and it is our submission that in an election petition proceedings and by virtue of paragraph 4(2) of the First Schedule, much more is expected from the petitioner. See **Stowe v. Benstowe (2012) 9 NWLR (Pt. 1306) 450 at 463-464, Oshiomhole v. Airhiavbere (2013) 7 NWLR (Pt. 1353) 376 at 394.** We are not unaware that the petitioners, through what they described as 'Reply' brought in some issues relating to the respondent's forfeiture in the US, acquisition of a Guinean citizenship, etc. While we have raised objections to these unorthodox reply, and Ruling has been reserved, it is common knowledge that evidence has been presented before the court, albeit, unconventionally, purporting to advance the contentions. Again, the EA is very clear that a petition cannot be amended outside the 21 days prescribed for filing same by virtue of paragraph 14(2) of the First Schedule to the Electoral Act. Not only that, it is trite that a ground of a petition which is prescribed to be mandatorily stated under

paragraph 4(1)(d) of the First Schedule cannot be brought in, through any ingenuity in a reply. The point must be clearly made that the issue of citizenship or dual citizenship is provided for under section 137 of the Constitution and it is a distinct issue or subject on its own that cannot be furtively introduced in a reply. With much respect to the petitioners, it is very unusual, and milder attempts than this have been roundly discountenanced and condemned in a legion of cases, including **Bamidele v. Bello (2020) 15 NWLR (Pt. 1748) 506 at 526, Obi-Odu v. Duke (No.2) (2005) 10 NWLR (Pt. 932) 105 at 142-143 and Okereke v. Yar Adua (2008) 12 NWLR (Pt. 1100) 95 at 140**. It would appear as if the Supreme Court had this type of petitioners in mind when it sounded serious warnings to counsel and litigants in the celebrated case of **Ajide V. Kelani (supra)** that parties should be consistent in stating their case, right from the stage of pleadings to the stage of trial and evidence; and that parties should not be allowed to take one step in their pleadings and turn summersault at trial/evidence. The apex court warned further that litigation is not a game of hide and seek and that no court should entertain any slippery customer like the petitioners who indulge in a game of hide and seek. Premised on these submissions, the court is urged not only to discountenance or expunge from the record, every piece of evidence from the petitioners, either on the issue of non-qualification bordering on the purported forfeiture proceedings in the US, procurement of a Guinean passport/citizenship, or such other allegation whatsoever.

7.3 Be that as it may, and *ex abundati cautela*, we will hereunder, react to the allegations *seriatim*.

PURPORTED FORFEITURE PROCEEDINGS IN THE US

7.4 The only witness called by the petitioners in respect of this subject is PW27, who deposed to a witness statement under a subpoena. The witness who in his witness statement pretended to have conducted investigations for the purpose of unraveling the truth and rendering assistance to "appropriate lawful agencies", gave himself out as a tainted witness, when he admitted that his candidate lost the presidential election as announced by INEC and that the fact that his candidate lost the election is not a pleasing outcome for him; and further expressly pronounced himself as a member of the "Obidient movement" (a sobriquet for supporters of Mr. Peter Obi, the 1st petitioner in petition No. 3). We submit that by a plethora of authorities of the apex court, including **Okoro v. State (1998) 14 NWLR (Pt. 584) 181 at 215-216 and Oguonzee v. State (1998) 5 NWLR (Pt. 551) 521**

at 577-578, this Honourable Court must take guard and warn itself, in respect of the evidence of such a witness who has his own purpose to serve in the proceeding. Even so, the witness admitted that he is not the official custodian of Exhibit PBC and the documents listed therein, which he had tendered to bias the mind of the court. It goes without saying that since the witness is also not the maker of the document, in the same vein as he was not the official custodian, the admissibility of the said documents has been put to question. They are at best documentary hearsay, and we urge the court to on this score, discountenance the evidence of this witness. See **Gbenga v. A.P.C. (2020) 14 NWLR (Pt. 1744) 248 at 273 and Ikpeazu v. Otti (2016) 8 NWLR (Pt. 1513) 38 at 107**.

