IN THE NATIONAL ASSEMBLY ELECTION PETITION TRIBUNAL

HOLDEN AT SOKOTO

ON WEDNESDAY THE 8TH DAY OF MAY, 2019

BEFORE:

HON. JUSTICE P.A. AKHIHIERO-----------------------------CHAIRMAN

HON. JUSTICE A.N. YAKUBU-------------------------------1ST MEMBER

HIS WORSHIP S.T BELLO ---------------------------------2ND MEMBER

PETITION NO: EPT/SKT/HR/02/2019

ELECTION TO THE OFFICE OF MEMBER, HOUSE OF REPRESENTATIVES REPRESENTING ISA/SABON – BIRNI FEDERAL CONSTITUENCY HELD ON THE 23RD DAY OF FEBRUARY, 2019.

BETWEEN:-

1. SANI AMINU ISA
2. ALL PROGRESSIVES CONGRESS} ----------------PETITIONERS/RESPONDENTS

AND

1. MHAMMED SAIDU BARGAJA
2. PEOPLES DEMOCRATIC PARTY} 1ST & 2ND RESPONDENTS/APPLICANTS

3. INDEPENDENT NATIONAL ELECTORAL COMMISSION----3RD RESPONDENT/RESPONDENT

RULING

This is a Ruling on a Motion on Notice, dated on the 9th of April, 2019, filed on the 10th of April, 2019, brought pursuant to paragraphs 18(1), (4) & (5) of the 1st Schedule to the Electoral Act 2010 (as amended) as well as under the inherent powers and sanctions of this Tribunal as enshrined under section 6(6) (A) of the Constitution of the Federal Republic of Nigeria 1999 as amended.

The application is praying the Tribunal for the following reliefs:

1. AN ORDER OF THIS HONOURABLE TRIBUNAL DISMISSING Petition No. EPT/SKT/HR/02/2019 in its entirety for failure of the Petitioners/Respondents to apply within 7 days after the service of the 1st & 2nd Respondents Reply, for an application for the issuance of Pre

– Hearing Notice as enjoined under Paragraph 18(1) of the 1st Schedule to the Electoral Act 2010 (as amended).

2. Such further or other orders as this Honorable Court may deem fit to make in the circumstances.

The grounds in support of the application are as follows:

a. The Petitioners/Respondents filed Petition No. Petition No. EPT/SKT/HR/02/2019 on the 16th of March 2019.

b. Upon service of the Petitioners/Respondents Petition, the 1st & 2nd Respondents/Applicants filed their Reply on the 29th of March 2019.

c. The 1st & 2nd Respondents/Applicants Reply was served on the Petitioners/Respondents on the 1st of April 2019.

d. The Petitioners/Respondents did not file the Petitioners Reply to the Reply of the 1st & 2nd Respondents/Applicants.

e. The Petitioners/Respondents had 7 days after the 29th of March 2019 to apply for the issuance of Pre – Hearing Notice but the Petitioners/Respondents did not apply for the commencement of Pre – Hearing Session as stipulated by paragraph 18(1) of the 1st Schedule to the Electoral Act 2010 (as amended).

f. The Petition of the Petitioners/Respondents has become an abandoned petition and for which the jurisdiction of this Honourable Tribunal cannot be ignited.

g. Interest of Justice.

In support of the application, the Applicants filed a 4 paragraphs affidavit and a Written Address.

In his written address, the learned counsel for the Applicants, ***Ibrahim Abdulahi Esq.*** formulated a sole issue for determination as follows:

> ***"Whether Petition No. EPT/SKT/HR/02/2019 is not liable to be dismissed for failure of the Petitioners/Respondents to comply strictly with Paragraph 18(1) of the 1st Schedule to the Electoral Act 2010 (as amended)?"***

Arguing the sole issue, learned counsel submitted that it has been settled by a plethora of authorities that the provisions of Paragraph 18(1), (2), (3), (4) & (5) of the 1st Schedule to the

Electoral Act 2010 (as amended) must be strictly complied with. That failure to comply will rob the Tribunal of the jurisdiction to entertain the Petition.

He maintained that it is also trite law that where the Tribunal lacks jurisdiction, any proceedings conducted will amount to a nullity and it will therefore be an exercise in futility to embark on any proceedings in the absence of jurisdiction.

