IN THE NATIONAL AND STATE HOUSES OF ASSEMBLY ELECTION TRIBUNAL HOLDEN AT SOKOTO ON MONDAY, THE 5TH DAY OF AUGUST, 2019

BEFORE THEIR LORDSHIPS:

HON. JUSTICE P.A. AKHIHIERO----------CHAIRMAN
HON. JUSTICE A.N YAKUBU----------MEMBER I
HIS WORSHIP S.T. BELLO----------MEMBER II

PETITION NO: EPT/SKT/HR/04/19

1. HON. ISAH SALIHU BASHIR
2. PEOPLES DEMOCRATIC PARTY (PDP) } **PETITIONERS**

AND

1. YUSUF ISAH KURDULA
2. ALL PROGRESSIVE CONGRESS (APC)
3. INDEPENDENT NATIONAL ELECTORAL COMMISSION
4. RESIDENT ELECTORAL COMMISSIONER (SOKOTO STATE)
5. THE RETURNING OFFICER,TANGAZA/GUDU FEDERAL CONSTITUENCY
6. THE ELECTORAL OFFICER, TAGAZA LOCAL GOVERNMENT
7. THE ELECTORAL OFFICER GUDU LOCAL GOVERNMENT
8. THE LOCAL GOVERNMENT COLLATION OFFICER TANGAZA L.G
9. THE PRESIDING OFFICER INEC GINJO DISPENSARY POLLING UNIT
10. THE PRESIDING OFFICER INEC RUWA WURI PRI. SCHOOL POLLING UNIT

RESPONDENTS

11. THE PRESIDING OFFICER INEC NAKURU POLLING UNIT
12. THE PRESIDING OFFICER INEC TSITSE POLLING UNIT
13. THE PRESIDING OFFICER INEC CHEKEHI POLLING UNIT
14. THE PRESIDING OFFICER INEC BARKATUBE POLLING UNIT
15. THE PRESIDING OFFICER INEC GURAME BAKIN KASUWAPOLLING UNIT
16. THE PRESIDING OFFICER INEC GWABRO POLLING UNIT

RESPONDENTS

JUDGEMENT
DELIVERED BY HIS WORSHIP S.T. BELLO (MRS)

The Petitioners *vide* a Petition dated and filed on the 16th day of March 2019 are challenging the election of the 1st Respondent on the platform of the 2nd Respondent to the office of member, House of Representatives for Tangaza/Gudu Federal Constituency of Sokoto State held on the 23rd day of February 2019.
The grounds for presenting the Petition are as follows:

(i) The 1st Respondent was, at the time of the election, not qualified to contest the election.
(ii) The 1st Respondent is not duly elected by a majority of lawful votes cast at the election.
(iii) The 1st Petitioner was the candidate who scored the highest number of lawful votes cast at the election; and ought to have been declared winner and returned as duly elected Member of the House of Representatives representing Tangaza /Gudu Federal Constituency of Sokoto State.
(iv) That the election was invalid by reason of corrupt practices or non-compliance with the provisions of this Electoral Act 2010 as amended

Whereupon, the Petitioners prayed the Honourable Tribunal for the following reliefs in the said Petition;

1. THAT IT BE DETERMINED that the 1st Respondent was not qualified to contest as the Candidate of the All Progressive Congress for election to the Office/membership of House of Representatives for Tangaza /Gudu Federal Constituency of Sokoto State held on the 23rd February, 2019.

2. THAT IT BE DETERMINED that the election of the 1st Respondent is invalid on the ground of non-compliance with the provision of the Electoral Act, 2010 as amended and INEC Regulations and Guidelines for conduct of Election 2019.

3. THAT IT BE DETERMINED that the return of 1st Respondent as having been duly elected to the Office/membership of House of Representatives for Tangaza /Gudu Federal Constituency of Sokoto State on the basis invalid votes cast for candidate of All Progressive Congress the election, was a nullity.

4. THAT IT BE DETERMINED that the 1st Petitioner is entitled to be returned by 3rd and 5th Respondents as having been duly elected to the Office/membership of House of Representatives for Tangaza /Gudu Federal Constituency of Sokoto State.

5. An Order setting aside the Certificate of Return (if any) issued by the 3rd Respondent to the 1st Respondent and instead the 3rd Respondent be ordered to issue Certificate of Return to the 1st Petitioner as the winner of the Tangaza/ Gudu Federal Constituency election held on 23rd day of February, 2019.
6. And such further or other orders as the Hon. Tribunal may be deemed fit to make in the circumstances of this petition.
7. COSTS of this petition.

Upon the Petition being served on the Respondents, the 1st Respondent filed a Reply to the Petition on the 31st of March 2019.The2nd Respondent filed his own Reply on the 1st of April, 2019 while the 3rd to 16th Respondents filed their joint Reply on the 12th of April, 2019. It is noteworthy that the 1st and 2nd Respondents filed Notices of Preliminary Objections alongside their replies. The Petitioners filed their Reply to the 3rd – 16th Respondents Reply on the 10th of May 2019.

Trial commenced in this Petition on the 23rd day of May 2019. The Petitioner eventually called six (6) witnesses with the 1st Petitioner himself being the seventh person to testify in his own support. At the close of the Petitioners case, the learned counsels to the Respondents decided not to call any witness in rebuttal.

A summary of the evidence presented by the Petitioners in proof of their case is as follows:

PW 1, Aminu Saidu adopted his deposition already frontloaded with the initials A.S. A summary of his said deposition was to the effect that he is a bona fide member of the People's Democratic Party (PDP), one of the registered Political Parties in Nigeria. According to him, he was a polling agent for his afore-named political party at the polling Unit 013 at Gurame Bakin Kasuwa, in Tangaza ward/ Registration Area (R.A), Tangaza Local Government Area during the General Election which was held on Saturday, the 23rd day of February, 2019 for the election of member of the House of Representatives representing the Tangaza/Gudu Federal Constituency of Sokoto State.

That at his voting point, voting took place without the use of the Smart Card Reader and nobody was accredited. He alleged that the one hundred and forty-one votes purportedly recorded for the 1st and 2nd Respondents were as a result of card reader malfunction.

Under cross-Examination, the witnessed confirmed that he was the agent of the Petitioners at the election. That he voted at Garame Bakin Kasuwa Polling Unit after he showed his PVC to the INEC officials who cross-checked with some documents. He said that was how the other voters voted at his polling unit.

He confirmed making his statement in Hausa Language to one Abdullahi Garba and acknowledged the fact that the statement he adopted was written in English language and that he could understand some part of the said statement.

Upon further cross examination he stated that the PDP scored 131 votes while the APC scored 135 votes. That he was not accredited before voting and he signed the Result sheet at his Polling unit as the petitioner's agent at the end of the voting.

He stated that has only one signature which is the one on his deposition. Later, he stated that his signature on the result sheet is the only signature that he has and maintained that the scores of the petitioner on the result sheet are the same scores contained in his deposition.

At the trial, the learned counsel to the Petitioners tendered some public documents from the bar which were admitted in evidence as follows:

1. Forms EC8A in respect of the following polling units were admitted as follows;
    (i) Chekehe Primary School-Exhibit PA1
    (ii) GurameBakinKasuwa – Exhibit PA2
    (iii) Ruwa-Wuri Primary School Code 001-Exhibit PA3

(iv) Ruwa-Wuri Primary School II Code 002-Exhibit PA4
(v) Kwannawa Primary School in Kwaccuhuru ward-Exhibit PA5

2. Forms EC8B from wards/Registration Areas in Tangaza Local Government Area were admitted as follows:
   (i) Tangaza ward-Exhibit PB1
   (ii) Sakkwai ward-Exhibit PB2
   (iii) Ruwawuri ward-Exhibit PB3
   (iv) Salewa ward-Exhibit PB4
   (v) Kwaccehuri ward-Exhibit PB5
   (vi) Gidanmadi ward-Exhibit PB6
   (vii) Magomhore ward-Exhibit PB7
   (viii) Sutti ward-Exhibit PB8
   (ix) Khalanjeni ward-Exhibit PB9
   (x) Raka ward-Exhibit PB10
3. Forms for collation and declaration of results were admitted as follows:
   (i) Form EC8C for Tangaza Local Government Area-Exhibit PC1
   (ii) Form EC8D for the two Local Government Area-Exhibit PC2
   (iii) Form EC8E (final declaration and return for constituencies-Exhibit PC3

PW2, Mainasara Lumoalso adopted his written deposition and stated therein that he was an agent for the PDP at Tangaza Local Government collation centre. That while collation was going on there, the collation officer (i.e. the 8th Respondent) unilaterally reduced his party's scores by 140 and recorded 12,473 votes for the party instead of 12,593 votes thereby conferring undue advantage on the first respondents to the detriment of the petitioner and his party.

Furthermore, that 13 votes were added to the first and second respondents in respect of Kalanjaini ward result in order to give the first and second respondents unlawful advantage over the petitioner. He said that he drew the attention of the collation officer in that regard but his complaints were disregarded. He was shown Exhibit PC1 and he identified Exhibit PB9 as the result of Kalajaini ward which he mentioned in paragraph 6 of his deposition.

Under cross-examination, the P.W.2 was shown Exhibit PC3 from which he attested to the fact that the APC candidate scored 27,220 votes while the PDP candidate scored 26,047 with the margin of lead being 1, 173 votes. He admitted that if his complaint of reduced votes is resolved the APC candidate will still be in the lead.

He informed the Tribunal that he did not see the form which he signed as the collation agent in respect of Tangaza Local Government Area in this Tribunal among the Exhibits tendered.

P.W. 3, Mohammed Sama'ila, was a staff of INEC who appeared on ***Subpoena duces tecum*** to produce the card reader Print out in respect of Tangaza/Gudu Federal Constituency. The documents produced by him were tendered and admitted in evidence as follows:

1. Certificate of compliance with the provisions of section 84 of the Evidence Act 2011 is admitted as Exhibit PD
2. Card Reader Printout in respect of Tangaza/Gudu Federal Constituency is admitted as Exhibit PD1.

The 1st petitioner, Isah Salihu Bashir testified by adopting his statement on Oath. In the said statement on oath he stated that the 1st Respondent was the person unduly declared as the winner of the election instead of himself. He stated that elections were not conducted in the following polling units in Tangaza Local Government with about 3,490 registered voters which is more than the differences between the APC and the PDP because no accreditation was done with Card reader contrary to INEC guidelines. The affected Polling Units are as follows:

Polling Units	Code	Registered Voters
a. Ginjo dispensary, Magonho ward	33/19/09/011:	803
b. Ruwa wuri primary school,	33/19/02/1001:	1,123
c. Nukuru, Sakkwai ward	33/19/10/004:	282
d. Tsitse, Sutti ward	33/19/06/005:	80
e. Chekehi primary, Salewa ward	33/19/04/005:	493
f. Barkatube, Tangaza ward	33/19/01/015:	76
g. GurameBakinKasuwa, Tangaza Ward	33/19/01/013:	633
h. Ruwa Wuri, Ruwa Wuri Ward	33/19/01/002 :	1,227

Registered Voters: 4,717.

He reiterated that no election was conducted and no result was declared at Barkatube Polling Unit, Tangaza ward with code 33/19/01/015 and 803 Registered Voters (sic). Further that at Tangaza Local Government Collation Centre, the Collation Officer (8th Respondent) unilaterally reduced his scores by 140 Votes and recorded 12, 473 votes for him instead of 12,593 votes while collating the Results from the Wards on Form EC 8C.Alaso, that the 3rd Respondent increased the scores of the 1st and 2nd Respondents

thereby conferring undue advantage on the 1st Respondent to his own detriment and to the detriment of his party, the PDP.

He maintained that having scored majority of valid lawful votes, he ought rightly to have been declared winner in the election and returned as Member of House of Representatives for TANGAZA/GUDU Federal Constituency of Sokoto State. That the 3rd Respondent ought not to have returned the 1st Respondent as elected as it did on 24th February 2019.

That during the conduct of the National Assembly election of 23rd February, 2019 in Tangaza/Gudu Federal Constituency of Sokoto State, there was non-compliance with the Provisions of the Electoral Act, 2010 (as amended) as well as the 3rd Respondent's Regulations and Guidelines for Election Officials 2019.That the non-compliance substantially affected the results of the election against him and that it will be in the interest of justice to enter judgment in his favour in terms of the reliefs in his Petition.

He was shown Exhibit PC 1 which he identified as the Form EC8C mentioned in Paragraph 8 of his deposition. He also identified Exhibits PA1, PA2, PA3, PA4 and PA5.

Under cross-examination, he informed the Tribunal that the score of his party for Tangaza Federal constituency was 12,473 while that of the score of the 1st Respondent is not known to him.

He testified that he voted in polling unit 001 in Kalenjeni Primary School in Kalenjeni ward in Tangaza Local Government Area on the day of election and confirmed that he did not visit any other polling unit but knew what happened in other polling units based on what his agents told him. He stated that card readers were not used in 8 polling units.

He maintained that he scored the highest number of votes from the information received from his agents. That he defeated the 1st Respondents with many votes but cannot say the actual number because there was some over voting. He confirmed stating in paragraph 8 that his votes were reduced by 140 but he later discovered that it was actually reduced by 120 votes.

He was shown Exhibit PC1 whereupon he informed the Tribunal that if he is given a calculator, he can show from the Exhibit how his votes were reduced. He also informed the Tribunal that he had agents in all the polling units at the election but when the results were announced they said that he lost the election. He confirmed the fact that he is only complaining of eight polling units excluding the polling unit where he voted. He also confirmed not visiting any of the eight units he complained about. He wants to be declared the winner. He also wants the Tribunal to investigate and do justice in this petition. He

however conceded that he does not have any other result apart from the one published by INEC.

P.W 4, Abdullahi Usman stated that he was a polling agent for PDP at polling Unit 001 at Ruwa Wuri primary School, in Ruwa Wuri ward/ Registration Area (R.A), Tangaza Local Government Area during the General Election. According to him, voting took place at his voting point without the use of Smart Card Reader and nobody was accredited. He knew that 312 votes purportedly recorded for the 1st and 2nd Respondents were as a result of card reader malfunction.

Under cross-examination, he said that there are three polling units in the said Ruwa-Wuri Primary School. He was shown Exhibit PD 1 and he confirmed that the number of persons accredited with card reader is stated therein. He however insisted on standing by the content of paragraph 5 of his deposition that no card reader was used.

P.W.5, Ala Kaka stated that he was a polling agent for the PDP at the polling Unit 002 at Ruwa Wuri 'C', in Ruwa Wuri ward/ Registration Area (R.A), in Tangaza Local Government Area during the General Election. He also stated that voting took place without the use of Smart Card Reader and nobody was accredited at his polling unit.

According to him, one security personnel named Abdullahi (Police Officer) thumb printed ballot papers for many voters against their will while one Ayi Babba engaged in vote buying for his party, All Progressive Congress (A.P.C) at his polling unit. He stated that 312 votes purportedly recorded for the 1st and 2nd Respondents were as a result of card reader malfunction.

Under cross-examination, he confirmed being the petitioner's agent in Ruwa-Wuri polling unit 002. That the card reader worked for some time but later malfunctioned. He denied the fact that some voters were accredited manually and some with card reader machine. He stated that the APC scored 417 votes at his polling unit and that he did not vote during the election.

He denied saying that the 312 votes purportedly recorded for the 1st and 2nd Respondents were as a result of card reader malfunction as recorded in paragraph 8 of his deposition. He said that it is a criminal allegation for the alleged police officer named Abdullahi to thumb print ballot papers for many voters against their will.

