

**IN THE NATIONAL AND STATE HOUSES OF ASSEMBLY**  
**ELECTION TRIBUNAL**  
**HOLDEN AT SOKOTO**  
**ON FRIDAY THE 2<sup>ND</sup> DAY OF AUGUST, 2019**  
**BEFORE THIER LORDSHIP**

HON. JUSTICE P.A. AKHIHIRO -----CHAIRMAN  
HON. JUSTICE A.N YAKUBU-----1<sup>ST</sup> MEMBER  
HIS WORSHIP S.T. BELLO ----- 2<sup>ND</sup> MEMBER

**PETITIONNO:EPT/SKT/HR/02/2019**

**IN THE MATTER OF THE ELECTION INTO THE OFFICE OF MEMBER  
HOUSE OF REPRESENTATIVES REPRESENTING ISA/SABON BIRNI  
FEDERAL CONSTITUENCY HELD ON THE 23<sup>RD</sup> DAY OF FEBRUARY  
2019**

**BETWEEN:**

1. SANI AMINU ISA  
2. ALL PROGRESSIVES CONGRESS (APC) } ----- PETITIONERS

**AND**

1. MUHAMMED SA'IDU BARGAJA  
2. PEOPLES DEMOCRATIC PARTY (PDP)  
3. INDEPENDENT NATIONAL ELECTORAL  
COMMISSION } ----- RESPONDENTS

**JUDGEMENT**  
**DELIVERED BY JUSTICE A.N. YAKUBU (1<sup>ST</sup> MEMBER)**

This Judgment is in respect of an election petition filed by the Petitioners on the 16<sup>th</sup> Day of March, 2019 challenging the election and return of the 1<sup>st</sup> respondent

on the platform of the 2<sup>nd</sup> Respondent to the seat of member House of Representatives representing ISA/SABON BIRNI Federal Constituency of Sokoto State held on 23<sup>rd</sup> February, 2019.

At the said election, the 1<sup>st</sup> Petitioner who was sponsored by the 2<sup>nd</sup> Petitioner scored 42,677 votes, while the 1<sup>st</sup> Respondent sponsored by the 2<sup>nd</sup> Respondent polled a total number of 47,286 votes. Consequently the 3<sup>rd</sup> respondent declared 1<sup>st</sup> respondent as the winner of the said election and issued a Certificate of Return to him.

Dissatisfied with this declaration, the Petitioners filed this Petition before the Election Tribunal on the 16<sup>th</sup> March, 2019 to challenge the said declaration. The grounds for the Petition are as follows:

1. That the 1<sup>st</sup> respondent was not duly elected by majority of lawful votes at the said election; and
2. That the election was invalid by reason of noncompliance with the provisions of the Electoral Act, 2010 (as amended) and the INEC Guidelines/ Manual 2019 issued by the 3<sup>rd</sup> respondent for the conduct of the said election. These two grounds are contained in Paragraphs 11 and 14 of the Petition.

Based on the above grounds, the Petitioners prayed this tribunal for the following Declarations:

- (a) That the election conducted in Isa/Sabon Birni Federal Constituency by the 3<sup>rd</sup> respondent on the 23<sup>rd</sup> day of February, 2019 was inconclusive;
- (b) That the declaration of the 1<sup>st</sup> Respondent as the winner of the said election conducted in Isa/Sabon Birni Federal Constituency by the 3<sup>rd</sup> Respondent on the 23<sup>rd</sup> day of February, 2019 was premature and undue;
- (c) An Order directing for the conduct of a supplementary election or a re-run election in all the polling units in Gebe 'A', Gebe 'B' and Yanfako wards of Isa/Sabon Birni Federal Constituency where elections were not conducted or not conducted in accordance with the 3<sup>rd</sup> Respondent's Guide lines/Manual for conduct of election; and
- (d) That the Certificate of Return hitherto issued to the 1<sup>st</sup> Respondent by the 3<sup>rd</sup> Respondent be withdrawn forthwith pending the conduct of the said supplementary or re-run election in the affected polling units in the Federal

Constituency where elections were not conducted or not conducted in accordance with the 3<sup>rd</sup> respondent's Guide lines/Manual 2019 for conduct of election.

These declarations sought are contained in Paragraph 17 of the Petition.

On their part the 1<sup>st</sup> and 2<sup>nd</sup> Respondents denied the claims of the Petitioners and jointly filed a Reply to the said Petition on 29/3/19. The 3<sup>rd</sup> respondent also denied the claim and filed a separate Reply on the 9<sup>th</sup> of April, 2019.

The Petitioners case is that Isa/Sabon Birini Federal Constituency of Sokoto State is made up of two Local Governments which are Isa and Sabon Birni. There are 21 wards in the Federal Constituency. That before the election of 23<sup>rd</sup> February, 2019, the 2<sup>nd</sup> Petitioners wrote a letter to the 3<sup>rd</sup> Respondent intimating it of the presence of Armed Bandits in some wards in Isa Local Government Area particularly the three wards of GEBE 'A', GEBE 'B' and YANFAKO.