7.5 To further show that the witness had his interest to serve, he also admitted that he instituted a criminal complaint before the Chief Magistrate Court in **CR/121/2022** between himself and the 2nd respondent, which said process was admitted as **Exhibit XX1**. It was at this point that it became more obvious that this witness had some axe to grind with the respondent and he seeks to employ the avenue of this petition, to achieve what he failed to achieve at the Magistrate Court, that is, to stampede the ambition of the respondent. Again, upon taking an evidential consideration of all the documents tendered by this witness, the court will observe that they have no value whatsoever. In fact, the witness admitted that he merely downloaded Exhibit PBF 4 (the Guinean Passport) from the internet and that he did not find out whether the 2nd respondent denounced the Guinean citizenship, while also admitting that the passport he tendered had since expired in 2020. There was no evidence given that the Respondent is not a Nigerian by birth or that he has renounced his Nigerian Citizenship in the manner laid out in **Section 29(1) & (2) of the Constitution**. Also, the US Judgment he tendered as Exhibit PBF1 was not registered in Nigeria contrary to the mandatory provision of sections 3 of the Foreign Judgments (Reciprocal Enforcement) CAP F35 L.F.N. 2004, which require that any judgment to be activated in Nigeria shall first be registered within the Nigerian jurisdiction. 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.**

7.6 Be it noted that this witness admitted under cross examination that before the purported judgment was procured, there was no charge, no indictment, no arraignment, no plea and no conviction. The sole witness called by the respondent, who is himself, a US practicing attorney and counsellor at law, as well as a Nigerian legal practitioner and legislator, corroborated this legal position while stating the legal implication under the US law, to the effect that such cannot be described as a criminal proceeding which could have grounded any form of conviction.

7.7 In addition to the foregoing, the said Exhibit BF1, having emanated from a foreign jurisdiction, the petitioners were unable to produce 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, 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** and **Ogboru v. Ibori (2006) 17 NWLR (Pt. 1009) 542 at 588.**

7.8 Without prejudice to the foregoing submissions, Exhibit PBF1 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).**

7.9 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."

7.10 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)*

7.11 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 PBF1, 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 respondent tendered Exhibit RA10, all to the effect that throughout all these past years, he has always enjoyed rights of ingress and egress to and from the US, a right which anyone who is burdened with a criminal forfeiture cannot enjoy. *Res ipsa loquitor* is the applicable maxim in this regard.

RESPONDENT'S EDUCATIONAL RECORDS

7.12 On the respondent's academic qualification, while PW27 claimed that he obtained his certificates through his US attorney, may we draw the attention of the court to the fact that such certificates are public documents under and by virtue of **section 106 (i) of the Evidence Act**, and they are not certified, despite admitting under cross examination that the educational institution in question is a public body. On the contrary, the respondent who has no burden placed on him, went all out to obtain certified true copies of all his educational records from the Chicago State University, including his University Degree certificate and a public notice issued and signed by the Registrar of the University that he distinctively passed through its portals. See Exhibit RA9. The respondent also tendered Exhibits RA7 and RA 8, respectively, a letter written by the Nigeria Police, under the hand of the then Inspector General of Police, to the US embassy, asking for information as to

whether the respondent had any criminal record or conviction in the US; and the response from the US embassy, categorically stating that upon a thorough combing of the Federal Bureau of Investigation (FBI) National Crime Information Center (NCIC), it is evident that the respondent maintains a clean criminal record in the US.