He confirmed being trained by his party before going to the field and knows the difference between a card reader that failed totally and one which malfunctioned. He acknowledged that if the card reader identifies the PVC card but fails to identify the thumbprint, the person can still vote. According to him, some times in his polling unit, the card reader failed to accredit both the PVC and the thumbprint.

P.W. 6, Aminu Alhaji stated that he was a polling agent the for PDP at the polling Unit 005 at Chekehe primary School, in Salewa ward/ Registration Area (R.A), Tangaza

Local Government Area during the General Election. He said that voting took place without the use of the Smart Card Reader and nobody was accredited at his voting point. That the 141 votes purportedly recorded for the 1st and 2nd Respondents were as a result of card reader malfunction.

Under cross-examination, he informed the Tribunal that he made a mistake when he stated in Paragraph 11 of his deposition that 141 votes were recorded for the 1st and 2nd Respondents. According to him, the number of registered voters in his unit was 493 but he could not remember the number that was accredited. He admitted not voting at this polling unit. He also informed the Tribunal that he could read and write in Hausa but not in English. He insisted that he signed the result sheet in his polling unit under compulsion. He claimed to have many signatures.

At this stage, the learned counsel to the Petitioner, Adar Usman Esq tendered some public documents from the bar. In the absence of any objection from the learned counsels for the Respondents, the documents were admitted in evidence as follows:

1. Seven voters Registers for Tangaza Local Government Area are admitted as Exhibit PE1 to PE7;
2. Nine Forms EC8A (II) in respect of Tangaza Local Government Area-Exhibit PF1 to PF9;
3. INEC Form CF 001 and all the attached documents-Exhibit PG; and
4. Two INEC receipts of payment for Certified True Copies of INEC documents-Exhibit PH and Exhibit PH1.

At the close of the Petitioners' case all the learned counsel for the Respondents informed the Tribunal that they would not lead evidence to defend the petition and the matter was adjourned for final addresses.

On the 23rd of July, 2019 they adopted their Final Written Addresses and the matter was adjourned for judgment.

In his Written Address, dated the 1st day of July 2019 and filed on the 4th day of July 2019, ***Sulaiman Usman SAN***, learned counsel for the Petitioners commenced by observing that there are some divergences between the 2015 INEC Regulations and Guidelines and Regulations 2019 in the following material respects:

i) The voting procedure is the Continuous Accreditation and Voting System (CAVS). This means that voters will come to the polling unit, get accredited and vote immediately. This is different from the 2015 method which involved accreditation first and voting later. The CAVS brings our voting procedure closer to the provision of section 49 of the Electoral Act;

ii) Mandatory use of Smart Card Reader (SCR). Clause 10 of the Regulations and Guidelines makes the use of the SCR compulsory. It is also an offence for any official not to use it;
iii) Voters whose fingerprints are not authenticated or where wrong pictures and details pop up on the SCR due to technical glitches will not be disenfranchised. However, they will be required to thumbprint the Register of Voters and provide their phone numbers for audit purposes while Polling Agents, who represent the political parties, will be consulted before such voters can receive ballot papers;
iv) In the present Regulations and Guidelines, presenting someone else's Permanent Voter's Card (PVC) with an intention to vote with it is now an offence, which may lead to prosecution;
v) Mandatory pasting of EC 60E which is a poster replica of the Polling Unit result. Failure to paste the poster is now an election offence in line with section 123 of Electoral Act; and
vi) Reverse logistics is now mandatory. This will ensure that re-usable materials deployed for elections are returned for safe keeping.

The learned counsel submitted that the requirement for the mandatory use of Smart Card Reader (SCR) contained in INEC Regulations and Guidelines, 2019 has full statutory flavour and effect. In support of this submission, the learned silk cited the case of: ***Best Njoku v. Chief Mike Iheanatu (2008) LPELR-3871 (CA)*** the Court of Appeal held as follows:

> ***"A subsidiary legislation or enactment is one that was subsequently made or enacted under and pursuant to the power conferred by the principal legislation or enactment. It derives its force or efficacy from the principal legislation to which it is therefore secondary and complementary."***

According to the learned counsel, it is settled law that a subsidiary legislation when lawfully made has the effect and force as the principal or enabling Act. On this he cited the following decisions: ***Abubakar V. Bebeji Oil and Allied Products Ltd (2007) All FWLR (Pt.362) 1855 (SC); George v. The State (2011) All FWLR (Pt.587) 664; Trade Bank Plc v. Lagos Island Local Government (2003) FWLR (Pt.161)1734 (CA); Queen v. Bukar (1961) 1 All NLR 646 @650-651.***

He thereafter drew the attention of the Tribunal to the express words used in the INEC Regulations and Guidelines 2019 on the mandatory use of Smart Card Reader for the

purpose of accreditation of voters particularly Paragraph 10(a) and (d) of the Regulations and Guidelines for the conduct of Elections.

The learned silk thereafter summarized the statement of facts, itemized the exhibits tendered and appraised the evidence of the witnesses called in proof of the Petition.

He submitted that upon the Respondents electing not to call evidence in support of their respective pleadings, the 1st, 2nd and 3rd – 16th Respondents cannot in law formulate any issue for the determination of this Petition. He referred the Tribunal to the case of ***Dingyadi v. Wamako (2008) 17 NWLR (PT 1116) 395 @ 422*** where the Court of Appeal held as follows;

> ***"There cannot be an issue for consideration formulated by a party that has abandoned his pleadings. The issue so formulated has nothing to hang on. Where a defendant abandons his pleadings, he is taken as having thrown in the towel and as having admitted the allegations against him in the statement of claim."***

The Petitioners therefore predicated their Written Address only on their issues formulated dated and filed on 15th day of May, 2019 which are as follows:

I. Whether having regard to the provisions of the Electoral Act, 2010(as amended) and Paragraph 39(b), INEC Regulations and Guidelines for Conduct of Election 2019, the 3rd Respondent's declaration and return of 1st Respondent as member of House of Representatives for Tangaza/Gudu Federal Constituency of Sokoto State is valid in law;

II. Whether from the Affidavit of Personal Particulars (INEC FORM CF 001) and Declaration on Oath submitted by the 1st Respondent to Independent National Electoral Commission (INEC), the 1st Respondent is qualified to contest to the office/membership of the House of Representatives for Tangaza/Gudu Federal Constituency of Sokoto State held on 23rd February, 2019; and

III. Whether from the totality of evidence adduced before this Tribunal, the Petitioners have proved the petition and therefore entitled to the reliefs sought.

The learned silk thereafter appraised the evidence of each of the witnesses presented by the Petitioners at the hearing and noted that where the statement on oath of a witness is duly adopted by the witness before the Tribunal, (in line with the front loading procedure, the written statements of the witnesses are required to be filed alongside the relevant process) they represent the testimony of the witness in chief who will then be cross-

examined and re-examined. He cited the case of: ***Agagu v. Mimiko*** where the Court of Appeal held that:-

> ***"the exhibits were produced and tendered on the record by sixth petitioner's witness, one Toyin Abegunde, the representative of INEC and fourth Respondent, Resident Electoral, Ondo State contrary to contention of the learned counsel for the appellant that it was learned counsel for the first appellant that tendered the document….The contention of the learned Senior counsel for the appellant that no modicum of ''oral evidence in chief was produced on the documents is erroneous. The provisions of the Electoral Tribunal and Court Practice Direction dispensed of oral evidence in Chief in the deposition, which will be adopted at the trial by the deponents who will then be cross-examined and re-examined''.***

He thereafter informed the Tribunal that he will argue issue three (3) first followed by issue two (2) and then issue one (1).

According to the learned counsel, it is a well-established principle of law that it is the party who alleges the existence of a state of facts that has the *onus* to prove that those facts indeed exist. He referred the Tribunal to the provisions of ***Sections 131, 132 and 133 of the Evidence Act, Cap. E14, 2011*** and reproduced some of the provisions of the above cited Sections of the Evidence Act, 2011 respectively in his written address. He also referred the Tribunal to the Supreme Court case of ***ISHOLA vs. FOLORUNSO (2010) 13 NWLR (Pt. 1210) P. 169, p. 213, para. A, per Muhammad, J.S.C.*** delivering the lead judgment and citing the provisions of ***Sections 135-137 of the Evidence Act*** held as follows:

> ***"The law is very clear that it is he who would fail if no evidence is called who shoulders the burden of proving what he claims. Sections 135-137 of the Evidence Act."***

However, in the case of ***NSEFIK vs. MUNA (2007) 10 NWLR (Pt. 1043) P. 502, Pp. 514-515, paras. H-B,*** where the Court of Appeal held thus:

> ***"In Tewogbade& Co. V. Arasi Akande & Co. (1968) NMLR 404 it was held that <u>the onus of proof is not static it shifts from side to side.</u> The burden of proof lies, in a civil case, on the party who would fail, assuming no evidence had been adduced on either side. <u>Moreover, in respect of particular facts, the burden rests on the person against whom judgment would be delivered if no evidence were produced in respect of those facts.</u>"***

He submitted further that where a defendant refuses to challenge the case of a plaintiff as in the instance case by adducing evidence, such defendant(s) is deemed to have admitted the case of the plaintiff as put forward. In the case of: ***IBWA V IMANO(NIG) LTD., & ANOR. 5 NSCC OR 77 AT 797 – 798per Iguh JSC (as he then was)*** held;
"It is well settled that where the defendant elected not to call evidence he must be taken as admitting the fact of the case as stated by the plaintiffs and must stand by on his submission and is bound".

Also in ***Dingyadi v. Wamako (2008) 17 NWLR PT 1116 page 395 @ 422 – 431 Paragraph E & B – H (ratio 9)*** the court per Belgore J.C.A held thus:

> ***"Where a party fails to adduce evidence in support of his pleading, he is deemed to have abandoned his pleadings. And such party cannot formulate an issue for consideration because any issue formulated by such party has nothing to hang on. Accordingly, where defendant abandons his pleading he is taken as having thrown in the towel and as having admitted the allegations against him in the statement of claim. In the instant case, where the 3rd to 43rd Respondent did not adduce evidence and their cross examination of the appellants' witness did not elicit any evidence in support of the averments in their joint reply, the tribunal ought to have struck out the reply after having correctly found that the same was abandoned. In other words, the tribunal was clearly in error to have refused and dismissed appellants' prayer to deem the 3rd to 43rd Respondent reply of respondent stood until after their consideration".***

The learned silk submitted further that pleadings do not amount and cannot constitute evidence and for averments in pleadings to be useful, evidence must be led on them. He referred the Tribunal to the cases of: ***OguejioforVs Siemens Ltd (2008) 2 NWLR (pt 1071) 283 and Nika Shipping Co. Ltd Vs Lavina Corporation (2008) 16 NWLR (Pt 1114) 509.*** That where a party fails to adduce evidence in support of his pleadings, he is deemed to have abandoned the pleadings - ***Dingyadi Vs Wamako (2008) 17 NWLR (Pt 1116) 395***.

That where a defendant fails to prove the averments in his pleadings, he did not take the necessary steps to join issues with the claimant in respect of the averments in the statement of claim and the statement of claim remains unchallenged and the oral evidence of the claimant is deemed sufficient proof of his case - ***Asika Vs Atuanya (2008) 17 NWLR (pt 1117) 484.*** Also that where a defendant fails to call evidence in defense of the claims against him at the trial, he is presumed to have admitted the case made against him by the claimant. See: ***Ifeta vs Shell Petroleum Development Corporation of Nigeria Ltd (2006) 8 NWLR (Pt 983) 585 and Okolie vs Marinho (2006) 15 NWLR (Pt 1002) 316." Per***

ABIRU, J.C.A. (Pp. 21-22, Paras. C-C) and ***IBADAN L.G.P.C. LTD. Vs. OKUNADE (2005) 3 NWLR (Pt. 911) P.45, Pp. 63-64, paras. H-A,***

Furthermore, he submitted that in ***Dingyadi V Wamakko (Supra)*** the Court of Appeal held as follows:

"In the instant case, the 3rd to 43rd respondents did not adduce evidence and the cross-examination of the appellants' witness did not elicit any evidence in support of the averments in their joint reply. At the close of the case for the 1st and 2nd respondents, Mr. M.U. Ibrahim, learned counsel for the 3rd to 43rd respondents announced to tribunal that they were not calling witnesses. The tribunal was right in treating the reply as having been abandoned. It however, failed or refused to strike out the reply based on wrong assumption that issues formulated by parties can stand alone without their pleadings. This is patently wrong and not in accord with the principles of law governing pleadings. It is most instructive to note that the same tribunal turned round to say that the issues formulated by these respondents must be given a consideration. The tribunal tried, albeit, unsuccessfully, to justify its stand on this point by engaging itself in an unnecessary and futile exercise of defining what an issue is. The tribunal was correct in its definition of "an issue" but it was manifestly wrong in its application to the facts of this case. The tribunal ought to have stuck out the reply after having correctly found that the same has been abandoned.

It will be observed that there is no appeal, by the 3rd to 43rd respondents, against these serious findings of fact by the tribunal in this behalf. One is tempted to ask the pertinent question: "What is the effect of the striking out of the 3rd to 43rd Respondents' reply?"

The reply or answer to this question is very simple and straight forward. There ceased to be a contest between the appellants and the 3rd to 43rd respondents before the tribunal, the 3rd to 43rd respondents having admitted the claims of the appellants as regards the conduct of the elections. This is by operation of the law. If the appellants are required to prove the averments relating to the allegation against the conduct of the election, by the 3rd to 43rd respondents, only a minimal proof is required.

I hold that the tribunal ought to have struck out the 3rd to 43rd respondents' reply to the petition and the said reply be and is hereby struck out. I exercise this power under section 16 of the Court of Appeal Act, 1976 (as amended)".

With respect to the allegation of non-accreditation and use of Card Reader, the learned silk submitted that, in paragraph 15 and 16 of the Petition the petitioners pleaded

that no election was conducted in each of the following polling units in Tangaza Local Government with about 3,490 registered voters which is more than the differences between the APC and the PDP because no accreditation was done with Card reader contrary to INEC guidelines. The affected Polling Units are as already listed above.

Learned counsel submitted further that the PW1 Aminu Saidu, PW4, Petitioner, PW5 Abdullahi Usman, PW6 Ala Kaka and PW7 Aminu Alhaji all testified in respect of the allegation of lack of accreditation with card reader contrary to INEC Regulations and guidelines 2019. All the EC8As were admitted in Evidence as Exhibits PA Series (PA1, PA2, PA3, PA4 and PA 5), Forms EC8A for Chekehe Primary School, Gurame Bakin Kasuwa, Ruwa Wuri Primary School Code 001, Ruwa Wuri Primary School Code 002 and Kwannawa Primary School Polling Units respectively.

The learned silk noted that under the extant INEC Regulation, the use of Card Reader for Election is mandatory and non-use of card readers renders the election invalid and liable to cancellation as was done in the election held at Ginjo Dispensary in Magonho Ward.He then respectfully drew the attention of the Tribunal to the express words used in the INEC Regulations and Guidelines 2019 on the mandatory use of Smart Card Reader for the purpose of accreditation of voters and Paragraph10(a) and (d) of the Regulations and Guidelines for the conduct of Elections.

With regards to the non-holding of election, the learned silk referred to paragraph 17 of the Petition where allegations of non-conduct of election at Barkatube Polling Unit Code 015 were made by the Petitioners. That the petitioner testified to that effect and was not cross examined at all by any of the Respondents' Counsel. Exhibit PB7 INEC Form EC 8B (Exhibit PB 1) for Tangaza Ward was tendered and admitted in evidence showing no results for Tangaza Ward Barkatube Polling Units. The Polling unit has 76 Registered Voters.