The letter requested that adequate security arrangements be made before the conduct of election in those wards. That no security arrangements were made and as a result the bandits prevented people from coming back home to vote and there was no election. That in spite of the fact that there was no election, the 3<sup>rd</sup> Respondent returned votes for the party in 27 polling units listed in Paragraph 12(c) of the Petition.

It is also the case of the Petitioners that in the same polling units there was none use of smart Card Readers in the conduct of the election, non-declaration of results, signing and pasting of the same at the Polling units.

In order to prove their Petition as required by law the 1<sup>st</sup> Petitioner testified and called one other witness who testified as PW1. The petitioners also tendered Exhibits PA1-PA10, PB11-PB20, PC21-PC28, PD PE1-PE3 PF1-PF3, PG1-PG3 PH-PH1 and R3.

The PW1 is one Sharif Abubakar. He testified that he is a member of the All Progressives Congress (APC). He was also the Respondent's agent at Isa/Sabon-Birni Federal Constituency collation centre for the National Assembly Elections held on the 23<sup>rd</sup> February, 2019. He stated in Paragraph 9 of his deposition that GEBE 'A' GEBE 'B' and YANFAKO wards were totally under the control of the Bandits and there is no way election could be said to have taken place in those wards.

That he and the agent of the petitioner raised a complaint at the collation centre about how the collation officer of the 3<sup>rd</sup> respondent in Isa Local Government came up with the result of the 3 wards when there was no election in those 3 wards. That the Returning officer ignored the complaint and entered the purported results of Gebe 'A' and Gebe 'B' and Yanfako wards. That at the end of the collation, the 1<sup>st</sup> Petitioner was said to have scored 42,677 votes while the 1<sup>st</sup> Respondents was said to have scored 47, 286 votes and returned the winner.

Under cross-examination PW1 stated that he was not present at Gebe 'B' and Yanfako wards during the election. He said it was his party chairman by name Ahmed Mohammed that informed him that there was no election. That the said party Chairman is still alive. That the 1<sup>st</sup> Petitioner was not also personally present at the three wards during the election. That there was a spelling mistake in the name YANFAKO. That the petitioner did not have agents at the polling unit during the election.

The next witness was Sani Aminu Isa, the 1<sup>st</sup> Petitioner who testified for the Petitioners. He told the Tribunal that he contested the election for the office of member, House of Representatives representing Isa/Sabon Birni Federal Constituency held on the 23<sup>rd</sup> February, 2019 on the platform of the 2<sup>nd</sup> Petitioner. He stated in paragraph 11 of his deposition that the 1<sup>st</sup> Respondent was not elected by majority of lawful votes cast at the election because the difference between him and the petitioner is far below the number of registered voters in the three wards of Gebe 'A', Gebe 'B' and Yanfako wards where elections did not take place.

He also deposed to the fact that none of the polling unit's results from the 3 wards was signed by any of the Petitioner's agent. That forms EC8As were filled at the INEC office at Isa instead of the polling units. In paragraph 18B, he deposed to the fact of non-declaration, signing and pasting of same. In paragraph 14, petitioner deposed to the fact that he had the opportunity during, and at the conclusion of elections to observe the election in many polling units in the two Local Governments, received and reviewed the electoral forms used at the election and heard from party agents from various polling units on the 23<sup>rd</sup> February, 2019. The rest of the deposition of the 1<sup>st</sup> Petitioner is the same with that of the PW1.

Under cross-examination the 1<sup>st</sup> petitioner agreed that he was not at Gebe 'A' Gebe 'B' and Yanfako wards during the election because of the insurgency. He also admitted that he was not present when the allocation of votes took place.

At the end of the case for the petitioners, the Respondents opened their defence. The 1<sup>st</sup> Respondent testified and called 3 other witnesses. All filed their witnesses' statements on Oath which were adopted at the trial.

In his evidence the 1<sup>st</sup> Respondent stated that he contested for the position of member House of Representatives representing Isa/Sabon Birni Federal Constituency in the National Assembly that was held on the 23<sup>rd</sup> February, 2019. That he was the candidate of the 2<sup>nd</sup> respondent and was declared as the winner with a total number of 47, 286 votes as against the 1<sup>st</sup> Petitioner who scored 42, 677 votes. That he was clearly elected with a majority of lawful votes.

He stated that the 3<sup>rd</sup> Respondent substantially complied with the provisions of the Electoral Act, INEC manuals and Guidelines for the conduct of the elections. He further stated that the elections were peaceful free and fair as there was adequate security arrangements. That all eligible voters came out en masse to exercise their franchise.

He stated further that there was no banditry whether armed or unarmed. That neither himself nor the 2<sup>nd</sup> respondent encouraged banditry or violence, or electoral malpractice in any of the polling units. That the allegation of malpractice was criminal in nature and perpetrated by unknown persons. He stated that the election in Isa/Sabon Birni Constituency was held simultaneously with the presidential elections and that the three wards allegedly invaded by bandits also produced votes for the Presidential candidates for the 2<sup>nd</sup> Respondent and the 2<sup>nd</sup> Petitioner. These among others represent the evidence of the 1<sup>st</sup> Respondent in his deposition.