7.13 Lastly, the same PW27, tendered Exhibit PBF4 (Guinean passport), which as usual, he claimed to have downloaded from the internet, purportedly representing the data pages of the respondent's Guinean passport, which *ex facie*, shows that the passport expired in 2020. It is all a guesswork, aimed at embarrassing the respondent. The law is well settled that an expired document does not command any probative value. Assuming without conceding that the respondent was ever issued that passport, it is our further submission that facts relating to citizenship of a foreign country are rooted in the laws of that country, which have to be proved in Nigeria. See **Attorney-General of Cross River State v. Attorney-General of the Federation (2012) 16 NWLR (Pt.1397) 425 at 514, Peenock Investment v. Hotel Presidential (1982) 12 SC 1 at 9. See also sections 68(1) and 69 of the Evidence Act.** It is submitted further, that even if the respondent has a dual citizenship, which is not conceded, the Constitution does not preclude him from contesting the office of President of Nigeria. See the *locus classicus* decisions in **Ogbeide v. Osula (2004) 12 NWLR (Pt. 886) 86 at 138, per Onnoghen, JCA** (as he then was, later CJN); which was followed in the (unreported) decision of this Honourable Court in **Appeal No: CA/AK/EPT/NAS/286/19: between Ikengboju Dele Gboluga v. Hon. Albert Akintoye & 3 Ors**., delivered on **26th September, 2019**, and **Labour Party v. Ishola (2004) LPELR-2003486 (CA).**

7.14 Based on the foregoing, we urge your Lordships to resolve this issue 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 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 as if it were one of the States of the Federation…"** 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 Federal Capital Territory, Abuja, 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.** The petitioners themselves admit this much in paragraph 107 of their petition, where they listed the FCT as the 37th State, after listing the States mentioned in section 3(1), as numbers 1 to 36. Again, the maxim, *res ipsa loquitur* applies to the petitioners.

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 <u>basis of the calculation of 2/3 of all the states in the Federation and the FCT, Abuja</u>. 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."**

8.12 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."**

8.13 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. 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 second position by 1,810,206.

8.14 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.

8.15 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.**

8.16 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 respondent tendered Exhibit RA11 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.

8.17 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 concepts of preferential shareholding in Company Law. We urge this court to resolve this issue against the petitioners and in favour of the respondent.

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 respondent did not win the presidential election, even as borne out by the petition itself. We respectfully refer the court to paragraph 142 of the petition where the petitioners admitted that NNPP came first in the presidential election in that State, with 977, 279 purported votes, and after listing the votes scored by the parties in that State, the petitioners conclude thus:

"The petitioners state that all these votes are liable to be voided."

9.2 In paragraph 143, the petitioners challenge the election results in States like Abia, Anambra, Bauchi, Delta, Ebonyi, Edo, Enugu, Gombe, Imo, Jigawa, Enugu, Gombe, Imo, Jigawa, Kano, Katsina, Kebbi, Kogi, Lagos, Nasarawa, Niger, Ogun, Ondo, Plateau, Rivers and Taraba. Be it noted that it was Labour Party that won the election in Abia,

Anambra, Delta, Ebonyi, Enugu, Imo, Lagos and Plateau States, while the petitioners themselves won in Bauchi, Gombe, Katsina, Kebbi and Taraba States. In other words, the petitioners are not only challenging their own results, but the specific States where other parties won, aside from the respondent. May we further draw the attention of the court to the fact that these paragraphs are under ground 3 of the petition, titled "Not duly elected by majority of lawful votes cast" and paragraph 105 thereunder, bears testimony to this. Of all the States being questioned in paragraph 143, the respondent only won in Kogi, Ogun, Ondo and Rivers. See further, paragraphs 183,184 and 185 of the petition, where criminal allegations have been made in respect of election in Kano State, where the respondent did not win; paragraph 186, where the same allegations have been repeated in respect of States that the respondent did not win. We again, draw the attention of the court to paragraph 16 of the petition, particularly, grounds A and B, to the effect that "the election of the 2nd respondent is invalid by reason of non-compliance with the provision of the Electoral Act, 2022" and that "the election of the 2nd respondent is invalid by reason of corrupt practices." 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.

9.3 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 respondent should be made willy-nilly, to defend the outcome of elections in places where he did not win, including Abia, Anambra, Ebonyi, Delta, Enugu, where Labour Party scored majority of votes ranging from 79%-97%. In like manner, the respondent 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. 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 Electoral Act, to make the respondent defend whatever is assumed to be wrong with the election, in the States where he did not win. Neither the Electoral Act, 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 Labour Party and its candidate, the New Nigeria Peoples Party 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.**

9.4 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 27 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.**

9.5 Starting from PW1, Captain Joe Agada (Rtd.) through to PW27, 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.**"

9.6 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 Oyetola v. Adeleke (supra), 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 and, indeed, all the POS testified to the proper, seamless and effective use of the voters' registers as well as the BVAS machines.