With regards to allegations of cancellation of election results, the learned silk submitted that in paragraph 15 of the Petition, allegations of non-conduct of election at Ginjo Dispenasary Polling Unit in Magonho Ward because election was done without card reader was made by the Petitioners. That the petitioner testified to that effect in his witness statement on oath which he adopted before the Tribunal and was also not cross examined on it. That Exhibit PB7 INEC Form EC 8B for Magonho was tendered and admitted in evidence showing no results for Ginjo Dispensary Polling Units because the result was subsequently cancelled. The Polling unit has 803 Registered Voters.

With regards to allegations of over voting, the learned silk submitted that in Paragraphs 18, 20 and 25 of the petition, the petitioners made allegations of over voting.

PW4 testified in proof and Forms EC 8A Exhibits PF series and Forms EC8A (II) For Tangaza Local Government Area were tendered in further proof of the following Polling Units: Kannawa Primary School Polling Unit, Baidi Primary School Polling Unit,Mano Primary School Polling Unit, Ruwa Wuri III Polling Unit, Gabro Polling Unit, and Labsani Polling Unit.

With regards to the allegations of suppression of votes, he submitted that in Paragraphs 19 of the petition the petitioners made allegations of suppression of votes and the PW2 and PW4 testified to that effect. Form EC8C for Tangaza Local Government Results (Exhibit PC2) was tendered and identified by PW2 and PW4 respectively.

With regards to the allegations of inflation of votes, the learned silk submitted that in Paragraphs 22 of the Petition the Petitioners made allegations of inflation of votes of the 1st and 2nd Respondents and the PW2 and PW4 testified to that effect. Form EC8B for Kalenjeni Ward was tendered and admitted in evidence and duly marked exhibit PB.

According to the learned silk, the declared results by the 3rd Respondent on 24th February, 2019 at the end of the election were as follows: PDP 26, 047 and APC 27, 220.

He submitted that if the results of the polling units with over voting and polling units where card reader was not used in accreditation were subtracted from the votes of the Petitioners as well as 1st and 2nd respondents the result will be as tabulated by him in his written address. It was also his submission that if the results of the polling units with over voting were subtracted from the votes of the Petitioners and as well as 1st and 2nd respondents the result will be as tabulated by him in his written address. Furthermore, that when the 140 votes reduced from the scores of the Petitioners at Tangaza Local Government Collation Centre, the scores of the 1st Petitioner will be 24,646 votes and the 13 votes wrongly added to the scores of the 1st and 2nd respondents are removed and subtracted from 24,322, the scores will be 24,309 votes. That the Final score will be; PDP - 24, 646 Votes and APC - 24,309 Votes and the Petitioners' will be entitled to be returned with a lead of 337 Votes in favour of the 1st and 2nd Petitioners.

The learned silk argued the following issue in the alternative to Issue One:

Whether having regard to the provisions of the Electoral Act, 2010(as amended) and Paragraph 39(b), INEC Regulations and Guidelines for Conduct of Election 2019, the 3rd Respondent's declaration and return of 1st Respondent as member of House of Representatives for Tangaza/Gudu Federal Constituency of Sokoto State is valid in law.

In arguing the above issue, the learned counsel canvased the following principles in support:

THE MARGIN OF LEAD PRINCIPLE:

According to him, where the margin of lead between the two leading candidates in an election is not in excess of the total number of voters registered in the polling units where elections were not held or voided in line with section 26 and 53 of the electoral Act, the Returning officer shall decline to make a return until polls have taken place in the affected Polling Units and the results collated into the relevant forms for Declaration and Returning. This is the Margin of Lead Principle and shall apply wherever necessary in making returns of all elections to which these Regulations and Guidelines apply.

The learned silk quoted the provisions of paragraph 39(b) of the INEC Regulations and Guidelines for the conduct of Elections 2019 and submitted further that if the numbers of registered voters of the affected polling units are reckoned with, the computation will be as tabulated by him in his written address.

According to him, the overall total of the registered voters in all the affected polling units is: 8265 while the declared results by 3rd Respondent on 24th February, 2019 at the end of the election is as follows: PDP 26, 047 and APC 27, 220. Thus, when the 140 votes is reduced from the scores of the Petitioners at Tangaza Local Government Collation Centre, the scores of the 1st Petitioner will be 26,167 votes and if the 13 votes wrongly added to the scores of the 1st and 2nd respondents are removed and subtracted from 27,220 the scores will be 27,207 votes.

He analysed further that if you subtract the score of the PDP from the score of the APC, the margin of lead will be 1,040 votes while the number of Registered Voters in the affected Polling Units is 8,265 votes. That the number of registered voters in the affected polling units is five times more than the margin of lead between the two leading candidates. The learned silk submitted further that despite the overwhelming evidence adduced by the Petitioners at the trial of this petition, none of the Counsel of the 1st, 2nd and 3rd Respondents called any witness in proof of any of the averments in their respective replies to the Petition. In fact, the 3rd to 16th Respondent did not frontload any witness deposition in filing their replies.

He submitted that their reply is defective and offends paragraph 4 of the first schedule to the Electoral Act 2010 as amended and ought to be struck out. He thus urged the Honourable Tribunal to strike out the reply of the 1st and 2nd and 3rd Respondents

respectively as having been abandoned since no evidence was elicited in proof of same during cross examination of the Petitioners witnesses.

He submitted further that where a defendant refuses to challenge the case of a plaintiff as in the instant case by adducing evidence, such defendant(s) is deemed to have admitted the case of the plaintiff. See: ***IBWA V IMANO (NIG) LTD., & ANOR. 5 NSCC OR 77 AT 797 – 798per Iguh JSC*** (as he then was); and ***Dingyadi v. Wamako (2008) 17 NWLR PT 1116 page 395 @ 422 – 431 Paragraph E & B – H (ratio 9)*** the court per Belgore J.C.A as earlier cited

It was also his submission that pleadings do not amount and cannot constitute evidence and for averments in pleadings to be useful, evidence must be led on them - ***Oguejiofor Vs Siemens Ltd (2008) 2 NWLR (pt 1071) 283 and Nika Shipping Co. Ltd Vs Lavina Corporation (2008) 16 NWLR (Pt 1114) 509, Dingyadi Vs Wamako (2008) 17 NWLR (Pt 1116) 395, Asika Vs Atuanya (2008) 17 NWLR (pt 1117) 484. Ifeta vs Shell Petroleum Development Corporation of Nigeria Ltd (2006) 8 NWLR (Pt 983) 585 and Okolie vs Marinho (2006) 15 NWLR (Pt 1002) 316." Per ABIRU, J.C.A. (Pp. 21-22, Paras. C-C).***

He also cited the case of: ***IBADAN L.G.P.C. LTD. vs. OKUNADE (2005) 3 NWLR (Pt. 911) P.45, Pp. 63-64, paras. H-A,*** where the Court of Appeal held as follows:

> ***"It is trite law, that what is admitted need not be proved. Clearly the onus of proof of a fact in issue is on the party who will lose if such a fact is not proved. However, where the party against whom the fact is sought to be proved has admitted it, the requirement to discharge the onus of proof abates..."***

Furthermore, in ***Dinygadi V. Wamakko (Supra),*** the Court of Appeal held as follows:

> ***"In the instant case, the 3rd to 43rd respondents did not adduce evidence and the cross-examination of the appellants' witness did not elicit any evidence in support of the averments in their joint reply. At the close of the case for the 1st and 2nd respondents, Mr. M.U. Ibrahim, learned counsel for the 3rd to 43rd respondents announced to tribunal that they were not calling witnesses. The tribunal was right in treating the reply as having been abandoned. It however, failed or refused to strike out the reply based on wrong assumption that issues formulated by parties can stand alone without their pleadings. This is patently wrong and not in accord with the principles of law governing pleadings. It is most instructive to note that the same tribunal turned round to say that the issues formulated by these respondents must be given a consideration. The tribunal tried, albeit, unsuccessfully, to justify its stand on this point by engaging itself in an***

unnecessary and futile exercise of defining what an issue is. The tribunal was correct in its definition of "an issue" but it was manifestly wrong in its application to the facts of this case. The tribunal ought to have stuck out the reply after having correctly found that the same has been abandoned. It will be observed that there is no appeal by the 3rd to 43rd respondents, against these serious findings of fact by the tribunal in this behalf. One is tempted to ask the pertinent question: - "What is the effect of the striking out of the 3rd to 43rd Respondents' reply?" The reply or answer to this question is very simple and straight forward. There ceased to be a contest between the appellants and the 3rd to 43rd respondents before the tribunal, the 3rd to 43rd respondents having admitted the claims of the appellants as regards the conduct of the elections. This is by operation of the law. If the appellants are required to prove the averments relating to the allegation against the conduct of the election, by the 3rd to 43rd respondents, only a minimal proof is required. I hold that the tribunal ought to have struck out the 3rd to 43rd respondents' reply to the petition and the said reply be and is hereby struck out. I exercise this power under section 16 of the Court of Appeal Act, 1976 (as amended)".

In the final analysis, the learned silk submitted that when issues are joined between parties to an action and the petitioners adduced evidence but the respondents elect willingly not to call evidence in rebuttal to the petitioners, the Honourable Tribunal is entitled to hold as follows:

a. It is deemed to have abandoned same and that the petitioner's case stands unchallenged. Mere cross-examination of the witnesses of the petitioners cannot amount to a challenge of the petitioners' case save where the evidence of such witnesses were shaken or discredited;
b. By electing not to call any evidence, the Respondents have abandoned their pleadings with the resultant consequence that they will be deemed to have accepted the facts of the electoral irregularities and the substantial noncompliance with the provision of the Electoral Act adduced by the petitioners.
c. The burden of proof on the petitioners in the circumstances is minimal.

It was also his submission that the Petitioners have discharged the onus placed on them by Law and has proved that the 1st Respondent was not duly elected by a majority of lawful votes cast at the election.

The learned silk thereafter urged the Tribunal THAT IT BE DETERMINED that the 1st Petitioner is entitled to be returned by the 3rd and 5th Respondents as having been duly elected to the office/membership of House of Representatives for Tangaza/Gudu Federal

Constituency of Sokoto State. He also prayed for an Order setting aside the Certificate of Return issued by the 3rd Respondent to the 1st Respondent and instead the 3rd Respondent be ordered to issue Certificate of Return to the 1st Petitioner as the winner of the Tangaza/ Gudu Federal Constituency election held on 23rd day of February, 2019.

Or in the alternative, he urged the Tribunal to hold that, the election of the 1st and 2nd Respondents was marred by non-compliance with the provisions of the Electoral Act 2010 as amended and that the non-compliance has substantially affected the result of the election entitling the Petitioners to judgement. He urged the Honourable Tribunal to order supplementary election in all the polling Units complained of because the Margin between the 1st Petitioner and the 1st Respondent is far less than the number of registered voters in the affected polling units, making it inconclusive as the winner of majority of lawful votes cast cannot be determined.

Chief J.E. Ochidi, learned counsel for the 1st Respondent adopted his written address filed on the 9th day of July 2019 and referred to the preliminary objection to the petition raised by the 1st respondent in his reply to the petition on the following grounds: -

GROUND 1:

(a) That the entire petition is improperly constituted and ought to be struck out.
(b) Paragraph 9 (iii) is not a ground for the challenge of an election under the Electoral Act, 2010 (as amended)
(c) Paragraph 9 (i) is not supported by any facts in the body of the petition.
(d) There is no relief being sought by the petitioners in respect of and arising from the ground contained in paragraph 9 (i) of the petition.
(e) Arising from the above is that this Honourable Tribunal lacks the requisite vires to countenance the said grounds.

GROUND 2:

This Honourable Tribunal is without jurisdiction to entertain the ground and facts contained in paragraphs 17.1 and 17.2 and 18.9 – 18.71 of the petition.

PARTICULARS

(a) The petition purports to challenge the election on the ground that it was marred by irregularities.
(b) The petitioners in the same breath are asking the tribunal to declare the 1st petitioner as duly elected.
(c) The reliefs sought by the petitioners are consistent with the entire petition.

GROUND 3:

That the Honourable Tribunal lacks jurisdiction to entertain this petition for failure of the petitioners to comply with the condition precedent for it to assume jurisdiction.

PARTICULARS

(a) There is no mention of the names of all the political parties and candidates who contested the election and their scores as required by paragraph 4(1) (c) of the First Schedule to the Electoral Act, 2010 (as amended).

(b) The requirement of stating the names of all the candidates and the political parties that participated in the election is a condition precedent to a valid election petition and failure to state it renders the petition incompetent under paragraph 4(7) of the First Schedule to the Electoral Act, 2010 (as amended).

The learned counsel for the 1st respondent decided to argue the above grounds of preliminary objection alongside the issues for determination as formulated in this petition by this Honourable Tribunal in his written address. He thereafter reproduced the issues formulated by the Tribunal for the parties at the pre-trial session by this Honourable Tribunal as already stated above.

According to the learned counsel, issue one herein formulated for determination is whether the 1st respondent was qualified at the time of the election to contest the election into the office of Member of House of Representatives for Tangaza/Gudu Federal Constituency of Sokoto State held on the 23rd day of February 2019. The above issue one is distilled from the first ground of the grounds upon which the petition is based as appearing in paragraph 9 (i) of the petition.

He submitted that the qualification of the 1st respondent to contest the said election for Membership of the House of Representatives is as laid down in section 65 of the Constitution of the Federal Republic of Nigeria 1999 (as amended). He thereafter reproduced the provisions of that section. He also reproduced the provisions of section 66(1) which provides for grounds for disqualifications of persons seeking for election to the office of Senate of the House of Representatives.

The learned counsel observed that even though the Petitioners pleaded in paragraph 9(i) of the petition as a ground of the Petition that the 1st Respondent was not qualified to contest the election at the time of the said election, he said that no facts were pleaded in the said petition to support the said ground contrary to the mandatory provisions of paragraph 4 (1)(d) of the First Schedule to the Electoral Act, 2010 (as amended).

He therefore submitted that the said ground of the petition to the effect that the 1st respondent was not qualified to have contested the said election is an incompetent ground, same having not been supported by any fact in proof of the said allegation. The law is

settled that facts not pleaded cannot be led in evidence before a court or tribunal and even where such facts are led in evidence; same are bound to be discountenanced by the court or tribunal. See the case of ***OGBORU V. ARTHUR (2016) ALL FWLR (PT 833) 1805 AT 1857*** where Okoro JSC held thus:-

> ***"It is trite that civil cases and indeed election matters are won and lost on the pleadings. This is so because facts not pleaded cannot be put in evidence before the court. Such evidence, if led, would be discountenanced, parties are bound by their pleadings."***

He also observed that none of the six witnesses as well as the 1st petitioner who testified before this tribunal for the petitioners narrated any fact to the tribunal to support the purported ground of the petition alleging that the 1st respondent is not qualified to have contested the said election. That despite the fact that this Honourable Tribunal formulated issues for determination in this petition during the pre-trial conference, the Petitioners have decided to completely abandon the said issues formulated for determination by this tribunal and have proceeded in their final written address to formulate different issues for determination on their own. At page 7 paragraph 2.8(II) of the said final written address of the petitioners, the said Petitioners formulated an issue touching on the qualification of the 1st respondent to contest the said election.