He referred to the case of: ***ADEGBUYI S. OLUFEMI V. INDEPENDENT NATIONAL ELECTORAL COMMISSION & ORS (2008) LPELR-4764(CA) at Pp. 18-19, paras. G-D*** where the Court of Appeal stated thus;

It is instructive to relate Appellant's case to the authoritative and solid decision of the Supreme Court in the case of OKEREKE VS. YARADUA (2008) ALL FWLR (PT. 4301 626 AT 646 Paragraphs B - D where it is stated that the proper Order Election Tribunal should make where a Petitioner or Respondent fails to apply for Pre-hearing session and effect of such failure on jurisdictional powers of the Tribunal under Paragraph 3 of the Practice Direction, is that, it is mandatory that where neither the Petitioner nor the Respondent files an application for a Pre-hearing session, the Tribunal or Court is under a duty to dismiss the Petition as abandoned and no application for extension of time to take that step shall be filed or entertained. Such steps are a condition precedent to the hearing of any matter in relation to the Petition pending before the Tribunal or Court. Non-compliance thereof will strip off the Tribunal or Court of jurisdiction as one of the factors which confer jurisdiction on a Court of law is not complied with.

(Underlining's that of counsel)

He submitted that compliance with the provisions of Paragraph 18(1) of the 1st Schedule to the Electoral Act 2010 (as amended) is so strict that where there is defect or default in compliance, no regularization can be allowed by this Honourable Tribunal. See: paragraph 18(4) of the 1st Schedule to the Electoral Act 2010 (as amended).

He relied on the case of: *ADEGBUYI S. OLUFEMI V. INDEPENDENT NATIONAL ELECTORAL COMMISSION & ORS (2008) LPELR-4764(CA)*, where THOMAS, J.C.A. at Pp. 17-18, paras. G-f stated thus:

> *"In the instant Appeal, Appellant on his own will, though based on Preliminary Objection on his Motion filed on 14/7/2007, withdrew his*

Motion, which was therefore struck out and hence dismissed the Petitioner's Petition. There is no doubt, that, the concession made by the Appellant in respect of his Motion for extension of time had matured into the Provisions of Paragraphs 3(4) and (5) of the Practice Direction No.2 of 2007, where it is provided thus:- "3(4) Where the Petitioner and the Respondent fail to bring an application under this paragraph, the Tribunal or Court shall dismiss the Petition as abandoned and no application for extension of time to take steps shall be filed or entertained" (Underlined is for emphasis). "3(5) Dismissal of a Petition pursuant to sub-paragraphs (3) and (4) above is final, and accordingly the Tribunal shall be functus officio": (Underlined is emphasis). The words "shall", stated in Paragraphs 3(1), (2), (3), (4) and (5) are mandatory and directive to the tribunal and the Appellate Court as well as Parties. Time is of the essence in complying with Electoral Act, 2006 and Paragraphs 3 (1) - (5) of the Practice Direction and therefore when any such time to comply has expired, the defect to be regularized cannot be allowed. That is its finality. See the decision of this Court in EMEKA VS. EMODI (2004) 16 NWLR (PT. 900) 433, 450."

He maintained that in election matters which are *sui generis* in nature, the slightest default in complying with procedural step could be fatal to the petition and referred to the case of: *ADEGBUYI S. OLUFEMI V. INDEPENDENT NATIONAL ELECTORAL COMMISSION & ORS (Supra)*, at P. 17, paras. D-G.

Counsel submitted further that the computation of when the Petitioners/Respondents are expected to apply for pre hearing notice is normally made according to law. Hence upon the expiration of the statutory period limited for the parties to file their pleadings, the time for the Petitioners/Respondents to apply for pre hearing starts running without waiting for any party who may default in filing his pleading. He also relied on the case of: *ONYEDEBELU* v. *NWANERI* (2008) 1 LRECN 207 at 224.

Furthermore, he submitted that by Paragraph 18(1) of the 1st Schedule to the Electoral Act 2010, (as amended), the Petitioners/Respondents in an election petition are required to apply for

issuance of pre-hearing notice as in form TF 007, upon the close of pleadings, as regulated in Paragraphs 10, 11, 12(1) 16(1) and 18(1) of the 1st Schedule to the Electoral Act.

He referred to the said Paragraphs 18(1), (2), (3) &(4) which states thus:

18 (1) "Within 7 days after the filing and service of the petitioner's reply on the respondent or 7 days after the filing and service of the Respondents reply, whichever is the case, the petitioner shall apply for the issuance of pre-hearing notice as in Form TF 007".