9.7 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 respondent should have lost; or what the respondent has gained. While we have raised objections to documents tendered by the petitioners, may we further submit that all the documents, including 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** and **Wada v. INEC (2022) 11 NWLR (Pt. 1841) 293 at 328**, to the effect that none of the petitioners' witnesses, including PW19 and PW22 had the capacity to demonstrate any of the documents tendered, as they were not the maker of the said documents.

9.8 Lastly, the uncontroverted evidence before this Honourable Court is that the respondent 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 respondent 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.**

9.9 Juxtaposing the arid evidence before this Honourable Court with the reliefs claimed in paragraph 150 of the petition, and which have also been reproduced in the witness statement of PW22, we urge the court to hold that the said reliefs, jointly and severally, and whether in the main or alternatives, are ungrantable. What remains the lawful votes cast in the election is still within the imagination of the petitioners; while the same 1st petitioner who is asking the court to nullify the election of the respondent for not scoring 25% of the votes cast at the FCT is praying the court, at the same time, to return him as the winner of the election, when he scored less votes than the respondents at the FCT. It is a clear demonstration of double talk and, with respect, of unseriousness. As earlier argued in this address, relief (c), which is not supported by any pleading is deemed abandoned; even if not abandoned, it has not been proved. Relief (e), portrays further, the inconsistency on the part of the petitioners who are asking the court to make an order of a fresh election between the 1st petitioner and the respondent; yet, according to the petitioners, respondent was not qualified to contest the election in the first instance. This relief also neutralizes relief (c) and all the hype so much generated on the non-qualification of the respondent to contest the election.

9.10 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 RA12 & RA12(A) 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 RA12 and RA12(A) were tendered before this Honourable Court and the sole witness called by the respondent 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 RA12(Form EC8D) was discounted by **10,929** in **Exhibit RA12(A) (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 RA12 and RA12(A). 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 PW27, that the petition itself is not only frivolous, but also amounts to a crass abuse of the process of court. Non-existent documents were being sourced and printed from the internet, among others, to be presented before this Honourable Court, after the filing of the petition, in furtherance of the abusive nature of the petition itself.

11.2 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."

11.3 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.**
Chief Akin Olujinmi, CON, SAN
Yusuf Ali, SAN
Emmanuel Ukala, SAN
Tanimola Molajo, SAN
Prof. Konyinsola Ajayi, SAN
Prof. Taiwo Osipitan, SAN
Tayo Oyetibo, SAN
Adebayo Adelodun, SAN
Mike Igbokwe, SAN
Dr. Roland Otaru, SAN

Olasupo Shasore, SAN
Oladele Adesina, SAN
Lawal Pedro, SAN
Oladipo Okpeseyi, SAN
Dr. Hassan Liman, SAN
Adesegun Ajibola, SAN
Ahmed Raji, SAN
Chief Ogwu Onoja, SAN
Olatunde Busari, SAN
Dr. Muiz Banire, OON, SAN
Dr. Oladapo Olanipekun, SAN
A. U. Mustapha, SAN
Chief Yomi Aliyu, SAN
Kehinde Ogunwumiju, SAN
Prof. Lanre Fagbohun, SAN
Bode Olanipekun, SAN
Aikhunegbe Anthony Malik, SAN
Mrs. Funmilayo Quadri, SAN
Babatunde Ogala, SAN
Dr. Remi Olatubora, SAN
M. A. Abubakar, SAN
Mutalubi Ojo Adebayo, SAN
Tunji Abayomi
Hassan T. Fajimite
Mutiu Ganiyu
Tafa Ahmed
D.I.G. Marvel Akpoyibo
Hellen Usenekong
Oluwole Afolabi
Rafiu Balogun
Chris E. Agbiti
Banjo Adenakin
Emmanuel Uwadoka
Chukwudi Adiukwu
Dr. M.T. Adekilekun
Benjamin Awurum
Adebisi Oridate
Opeyemi Adekoya
Abiola Olawole Olaniji
Abdulghani Rotimi Arobo
Jesutega Onokpasa
Ademola Adesina
Dr. Michael Afolayan
Michael Olajide Olanipekun
Temilolu Adamolekun
Faith Adarighofua
L. A. Fasanmi