He observed that throughout the length and breadth of the final written address of the Petitioners, they never proffered any argument on the above quoted issue formulated by them. He submitted that the Petitioners who did not plead any fact to support the ground in the Petition questioning the qualification of the 1st Respondent to contest the said election equally failed to proffer any legal argument in their final written address to challenge the qualification of the 1st Respondent to contest the said election.

He therefore urged us to hold that the qualification of the 1st Respondent to have contested the said election is a non-issue before this Honourable Tribunal and he urged us to resolve this issue one in favour of the 1st respondent and to hold that the ground in the petition in respect of which the said issue one is predicated is not competent and should therefore be struck out/dismissed by this Honourable Tribunal.

With regards to the issue two formulated for determination by this Honourable Tribunal that is, whether the 1st Respondent was duly elected by majority of lawful votes cast at the said election while issue four is whether the 1stPetitioner scored the highest number of lawful votes cast at the election and is entitled to be declared winner and returned as the duly elected Member of House of Representatives for Tangaza/Gudu Federal Constituency of Sokoto State. He said that these two issues are related and as such he argued them together.

According to the learned counsel, at the said election, by EXHIBIT PC3 (the declaration of result for Tangaza/Gudu Federal Constituency), it is shown that the 1st Petitioner scored a total of 26,047 votes while the 1st Respondent scored a total of 27,220 votes thereby creating a margin of lead between the votes of the two candidates to be in the figure of 1,173 votes in favour of the 1st Respondent.

Apparently therefore and by the result of the said election declared by the 3rd Respondent, the 1st Respondent garnered majority of the lawful votes cast at the said election and is entitled to be declared the winner of the election as rightly effected by the 3rdRespondent.

He said that the law is settled that there is a rebuttable presumption of correctness of results declared by INEC and until that presumption is successfully rebutted, the declared result stands valid for all intents and purposes. See the decision of the Supreme Court in ***NYESOM V. PETERSIDE (2016) ALL FWLR (PT 842) 1573 AT 1647*** where Kekere – Ekun JSC held thus:-

> ***"The law is trite that the results declared by INEC enjoy a presumption of regularity. In other words, they are prima facie correct. The onus is on the petitioner to prove the contrary."***

He submitted that the petitioners on whom the burden to prove the incorrectness of the said result lies have woefully failed to prove before this Honourable Tribunal that the 1st respondent did not score majority of the lawful votes cast at the said election.

That in the instant petition, the complaints of the Petitioners by which they are contending that the 1stRespondent did not score majority of lawful votes cast at the said election are as pleaded in paragraphs 10 - 22 of the Petition.

He submitted that even if the 1st respondent admits all of the said allegations of the petitioners as contained in the said paragraph of the petition of the petitioners, yet on the basis of calculation of lawful votes scored by the parties as effected by the Petitioners themselves in paragraphs 20, 21 and 22 of the petition, the 1stRespondent would still have emerged as the candidate who scored majority of lawful votes cast at the said election at the figure of 26,229 votes to the 1st respondent and 25,459 votes for the 1st petitioner thereby creating the margin of win between the votes scored by the 1stRespondent and that scored by the 1stPetitioner to be in the figure of 770 votes.

The learned counsel submitted further that even by the facts of the election as pleaded in the Petition by the Petitioners themselves, the 1stRespondent clearly scored majority of lawful votes cast at the said election. He therefore submitted that this election Petition as constituted by the Petitioners before this Honourable Tribunal is merely an academic exercise.

It was also his submission that the testimonies of PWs 1 - 6 as well as that of the 1st Petitioner before this tribunal have not in any way proved that the 1st Petitioner scored majority of lawful votes cast at the said election. He said that in his amended deposition, the 1st Petitioner testified and averred that election did not take place in 8 polling units in Tangaza Local Government Area of Sokoto State due to the fact that accreditation of voters were not carried out by the use of Smart Card Readers. He said that the 1st petitioner also averred that the total number of registered voters for the said 8 polling units is 3,490 which figure the 1st Petitioner claims is higher than the margin of lead between the 1st Respondent and himself. He however submitted that there is no evidence before this tribunal to back up the said assertions of the 1st petitioner. Similarly he said that the evidence of the PW1, PW2, PW4, PW5 and PW6 are all on the issue of alleged non-accreditation of voters with Smart Card Readers at the various polling units where they acted as petitioners' polling unit agents.

He said that it is now settled law that in order for a party in an election petition to establish accreditation or lack of it, resort must be made to the voters register where it can be ascertained whether or not same is marked or ticked as required by law. See the case of ***EMERHOR V. OKOWA (2017) ALL FWLR (PT 896) 1868 AT 1916 – 1917*** where Onnoghen JSC (as he then was) held thus:-

"It is now settled law that Section 49 of the Electoral Act, 2010, as amended governs the process of accreditation of voters in Nigeria. Under the section, a prospective registered voter presents his voters card (PVC) to the presiding officer, who, upon being satisfied of the details vis-à-vis the information on the voters register, issues the voter with a ballot paper and marks his name in the register. In the circumstance and as provided by law, to establish accreditation or lack of it, in any election, production of the relevant voters register is a must. It cannot be otherwise. It is true that in the recent general election, the card reader concept was introduced by INEC. I hold the strong view that the card reader which was introduced is not a substitute for the voters register particularly as there is no legislation backing that concept vis-à-vis the voters register. If anything, I hold the view that the card reader is introduced as an aid to the process of accreditation of voters in that after the voters card of the prospective voter is verified by the card reader, the presiding officer still has the duty to confirm the name of the said voter in the voters register before proceeding to make it accredited and before issuing the ballot paper to the voter."

He said that in the course of trial, the voters registers in respect of the polling units where the petitioners alleged that accreditation did not take place were never tendered in evidence before this tribunal with the result that there is no material before this tribunal with which to prove the allegation of the petitioners that no accreditation took place in the 8

polling units in the Federal Constituency complained of. Moreover, the petitioners by themselves tendered in evidence Exhibit PD1 which is the Smart Card Reader print out in all the polling units of the constituency in issue. However, he maintained that the contents of the said Exhibit PD1 was never demonstrated in open court before this tribunal by any of the witnesses called by the petitioners but same was merely dumped on the tribunal.

Similarly he said that it is not in doubt that Forms EC.8A, EC.8B, EC.8C were tendered and admitted in evidence before this tribunal. However, he submitted that all of the said documents except EXHIBIT PC3 were merely dumped on the tribunal as no witness identified nor referred the same to any specific area of the Petition in the course of their oral testimonies before this tribunal. More importantly, he said that the contents of the exhibits were never analysed in the various depositions of the said witnesses. That dumping of documents on a court is never permissible in any judicial proceedings as such documents will not attract any evidential value. See the decision of the Supreme Court in ***UCHA V. ELECHI (2012) ALL FWLR (PT 625) 237 AT 258*** where Rhodes – Vivour JSC held as follows:-

> ***"When a party decides to rely on documents to prove his case, there must be a link between the document and the specific area of the Petition. He must relate each document to the specific area of his case for which the document was tendered. On no account must counsel dump documents on a trial court. No court will spend precious judicial time linking documents to specific areas of a party's case."***

See also the case of *MAKU V. AL-MAKURA (2017) ALL FWLR (PT 909) 1 AT 77* where Agube JCA held thus:-

> ***"The Tribunal rightly relied on the case of Obasi Brothers Merchant Co. Ltd v. Merchant Bank of Africa Securities Ltd (2005) 2 SC (Pt. 1) 51 at Page 68 (2005), ALL FLWR (Pt. 261)216, to unassailably hold that the position of the law on dumping of documents on courts is that the party is under an obligation to tie his documents to the facts or evidence or admitted facts in the open court and not through counsel's oral or written address. As for the contention of the learned counsel for the appellants that no barrier was on the way of the tribunal to evaluate the documents tendered, the tribunal also was on very strong wicket when it held that from plethora of authorities, it is not the duty of a court or tribunal to embark on inquiry outside the court, not even by examination of documents which were in evidence when the documents had not been examined or analysed as in the instant case by the party who tendered them."***

He therefore submitted that the Petitioners have failed to prove that the 1st respondent did not score majority of lawful votes cast at the said election and the declaration of the 1stRespondent by the 3rdRespondent as the winner of the said election cannot be faulted.

Learned counsel further submitted that as the petitioners failed woefully to lead any credible evidence to support their claims before this tribunal, the 1stRespondent was on firm ground in law when he resolved not to call any rebuttal evidence in defence of this Petition as declaratory reliefs are never granted on admission made by the Respondents. See the case of ***NYESOM V. PETERSIDE (2016) ALL FWLR (PT 842) 1573 AT 1649 – 1670*** where Kekere - Ekun JSC held as follows:-

> ***"The law is that where a party seeks declaratory reliefs, the burden is on him to succeed on the strength of his own case and not on the weakness of the defence (if any). Such reliefs will not be granted even on admission by the respondents."***
> **See as well the case of *IYAGBA V. SEKIBO (2009) ALL FWLR (PT 466) 1951 AT 1969 – 1970* where Abdullahi JCA (as he then was) held as follows: -**
> **"*It is now settled that, where the evidence led is virtually worthless, it is futile to presume that the party alleging has discharged the burden of proof or the court ought to act on the evidence adduced because the opposite party has not presented a rebuttal: Aibramauka v. Osakwe (1989) 3 NWLR (Pt 107) 101; Omoregbe v. Lawani (1980) 3 - 4 SC 108 and Odulaja v. Haddad (1973) 11 SC 357, (1973) 1 All NLR 191. Consistent with the decisions of the cases cited supra, the evidence led by the petitioner in respect of his assertions; that there was no accreditation of voters, no voting and no results of the election before the trial tribunal were not the type of evidence that calls for a rebuttal from the respondents."***

He submitted that the decision of Mohammed JSC in ***CPC v. INEC (2012) ALL FWLR (PT 617) 605 AT 648*** was also on all fours with the above cases.

The learned counsel noted that in paragraphs 20, 21 and 22 of the Petition (seen on page 7 of the petition), the Petitioners by themselves tabulated the final scores of the 1st Petitioner and that of the 1st Respondent and it is apparent in the said paragraphs of the petition that if the allegations of over voting in polling units complained of are cancelled and if the inflation of votes in favour of the 1st Respondent and reduction of votes of the 1st Petitioners are corrected by this tribunal, the 1st Respondent would have still scored majority of the lawful votes cast at the said election. That in effect, the Petitioners have failed to prove that the non-compliance complained of substantially affected the result of the said election.

He said that despite the facts pleaded by the Petitioners in paragraphs 20, 21 and 22 of the petition as highlighted above, the petitioners have proceeded in their final written

address in paragraphs 4.18, 4.19, 4.20, 4.21, 4.22, 4.23 and 4.24 thereof to put forward a different case other than the one set out in the petition and then came to the conclusion that the 1st petitioner scored majority of lawful votes cast at the said election by scoring 24,646 votes against the purported final score of the 1st respondent which the petitioners put at 24,309 votes.

He submitted that the scores of the respective candidates which the Petitioners' counsel narrated in the petitioners' final written address under reference is not borne out by the evidence presented before this tribunal and neither were the said figures demonstrated before this Honourable Tribunal by any of the petitioners' witnesses in the course of trial. It is not enough for the petitioners to tender in evidence pieces of documents and expect the tribunal to conduct an enquiry into the said documents outside the court. He said that the Petitioners are expected to relate the said documents to the specific area of the complaint of the Petitioners in the petition but in the instant case, the Petitioners failed to do so as the said documents were merely dumped on the Tribunal. He therefore submitted that all of the said documents tendered before this tribunal by the Petitioners have no evidential value. See the case of ***DANLADI V. EL-RUFAI (2018) ALL FWLR (PT 924) 118 AT 160*** where Saulawa JCA held as follows:

> ***"Indeed, it is a well settled doctrine to the effect, that it is not the responsibility of the court or tribunal to resort to a cloistered justice by embarking on a voyage of discovery or enquiry in the case outside the open court, not even by examination of documentary exhibits which were in evidence but not duly examined in open court."***

See also ***ACN V. LAMIDO (2012) 8NWLR (PT 1303) 560 AT 584 – 585.***

The learned counsel also observed that the purported final scores of the respective candidates which were tabulated in the final written address of the petitioners were not pleaded in the Petition of the Petitioners to enable the Respondents join issues with the Petitioners on the said tabulations. It must be borne in mind at all times that counsel address cannot take the place of evidence led before a court or tribunal no matter how such address is brilliantly presented. See the case of ***DANLADI V. EL-RUFIA (supra) at page 163.***

He therefore urged the Tribunal to resolve issues two and four in favour of the 1stRespondent and to hold that it was the 1st Respondent that scored the highest number of lawful votes cast at the said election and was therefore validly declared the elected Member of House of Representatives for Tangaza/Gudu Federal Constituency of Sokoto State at the election held by the 3rdRespondent on the 23rd day of February, 2019.

With respect to issue three formulated for determination by this Honourable Tribunal, that is whether the election was invalid by reason of corrupt practices or non-compliance with the provisions of the Electoral Act, 2010 (as amended), learned counsel submitted that

whenever a Petitioner contends in an election petition that the election was invalid by reason of corrupt practices or non-compliance with the provisions of the Electoral Act, 2010 (as amended), such a petitioner must prove before the tribunal that the corrupt practices or non-compliance complained of actually took place and also that same substantially affected the result of the said election. He said that these two conditions must be satisfied by the petitioner cumulatively before such a petitioner can succeed on an allegation of this nature. See the case of ***OGBORU V. ARTHUR (2016) ALL FWLR (PT 833) 1805 AT 1855*** where Ogunbiyi JSC held thus: -

> **"*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 measurement however, is whether the degree of non-compliance is sufficient enough so as to vitiate the credibility of the election held."*** **See also the decision of the Supreme Court in *NYESOM V. PETERSIDE (2016) ALL FWLR (PT 842) 1573 AT 1635*."**

Learned counsel further submitted that in establishing the substantiality of the corrupt practice and or non-compliance, the Petitioner must prove the effect of such acts polling unit by polling unit while the required standard of proof is not on a minimal proof but on the balance of probabilities. See the decision of the Supreme Court in ***EMERHOR V. OKOWA (*****supra*****) *at Page 1927*** where Odili JSC held thus:-

> ***"On the importance of establishing the substantiality of the non-compliance, the appellants are further expected to prove the effect of the alleged non-compliance polling unit by polling unit and the standard of proof is on the balance of probabilities and not just on minimal proof. If the appellants are able to meet up with that required standard, then would the respondents be asked to lead evidence in rebuttal."***

See also the case of the ***UCHA V. ELECHI (2012) ALL FWLR (PT 625) 237 AT 256.***

It was further submitted that an allegation of corrupt practices in an election petition being an allegation that is criminal in nature, must be proved beyond reasonable doubt. See the case of ***IKPEAZU V. OTTI (2016) ALL FWLR (PT 833) 1946 AT 1974*** where Galadima JSC held thus:

"Where in an election petition, the petitioner makes an allegation of a crime against a respondent and he makes the commission of the crime the basis of his petition. Section 135(1) of the Evidence Act, 2011 imposes strict burden on the said petitioner to prove the crime beyond reasonable doubt. If he fails to discharge the burden, his petition fails."

Learned counsel further observed that in paragraphs 5.1, 5.2, 5.3, 5.4, 5.5, 5.6 and 5.7 of the Petitioners' final written address, the learned Counsel for the petitioners postulated "the margin of lead principle" and stated in paragraph 5.7 of the said written address that "if you subtract the score of PDP from the score of APC, the margin of lead will be 1,040 votes while the number of registered voters in the affected polling units is 8,266 votes. The number of registered voters in the affected polling units is five times more than the margin of lead between the two leading candidates."