Under cross-examination by the Petitioners counsel, the 1<sup>st</sup> Respondent stated that apart from his polling unit, he did not visit any other polling unit. That the contents of his deposition are based on information from people. That he had a supervisor at Yanfako named Bello Abdullahi to oversee the area. That he also had agents for Gebe 'A', Gebe 'B' and Yanfako wards.

R.W1 is one Salisu Mohammed. He adopted his deposition and told the Tribunal that as a PDP supervisor, he was given a tag with a PDP Logo. Under cross-examination by O.F.Abegunde Esq, learned counsel for the 3<sup>rd</sup> Respondent, he

stated that he was the ward supervisor of his party. That election was held in Gebe 'A' ward and there were supervisors for other parties. That there was no form of violence in that ward and result was delivered at the collation centre at Bafarawa. He denied that there was any over voting.

Saddam Mohammed testified as RW2. He adopted his deposition as his oral evidence. He told the Tribunal that he has a tag given to him to show that he is a ward supervisor for PDP for Gebe 'B' ward. His evidence on Oath is similar to that of RW1. He denied that there is a ward known as Yanfago in Isa/Sabon Birni Federal Constituency but rather Yanfako ward. He also denied that there is no name as Mhammed Sa'idu Bargaja who contested the election but rather Muhammed Sa'idu Bargaja.

He said there were no reported cases of armed banditry during the election and people came to the polling unit en masse to vote. He said as a supervisor, it was his duty to supervise the polling units in Gebe 'A' ward and make necessary Report to the 1<sup>st</sup> and 2<sup>nd</sup> Respondents. That elections were held in all the polling units through the use of Card Reader by the 3<sup>rd</sup> Respondent and results duly signed. That the Respondent's did not encourage or facilitate banditry or electoral malpractices. He denied allocation of votes.

Under cross-examination by counsel to the 3<sup>rd</sup> Respondent, he said he did not experience any form of violence at Gebe 'B' ward on the date of the election. That the election was conducted by INEC on that day. That there were other supervisors for other parties in that ward and nobody complained of the conduct of the election. That he will be surprised to hear that no election took place in Gebe 'B' ward. Under further cross-examination by Chief Nwoke, learned counsel to the Petitioner, the witness said he was not the supervisor of Yanfako ward. That he does not know the result of Yanfako and Gebe 'A' ward.

One Bello Abdullahi gave evidence as RW3. He adopted his witness statement on Oath as his evidence and tendered Exhibit R2 to show that he was a PDP supervisor for Yanfako ward during the election of House of Representative representing Isa/Sabon Birni Federal Constituency. His deposition is similar to that of the witnesses who testified before him.

He stated that the 1<sup>st</sup> Respondent contested for the seat of member House of Representatives for Isa/Sabon Birni Federal Constituency and won the election. He stated further that in all the listed wards and or polling units being challenged including Yanfako ward where he was supervisor, elections were free and peaceful

devoid of any violence, or threat of same, voters were properly accredited based on corresponding identification in the Register of voters, voting was orderly and proper, votes were counted and announced publically and all the entries in requisite electoral forms represent a true reflection of the actual valid and lawful votes cast.

When cross-examined by counsel to the 3<sup>rd</sup> Respondent, the witness said it is not true that elections did not hold in Gebe 'A', Gebe 'B' and Yanfako wards because of banditry. That the result for Yanfako ward was announced at Yanfako ward collation centre in Yanfako town. That he saw supervisors of other parties. On further cross-examination by counsel to the Petitioners, he denied being the author of paragraph 44 (iii) of his deposition. He said the deposition he wrote in Hausa is not the one before the Tribunal.

At the end of the case for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, the 3<sup>rd</sup> Respondent opened his defence. He called a lone witness who testified as R.W4. The witness told the Tribunal that he works with the Independent National Electoral Commission as an electoral officer in charge of Isa Local Government Area. In his deposition which he adopted, he stated that on 23/2/19 election for Isa/Sabon Birni Federal Constituency was held. That security was provided in all the wards and election was peaceful. The votes were counted at the polling units and wards. He said election results were duly signed. That INEC complied with the electoral Act 2010 (as amended) and guidelines. That election was conducted with smart Card Readers that the votes cast were valid and did not exceed the number of accredited voters. He denied the entire Reliefs sought by the Petitioners.

Under cross-examination by the counsel to the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, witness stated that he visited Gebe 'A', Gebe 'B' and Yanfako wards during the election. That Results of the polling units were the ones reflected in Exhibits PA1-PA10, PB11-PB20, and PC21-PC28. That only PDP and APC had polling agents in all the polling units. That the APC wrote him a letter that bandits were in Gebe 'A' and Gebe 'B' wards. He asked if they had any security Report but they answered No. That the complaint was made 2 days before election.

He stated that Exhibit PH is an original letter from the APC but it has no stamp to show it was received by INEC. He said the PDP candidate won the election.