FOR SERVICE ON:

1. **The Petitioners**
   Atiku Abubakar
   Peoples Democratic Party
   C/O Their Counsel
   Chief Chris Uche, SAN
   Chris Uche (SAN) & Co.
   Angels Court
   34 Kumasi Crescent,
   Wuse 2, Abuja.

2. **The 1st Respondent**
   Independent National Electoral Commission
   C/O Its counsel
   A. B Mahmoud, SAN
   Dikko & Mahmoud
   10, Seguela Street
   Wuse 2, Abuja.

3. **The 3rd respondent**
   All Progressives Congress (APC)
   c/o its counsel
   L. O. Fagbemi, SAN, FCIArb.
   c/o Lateef Fagbemi & Co.
   4th Floor, Rivers House
   Plot 83, Ralph Shodeinde Street
   Central Business District, Abuja.

Yinka Ajenifuja
Adelani Ajibade
Gbenga Benson
Ibrahim Audu
Akintola Makinde
Bright Odia
Julius O. Ishola
Olajide Salami
Ayuba Kawu
Emeke Ananyi
Adeyemi Ikuforiji
Tokunbo Afikuyomi
D.I.G. Taiwo Lakanu
Amb. Olusola Iji
Emmanuel Tayo Ogunjide
Dr. Hannatu Musawa
Patrick Eze Uzukwu
Vincent Essien
Doueyi Fiderikumo
2nd Respondent's Counsel
C/o Wole Olanipekun & Co.
God's Grace House
No. 5 Maple Close
Osborne Estate, Phase 2
Ikoyi, Lagos.
Or
Wole Olanipekun & Co.
God's Grace House
No. 6 Oshakati Close
Off Constantine Street
Wuse Zone 4, Abuja.
Phone: 08062629779|08060749219
Email: info@woleolanipekun.com
akintola.m@woleolanipekun.com

LIST OF AUTHORITIES

STATUTES

1. Constitution of the Federal Republic of Nigeria 1999 (as amended)
2. Electoral Act, 2022
3. Advance Fee Fraud and Other Fraud Related Offences Act 2006
4. Corrupt Practices and Other Related Offences Act, 2000
5. Economic and Financial Crimes Commission (Establishment) Act 2004 (EFCC Act)
6. Maxwell, on the Interpretation of Statutes, 12th edition, by P. St. J. Langan (Tripath) page 199
7. The Regulations and Guidelines for the Conduct of Elections, 2022
8. TS Greenberg et al, A Good Practice Guide for Non-Conviction Based Asset Forfeiture (World Bank 2009) 13

JUDICIAL AUTHORITIES

1. A.G Abia v. A.G Federation (2002) 6 NWLR (Pt. 763) 265 at 365
2. Abubakar v. Yar'Adua (2009) All FWLR (Pt. 457) 1
3. Abubakar v. YarAdua (2008) 19 NWLR (Pt. 1120) 1 at 147
4. Abubakar v. Yar'Adua (2008) 19 NWLR (Pt.1120) 1 at 163
5. 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) 28-30
6. Adelakun v. Oruku (2006) 11 NWLR (Pt. 992) 625 at 644
7. Adeogun & Anor V. Fashogbon & Ors (2011) 2 -3 SC (Pt. II) 90 at 98.
8. ADH Limited v AT Limited (2006) 10 NWLR (Pt. 986) 635, 649
9. Adun v. Osunde (2003) 16 NWLR (Pt. 847) 643 at 666
10. Agagu v. Mimiko (2009) 7 NWLR (Pt. 1140) 342 at 488
11. Agbaje v. Fashola (2008) 6 NWLR (Pt. 1082) 90 at 147-148
12. Ajide V. Kelani (1985) 2 NWLR (Pt. 12) 248 at 269
13. Akeredolu v. Mimiko (2014)1NWLR (Pt. 1388)402 at 439-440
14. Anasodo v. Audu (1999) 4 NWLR (Pt. 600) 530 at 546
15. Andrew v. I.N.E.C (2018) 9 NWLR (Pt. 1625) 507 at 553.
16. Anyawu & Ors. v. Uzowuaka & Ors. (2009) LPELR0515(SC) at 26