He submitted that the margin of lead principle as being canvassed by the petitioners in their final written address before this tribunal is only applicable in an election petition where a petitioner contends that the result of the election conducted in a constituency ought to have been declared inconclusive on the premise that the margin by which the respondent won the said election is less than the total number of registered voters at the polling units where election did not hold or where elections were cancelled. In such situations, the petitioners pray the tribunal for the conduct of supplementary election in the affected polling units before the declaration of the winner of the election is made by INEC.

He said that in the instant petition however, no such case has been put forward by the Petitioners in any of the paragraph of the Petition and neither have the Petitioners prayed this Tribunal to declare the said election inconclusive. Again, he submitted that the Petitioners have not prayed this tribunal for conduct of any supplementary election in any polling unit in the Tangaza/Gudu Federal Constituency. In the circumstance, he submitted that the margin of lead principal put forward by the petitioners in their final written address is not applicable in the instant petition. See the cases of ***HERO V. SHERIFF (2016) ALL FWLR (PT 861) 1309 AT 1347 – 1348;*** **and** ***AGBAJE V. INEC & ORS (2015) LPELR – 25651 (CA).***

He therefore submitted that the Petitioners have failed to prove any act of corrupt practice or of non-compliance in relation to the conduct of the said election. Accordingly, he urged us to resolve this issue three in favour of the 1st Respondent and to hold that the said election was not invalid by reason of corrupt practices or non-compliance with the provisions of the Electoral Act, 2010 (as amended).

In conclusion, the learned counsel submitted on behalf of the 1st Respondent that this petition is devoid of any merit whatsoever and he urged the Tribunal to dismiss same with substantial costs.

Chief S.U. Nwoke, learned counsel for the 2nd Respondent adopted his written address filed on the 9th day of July 2019 wherein he called the attention of the Tribunal to the Preliminary Objection filed by the 2nd Respondent praying the Honourable Tribunal to dismiss or strike out the Petition wholly or in part which the Tribunal directed should be argued in the final address of the 2nd respondent.

He decided to dispose of the said preliminary objection before arguing the issues formulated for the parties by the Tribunal.

It is noteworthy that the grounds and particulars of the objections are similar to the one formulated by the 1st Respondent as stated above thus there is no need to reproduce same here. The learned counsel later decided to abandon ground two of the objection and argued grounds 1 and 3 thereof.

His legal arguments with respect to ground one and three of his preliminary objection were also similar to the argument canvassed on behalf of the 1st Respondent on ground one of the preliminary objection in all material particulars. He submitted in the final analysis that this petition is incompetent and liable to be struck out and urged the Tribunal to so hold.

In conclusion, learned counsel urged the Tribunal to uphold the preliminary objection and make the following orders:

A. An Order striking out paragraphs 9 (111) of the petition for being alien to a ground for the presentation of an election Petition.
B. An Order striking out paragraphs 9 (1) of the Petition for being incompetent not having been supported by any particulars.
C. An order striking out the entire petition for failure of the Petitioners to state the names and scores of all the political parties and candidates that participated in the election.

In the alternative, learned counsel proceeded to argue the issues formulated for the parties as follows;

On issue one, he noted that this issue has been argued in their preliminary objection but is being argued here in the unlikely event that they are over ruled. He thereafter canvassed the same argument in the preliminary objection and urged the Tribunal to strikeout all the paragraphs that connected or related to the issue of non-qualification of the 1st respondent for being incompetent.

With respect to issues two, three and four which he sought the permission of the Tribunal to argue together, learned counsel submitted that by the showing and averments of the Petitioners in paragraph 15 of the Petition, the petitioners are challenging 8 poling units in Tangaza/Gudu Local Government Areas of Federal constituency for member House of

Representatives representing the said constituency on the ground that no election in these polling units was conducted because card reader was not used and that there were so many distortions, anomalies and alterations and/or manipulations in the forms EC8A (II), EC8C(II), EC8D(II) and EC8 D(II) in respect of areas or units purportedly won by the 1st and 2nd respondents which should lead to cancellation and or nullification of votes purportedly recorded or entered in their favour by the 3rd respondent.

In the meantime, he said that the 1st Respondent was declared and returned as winner on account of the totality of valid votes he scored in all of the said polling units, Wards and Local Government Areas in Tangaza/Gudu Federal House of Representatives of Sokoto State. In response to the Petitioners total rejection of the electorates who preferred and voted overwhelmingly for the 1st Respondent, the Petitioners presented a sham Petition to mock and express their disdain for the democratic and electoral process they participated in and had wished to exploit for their benefit and glory. Worse still, he said the Petitioners called only six (6) witnesses who gave hearsay and inadmissible evidence in respect of the wild allegations in the Petition including the 1st Petitioner and closed their case.

He said that because of the dismal failure of the Petitioners to discharge the burden of proof placed on them by the Evidence Act, the 1st, 2nd and 3rd -16th respondents did not call any witnesses neither did they tender any documents and closed their cases.

He stated the general overview of the law as it relates to non-compliance and lack of the respondent scoring the majority of the lawful votes cast at the election. According to the learned counsel, the law is trite that to succeed on these grounds the petitioners must plead and lead evidence that there was not only non-compliance with the provisions of the electoral act but that the non-compliance substantially affected the result of the election. See ***OKE V MIMIKO (no. 2) (2014) 1 NWLR (pt.1388) 332 at 367***. The petitioner must also show the figures as it has been held that an irregularity affecting only a minority of voters would not invalidate an election. See ***BIYU V IBRAHIM (2006) 8 NWLR (PT. 981)1 @ 50.***

Most importantly, he submitted that it is settled law that the petitioner must succeed on the strength of his own case even where, as in this case, the respondent did not call any evidence since their claims are declaratory in nature and referred to the case of ***PDP & ANOR VS INEC (2012) LPELR 8409(CA).***

Learned counsel thereafter proceeded to examine how the petitioners went about proving their petition by reviewing the evidence proffered in each of the polling units complained of. He submitted that the law is trite that where evidence given by a witness is

contradictory it will result in the rejection of the evidence of a witness. See the case of ***AJONYE v. NWACHUKWU (2011) LPELR-3677(CA).***

On the issue of non-use of card reader machine in accrediting voters to vote at the election, he said that the Electoral Act, 2010 (as amended) and INEC MANUAL 2019 has not done away with the manual accreditation of voters to vote at the election where card reader accreditation failed. He said that the PW1 hinged his evidence on the non-use of card reader but did not say that there was no accreditation. He admitted voting in the polling unit and being accredited manually along with other voters in the unit.

He submitted that non-accreditation of a voter by the use of card reader is not a ground to challenge an election result and referred the Tribunal to the case of ***IKPEAZU v. OTTI & ORS (2016) LPELR-40055 (SC)***, where the Supreme Court Nigeria held that:-

> ***"This Court also held that the introduction of the card reader machine has not eliminated manual accreditation of voters. Laudable as the innovation of the Card Reader may be, it is only a handmaiden in the accreditation process. Thus, any attempt to prove over-voting or non-accreditation without reference to the voter's registers of the affected Local Government Areas, as in this case, was bound to fail." Per KEKERE-EKUN, J.S.C (P. 75, paras. C-E).***

He therefore urged the Tribunal to disregard the testimony of PW1 as it is self-contradictory and irrelevant.

With regards to the evidence of PW2 Mainasara Lumo, who claimed to be a WARD COLLATION AGENT for the petitioners at Tangaza Local Government collation center, learned counsel submitted that the PW2 has not in any way proved the allegation of corrupt practice as required by law, to wit allegation of reduction of his party's vote by 140/120 as claimed or alleged. He said that the law is settled that allegation of corrupt practices in an election petition is in the nature of a criminal charge which must be proved beyond reasonable doubt and referred the Tribunal to the case of ***OMISORE VS. AREGBESOLA (SUPRA) AT PAGE 334-335 (G - C).***

He also submitted that by the PW2's admission, even if these votes are added or deducted without conceding, the 1st and 2nd respondent still won the election. He urged the Tribunal to so hold.

With regards to the Exhibits PC1 and PB9 tendered before this tribunal and subsequently identified by the PW2 all in an attempt to proof the allegation of reduction of his party's votes of 120/140 which the figures are at variance with the figures PW1

specifically pleaded in deposition, he submitted that these exhibits did not in any way prove such allegation. That the law has been settled on how to proof an allegation of corrupt practice and referred to the holding of the court in the case of ***OLOFIN & ANOR v. RASAKI & ORS (2014) LPELR-41205(CA)***. According to the learned counsel, the testimony of PW2 is of no evidential value to the Petitioners because the testimony of the PW1 and the exhibits were never linked to prove the allegation of corrupt practice in the said election and he urged this tribunal to so hold and discountenance his evidence.

With respect to the evidence of ISAH SALIHU BASHIR, who is the 1st petitioner, learned counsel submitted that it is very clear from the evidence of the petitioner that his complaint was predicated on the information he received from his agents. That the petitioner was not there neither did he visit any of the polling units apart from the one he voted in which he said he was not complaining about. That it is trite that where a petitioner complains of non-compliance with the provisions of the Electoral Act, he has a duty to prove the non-compliance alleged based on polling unit by polling unit and through the agent of the political party that were physically on ground and in true position to testify as to what transpired at an election. He said that the significance of the polling unit agent cannot therefore be underestimated in the case at hand if the petitioner must have the facts to prove their case. He said that the best evidence the petitioner could have was that of the agents at the polling units who were physically on ground and in true position to testify as to what transpired at the election. He referred to the case of ***MR. BOLA ABAYOMI J. FASUWA & ANOR v. MR. OLUJIMI JAMES OTUKOYA & ORS (2015) LPELR-41802(CA)*** where the court stated thus:

> ***"The issue of non-compliance is a question of fact and it is the degree of the non-compliance and documentary evidence tendered that will show what will constitute substantial noncompliance. It is taken as correct that an election result is presumed authentic until contrary evidence is adduced to show its irregularity. It is very apt to re-state that the Petitioners/Appellants that complains against the result of the elections in 21 polling units and seeking for same to be voided on the grounds of corrupt practices and non-compliance with the provisions of the law. The grounds of irregularities, non-compliance and corrupt practices are set out in Paragraphs 27, 43 and 44 of the petition. It is trite that he who asserts must prove that those facts exist. See Section 13(1) and (2) of the Evidence Act, 2011. The burden of proof of allegations seeking to vitiate election results in a petition lies on petitioners questioning the election. See BUHARI VS. INEC & ORS {2008} 19 NWLR***

(Pt.1120} 246-355 1 - H. "Per ADZIRA GANA MSHELIA, J.C.A (Pp. 16-17, paras. D-C) Per NWOSU-IHEME, J.C.A (P. 5, paras. A-C)

He also cited the cases of: ***OKEREKE v. UMAHI & ORS (2015) LPELR-40687(CA) and UCHA V. ELECHI &Ors (2012)13 NWLR (Pt.1317)330@359*** in support of his contention and submitted in the final analysis that the testimony of the petitioner and that of the PW2 in all material respects amounts to hearsay evidence and they are incompetent to give account of what actually happened in these polling units i.e. corrupt practice as alleged. He said that having made the allegations against the Respondents, it behoves on them to call at least one credible witness from each of the polling booths or units or stations to testify in support of their allegations. See: ***AUDU v. INEC (No.2) (2010) 13 NWLR (Pt.1212) 456 at 523; CHIME v. ONYIA (2009) 13 NWLR (Pt.1124) AYOGU v. NNAMANI (2006) 8 NWLR (Pt.981) 160.***

He submitted finally that hearsay evidence is inadmissible in law for the purpose of establishing an allegation and once it is found that a deposition is laced with hearsay, the court cannot ascribe probative value to it.

He drew the attention of the tribunal to the issue of accreditation of voters with Smart Card Reader as provided for by the 3rd Respondent (INEC) in section 139(2) of the Electoral Act, 2010 (as amended) and INEC Guidelines for 2019 General Election 2019 and submitted that the petitioners have not averted their minds to the fact that where a Smart card reader failed to accredit a voter the INEC official is allowed to resort to the manual accreditation provided by INEC Guidelines for 2019 General Election 2019.

Again, learned counsel submitted that the petitioners did not tender any voters register for this polling unit to indicate or show that there was no accreditation of voters and more so, the alleged votes accredited to the 1st and 2nd respondents were not linked to the voters register as it is the only document that can show non-accreditation of voters and cited the case of: ***IKPEAZU v. OTTI & ORS (2016) LPELR-40055 (SC).***

Based on the above Supreme Court authorities he urged the Tribunal to discountenance the PW4's testimony since it has no evidential value whatsoever.

With respect to the PW5 Ala Kaka he submitted that the witness contradicted himself and lied to the Tribunal that no person was accredited but Exhibit PD2 has shown that some voters were accredited. He submitted that it is trite that where a witness is not a truthful witness the court will discountenance his evidence. He said that the witness also made a criminal allegation against a police officer and a member of the All progressives congress but none of these two persons were joined in this petition neither was there evidence that

even if it is true that Ali Babba committed the offence of vote buying on the day of the election, that it was on the instruction of the All progressives congress or the 1st Respondent. He said that the law is trite that where a criminal allegation is made in pleadings in a civil matter such criminal allegation must be proved beyond reasonable doubt. See: ***OYEBODE & ANOR v. GABRIEL & ORS (2011) LPELR-8693(CA)***. He urged the Tribunal to discountenance the evidence of this witness.

With respect to the evidence of the PW6, learned counsel noted that this witness' evidence is on the vexed issue of non-use of card reader machine in accrediting voters to vote at the election which he dealt with earlier in this address. He adopted his earlier submission on the issue and urged my lords to discard the Petitioners evidence.

In reply to the Petitioners argument that the respondents are deemed to have admitted the case of the petitioners by their failure to adduce evidence in defence based on the case of: ***Dingyadin v Wamakko*** and a host of other cases to support his position, he submitted that that may well be the law but for a respondent to admit the case of the petitioner, there has to be a case capable of admission. Where the petitioner has not been able to make out a case capable of admission, admission by failure to call evidence cannot arise.

He submitted for the 2nd respondent that as in every legal principle there is an exception to this rule, That one of such exceptions is that where a respondent cross examined the witness called by the petitioner and was able to show that the position of the petitioner is untenable thereby supporting his defence, he is in law taken to have called evidence in support of his pleadings which cannot then be said to have been abandoned. See the decisions in: ***OMISORE V AREGBESOLA (2015) 15 NWLR (Pt 1482) 205 at 324 para A-C*** and ***AKOMOLAFE V GUARDIAN PRESS LTD (2010) 3 NWLR (pt. 1181) 338*** where the Supreme Court echoed a similar view in the following words:

> ***"Evidence elicited from a party or his witness under cross examination, which goes to support the case of the party cross examining, constitutes evidence in support of the case or defence of the party. If at the end of the day, the party cross examining decides not to call any witness, he can rely on the evidence elicited from cross examination in establishing his case or defence. In that case it cannot be said that the party called no defence. However, it can be said that the party called no witness in support of his case or defence, not evidence, as the evidence elicited under cross- examination, which are in support of his case or defence constitute his evidence in the case."***

Learned counsel found it necessary to remind the petitioners that their claims before the court are declaratory in nature. That being the case, he said that they are in law duty bound to prove their case. That it is only when they have done so that the respondents will be expected to enter their defence. That if they fail to do so as in this case, they cannot rely on the failure of the respondents to secure a cheap and easy judgment because declaratory reliefs cannot be granted on the admission of the Respondent.