18(2) Upon application by a Petitioner under Sub-paragraph (1) of this paragraph, the tribunal or Court shall issue to the parties or their legal practitioners (if any) a pre-hearing conference notice as in Form TF 007 accompanied by a pre-hearing information sheet as in Form TF 008, for: a) the disposal of all matters which can be dealt with on interlocutory application; b) giving such directions as to the future course of the petition as appear best adapted to secure its just, expeditious and economical disposal in view of the urgency of election petitions; c) giving directions on order of witnesses to be called and such documents to be tendered by each party to prove their cases having in view the need for the expeditious disposal of the petition; and d) Fixing clear dates for hearing the petition.

18(3) The Respondent may bring the application in accordance with sub Paragraph (1), where the petitioner fails to do so, or by motion, which shall be served on the petitioner and returnable in 3 days, apply for an order to dismiss the petition". Going by the above purport of filing the application for issuance of pre-hearing notice and for the pre-hearing session, namely, to signal close of pleadings and cause the Tribunal (Registry) to issue to the parties invitation to come for pre-hearing session, for the purpose of disposing of all interlocutory matters, and to give direction as to the future of the course of the petition, with regards to the just, expeditions and economical way of disposing of the petition, order of call of witnesses and tendering of documents, as well as fixing date for hearing of the petition.

18(4) Where the petitioner and the respondent fail to bring an application under this paragraph the tribunal or court shall dismiss the petition as abandoned petition and no application for extension of time to take step shall be filed or entertained."

He submitted that Paragraph 18 of the 1st Schedule to the Electoral Act 2010 (as amended) should be read with paragraph 49 of the First Schedule which reads thus;

"Two or more candidates may be made Respondents to the same petition and their case may, for the sake of convenience be heard at same time but for all purposes (including the taking of security) the election petition shall be deemed to be a separate petition against each of the Respondents."

He maintained that the implication of reading paragraph 18 with paragraph 49 is that when there is more than one Respondent as in the instant petition, the election petition against each of the Respondents shall be deemed to be a separate petition. That the Petitioner is to apply for issuance of pre-hearing notice as in form TF007 under the said paragraph 18 and he is to do so within 7 days after each Respondent files and serves his reply or after the Petitioner had filed and served petitioner's reply to each of the Respondent's reply. He said that if he fails to do so in respect of one of the Respondents, that respondent is empowered to invoke the provision of paragraph 18(3) or as the case may be, that the Tribunal is empowered to *suo motu* dismiss the petition against such Respondent.

He said that the position of the law is that the Petitioners/Respondents are not to wait for all the Respondents to file and serve their respective replies before applying for pre-hearing notice. He said that this was the position of the Court of Appeal in the case of *OSEKE & ANOR v. INEC & ANOR* in Appeal No. CA/PH/EPT/25/2011 delivered on Tuesday, the 25th day of October, 2011.

He said that going by the above judicial authorities, pleadings are deemed closed as between the Petitioners/Respondents and the 1st & 2nd Respondents/Applicants when the 1st & 2nd Respondents/Applicants filed their reply to the petition on the 29th of March 2019 and same served on the Petitioners/Respondents on the 1st of April 2019. He referred to paragraphs 4 & 5 of the supporting affidavit as well as Exhibit B.

He said that the Petitioners/Respondents did not deem it fit to file the Petitioners/Respondents reply to the Reply of the 1st & 2nd Respondents/Applicants and the time within which to do same had elapsed. That by paragraph 18 (1) of the 1st schedule to the Electoral Act 2010, the Petitioners/Respondents had 7 days after the 29th of March 2019 to apply for the issuance of Pre – Hearing Notice but the Petitioners/Respondents did not apply for the commencement of Pre – Hearing Session as stipulated by paragraph 18(1) of the 1st Schedule to the Electoral Act 2010 (as amended).

He said that Exhibit A annexed to his supporting affidavit is a letter written for confirmations as to whether till date the Petitioners/Respondents filed any application for the issuance of pre hearing notice and which enquiry by paragraph 9 of the supporting affidavit shows the negative (i.e. that the Petitioners had not filed any application for the issuance of pre hearing Notice).