17. Attorney General of Ogun State v. Aberuagba & Ors. (1985) 1 NWLR (Pt. 3) 395 at 405
18. Attorney-General of Cross River State v. Attorney-General of the Federation (2012) 16 NWLR (Pt.1397) 425 at 514
19. Attorney-General v. Mutual Tontine Westminster Chambers Association Ltd. (1876) 1 Ex. D. 469
20. Audu v. APC (2019) 17 NWLR (Pt.1702) 379 at 398, 399 and 400
21. Awolowo v. Shagari (1979) NSCC 87 at 102
22. Awolowo v. Shagari (supra), Abraham Adesanya v. President
23. Bakari v Ogundipe & 3 Ors. (2021) 5 NWLR (Pt. 1768) 1 at 37 (SC)
24. Baker Marine (Nig.) Ltd. v. Chevron (Nig) Ltd. (2000) 12 NWLR (Pt. 681) 393 at 413
25. Bamidele v. Bello (2020) 15 NWLR (Pt. 1748) 506 at 526
26. Bradlaugh v. Clarke (1883) 8 App. Cas. 354.
27. Buhari v. Obasanjo (2005) 13 NWLR (Pt. 941) 1 at 105
28. Dalhatu v. Turaki (2003) 15 NWLR (Pt. 843) 310 at 338
29. Dickson v. Sylva (2017) 8 NWLR (Pt. 1567) 167 at 199
30. Diokpa F. Onochies & Ors v. Ferguson Odogwu &Ors (2006) 6 NWLR (Pt. 975) 65 at 89.
31. Duriminiya v. Commissioner of Police (1961) NRNLR 71
32. Ejiogu v. Irona (2009) 4 NWLR (Pt. 1132) 513 at 560
33. Elias v. Omo-Bare (1982) 5 SC 13 at 22, where Udo-Udoma, JSC
34. Federal Republic of Nigeria (1981) 12 NSCC 146 at 167-168
35. Garba v. FCSC (1988) 1 NWLR (Pt. 71) 449 at 453
36. Gbadamosi v. Azeez (1998) 9 NWLR (Pt. 566) 471 at 474-475
37. Gbenga v. A.P.C. (2020) 14 NWLR (Pt. 1744) 248 at 273
38. Grosvenor Casinos Ltd. v. Halaoui (2009) 10 NWLR (Pt. 1149) 309 at 347
39. Highgrade Maritime Services Ltd. v. First Bank Ltd (1991) LPELR-1364 (SC) at 26
40. 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.
41. Ibori v. Ogboru (2005) 6 NWLR (Pt.920) 102 at 137-138 (CA)
42. Ikengboju Dele Gboluga v. Hon. Albert Akintoye & 3 Ors. (Appeal No: CA/AK/EPT/NAS/286/19), delivered on 26th September, 2019
43. Ikpeazu v. Otti (2016) 8 NWLR (Pt. 1513) 38 at 107
44. Jegede v. INEC (2021) 14 NWLR (Pt. 1797) 409 at 577-578