According to the learned counsel, the case of: ***Dingyadi v Wamakko*** relied on by the Petitioners is a judgment of the Court of Appeal delivered at a time when appeals in governorship petitions stopped at the Court of Appeal and was therefore never tested at the Supreme Court. In the face of Supreme Court judgments to the contrary, it is no longer good law as it was too general in its pronouncement and failed to take cognizance of the fact that INEC therein cross examined the petitioners' witnesses.

He also referred to paragraphs 4.10-4.21 where the Petitioners argued on alleged incidences of non-use of card reader machine, non-holding of election, cancelation of election results, over voting, suppression and inflation of votes and went on to say that if these votes are subtracted and added, the 1st petitioner would have won the election in that PDP would have scored 24,526 votes while the APC would have scored 24,322 votes.

He said that the petitioners never pleaded these facts neither are they contained in the written statements on oath of all the witnesses listed by the petitioners.

He said that the Petitioners mentioned over voting in paragraph 20 of the petition in the following words:

> ***"Your petitioners state that, if the results of the polling units with over voting were subtracted from the votes of the petitioners and as well as the 1st and 2nd respondents, the result will be as follows: PDP=25,319 and APC=26,242."***

That prior to that paragraph, the Petitioners did not plead incidence of over voting in any of the preceding paragraphs. He thus submitted that over voting was not pleaded by the petitioners in the entire petition. A fortiori, no evidence of over voting was given by any of the petitioners' witnesses and none could have been given without pleading.

He maintained that it is trite law that a petition should not be vague, imprecise or nebulous and it is the duty of the petitioner to plead and lead evidence of over voting polling unit by polling unit, ward by ward and local government by local government showing the figures involved at each polling unit, ward and local government. For this he referred to paragraph 4(1) of the 1st Schedule to the Electoral Act 2010 (as amended) and submitted that failure to so plead renders the fact so vaguely pleaded unacceptable.

On the suppression/inflation of votes, cancelation of results, non-holding of election, he adopted their argument as it relates to PW2, PW4 and urged the Tribunal to dismiss the petition in its eternity.

In conclusion, learned counsel submitted that the petitioners have failed woefully to prove their petition before this tribunal and urged the Tribunal to:

(i) Strike out paragraphs 9(1) and (iii) of the Petition for being incompetent;
(ii) Strike out the entire Petition for the failure of the Petitioners to mention the names and scores of all the candidates in the election while at the same time praying to be returned as the candidate with the highest number of lawful votes cast at the election;
(iii) Dismiss the Petition for failure of the Petitioners to prove substantial non-compliance with the provisions of the electoral act 2010 (as amended) or that he scored majority of the lawful votes cast at the election; and
(iv) Award substantial cost to the 2nd respondent for their time, money and energy in defending this petition.

Oladipo Tolani Esq, learned counsel to the 3rd – 16th Respondents also adopted his written address filed on the 8th day of July 2019. He noted that the allegations of fact in support of the Petition as averred by the Petitioners clearly shows that whereas Tangaza and Gudu Local Government Areas constitute the Federal Constituency which election is being disputed, only the election in respect of some polling units in eight (8) out of ten (10) wards in Tangaza Local Government Area is being challenged.

In essence, he said that the Petitioners shown that they are not challenging the results of the election conducted by the 3rd Respondent in the remaining two wards in Tangaza Local Government as well as the results of the election in the entire polling units in ten wards in Gudu Local Government Area, Sokoto State. He said that this point is very fundamental to the determination of the scope of this Petition as constituted.

He noted the averments of the 3rd – 16th Respondents in their Joint Reply to the Petition as will be demonstrated. According to learned counsel, the Petitioners by their showing in the Petition particularly Paragraphs 20, 21 and 22 thereof concede to the irresistible fact that even if their computation and deduction is right which is vehemently denied, the 1st Respondent still won the election in dispute by a majority of the lawful votes cast which in the first instance renders the Petition otiose and academic.

He also noted that at the close of the Petitioners case on 22/06/2019, the learned counsel for the 3rd – 16th Respondents informed the Tribunal in deliberate but cautious

choice of words ***that having regards to the quality and nature of the evidence led or adduced by the Petitioners, they shall be resting their case on that of the Petitioners (italics ours for emphasis).*** He thereafter submitted that by the quality and nature of evidence led by the Petitioners as well as the weight of the evidence elicited under cross examination in support of the averments in the Reply to the Petition, there is nothing to rebut.

In response to the issues for determination formulated by the Honourable Tribunal, he sought permission to argue issues ii – iv together while issue one shall be argued separately.

ISSUE (ii), (iii) & (iv) :

Opening his arguments on Issues (ii), (iii) and (iv) learned counsel submitted that it is misconceived and not correct that the 3rd – 16th Respondents abandoned their pleadings rather, it is the evidence led by the Petitioners that fell far short of what was required to prove the allegations of fact in the Petition. He urged the Tribunal to discountenance the submissions of the Petitioners that the 3rd – 16th Respondents abandoned their pleadings and hold that it is the quality of evidence led by the Petitioners that fell below the standard of proof required to substantiate the allegations levelled against the conduct of the election in dispute.

Learned counsel thereafter appraised the evidence of the Petitioners' witnesses and submitted that, the Petitioners cannot be said to have proved their Petition.

He posited that as can be seen from the record of the Tribunal, all the witnesses for the Petitioners testified in Hausa language, a foreign language and not a language of the Tribunal. This presupposes that the witnesses who all testified for the Petitioners including the 1st Petitioner are illiterates who first made their statements in Hausa language, had them translated into English language and adopted them without any illiterate *jurat*.

Learned counsel observed that the version recorded in Hausa language was not tendered before the Tribunal as the witnesses could not have made a deposition in English language and appear before the Tribunal only to testify in Hausa language. He said that the implication of this fundamental and incurable defect can be properly appreciated by reference to the case of: ***Gundiri v. Nyako (2014) 2 NWLR (Pt. 1391) 211 at 241,*** an appeal against the decision of an election petition tribunal affirmed by the Court of Appeal and re-affirmed by a full panel of the Supreme Court Per Ogunbiyi, JSC thus;

"With the depositions adopted being in English language, the question to pose is, were those depositions adopted same as those made by the witnesses? To my mind and from all

indications, the witnesses were adopting to depositions which were not in fact made by them since English language was foreign to their understanding. The appellants owed a duty to the court to have presented the very depositions made by the witnesses. The adoption of a different deposition was very defective and it could not have been rectified by the use of an illiterate jurat. ……..…. the law desires that witness depositions are to be individually identified with the maker. It is not enough an identity that none of the witnesses in question disowned the statement. They could not in other words have claimed rightly a deposition which was made in English language since they spoke in Hausa."

At pages 261 – 262 (G – B), the Supreme Court held further Per Chukwuma-Eneh, JSC thus,

"It is the law that where a witness as an illiterate has made his statement in a foreign language as in this case in Hausa language, that both the statement in a foreign language and the English translation thereof have to be tendered together and in that case, the jurat so provided in respect of the statement must be signed by an interpreter who recorded the statement. This process has not been followed for the rest of the 22 illiterates as witnesses in the matter vis-à-vis their depositions recorded by unidentifiable persons as found and rejected by the Tribunal and rightly upheld by the lower court. It is not being denied that the depositions of the 22 of them have been taken and recorded under strange circumstances without due adherence to the provisions of the illiterate protection law requiring the insertion of jurats properly so attested and signed by an identifiable interpreter as the maker. <u>These statements have been rightly rejected by the Tribunal and confirmed by the lower court for their inadmissibility in evidence as not having complied with the provisions of the Illiterates Protection Act which precludes drawing the inference that any of the 22 Hausa witnesses have understood the contents of the depositions</u>. See Ezera v. Ndukwe (1961) All NLR 564." (Underlining supplied for emphasis).

Counsel urged this Honourable Tribunal to reject the sworn depositions of the six witnesses that testified for the Petitioners the implication of which is that there is no scintilla of evidence led in support of the allegations of fact averred in the Petition.

Learned counsel submitted further that paragraph 15, 16 and 17 are not only contradicting but confusing in the averments and figures. That even then, the complaint is limited to some polling units in Tangaza Local Government Area. Furthermore, that paragraph 19 of the Petition is a complaint on the alleged act of a collation officer who is the 8th Respondent in Tangaza Local Government. That there is nowhere, save as averred

in paragraphs 15 to 19 of the petition where there is any complain about the conduct of the election and collation of result in Gudu Local Government Area.

He submitted that if the Petition will succeed, the collation of results in Tangaza must be afflicted by fundamental vices to make it worthless. He noted that in paragraph 3 and 8 of the petition where the Petitioner stated that he and the 1st Respondent were candidates in the election and that he scored 26,047 votes while the 1st Respondent scored 27,220 votes. That after all the complaints and alleged infractions, the Petitioner averred in paragraph 20-22 that the correct computation of votes after subtraction and addition of votes from the averments in paragraphs 20-22 of the Petition, the Petitioners conceded to the fact that irrespective of the alleged subtraction or deduction that were made from the scores of the result collated, the 1st Respondent is still the lawful winner of the said election by majority vote cast.

He noted that in an attempt to prove alleged infractions in the course of collation, the Petitioner tendered some documents without any attempt to explain or relate the documents to their case. That there is thus a need to comment on the probative value of documents that were literarily dumped on the Tribunal in the proceedings of 11th June, 2019 which were admitted as Exhibits PA1 – PC3 after they were tendered from the bar. He said that no attempt was made by any of the petitioners' witnesses to link any of the documents to specific averments or allegations in the petition.

He also submitted that it is the duty of a proponent seeking to rely on documents to prove his case to link the documents that have been thrust on a Court or Tribunal to specific areas of his allegation and relate each document for the purpose it was tendered as it is not within the duty of the Tribunal to link the document to the case of the party in the comfort of its Chambers. That on no account must counsel dump documents and no Court or Tribunal can spend its precious judicial time to link the documents that were dumped on it to specific area of the Petitioners case. See ***Ucha .V. Elechi&ors (2012) 13 NWLR (PT 1317) 330 @ 360(E-G). See A.C.N .V. LAMIDO (2012) 8 NWLR (PT 1303) 560 @ 584 (G) to 585 (B).***

He submitted further that the law places the burden on the petitioner to tie each document to oral evidence for such document to be useful as evidence in the instant case, the averment in the sworn deposition. He said that none of the Petitioners witness spoke to or referred to any of the Exhibits dumped before this Honourable Tribunal apart from the glib reference of the petitioner to Exhibit PC1 and PA1-PA5. That there was no attempt to demonstrate how the petitioner was negatively affected by the documents. That the petitioner only remembered his own votes and could not remember that of the 1st

respondent during cross examination. That this is not surprising because, by his showing in paragraphs 20-22 of his petition, he did not score majority of lawful votes cast in the election and did not assert or ascribe any votes scored to himself in the entirety of his testimony in chief (witness statement on oath) to show that he had a majority of lawful votes cast.

Learned counsel noted that the Petitioner alleged that card readers were not used during the conduct of the disputed elections and to that effect he subpoenaed Exhibit PD1, which is the card reader report to establish that fact. Unfortunately, Exhibit PD1 showed clearly that contrary to the postulation of the Petitioners, accreditation with card reader indeed took place in many polling units and stations. In fact, the numbers of accredited voters are shown on the documents. That Exhibit PD1 rather than strengthen the petitioner's case, made non-sense of the regurgitated depositions in almost all the witness statements attached to the petition. He said that Exhibit PD1 also has a provision in one of the columns showing or depicting the number of people whose accreditations were completed manually.

Counsel submitted that if the petitioner had been mindful of the provisions of Regulations 10 and 11 of the INEC Guidelines for 2019 General Election, they would have realized that their contention is not tenable and otiose as Exhibit PD1 clearly shows full compliance with the Regulations. He said that Regulations 11(b) (i) – (iv) of 3rd Respondent's Guideline for the 2019 General Election provides that where a voter's PVC is read but his/her fingerprint is not authenticated, the APO shall refer the voter to the APO II who shall request the voter to thumbprint the appropriate box in the Register of Voters; request the voter to provide his/her phone number in the appropriate box in the Register of Voters; continue with the accreditation of the voter; and refer the voter to the PO or APO (VP) for issuance of ballot paper(s).

He pointed out that while the Petitioners found it convenient to set out copiously Regulation 10 of the Guideline for the 2019 General Election, they kept mute with respect to the provisions of Regulation 11 of the said Guideline which effectively deals with the failure of authentication of fingerprint by the VCR in order to avoid any case of disenfranchisement of voters solely on the account of non-authentication of a voter's fingerprint by the VCR.

He referred to the PW5, a trained party agent who stated clearly that the card reader was used and that he understands the difference between mal-functioning and total failure. That if the card readers identifies the PVC's but fails to recognize the thumb prints the person can still vote and that sometimes the card readers fail to accredit the PVC's and the thumb prints.

Counsel referred to the case of ***IKPEAZU .V. OTTI & ORS. (2016) 2. S.C (PT 2) 102 @ 163-164***, which decided that the use of card reader can only be mandatory if there is a law of the national assembly to that effect. He submitted that in the absence of any law of the national assembly making the use of card reader compulsory or mandatory the petitioners are on a slippery wicket.

Counsel referred to Exhibit PD1 and stated that there are columns for all these incidences which are clearly reported. That it is not true as alleged by the petitioner that the card readers were not used at most of the polling units. He said that it is equally untrue that election took place in most of the polling units without accreditation because PW5 stated under cross examination that agents were trained before they went to the field and that there is a difference between card reader failure and malfunctioning. He said this was why most of the result sheets dumped on this Honourable Tribunal were signed by party agents, as confirmed by PW6.

He referred to paragraphs 4.20, 4.21 and 5.4 of the Petitioners Final Address where they tabulated figures and attempted to lead evidence on purported votes that ought to be subtracted or deducted from the votes of the 1st Respondent on the allegation that some votes were credited to the 1st Respondent and submitted that these attempts were belated as no matter how well drafted or elegant a written address, cannot be substitute for evidence.

He further submitted that what this honourable Tribunal is being invited to do by the Petitioners is cloistered justice which invitation he urged the Tribunal to reject.

He therefore urged the Tribunal to resolve issues (ii), (iii) and (iv) in favour of the 3rd – 16th Respondent and hold that;

(a) The 1st Respondent was duly elected by majority of lawful votes cast; and
(b) There is no credible evidence before this Honourable Tribunal to vitiate the conduct of disputed election as same was conducted in substantial compliance with the Electoral Act 2010 (As Amended).

ISSUE (i) :

With respect to the first issue, learned counsel's submissions are also substantially in line with the submissions of the 1st and 2nd Respondents. According to the learned counsel, the Petitioners did not aver to any fact in support of this tenuous assertions. He said that none of the witnesses that was called gave any evidence in prove of the allegation that the 1st Respondent was not qualified and in the absence of any fact alleging or suggesting that the 1st Respondent was not qualified, the Honourable Tribunal is left with no option than to deem that leg of the petition as abandoned.

He said that if the Petitioners had tendered Form CF001 for the 1st Respondent, it would have been against their interest, thus they have concealed or withheld evidence which if made available to the Tribunal will be against their interest. He submitted that Section 169 (d) of the Evidence Act, 2011 is called in aid and he urged the Tribunal to hold that the Petitioners are caught by presumption of withholding evidence.