Under cross-examination by counsel to the Petitioners the witness said he received a letter from the APC about bandits invading two wards specifically Kagara Polling unit in Gebe 'A' ward. He did not put any received stamp on the letter because it is not every letter that is so treated. The letter he received was dated

15/2/19. He was not aware of another letter dated 20/2/19 written to INEC Headquarters. The letter from APC to INEC was admitted as Exhibit PH through this witness. The witness further stated that there are 109 polling units in Isa Local Government Area that he went round about 10/15 units on the day of the election, and they cut across the 10 wards in Isa Local Government. He said the registered voters in Gebe 'A' is 7051; Gebe 'B' is 6,227 and Yanfako is 4, 074.

In the Pre-hearing Report issued by the Tribunal, a sole issue for determination was raised namely:-

***“Whether the Petitioner are entitle to the Reliefs claimed in this Petition.”***

However before going into the arguments on the sole issue it is appropriate to dispose of some Preliminary issues raised by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents. The 1<sup>st</sup> Preliminary issue raised by learned counsel to 1<sup>st</sup> and 2<sup>nd</sup> Respondents is that the name of the winner of the election as declared by the 3<sup>rd</sup> Respondent is one MUHAMMED SA'IDU BARGAJA. But in the Parties column of the Petition, it was the name of MHAMMED SA'IDU BARGAJA that was written in it. That this was not the correct name declared by the 3<sup>rd</sup> Respondent in form EC8E II admitted as Exhibit PD1. That it was the name Muhammed Sa'idu Bargaja that was also made a Party and sued as the 1<sup>st</sup> Respondent. Learned counsel stated further that in paragraph 4 of their Reply, they denied paragraph 4 of the petition which states that it was one MHAMMED Sai'du Bargaja that was a Candidate of the 2<sup>nd</sup> Respondent and participated in the election.

He submitted that Exhibit PD being documentary evidence is the best evidence as to the correct names of the Parties that participated in the election in dispute. He cited the case of ***OLAWOYE VS. BELLO (2015) LPELR 24475 C.A.*** Learned counsel stated further that all the witnesses statements on Oath of the petitioners relates to the name used in the originating petition as MHAMMED Sa'idu Bargaja that in spite of their denials of the actual name of the 1<sup>st</sup> Respondent, the Petitioners failed to amend the Petition to reflect the correct name of the person declared to be the winner of the said Petition. Counsel argued that the petitioners gave two versions of the name of the 1<sup>st</sup> Respondent which amounts to contradiction and makes the Petitioners' case worthless and unreliable.

He cited the case of ***ONWE VS. THE STATE (2017) LEPELR 42589.*** He submitted further that since the correct name of the winner of the election was not used, MHAMMED SAIDU BARGAJA is unknown to the said election in dispute. That he cannot be sued and no relief can be sought by the petitioner against the 1<sup>st</sup>



Respondent in view of this, he further argued that all the Reliefs sought by the Petitioners against the 1<sup>st</sup> and 2<sup>nd</sup> Respondents ought to fail. He finally urged us to uphold his submission and strike out or dismiss the Petition. The second preliminary issue raised by the respondent's counsel centres on the 2<sup>nd</sup> ground of the Petition contained in Paragraph 4 of the Petition. He contended that the 2<sup>nd</sup> ground of the Petition is not a cognisable ground known to the Electoral Act, 2010 (as amended) under S. 138(I)(B) and which the Tribunal can consider in the determination of this Petition.

Counsel submitted that what is required of a petitioner is to reproduce the provisions of S. 138 (I) (B) of the Electoral Act 2010(as amended) verbatim. That a Petitioner cannot go outside the ambit of S. 138(I) (B) of the Act. That the Petitioners cannot add or subtract from the provisions of 138(I) of the Act. Counsel argued that in the instant Petition, Ground two questioning the disputed election contains subtractions and additions that are outside the purview of S. 138(B) of the Act as amended.

He submitted that the consequence is that the Ground risks being struck out by the Tribunal. He cited the case of: *OJUKWU VS. YAR'ADUA (2009)12 NWLR (pt 1154)50 at 121*. He concluded by saying that the Petitioner merely alleged corrupt practices in the election for which there is no Ground alleging same.

In his Reply to the 1<sup>st</sup> leg of the preliminary objection counsel to the petitioner, Chief Steve Nwoke, argued that the 1<sup>st</sup> Respondent's name was merely misspelt as MHAMMED instead of MUHAMMED. That there is an omission of the letter 'U' in the name Mhammed. That the 1<sup>st</sup> and 2<sup>nd</sup> Respondents knew who was sued, and were not misled as to who is being sued. That it is a misnomer which is not capable of vitiating the process. He cited in support the case of *UBA PLC. VS. GPSTER. INV. COY LTD (2019) 2 WRN 89*. He submitted further that Paragraph 12 (5) of the 1<sup>st</sup> Schedule enjoins a Party who has objection to the hearing of a Petition to raise same in his Reply and failure to do so imply that the party has waived his right to complain. He cited in support the case of *NYAKO VS. ACTION CONGRESS (2009)2 NWLR* and submitted that omission of letter 'U' in the name of the 1<sup>st</sup> Respondent is not a claim to a wrong name. He distinguished the case of ONWE from the instant case.