He said that the implication of the above is that the Petition has become an abandoned petition for which the jurisdiction of this Honourable Tribunal cannot be ignited. He said that the issue here goes beyond mere technicalities. That it is a question of condition precedent for this Honourable Tribunal to express its jurisdiction. He referred to the dictum of Muhammed JSC in the case of *OKEREKE VS YAR'ADUA (2008) 12 NWLR (PT 100) 95 AT 113 PARAS B – E* where his Lordship stated as follows:

"… Secondly, subparagraph 4 of paragraph 3 makes it mandatory where neither the petitioner nor the Respondent files an application for pre hearing session, the Tribunal or Court is under a duty to dismiss the petition as abandoned. Tribunal or court as such steps are condition precedent to the hearing of any matter in relation to the petition pending before the Tribunal or court of jurisdiction as one of the factors which confer jurisdiction on a court of law is not complied with. In the case of MADUKOLU V. NKEMDILIM (1962) 1 ALL NLR 589; (1962) 2 SCNLR 341, a court is said to be competent to determine a matter before it when the following are present;

1. If it is properly constituted with respect to the number and qualification of its membership.

2. The subject matter of the action is within jurisdiction.

3. The action is initiated by due process of law and;

4. Any action (condition precedent) to the exercise of its jurisdiction has been fulfilled.

Sentiments command no place in judicial deliberations. The rules of court are meant to be obeyed or observed by the parties coming before it for judicial deliberations. This is not a question of share technicality. Rather, it is an issue of applying legal sanctions for an abandoned petition against the petitioner in proceedings where time is of the essence.

He said that from the foregoing, the Petition is fundamentally defective and liable to be dismissed.

He urged the Tribunal to resolve the lone issue for determination in favour of the 1st & 2nd Respondents/Applicants.

In opposition to the application, the learned counsel for the Petitioners, ***Chief S.U.Nwoke*** filed a 5 paragraph counter affidavit to which is attached one exhibit marked as exhibit ''A''. He also filed a Written Address of counsel which he adopted as his arguments in opposition to the motion.

In his written address, the learned counsel formulated a sole issue for determination as follows:

> ***"WHETHER THIS PETITION IS LIABLE TO BE STRUCK OUT FOR FAILURE TO COMPLY WITH PARAGRAPH 18 (1) OF THE 1ST SCHEDUL TO THE ELECTORAL ACT 2010 (AS AMENDED)."***

Arguing the issue, counsel submitted that the Petition cannot be struck out for lack of compliance with the provisions of paragraph 18 (1) of the 1st schedule to the Electoral Act 2010 (as amended) because the application is premised upon a wrong assumption that the petitioners did not apply for the issuance of pre-hearing Notice within 7 days of service of the 1st and 2nd respondents' reply.

He submitted that from the averments in paragraphs 4 (a), (b), (c), (d), (e), (f), (g) and (h) of the counter affidavit and exhibit ''A'' attached to the counter Affidavit, it is clear that the petitioners/respondents applied for the issuance of pre-hearing Notice within 6 days of the service of 1st and 2nd respondents' reply and also filed a motion for extension of time within which to file the petitioners' reply to the 1st and 2nd respondents reply which was yet to be taken. He also submitted that in view of the pending application for extension of time within which to file the petitioners reply to the 1st and 2nd respondent' reply the time for filing request for the issuance of pre-hearing Notice has not lapsed to warrant this application being granted.

Furthermore, he submitted that since from paragraph 4 a-g of the counter affidavit, it is clear that the petitioners did in fact write a letter to the secretary of the tribunal dated 5th April 2019 which was taken to the tribunal on Saturday the 6th of April 2019 and given to the assistant secretary of the tribunal who asked the petitioners to go and pay for it after assessing it, the petitioners have complied with the provision of paragraph 18 (1) of the 1st schedule to the Electoral Act 2010 (as amended).

He contended that the import of the paragraph is for the petitioner to make a request in writing to the secretary which request was duly made by delivering the letter to the tribunal on Saturday, the 6th of April 2019, which is a sufficient compliance with the provisions of paragraph 18 (1) of the Electoral Act 2010 (as amended). He relied on the case of: ***ABUBAKAR VS. NASAMU (NO.2) (2012) 17 NWLR (PT. 1330)523; (2011)11 SC (Pt. 1) p.1*** where the Supreme Court described an ordinary letter as in this case as sufficient compliance with the requirement.