He urged the Tribunal to resolve this issue in favour of the 3rd to 16th Respondent, by holding that there is no evidence before it, to establish the alleged disqualification of the 1st Respondent.

In conclusion, he urged the Tribunal to dismiss the Petition for lacking in merit and a gross abuse of processes and hold that the election into the House of Representatives on 23rd February, 2019 for Tangaza/Gudu Federal Constituency, Sokoto was conducted in substantial compliance with the provision of the Electoral Act, 2010 (as amended), the Guidelines for the Conduct of 2019 General Election and all other relevant electoral laws.

A.T. Ibrahim Esq, the learned counsel for the Petitioners filed a joint Reply on points of law to the written addresses of the 1st, 2nd and 3rd – 16th Respondents on the 18th day of July 2019 and same was adopted by him as the Petitioners Reply on points of law.

In his Reply, the learned counsel noted that address of counsel no matter how eminent, articulate or ingenious cannot be a substitute for evidence given in the open court in the course of the proceedings and referred the Tribunal to the case of ***ANPP V USMAN (2008) 12 NWLR PT (1100) 1.***

On the allegation of dumping of INEC statutory forms, the learned counsel submitted that one has to bear in mind the nature of forms EC8A, EC8B. The two forms are to show the polling unit, the code number, the ward and the local government area they relate to. He cited the case of ***TERAB V LAWAN (1992) 3 NWLR PT (231) 569*** where the court of Appeal held

> ***"A Petitioner who tendered them in proceedings has by so tendering them given all the relevant evidence which is discoverable from the forms. It is reasonable for a Tribunal to expect that when a form EC8A or EC8B is tendered the party tendering either will have to read the contents of each form to the court as further evidence? I think not. The forms themselves carry bold information to the polling units to which they relate. They can therefore be easily linked with particular areas or facts pleaded. It is a misapplication of the principle in Duriminiya v C.O.P (supra) to expect the Petitioner to come and read afresh to the court the same evidence already contained in the exhibits which were***

tendered and received without objection. The Tribunal erred seriously by failing to see that forms EC8A and EC8B are statutory forms complete on their own as to their source and purport and which cannot therefore be equated with ordinary documentary exhibits"

He also cited the case of ***Uduma v Arunsi &Ors (2010) LPELR – 9133 CA*** and submitted further that in election petition matters the issue cannot be over stretched in view of the sui generic nature of election cases and the explicit provisions of ***paragraph 41 (3) of the First Schedule to the Electoral Act 2010 (as amended)*** which stipulates that

"There shall be no oral examination of witnesses during examination in chief except to lead the witness to adopt his written deposition and tender in evidence all disputed documents or other exhibits referred to in the deposition"

Learned counsel in reply to submission that the Petitioners did not tender the voters register in the polling units in contention, referred to Exhibits PE1-PE7 as the voters registers for the concerned polling units.

In the reply to the argument of the learned counsel to the 1st Respondent that card reader report admitted as Exhibit PD1 was never demonstrated in open court before the Tribunal by any witness, he referred to the proceedings of the 15th June 2019 where the PW5 was shown exhibit PD1 and his response was that "it is not true that some voters were accredited manually and some with card reader machine"

According to the learned counsel, where a witness statement on oath is duly adopted by the witness before the Tribunal in line with the frontloading procedures, the written statements are required to be filed alongside the relevant process and they represent the testimony of the witness in chief who will then be cross examined and re-examined. He quoted the case of ***Agagu vs. Mimiko*** and ***Aregbesola vs. Oyinlola*** to the effect that a witness deposition once adopted becomes effective as the evidence in chief of such a witness.

Learned counsel reiterated his earlier position in his written address that where a Petitioners' witness statement is duly adopted, a respondent who fails to call evidence in support of his pleadings is deemed to have abandoned same and that the Petitioner's case stands unchallenged. Furthermore, that mere cross examination of the witnesses cannot amount to a challenge of the Petitioner's case save where the evidence of such witness was shaken or discredited. He urged the Tribunal to so hold.

He submitted further that the argument of the 3rd to 16th Respondent's counsel that since all the five witnesses of the Petitioner testified in Hausa language is tantamount to

classifying them as illiterates is a misconception of the principle of law enunciated in the case of ***GUNDIRI V NYAKO (2014) 2 NWLR PT (1391) 211***.

According to the learned counsel, there is a world of difference between witness statement deposed in foreign language and when a witness who made his statement in the language of the court chose to testify for convenience before the court in the other language. He submitted that it is only when the witness gave his statement in a foreign language that a jurat will be required. He said that there is no place where the witnesses said they gave their statements in Hausa language. He buttressed this point with the content of the pre-hearing where the petitioner stated that they will not require the services of an interpreter and the record of proceedings of the 15th June 2019 where the Petitioner stated that his highest qualification is NCE from Shehu Shagari College of Education Sokoto. He said that the giving of evidence is for convenience which did not translate into the witnesses making their statements in Hausa language.

He referred to the alleged misunderstanding of the learned counsel to the 3rd – 16th Respondents at pages 8-9 of his written address where he stated that the pleadings of the Petitioners were restricted to paragraphs 20-22 of the petition and referred the tribunal to paragraph 4 (2) of the First Schedule of the Electoral Act 2010 as amended dealing with the contents of a petition and submitted that it is befuddling that the Respondent chose to concentrate their efforts on the ill-advised and misconceived notion that the petition is anchored on only paragraph 20-22 of the Petition.

He submitted that the learned counsel to the 3rd to 16th Respondents attempted to water down the provisions and effects of non-compliance to INEC guidelines 2019 as it relates to the mandatory use of smart card reader in the 2019 electoral elections at page 13, paragraph 1 and submitted that a subsidiary legislation has the same effect and force of law as the principal act. He referred to the cases of ***BEST NJOKU V CHIEF MIKE IHEANATU (2008) LPELR- 3971 (CA), ABUBAKAR V BEBEJI OIL AND ALLIED PRODUCTS (2007) ALL FWLR (PT 362) 1855*** and also ***S.153 of the Electoral Act*** which empowers the commission to issue regulations, guidelines and manual for the purpose of giving effect to the provisions of the Act for its administration thereof. He thus urged the Tribunal to discountenance the submissions of the respondents and give full legal effects to the card reader statement and the provisions of the 2019 INEC Guidelines and Regulations

Learned counsel submitted further that it is a fundamental procedural requirement that when issues are joined on the pleadings, evidence is needed to prove them and he who asserts must prove. He referred to the case of ***OJOH V KAMALU (2005) 18 NWLR (PT***

958) 565 and that of: ***AREGBESOLA & 2 ORS V OYINLOLA & ORS (2011) NWLR (PT 1253)458 @ 597*** PER OGUNBIYI JCA thus:

"Pleadings speak through the language of a witness. Pleadings, not being human beings have no mouth to speak in court. And so they speak through witnesses, if witnesses do not narrate them in court, they remain moribund if not dead at all times and for all times to the procedural disadvantage of the owner. The effectual presupposition is that issues are no longer joined because the being nature of the pleadings can no longer speak through the language of a witness. The consequential outcome is that there would be no reply at all on record in which case issues are no longer denied because there is no denial"

In conclusion, learned counsel submitted that when issues are joined between parties to an action and the petitioners adduced evidence but the respondents elect willingly not to call evidence in rebuttal to the petitioners, the tribunal is entitled to hold as follows;

a. It is deemed to have abandoned same and that the petitioner's case stands unchallenged. Mere cross examination of the witnesses of the petitioners cannot amount to a challenge of the petitioner's case save where the evidence of such witness was shaken or discredited.
b. By electing not to call any evidence, the respondents have abandoned their pleadings with the resultant consequence that they will be deemed to have accepted the facts of the electoral irregularities and the substantial non-compliance with the provisions of the electoral Act adduced by the petitioners.
c. The burden of proof on the petitioners in the circumstances is minimal.

The learned counsel to the Petitioners also filed a Petitioner's Reply to the 2nd Respondent's objection on the 22nd July 2019 wherein he submitted that the objection of the Respondent is frivolous, time wasting and without any factual or legal basis to support the grounds stated in that objection. That it was simply a ploy and stratagem designed by the Applicants to delay the hearing of this petition on its merit.

Learned counsel drew the attention of the Tribunal to paragraph 53 (1) of the First Schedule to the Electoral Act 2010 (as amended) and submitted that the paragraph 9 (iii) of the Petition is in consonance with section 138 (c) of the Electoral Act 2010 as amended while ground of non-qualification to contest found its root and meaning from the provisions of the constitution of the Federal Republic of Nigeria as amended. He thereafter submitted that reliefs 1.5, and the omnibus relief relates to the ground of qualification.

It was also his submission that paragraphs 17.1, 17.2, 18.9 and 18.71 are non-existent in the petition, he thus urged the Tribunal to discountenance the grounds of objection premised on that.

In reaction to the objection of the Respondent that paragraph 9 (i) was not backed with facts, learned counsel submitted that this objection is misplaced as such complaints lies squarely within the requirements of the Act for a respondent to request for further particulars whenever he alleges vagueness of a petition. He referred to paragraph 5 of the First Schedule of the Electoral Act which stipulated that evidence need not be stated in the election petition but the Tribunal may order such further particulars as may be necessary. He also referred to the provisions of paragraph 17 (1) of the First Schedule to the electoral Act 2010 as amended and supported with the holding in the case of: ***Nwankwo V Yar'adua (2010) 12 NWLR (1209) 518 @ PP 579-580.***

According to the learned counsel, since the Respondent did not request for further particulars, they should not be heard for surreptitiously calling on the Tribunal to decline jurisdiction to adjudicate on the Petition. The Respondent should not be allowed to benefit from his indolence.

On the issue of failure of the petitioners to state the names of all the parties who contested in the election, learned counsel submitted that that argument is tainted with grave misconception of the law and at best shallow appreciation of laws guiding our relevant processes. He cited the case of ***Kalu V Chukwumereije (2012) 12 NWLR (PT 1315) 425 @ 455*** which restated the instances where failure to state the scores of all the candidates would not render an election petition incompetent.

In conclusion, learned counsel submitted that the objection of the Respondent is premature, frivolous and lack merit. That none of the grounds of objection raised is fatal to the petition and the petitioners have complied substantially with the provisions of the Electoral Act 2010 as amended in every way. He thus urged the Tribunal to hear the petition on the merit and not sacrifice it on the altar of technicalities. He therefore urged the Tribunal to dismiss the Preliminary objection and proceed to consider the merits of the case.

We have carefully examined all the processes filed, the records of proceedings and the written addresses of counsels. It is noteworthy that the learned counsels to the 1st and 2nd Respondents filed preliminary objections in their replies to the petition raising jurisdictional issues.

It has been held in a plethora of decided cases that issues bordering on jurisdiction are threshold issues which ought to be determined first and could be raised for the first time

before an appellate Court. It could also be raised by any party; the trial Court inclusive, see the case of see ***UCHEGBU & ORS V. THE SHELL PETROLEUM DEV. CO. NIG. LTD.(2009) LPELR-8891(CA).***

We shall therefore resolve the issues raised in the preliminary objections filed by the learned counsels to the 1st and 2nd Respondents in their respective replies which the Tribunal urged should be argued in their final address in line with extant laws. Both preliminary objections are similar and based on grounds earlier reproduced above.

It is worthy of note that the learned counsels to the 1st and 2nd Respondents later decided to abandon ground two of the objection and argued grounds 1 and 3 thereof. It is thus safe to presume that the second ground of the preliminary objection has been abandoned by both the 1st and 2nd Respondents and same is hereby struck out.

With respect to the first ground of the preliminary objection which contends that paragraph 9(iii) of the Petition is not a ground for the challenge of an election under the Electoral Act 2010 (as amended). The said Paragraph 9(iii) of the Petitioner's Petition reads;

> ***"The 1st petitioner was the candidate who scored the highest number of lawful votes cast at the election and ought to have been declared winner and returned as duly elected member of the House of Representatives representing Tangaza/Gudu Federal Constituency of Sokoto State."***

The question now is whether this paragraph as couched by the Petitioners can fall under any of the grounds for presenting election petitions as stipulated under the Electoral Act, 2010 (as amended). Section 138 of the Electoral Act, 2010 (as amended) provides as follows:

Section 138 "An election may be questioned on any of the following grounds: that is to say-

- ***a. That a person whose election is questioned was, at the time of the election, not qualified to contest the election;***
- ***b. That the election was invalid by the reason of corrupt practices or non-compliance with the provisions of this Act;***
- ***c. That the respondent was not duly elected by the majority of lawful votes cast at the election: or***
- ***d. That the petitioner or its candidate was validly nominated but was unlawfully excluded from the election.''***

It is however now settled law that a Petitioner is free to either present his Petition before any Election Petition Tribunal to challenge or question the return of any candidate in an election under one or more of the grounds specified under Section 138 of the Electoral Act 2010 (as amended) depending on the circumstances of each case or the Petitioner may present his Petition under ***Sections 7 and 9 of the Constitution of the Federal Republic of Nigeria (Second Alteration) Act 2010*** which provides that;

> ***9 (1) there shall be established for each state of the federation and the federal capital territory one or more election tribunals to be known as the National and State Houses of Assembly Election Tribunals which shall to the exclusion of any Court or Tribunal have original jurisdiction to hear and determine petitions as to whether;***
>
> ***a. Any person has been validly elected as a member of the National Assembly; or***
> ***b. Any person has been validly elected as a member of the House of Assembly of a state.***

See the case of*:* ***Adebiyi V Babalola (1993) 1 NWLR PT (267) 1.Oshiomhole V Airhiavbere (2013) 7 NWLR (PT 1353) 376 @ 396, Oyegun v Igbinedion & Ors (1992) 2 NWLR PT (226) 947, Okonkwo v INEC &Ors (2003) 3 LRECN 599***

In addition to the requirement that the ground forming the basis of an election petition must be cognizable under the electoral Act or the Constitution, it must also be related to or have arisen out of Acts or omissions that were contemporaneous with the conduct of an election because an election Tribunal has no power to investigate matters which took place before the conduct of election, see the case of ***National Electoral Commission V National Republican Convention (1993) 1 NWLR PT 267 120 @ 126***

The position of our law is that, couching the grounds of the Petition in the exact language used in the Electoral Act is a must or at best the wording as couched must be cognizable under the Electoral Act or the Constitution failing which the ground will be declared incompetent especially where the objection to the ground was raised timeously, see the cases of: ***Ogboru V Ibori (2004) 7 NWLR (PT 871) 192, Kurfi v Mohammed (1993) 2 NWLR (PT 277)602 @ 616 , Buhari v INEC (2008) 4 NWLR PT 1078 546 @643-664.***

In the instant case, objection to that particular ground of the Petition was raised timeously in the Respondents Reply. A careful examination of the said Paragraph 9 (iii) of the Petition shows it falls outside the specified grounds for presenting election petitions as

stipulated under the Electoral Act 2010 (as amended) and S.9 of the Constitution of the Federal Republic of Nigeria (Alteration Act) 2010. It is clearly not cognizable under any of the statutes. Consequently, the said ground as stated in paragraph 9 (iii) is held to be incompetent and same is hereby struck out.

Learned counsels to the 1st and 2nd Respondent also contended that Paragraph 9 (i) of the Petition is not supported by any facts in the body of the petition and further that there is no relief being sought by the petitioners in respect of and arising from the ground contained in the said paragraph 9 (i) of the petition thus this tribunal should hold that it lacks the requisite *vires* to countenance the said grounds.