On the 2<sup>nd</sup> leg of the preliminary objection counsel submitted that contrary to the contention of the counsel to the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, ground two of the petition in paragraph 14 thereof comes squarely within section 138(B) of the

Electoral Act supra; and is a complete ground. He cited the case of ***OJUKWU & ANOR. VS. INEC & ORS. (2015) LPELR 40652*** on how to couch Grounds of an election petition.

We have carefully considered the arguments of counsels on both sides to the objections raised by counsel to the 1<sup>st</sup> and 2<sup>nd</sup> Respondent.

The filing of a Reply and objections in an election petition is regulated by Paragraph 12 of the 1<sup>st</sup> Schedule to the Electoral Act 2010 (as amended.) Paragraph 12 (5) provides:-

***‘A Respondent who has an objection to the hearing of the petition shall file his Reply and state the objection therein, and the objection shall be heard along with the substantive Petition.’***

We have taken a look at the Reply filed on the 29<sup>th</sup> March by the 1<sup>st</sup> and 2<sup>nd</sup> Respondent. There is no objection in any form stated therein. There was equally no motion filed during the Pre-hearing raising any objection. This objection was only raised in the address stage after the Respondents participated in the proceeding. We agree with the Petitioner’s counsel that there is a delay in raising the objection. The law is that where a Respondent delays in raising an objection, he is deemed to have waived his right to complain. See ***NYAKO VS. ACTION CONGRESS (2009) 2 NWLR (pt.1126)524.***

The objection as to the real names of the 1<sup>st</sup> Respondent borders on technicalities. We are of the view that the names MHAMMED SA’IDU BARGAJA and MUHAMMED SA’IDU BARGAJA are the same and sued as the 1<sup>st</sup> Respondent. We agree with counsel to the petitioners that the name was only misspelt as MHAMMED by the omission of letter ‘U’ in between letters ‘M’ and ‘H’. More so, the Respondents were not in any way misled by the error. The courts are enjoined to administer substantial justice. We prefer to be guided by the interest of justice and hear the petition on its merit rather than strike out the Petition. The objection based on this Ground is over ruled.

The objection that Ground two of the Petition is not cognizable under the electoral Act is misconceived. The said ground two of the petition is reproduced below:-

***‘That the election was invalid by reason of noncompliance with the provisions of the Electoral Act, 2010 (as amended) and the provisions of INEC Guidelines/manual 2019 issues by the 3<sup>rd</sup> Respondent for the conduct of the said elections.’ See paragraph 14 of the petition.***

The 1<sup>st</sup> and 2<sup>nd</sup> Respondents counsel contend that the above ground is incompetent because it contains some addition and subtraction outside Section 138(B) of the Electoral Act. That the Petitioner is supposed to copy word for word section 138(B). We are of the view that the petitioner can also use his language to convey the exact meaning and purport of the subsection. See the case of ***OJUKWU & ANOR. VS. INEC & ORS. (2015) LPELR 40652 (CA)***.

In view of the above, the objection on Ground two of the Petition is also overruled.

Having disposed of, the preliminary objection, we shall not consider the arguments of counsels on the sole issue for determination namely: -

**“Whether the petitioners are entitled to the reliefs claimed in this petition.”**

In his address, petitioner’s counsel submitted that to prove noncompliance, the petitioner is required by law to prove it and where it has been proved, the natural consequence is the nullification of the election in issue. He cited case of ***AKAKPO VS. HAKEEM-HABEEB (1992)6 NWLR (pt.247)266***. Counsel argued that the 1<sup>st</sup> Petitioners’ evidence in Paragraph 18 of his deposition that since the margin of lead between the parties is 1,432 in favour of the Petitioner stood unchallenged; the Tribunal is enjoined by law to accept and act on it. He relied on the case of ***OFORLETE VS. STATE (2000)12 NWLR (pt 681)415 at 436 Paragraph ‘B’***.

Counsel contended that from the Exhibit before the tribunal, the 1<sup>st</sup> petitioner has shown that there was over voting of 126 votes in 8 polling units of Yanfako wards, 193 votes from ten polling units in Gebe ‘B’ ward and 126 votes in Gebe ‘A’ ward. That this election was inconclusive and it should have been so declared.

Counsel contended further that the petitioners have proved noncompliance with the provisions of the Electoral Act in the election and it is so substantial that the results from the objected polling units ought to be cancelled and nullified. He relied on the case of ***YUSUF VS. OBASANJO (2005) 18 NWLR (pt 956) (96 at 18)***. It was counsel’s further submission that the tribunal reserve the right and power to compute or collate results based on the evidence before the tribunal. He cited in support the case of ***AGBAJE VS. FASHOLA (2008) 6 NWLR (pt 1082) (90 at 148)***. It was the contention of learned counsel that the 3<sup>rd</sup> Respondent admitted receipt of the petitioner’s letter in paragraph 4, prior to the election complaining of the

presence of armed bandits in the three wards. That RW4 confirmed the presence of armed bandits and receipt of the 2<sup>nd</sup> petitioner's letter. This according to counsel amounts to an admission which need no prove. He relied on the case of *AL-HASSAN VS. ISHAKU (2015)10 NWLR (pt. 1520) at 299 paragraphs B-C*.