He referred to the views of ***Chukwuma Ene, JSC*** in the aforesaid case at page 48 line 5 as follows:

" The provision of the 1st schedule etc., must have been put in place to facilitate quick dispensation of justice in election matters and it will be sad if it is converted into stumbling blocks to impede the speedy dispensation of election matters on the merits; that defeats the object of the first schedule.''

Counsel also referred to the case of: ***IHEDIOHA VS. OKOROCHA****, suit No.* ***CA/OW/EPT/GV/1/2015****,* where the Court of Appeal seating in Owerri held thus:

> " **There is nothing in paragraph 18 (1) of the first schedule vesting any adjudicative or quasi-judicial power on the Tribunal Secretary when he is presented an application by the petitioner for issuance of Hearing Notice for pre-hearing session. The secretary in this regard is not required to hear the parties in the petition, upon the petitioner's application for issuance of hearing Notice before he acts on the application and issues the hearing notice. The function is purely administrative. The Secretary of the Tribunal, an administrative officer, plays no adjudicatory role in the administration of the petition. The duty imposed by paragraph 18 (1) of the First Schedule on the secretary when nudged by the petitioner to issue Hearing notice at the close of the pleadings for pre-hearing session, is merely to issue the notice. The purpose of pre-hearing Notice, as held in the case of SA'EED V. YAKOWA (2013) ALL FWLR (PT. 692) 1650 AT 1686, is to inform the parties of the impending hearing in Order that may attend the hearing.''**

He therefore submitted that there was no reason for the assistant secretary to have given the document back to the counsel to go and pay even if there is the need, which is not conceded, and the date it was brought to the Tribunal should be reckoned with.

Learned counsel submitted that going through the Federal High Court (civil procedure) Rules 2009 applicable in this tribunal, he did come across any provision which requires an ordinary letter written to the secretary of the tribunal requesting an administrative function of issuing a pre-hearing notice to be paid for, failure of which would warrant a petition being dismissed. He emphasised that the essence of the letter was to nudge the secretary to issue pre-hearing notice and this the secretary has done. He said that seeking to dismiss the petition because the payment for the letter was not made in time is stretching the provision of paragraph 18 (1) to the limits.

He submitted that even if payment was not made within time (same not being a requirement), the fact that the application for issuance of pre-hearing Notice was sent to the tribunal within time is a substantial compliance with the provisions of paragraph 18 (1) of the 1st schedule and he urged the Tribunal to so hold as was done in the case of CPC **VS. INEC & ORS EPT/TRB/02/2011** where the Tribunal sitting in Jalingo in a ruling delivered on 29th June, 2011 held,

> **''What we could not find in it or is the fact anywhere within the confines of the entire 1st Schedule is that an application for issuance of pre-hearing notice should be made a Motion on Notice in the first place. What this means is that a Motion on Notice as in the instant one is not even a requirement of any Law or Rule of practice. Issuance of pre-hearing notice, if apply for any essentially administrative as oppose, to Judicial Acts. On such application the Secretary of the Tribunal issues them. Instead of applying directly to the Secretary of the Tribunal, the petitioners filed a motion. The said motion was filed within time. It can be heard. The submission on its dismissal and consequently, the entire petition holds no water.''**

Replying on the further counter Affidavit filed on 5/5/19, the learned counsel for the 1st and 2nd Respondents submitted that the Petitioners have no right to file a further counter affidavit. That the said further counter affidavit is an incompetent process having been filed

outside the 7 day Period allowed the Petitioner under Paragraph 47(4) of the 1st schedule to the Electoral Act.

Furthermore, he submitted that the further counter Affidavit was not brought in as an annexure to the original counter affidavit but merely as a further counter affidavit without any origin and should be struck out.

We have carefully examined all the processes filed in this application together with the submissions of counsel on the matter.

The most relevant provision in relation to the application is the provision of ***Paragraph 18 of the 1st schedule to the Electoral Act, 2010*** as amended which stipulates as follows:

18. (1) Within 7 days after the filing and service of the petitioner's reply on the respondent or 7 days after the filing and service of the respondent's reply, whichever is the case, the petitioner shall apply for the issuance of pre-hearing notice as in Form TF 008;

(2) Upon application by a petitioner under subparagraph (1), the tribunal or court shall issue to the parties or their Legal Practitioners (if any) a pre-hearing conference notice as in Form TF 008 accompanied by a pre- hearing information sheet as in Form TF 009 for -

(a) the disposal of all matters which can be dealt with on interlocutory application;

(b) giving such directions as to the future course of the petition as appear best adapted to secure its just, expeditious and economical disposal in view of the urgency of election petitions;

(c) giving directions or order of witnesses to be called and such documents to be tendered by each party to prove their cases having in view the need for the expeditious disposal of the petition; and

(d) fixing clear dates for hearing of the petition.