45. Labour Party v. I.N.E.C. (Suit No. FHC/ABJ/CS/399/2011)
46. Labour Party v. Ishola (2004) LPELR-2003486 (CA).
47. Lawal v E.F.C.C. (2020) 14 NWLR (Pt. 1744) 193, 245
48. Magor and St. Mellons Rural District Council v. Newport Corporation (1952) A.C. (H.L.) 189 at 191
49. Mailantarki v. Tongo (2018) NWLR (Pt. 1614) 69 at 86-87
50. Marwa v Nyako (2012) 6 NWLR (Pt. 1296) 199, 306 – 307
51. Nafiu Rabiu v. State (1980) 12 NSCC 291 at 300-301
52. Nokes v. Doncaster Amalgamated Collieries Ltd. (1940) A.C. 1014 (P.C.) at page 1022
53. Nwaigwe v F.R.N. (2009) 16 NWLR (Pt. 1166) 169, 200 – 201
54. Nwobodo v. Onoh (1984) 15 NSCC 1 at 23
55. Obawole v. Coker (1994) 5 NWLR (Pt. 345) 416 at 434
56. Obi-Odu v. Duke (No.2) (2005) 10 NWLR (Pt. 932) 105 at 142-143
57. Offodile v. Offodile(2019) 16 NWLR (Pt. 1698) 189 at 211
58. Ogbeide v. Osula (2004) 12 NWLR (Pt. 886) 86 at 138
59. Ogboru v. Ibori (2006) 17 NWLR (Pt. 1009) 542 at 588
60. Ogboru v. Okowa (2016) 11 NWLR (Pt. 1522) 84 at 148
61. Ogidi v. State (2005) 9 NWLR (Pt. 918) 256
62. Oguonzee v. State (1998) 5 NWLR (Pt. 551) 521 at 577-578
63. Ojukwu v. Onwudiwe (1984) 1 SCNLR 247 at 284
64. Okereke v. Yar Adua (2008) 12 NWLR (Pt. 1100) 95 at 140
65. Okoro v. State (1998) 14 NWLR (Pt. 584) 181 at 215-216
66. Olumesan v. Ogundepo (1996) 2 NWLR (Pt. 433) 628 at 645.
67. Osakue v. F.C.E., Asaba (2010) 10 NWLR (Pt. 1201) 1 at 36, Okulate v. Awosanya (2000) 2 NWLR (Pt. 646) 530 at 543.
68. Oshiomhole v. Airhiavbere (2013) 7 NWLR (Pt. 1353) 376 at 394
69. Oti v EFCC (2020) 14 NWLR (Pt. 1743) 48, 90 – 91
70. PDP v. INEC (2022) 18 NWLR (Pt. 1863) 653 at 693
71. Peenock Investment v. Hotel Presidential (1982) 12 SC 1 at 9
72. PML (Nig.) Ltd. v. F.R.N. (2018) 7 NWLR (Pt. 1619) 448 at 493
73. Reptico S.A. Geneva v. Afribank (Nig.) Plc, (2013) 14 NWLR (Pt. 1373) 172 at 217
74. Rosseck v. ACB Ltd. (1993) 8 NWLR (Pt. 312) 382 at 434-435

75. Sam v. Ekpelu (2000) 1 NWLR (Pt.642) 582 at 596
76. Skye Bank Plc v. Iwu (2017) 16 NWLR (Pt. 1590) 24 at 94
77. Sommer v. F.H.A. (1992) 1 NWLR (Pt. 219) 548 at 561
78. Sonnar v. Partenreedri M.S. Norwind (1987) 9-11 SC 121
79. Stowe v. Benstowe (2012) 9 NWLR (Pt. 1306) 450 at 463-464
80. The Fehmrn (1958) 1 All E.R 333
81. Ucha v. Elechi (2012) 13 NWLR (Pt. 1317) 33 at 359
82. Ucha v. Elechi (2012) 13 NWLR (Pt. 1317) 330 at 359
83. Udom v. Umana (2016) 12 NWLR (Pt. 1526) 179 at 253
84. Uduma v. Arunsi (2012) 7 NWLR (Pt. 1298) 55 at 119
85. Ugwu v. Ararume (2007) 12 NWLR (Pt.1048) 367 at 441 – 442
86. Ukpo v. Imoke (2009) 1 NWLR (Pt. 1121) 90 at 168. In fact,
87. Wada v. Bello (2016) 17 NWLR (Pt. 1542) 374 at 433
88. Wada v. I.N.E.C. (2022) 11 NWLR (Pt. 1841) 293 at 320.