Learned counsel finally urged us to hold that the return of the 1<sup>st</sup> Respondent as the member House of Representatives for Isa/Sabon Birni Federal Constituency was premature as the election was inconclusive and a re-run election ordered in these wards.

On his part, learned counsel to the 1<sup>st</sup> and 2<sup>nd</sup> Respondent Ibrahim Abdullahi Esq., submitted that he who asserts must prove with cogent and credible evidence. That the reliefs of the petitioners are declaratory reliefs and that it is settled law that where a plaintiff/claimant/petitioner(s) claims a declaration of Right as in the present petition, the petitioners must succeed on the strength of their case and not on the weakness of the defence. He cited the case of *OSUJI VS. EKEOCHA (2009) ALL FWLR (pt. 490) 614 at 640*. He contended that where as in paragraph 11 of the Petition alleges presence of armed Bandits in Yanfago ward, the polling unit complained of relates to the polling unit in Yanfago ward quite different from Yanfako ward. That all the electoral forms tendered as exhibits relate to Yanfako ward and therefore goes to no issue since they are at variance with pleaded facts. He urged us not to place any probative value on the exhibits and expunge petitioner's evidence relating to Yanfako.

He submitted that evidence that is at variance with pleadings goes to no issue and should be disregarded. That the effect is that there is no evidence led in relation to any polling unit in Yanfako. He drew the courts attention to the fact that PW1 under cross-examination said there is no Yanfago ward in Isa/Sabon Birni Constituency.

Counsel urged us to hold that there is no allegation against Yanfako ward and neither is there any Relief sought against it.

On Gebe 'A' and Gebe 'B' wards, learned counsel submitted that the allegations of presence of armed bandits in those wards were not proved. He argued that there was no evidence from any resident of Gebe 'A' and Gebe 'B' wards who testified before the tribunal that they were prevented from exercising their franchise owing to the presence of the armed bandits. That there was equally no security Report on the presence of the armed bandits from any security personnel. He referred the court to the evidence of PW1 and the 1<sup>st</sup> Petitioner under cross-examination that they were not at Gebe 'A', Gebe 'B' and Yanfako wards on the date of the election and neither their agents. That PW1 admitted under cross-examination that what he informed the tribunal about the 3 wards were based on what the Chairman of their party informed him. That their chairman was not called to testify and the evidence of the two witnesses is hearsay. In view of this counsel

submits that hearsay evidence whether oral or documentary is inadmissible and lacks probative value. He relied on the case of **BUHARI VS. OBASANJO (2005)13 NWLR (pt. 941) (1 at 317)**.

Counsel argued further that there is a contradiction in the evidence of the 1<sup>st</sup> petitioner under cross-examination to the effect that he did not visit the three wards and his evidence in Paragraph 14 of his deposition that he visited many polling units in the 3 wards. Counsel argued further that paragraph 11 of the Petition states that bandits prevented residents from coming home to vote and not that those present were prevented from voting. Figure of those prevented is not known. As for disenfranchisement counsel submitted that petitioner must call:-

- (i) Disenfranchisement voters to testify that they are registered voters but were not allowed to vote.*
- (ii) They must tender their voters card and Register.*

He relied on the case of **NGIGE VS. INEC (2015) 1 NWLR (pt. 1440)281 at 326**. Counsel argued that the evidence of the 1<sup>st</sup> Petitioner, RW1, RW2 and RW3 to the effect that there was election and adequate security arrangements in the 3 wards were not contradicted and ought to be believed. He relied on **OMO VS. JUDICIAL SERVICE COMMITTEE OF DELTA STATE (2000)7 S.C (pt. 11)1**.

Learned counsel also referred us to the evidence RW1-RW4 to the effect that elections took place in the three wards, which were not contradicted by cross-examination and urged us to believe the evidence. He contended further that the RW1-3 are ward supervisor for the three wards, the RW4 is the Electoral officer for Isa Local Government Area and all were competent to testify on the conduct of the said election. Learned counsel argued further that the tendering of the result of the election by the petitioner amounts to acknowledgement that election took place in the three wards. That the results of the election are presumed correct until the contrary is proved. That this presumption has not been rebutted. He argued further that if the inadmissible evidence of the 1<sup>st</sup> petitioner and PW1 are expunged from the record, there will be nothing left to sustain the petition. Counsel urged us not to place any value on Exhibit PH since it was not pleaded.

On noncompliance, counsel argued that allegation of non-usage of card reader, non-declaration of Results, signing and pasting of same were not proved as neither the 1<sup>st</sup> petitioner nor the PW1 was at any of the polling units. That the 1<sup>st</sup> Petitioner and the PW1 just dumped the result sheets and did not identify which of them was not signed or relate them to each of the polling units where the result was not signed.

That exhibits PA1-PA10, PB11-PB20, PC21-PC28 remained dormant until they are activated. He relied on the case of **UNION BANK VS. ONWUKWE (2017)**

***LPELR 43279 C.A.*** Counsel finally submitted that the petitioners have not proved substantial noncompliance which has substantially affected the result of the elections. He therefore urged us to resolve the lone issue in favour of the Respondents.