(3) The respondent may bring the application in accordance with subparagraph (1) where the petitioner fails to do so, or by motion which shall be served on the petitioner and returnable in 3 clear days, apply for an order to dismiss the petition.

(4) Where the petitioner and the respondent fail to bring an application under this paragraph, the tribunal or court shall dismiss the petition as abandoned petition and no application for extension of time to take that step shall be filed or entertained.

(5) Dismissal of a petition pursuant to subparagraphs (3) and (4) is final, and the tribunal or court shall be functus officio.

By virtue of ***paragraph 18(1) of the first schedule to the Electoral Act, 2010 (as amended)*** a petitioner is required to apply for the issuance of pre-hearing notice within 7 days after the filing and service of the petitioner's reply on the respondent or 7 days after the filing and service of the respondent's reply whichever is the case. See: **Tunji v. Bamidele (2012)12 NWLR (Pt.1315)477 @** ***469;*****Awojobi v. INEC (2012) 8 NWLR (Pt.1303) 528; Ezekiel v. Dede 4 LRECN 222;**

Sowemino v. Awobajo (1999) 1 LRECN 28; and BASHIRU v. INEC & ORS (2008) LPELR – 3857 (CA).

The power to dismiss a petition, conferred on the tribunal under paragraph 18(3)(4) and (5) of the schedule comes into operation where the petitioner did not bring the application within 7 days after the filling and service of the petitioner's reply on the Respondent: **ENEJI & ANOR v. AGAJI & ORS (2011) LPELR – 2520 (CA)**.

The application under paragraph 18(1) can be made either by letter or ex-parte motion or on notice. This is because, the matter is purely an administrative act, not judicial or quasi-judicial and cannot be used to oust the jurisdiction of the court or take away the right of an applicant to be heard**: UGBA v. PDP (2013) 4 NWLR (Pt.1345) 486 @ 492-493.**

However, it is settled law that failure to apply for pre-hearing notice, after close of pleadings, renders the petition as "abandoned" **ACN & 1 Or. v. Nomiye & 2 Ors. (2012) 7 NWLR (Pt. 1300) 568 @ 581.**

In the instant petition, the learned counsel for the 1st and 2nd Respondent is seriously contending that the letter of application to issue pre-hearing notice was submitted outside the seven days period and that the Petitioners/Respondents did not apply for the commencement of Pre – Hearing Session as stipulated by paragraph 18(1) of the 1st Schedule to the Electoral Act 2010 (as amended).

He maintained that by Exhibit A annexed to his supporting affidavit he wrote to confirm whether till date the Petitioners/Respondents filed any application for the issuance of pre hearing notice and he received a negative response.

We are of the view that the issue for determination in this application is: ***"Whether this Petition is not liable to be dismissed for failure of the Petitioners to comply strictly with Paragraph 18(1) of the 1st Schedule to the Electoral Act 2010 (as amended)?"***

The first thing to determine is whether the Petitioner submitted any application to the Tribunal for them to issue a Pre-Hearing Notice. The 1st and 2nd Respondents are seriously contesting this fact. According to their counsel, he wrote to confirm whether the Petitioners filed any application for the issuance of pre hearing notice and he received no reply. However the Petitioners got ***the Assistant Secretary of the Tribunal, one Aliyu Hassan*** to depose to a ***Further Counter Affidavit*** where he confirmed that on Saturday, the 6th of April, 2019, Chief Steve U. Nwoke came to the Tribunal at about 11 am with a letter requesting for the issuance of pre-hearing notice in petition No. EPT/SKT/HR/O2/2019. That after receiving the letter, he told the lawyer to go and pay the sum of N400 as fees and the letter was returned to him after payment on the 11th of April, 2019.

However, the 1st & 2nd Respondents' Counsel argued that this Tribunal cannot look at the Further Counter Affidavit because *inter alia*, it was not brought in as an annexure to the original counter affidavit but merely as a further counter affidavit without any origin and should be struck out.