The 3<sup>rd</sup> Respondent also made submissions on the sole issue for determination through its counsel, Ridwan Musa Esq. He submitted that the trite position of the law is that there is a presumption of regularity, genuineness and correctness of the result declared by third Respondent. He relied on the case of ***ALIUCHIA VS. ECHI (2012) LPELR 7823***. He argued that the petitioners have failed to rebut the presumption from their evidence before the tribunal. He contended that the evidence given in rebuttal is hearsay.

He argued that the allegation of non-voting due to invasion of bandits amounts to disenfranchisement and which was not proved. That the allegation of vote allocation amounts to falsification of results and only those who falsified or were present when it was carried out are competent to give oral evidence. That the falsification of Result amount to criminal offence which must be proved beyond reasonable doubt. He relied on the case of ***NWOBODO VS. ONCH (2011)18 NWLR (PT. 1279) (493 at 538)***. He further contended that the petitioner alleged non-signing of Result, but failed to call agents to testify on what really happened. That this is fatal to the case of the petitioners. He relied on ***IGWEBUIKE VS. EZEONWUKA & ORS. (2015) LPELR 40675***. Learned counsels submitted further that all the electoral forms were tendered as exhibits from the Bar and there was no evidence to link them. That they are of no value. He relied on the case of ***OMISORE VS. AREGBESOLA (2015) LPELR 24803***. In conclusion, counsel urged us to dismiss the petition in its entirety.

We have considered the totality of evidence and the submission of counsel to the both sides on the lone issue. Petitioners urged us to determine the sole issue in favour of the petitioners and grant the reliefs sought. The reason according to them is that the 1<sup>st</sup> Respondent was not elected by majority of lawful votes and that the election was invalid due to noncompliance with the provisions of the electoral Act 2010 (as amended) and the INEC guidelines/manual 2019. To substantiate his submission that the election was not based on majority of lawful votes, learned Counsel made the following allegations:-

- (1) Non-conduct of election in three wards due to the presence of armed Bandits;***
- (2) Voters were not allowed to vote; and***
- (3) Allocation of votes.***

These allegations must be proved and the burden of prove lies with the Petitioners more so that he seeks a declaratory relief. The Petitioners must succeed or fail on the strength of his own case and not on the weakness of the respondent's case see *APC VS. INEC (2011)18NWL (pt. 1278) (493 at 538)*

On non-conduct of election, the petitioner must prove it by calling at least a registered voter from each of the polling booths in each of the ward in the constituency to testify. See *INEC VS. ANTHONY (2011)7 NWLR (pt 1245) (1 at 20-27)*. No such prove is before the tribunal. Also to prove DISENFRANCHISEMENT, the disenfranchised voters must be called to give evidence to establish the fact that they were registered voters but were not allowed to vote, the voters card, and voter's Register for the polling units must be tendered, and all the disenfranchised voters must testify to show that if they were allowed to vote, their candidate would have won the election. See *NGIGE VS. INEC (2015) 1 NWLR (pt. 1440) p. 281*. All the elements must be proved and not just one. There is none of such proof before the tribunal. As for ALLOCATION OF VOTES, this amounts to falsification of result by the 3<sup>rd</sup> Respondent. This must be proved by only those who falsify or were present when it was carried it out. Besides, the allegation of votes allocation is a criminal offence and must be proved beyond all reasonable doubt. See *WAZIRI & ANOR. VS. GAIDAM & ORS. (2015) LPERL (26046)*.

We are of the view that none of the allegations was proved in any of the ways mentioned above. In an attempt to prove the allegations PW1 and the 1<sup>st</sup> petitioner testified. The PW1 said he was an agent of the 2<sup>nd</sup> Petitioner at the collation centre. He accepted his deposition. Under cross-examination, he admitted that he was not personally present at the wards during the elections. That it was his party chairman one Ahmad Mohammed who told him that election did not take place. The said Ahmed is still alive and was not called. P.W.1 further admitted under cross-examination that the 1<sup>st</sup> Petitioner was not at those 3 wards during the election. The evidence of the P.W 1 is based on hearsay since it was his party chairman that told him that election did not hold in the 3 wards. The 1<sup>st</sup> Petitioner testified himself as the 2<sup>nd</sup> witness. He admitted under cross-examination that he was not at Gebe 'A', Gebe 'B' and Yanfako wards because of the insurgency. If 1<sup>st</sup> Petitioner was not at the 3 wards, it means the content of his deposition is also hearsay. The allegation in ground 1 cannot be proved by hearsay. Hearsay evidence oral or documentary is inadmissible and lacks probative value. See the case of *BUHARI VS. OBASANJO (2005)13 NWLR (pt. 941) (1 at 317)*.