However, we observed that the said Further counter affidavit is more than a document emanating from a party. It is actually an official document from a relevant court official who deposed to some salient facts to put the records straight on this official administrative function relating to the issuance of the pre-hearing notice. The affidavit is very germane to the just determination of this application. It is settled law that a Court is entitled to look at a document in its file while writing its judgment or ruling, despite the fact that the document was not tendered and admitted as exhibit at the trial. See the case of ***ABIODUN VS. A.G. FEDERATION (2008) 17 WRN 56 at 108*** where the court stated thus:

"The law is settled that a Court will be right in law to refer to the documents contained in the case file which are not made part of the application under consideration if such documents will lead towards doing justice in between the parties before it. See also AGBABI VS. EBIKOREFE (1997) 4 NWLR (Pt. 502) 630".

From the above narration by the said Assistant Secretary of the Tribunal, it is evident that the Petitioner actually submitted the application letter on the 6th of April, within time. Only it appears the payment was made out of time.

The critical issue which appears to be relevant in the consideration of this application at this stage is that of the apparent late payment of the fees allegedly assessed for payment for the application for the issuance of Pre-Hearing Notice. This issue was considered in the case of: ***PDP v. EL-SUDI & ORS (2015) LPELR-26036(CA).*** In that case, the Court of Appeal opined as follows:

"From the authorities available to me the application for issuance of the Pre-hearing Notice under Paragraph 18 (1) being purely administrative in nature would not require the intervention of Court as for instance the necessity of having to seek for leave of the Courts pursuant to Paragraph 47 (1) of the 1st Schedule to perfect the application for the issuance of Pre-hearing Notice. See: Abubakar Abubakar vs. Usman Nasamu (2012) 1 SCNJ 310; Ugba & Ors. vs. PDP (2011) LPELR-2927 (SC); Gebi v Dahiru (2012) 1 NWLR (Pt.1282) 560 Awojobi v. INEC (2012) 8 NWLR (Pt. 1303) 528----It is not being alleged that the Respondents were not assessed and so did not pay appropriate fees upon the presentation of their petition. What the contention is in the circumstance is about the absence of payment of fees for the application for issuance of pre-hearing Notice, an administrative act or procedure. To insist that such payment of fees was required where the application for issuance of Notice was made by Motion, would in my view create two classes of application in pursuance of Paragraph 18 (1) of the 1st Schedule. The first is the category of application made by way of Motions where fees are paid and the other category will be applications made by way of "mere" letters written to that effect and where no fees are paid. I do not think it is the intendment of the legislature to create that dichotomy and saddle one category with some financial obligation, all within Paragraph 18(1) of the 1st Schedule."

The question therefore is whether the late payment can invalidate the letter? We do not think so. From the above dicta of the Court of Appeal, we are of the view that in so far as the application for prehearing was submitted to the Tribunal Registry on the 6th of April, 2019 within the stipulated

seven days period, the payment of the alleged filing fees on the 11th outside the period cannot invalidate the letter of application which was submitted within time. In the verdict of the Court of Appeal in the case of: ***PDP v. EL-SUDI & ORS (2015) LPELR-26036(CA),*** the Court even stated that for: "***applications made by way of "mere" letters written to that effect--- no fees are paid.***"

We hold that the delay in payment of fees was quite immaterial to the validity of the process.

In view of our salient findings above, we are unable to accede to the submissions of the 1st and 2nd Respondents that this Petition should be dismissed for failure of the Petitioners to comply strictly with Paragraph 18(1) of the 1st Schedule to the Electoral Act 2010 (as amended).

The sole issue for determination is resolved in favour of the Petitioners and the motion is dismissed with N20, 000.00 (twenty thousand naira) costs in favour of the Petitioners.

HON. JUSTICE P.A. AKHIHIERO
CHAIRMAN

HON. JUSTICE A.N. YAKUBU
1ST MEMBER

HIS WORSHIP S.T BELLO
2ND MEMBER

COUNSEL:

1. **CHIEF S.U. NWOKE…………1ST & 2ND PETITIONERS/RESPONDENTS**
2. **IBRAHIM ABDULLAHI ESQ.……1ST & 2ND RESPONDENTS/APPLICANTS**
3. **O.F. ABEGUNDE ESQ………….………….3RD RESPONDENT/RESPONDENT**