The allegation by the Petitioners of the presence of the armed bandits in the 3 wards has not also been proved. There is no eye witness account of the presence of the armed bandits. The only two witnesses that testified said they were not at the 3 wards on the election day. They gave hearsay evidence which is inadmissible and

lacks probative value. See *BUHARI VS. OBASANJO (supra)*. There was equally no security Report tendered before the tribunal to show the presence of the bandits. We agree with learned counsel to the 1<sup>st</sup> and 2<sup>nd</sup> Respondents that Exhibit PH which is a letter written to the 3<sup>rd</sup> Respondent is not confirmation of the presence of the armed bandits. Moreover, the letter was written before the election, there is nothing to prove that the alleged bandits were present at any of the polling booths on the election day.

The 2<sup>nd</sup> ground for this Petition is that election was invalid by reason of non compliance with the provisions of the Electoral Act 2010 (as amended) and the INEC Guideline/manual 2019 issued by the 3<sup>rd</sup> Respondent.

The facts in support are provided in paragraph 15. The allegation of non compliance therein are non-use of Smart Card Reader in 27 polling units, non-declaration of Results, signing and pasting of same. Again the Petitioner must prove this ground to be entitled to the Reliefs sought. The evidence to prove these allegations must come from the PW1 and the 1<sup>st</sup> petitioner.

The totality of the evidence of the two witnesses have been declared as hearsay which is not admissible. For the non-signing of Result Sheets Exhibits PA1-PA10, PB11-PB20 and PC21-PC28 were tendered. They are all Results sheets of the three wards. Learned counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents had submitted that the results were merely dumped and no analysis was made by the petitioners to show which of the results was not signed. We agree with him. The law is that documentary evidence admitted in proof of petitioner's case remains dormant until they are activated by oral evidence see *UNION BANK VS. ONWUKWE (2017) LPELR 43279*.

The Petitioners in paragraphs 5.12-5.14 made allegations of over voting in the three wards. 1<sup>st</sup> and 2<sup>nd</sup> respondent's counsel has urged us to disregard same. He submitted that the petitioner's never made over voting an issue as same was not pleaded in relation to any of the polling units. Again, we agree with him. We have gone through the entire petition, and cannot locate where over voting is pleaded. The law is that evidence of facts not pleaded goes to no issue. See *STANBIC IBTC BANK VS. LONGTERM GLOBAL CAPITAL LTD & ORS. (2018) LPELR*.

In view of the above, we are of the view that the petitioner has not proved non compliance with the provisions of the Electoral Acts 2010 (as amended) and the INEC Guidelines and manual 2019.

The evidence of the respondents on the other side came from RW1-RW3 who testified. They were ward supervisors from GEBE 'A,' GEBE 'B' and YANFAKO wards who supervised the elections. They are competent witnesses as to the conduct of the elections in the three wards. They gave un-contradicted evidence that elections were peaceful without any violence. Their evidence were not contradicted and we believe them. The R.W4 is the electoral officer and witness to



the 3<sup>rd</sup> Respondent. He is also a competent witness by the nature of his office to testify on the conduct of the election in the three wards. He adopted his statement on Oath, and stated under cross-examination that elections were held in the three wards and same was peaceful.

He was at the three wards during the election and the 1<sup>st</sup> Respondent was declared the winner. He testified that the results from the three wards were the ones reflected in Exhibits PA1-PA10, PB11-PB20 and PC21-PC28.

The evidence of R.W4 was not contradicted we believe him that there was election at the three wards. We also draw support in our belief from the fact that the Petitioner under cross-examination by counsel to the 1<sup>st</sup> and 2<sup>nd</sup> Respondents, agreed that there was election in the three wards and result declared. Besides, the tendering of the result sheets that is Exhibit PA1-PA10, PB11-PB20, PC21-PC28 for the three wards by the petitioners is an acknowledgement of the fact that election indeed took place in the said wards and are presumed by law to be genuine and correct, until the contrary is prove. See ***CPC VS. INEC & ORS. (2011)LPELR 8257 AT 71***. There is no credible evidence from the Petitioners to rebut this presumption as we have held the evidence of the 1<sup>st</sup> Petitioner and the PW1 amounts to hearsay evidence which is inadmissible.

In view of the above, the petitioners have failed to prove that election did not hold at the three wards of GEBE 'A', GEBE 'B' and YANFAKO wards. They have equally failed to prove that the votes scored by the 1<sup>st</sup> Respondent were not valid votes. On the contrary, we hold that the election in the three wards were conclusive as votes were cast, counted and the winner declared.

On the whole the lone issue for determination is resolved in favour of the Respondents.

Having resolved all the Issues in this Petition in favour of the Respondents, ***we hold that the Petition lacks merit and it is accordingly dismissed with N20, 000.00 (twenty thousand naira) costs in favour of each Respondent.***

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**HON. JUSTICE P.A. AKHIHIERO**  
**CHAIRMAN**

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**HON. JUSTICE A.N. YAKUBU**  
**1<sup>ST</sup> MEMBER**

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**HIS WORSHIP S.T BELLO**  
**2<sup>ND</sup> MEMBER**

**COUNSEL:**

- 1. CHIEF S.U.NWOKE.....PETITIONERS**
- 2. IBRAHIM ABDULLAHI ESQ.....1<sup>ST</sup> & 2<sup>ND</sup> RESPONDENTS**
- 3. O.F.ABEGUNDE ESQ.....3<sup>RD</sup> RESPONDENT**