The said Paragraph 9 (i) of the petition states as follows:

> ***"The 1st Respondent was, at the time of the election, not qualified to contest the election"***

The petitioners in paragraph 1 of the reliefs claimed at page 8 of the petition claims as follows:

> ***"That it be determined that the 1st respondent was not qualified to contest as the candidate of the all progressives congress for election to the office/membership of house of representatives for Tangaza/Gudu federal constituency of Sokoto state held on the 23rd February, 2019"***

The learned counsel to the 1st and 2nd Respondent urged the Tribunal to strike out the said ground 9(1) of the petition as being incompetent. He referred to ***Paragraph 4 (1) (d) First Schedule to the Electoral Act 2010*** as amended which stipulates:

(1) An election Petition under this Act shall

(d) State clearly the facts of the election Petition and ground or grounds on which the Petition is based and the relief sought by the Petitioner

There is no doubt that in election petitions, the need to plead particulars is mandatory. The Petitioner must give the adverse party a sufficient outline of the non-compliance to the Electoral Act he intends to establish. Just like in civil matters where all facts a party intend to rely upon must be pleaded in numbered paragraphs. The same applies to election petitions where facts and particulars in support of the Ground must be clearly stated: See ***BUHARI v OBASANJO 2005 13 NWLR (Pt 941) 1 at 200.*** The object of giving particulars in support of a ground of petition is to compel the parties to define precisely the

issues upon which the case between them is to be contested to avoid elements of surprise by either party and also to ascertain the nature of non-compliance and the burden of proof on the petitioner.

A careful perusal of the facts in support of the Petition did not yield any facts in support of this ground. None of the witnesses fielded by the Petitioners made any reference to this particular ground either in their written depositions or evidence in court. Learned counsel to the Petitioners attempted to cure this defect in their reply to the 2nd Respondents Objection by submitting that the ground of non-qualification to contest found its root and meaning from the provisions of the constitution of the Federal Republic of Nigeria as amended. He thereafter submitted that reliefs 1,5 and the omnibus relief relates to the ground of qualification thereby equating reliefs with pleaded facts.

It is well settled that parties are bound by their pleadings, their cases stand or fall by the averments in their pleadings and the evidence adduced in support of those averments. Any evidence not supported by pleadings goes to no issue. See the cases of: ***Oladipo V Moba L.G.A (2010) 5 NWLR (PT 1186) 111 307 @ 312, Abubakar V Joseph (2008) 13 NWLR PT 1104.***

In as much as the Petitioners did not support ground 1 of the Petition as stated in paragraph 9 (1) of the Petition or any of the witness statements on oath, the Petitioners are deemed to have abandoned that ground of the petition. Based on the above, ground one of the petition is deemed abandoned, same is hereby struck out.

Having resolved ground 1 (a) and (b) of the preliminary objection in favour of the Respondents, it follows therefore that ground 1 (c) and (d) are also resolved in favour of the Respondents being consequential in nature.

With respect to the third ground of the preliminary objection, the learned counsels to the 1st and 2nd Respondents contended that the Honourable Tribunal lacks the jurisdiction to entertain this petition for failure of the petitioners to comply with the condition precedent for it to assume jurisdiction on the ground that there is no mention of the names of all the political parties and candidates who contested the election and their scores as required by paragraph 4 (1) of the first schedule to the Electoral Act 2010 (as amended) and the requirement of stating the names of all the candidates and the political parties that participated in the election is a condition precedent to a valid election petition and failure to

state it renders the petition incompetent under Paragraph 4 (1) of the 1st schedule to the electoral act 2010 (as amended).

Paragraph 4(1) of the First Schedule to the Electoral Act 2010 (as amended) provides;

1. An election petition under this Act shall-

a) Specify the parties interested in the election petition;
b) specify the rights of the petitioner to present the election petition.
c) State the holding of the election, <u>the scores of the candidates</u> and the person returned as the winner of the election.
d) state clearly the facts of the election petition and the ground or grounds on which the petition is based and the relief sought by the petitioner.

In the instant case, the Petitioners only listed the names of the 1st and 2nd Respondents and their scores as the winners of the election and that of the 1st Petitioner and his scores. The petitioners omitted the names of all the other candidates who contested in the elections and their scores as required by paragraph 4 (1) (c) of the Electoral Act 2010 (as amended) as can be seen in Exhibit PC1 tendered by the Petitioners. The learned counsels to the 1st and 2nd Respondents contended that this omission is a condition precedent to the competence of the petition thus the petition is incompetent as filed.

The learned counsel to the Petitioners in response to this referred the Tribunal to the provisions of ***paragraph 53 (1) of the First Schedule to the Electoral Act 2010 (as amended)*** which provides that;

"non-compliance with any of the provisions of this schedule or with a rule of practice for the time being operative, except otherwise stated or implied shall not render any proceeding void unless the Tribunal or court so directs but the proceedings may be set aside wholly or in part as irregular or amended or otherwise dealt with in such manner and on such terms as the Tribunal or court may deem fit and just"

In the case of the case of ***Kalu V Chukwumereije (2012) 12 NWLR (PT 1315) 425 @ 455*** the Court stated some instances where failure to state the scores of all the candidates would not render an election petition incompetent. The court observed as follows;

"therefore the prevalent view of the law is that it is not in all cases where failure of the petitioners to state the scores of all the candidates in the election would be fatal as to render the election petition incompetent. Failure to state the scores of all the candidates

in the election petition would not result in the petition being rendered incompetent where;

(1) The petitioner states the votes scored by the necessary parties to the petition i.e the scores of the petitioner and the person returned as the winner of the election and it is clear that the petition could be determined without the scores of the other candidates that contested the election."

In line with the position of the above decision, we hereby hold that not stating all the names of the candidates who contested in the election petition in the instant case is not fatal to the competence of the petition. Based on the above, the 3rd leg of the objection is dismissed.

The preliminary objection therefore succeeds in part. While the first ground of the objection was upheld, the second ground of the objection was deemed abandoned and struck out while the third ground of the objection was dismissed.

However, just in case we are wrong to have upheld the first ground of the preliminary objection, we shall now proceed to determine the petition on its merits by resolving all the issues formulated by the Tribunal.

As earlier stated, at the close of the pre-hearing session, the Tribunal adopted the issues formulated by the parties with some slight modifications as already stated above.

In his Written Address, we observed that the learned counsel for the Petitioners abandoned these issues and opted to argue the issues formulated by him on the ground that the Reply to the Petition filed by all the Respondents ought to be struck out on the ground that they did not call any witness in support of same. However, the learned counsel to the Petitioners did not cite statutory or case law to back up this position.

For the avoidance of doubt, ***Paragraph 54 of the First Schedule to the Electoral Act 2010*** as amended provides as follows:

> ***"Subject to the express provisions of this Act, the practice and procedure of the Tribunal or the court in relation to an election petition shall be as nearly as possible similar to the practice and procedure of the Federal High Court in the exercise of its civil jurisdiction and the civil procedure rules shall apply with such modifications as may be necessary to render them applicable having regards to the provisions of this Act as if the petitioner and the respondent were respectively the plaintiff and the Defendant in the ordinary civil action."***

By virtue of the above provision, the Tribunal can apply the provisions of the Federal High Civil Procedure Rules whenever there is a lacuna in the Electoral Act. The provisions of the 1st Schedule to the Electoral Act is silent on the rules relating

to the formulation of issues for determination. So by virtue of Paragraph 54 of the 1st Schedule to the Act, we can have recourse to the provisions of the Federal High Court Rules.

Order 18 Rule 2 (2) of the Federal High Rules 2009 provides as follows:

> ***"Where the parties have filed their respective issues for determination and the parties have not agreed on the issues for determination or the judge is of the opinion that the issues formulated by the parties do not adequately address the controversy between the parties, the judge may in spite of the issues formulated by the parties formulate appropriate issues for determination and such shall be the issues for determination at the trial of a matter."***

Going by the above provisions of the law, it follows that the position of the learned counsel to the petitioners in deciding to argue the issues formulated by him for the petitioners alone is wrong as the appropriate issues for determination in this case is the one formulated by the Tribunal for the parties. Based on the above we shall now resolve the issues for determination as formulated by the Tribunal.

However, before the final determination of the petition on its merit, it is appropriate to determine some ancillary issues raised by the parties in their written address some of which also bothers on the competence of the petition consequently the jurisdiction of the Tribunal.

Firstly, the learned counsel to the 3rd to 16th Respondents raised the issue of illiterate jurat in his final written address and urged the Tribunal to reject the sworn depositions of the six witnesses that testified for the Petitioners the implication of which is that there is no scintilla of evidence led in support of the allegations of fact averred in the Petition. The said learned counsel submitted in support of this that all the witnesses for the Petitioners testified in Hausa language, a foreign language and not a language of the Tribunal. He said that this presupposes that the witnesses who all testified for the Petitioners including the 1st Petitioner are illiterates who first made their statements in Hausa language, had them translated into English language and adopted them without an illiterate *jurat*. He contended that the depositions were not valid and referred the Tribunal to the case of **Gundiri v. Nyako (2014) 2 NWLR (Pt. 1391) 211 at 241**.

It is an indisputable fact that all the witnesses for the Petitioners testified in Hausa language while their written depositions on oath were made in English language without illiterate jurat. However, the issue of illiterate jurat did not come up during the testimony of the PW2, PW3, PW4, PW5. The 1st Petitioner on his part informed the Tribunal that he has

an NCE degree while the PW6 informed the Tribunal that he could read in Hausa language not English. None of these witnesses informed the Tribunal that there was a Hausa version of their statement in existence. None of the witnesses complained that the statement they adopted was not the one they made.

In any case, the sole essence of the illiterate jurat is to protect the illiterate and not to hurt him. See: ***Lawal v Akande (2009) 2 NWLR (Pt. 1126) 425 @ 429, UBN Plc v Idrisu (1999) 7 NWLR (Pt.609) 105. The court also held in the case of MAIGADAJE v. SULEI & ORS(2018) LPELR-46504(CA)*** that;

> ***"As regards the complaint in respect of the illiterate jurat, it has to be noted that the sole purpose of the law is to protect the illiterate. It is therefore the law that only the illiterate can challenge the content of a document where he signed as an illiterate without jurat." Per MSHELIA, J.C.A. (P. 22, Paras. D-F)***

In any case, as the learned counsel to the petitioners rightly submitted, the mere fact that a witness testified in his native language does mean that he is an illiterate. Going by the above case law, we hereby hold that the statements made by the petitioners' witnesses were validly made.

Secondly, the learned counsel to the Petitioners commenced his written address by submitting that the requirement for the Mandatory use of Smart Card Reader (SCR) contained in INEC Regulations and Guidelines, 2019 has full statutory flavor and effect. In support of this submission, the learned silk cited the case of ***Best Njoku v. Chief Mike Iheanatu (2008) LPELR-3871 (CA).***

According to the learned counsel, it is settled law that a subsidiary legislation when lawfully made has the effect and force as the principal or enabling Act. He thereafter drew the attention of the Tribunal to the express words used in the INEC Regulations and Guidelines 2019 on the mandatory use of Smart Card Reader for the purpose of accreditation of voters i.e Paragraph 10 (a) and (d) of the Regulations and Guidelines for the conduct of Elections which he reproduced in his written address and submitted that under the extant INEC Regulation, the use of Card Reader for Election is Mandatory and non-use of smart card readers renders the election invalid and liable to cancellation.

It is settled law that the failure to accredit with the card reader cannot invalidate the election if the manual accreditation was done.

The Supreme Court elucidated on this point in the case of: ***NYESOM v.PETERSIDE & ORS (2016) LPELR-40036(SC)*** when they stated thus:

"The introduction of the card reader is certainly a welcome development in the electoral process. Although it is meant to improve on the integrity of those accredited to vote so as to check the incidence of rigging, it is yet to be made part of the Electoral Act. Section 138(2) of the Electoral Act envisages a situation where the Electoral Commission issues instructions or guidelines which are not carried out. The failure of the card reader machine or failure to use it for the accreditation of voters cannot invalidate the election. The Section stipulates as follows:-

" 138(2) An act omission which may be contrary to an instruction or directive of the Commission or of an officer appointed for the purpose of election but which is not contrary to the provisions of this Act shall not of itself be a ground for questioning the election".

See also the cases of: ***EMMANUEL v. UMANA & ORS (2016) LPELR-40037(SC);*** and ***OKEREKE v. UMAHI & ORS (2016) LPELR-40035(SC)*** which are on the same point.

Moreover, in the instant case, the petitioners themselves tendered in evidence Exhibit PD1 which is the Smart Card Reader print out in all the polling units of the constituency in issue. Although the contents of the said Exhibit PD1 was never demonstrated in open court before this tribunal the exhibit showed clearly that contrary to the postulation of the Petitioners, accreditation with card reader took place in many polling units and stations. As a matter of fact, the numbers of accredited voters are reflected in Exhibit PD1.

Relying on the decision of the Supreme Court in the case of: ***NYESOM v. PETERSIDE & ORS (2016) supra*** we are of the view that the use of smart card reader is not a replacement of the voters register and until this is backed up by a legislation of the National Assembly, failure to use the smart card reader cannot invalidate an election.

Thirdly, the learned silk submitted on behalf of the petitioners that upon the Respondents electing not to call evidence in support of their respective pleadings, the 1st, 2nd and 3rd – 16th Respondents cannot in law formulate any issue for the determination in this Petition. He referred the Tribunal to the case of***: Dingyadi v. Wamako (2008) 17 NWLR (PT 1116) 395 @ 422.***

The question now is whether the Respondents can be said to have abandoned their pleadings because they did not call witnesses in rebuttal?

In the case of: ***Omisore V Aregbesola (2015) 15 NWLR (PT 1482) 205 @ 324,*** the Supreme Court exposited thus:

> ***"It has long been settled that evidence obtained in cross examination on matters that are pleaded, that is, on matters on which issues were joined (as was the case at the Tribunal), is admissible, Adeosun v. Governor of Ekiti State (2012) All FWLR (Pt. 619) 1044, 1059; Akomolafe v. Guardian Press Ltd. (2010) 3 NWLR (Pt. 1181) 338, 351; 353-354. In effect, the argument that the third respondent had no evidence before the trial Tribunal is incorrect. That argument would have been impregnable if the pieces of evidence Chief Awomolo, SAN, elicited from the petitioners' witnesses in cross examination were not supported by the pleading of either party, Punch Nigeria Ltd v. Enyina (2001) 17 NWLR (Pt. 741) 228; SPDC v. Anaro (2000) 10 NWLR (pt 675) 248; Ita v. Ekpeyong (2001) 1 NWLR (Pt. 695) 587; Isheno v. Julius Berger Nig Plc (2003) 14 NWLR (Pt. 840) 289, 304; Ojo v. Kamalu (2005) 18 NWLR (Pt. 958) 523, 548; Woluchem v. Gudi (1981) 5 SC 291, 320; Ewarami v. ACB Ltd. [1978] 4 SC 99, 108; Dina v. New Nigeria Newspapers Ltd.[1986] 2 NWLR (Pt. 22) 353; Aguocha v. Aguocha (1986) 4 NWLR (Pt. 37) 366, Okwejiminor v. Gbakeji [2008] All FWLR (Pt. 408) 405."***

It is noteworthy that the case of ***Dingyadi v. Wamako supra*** referred to by the learned counsel for the Petitioners was decided in 2008 while the case of ***Omisore V Aregbesola (supra)*** was decided in 2015.

There are myriads of authorities on this issue as cited in the ***Omisore V Aregbesola (supra)*** case. In the recent case of: ***HOSEA OBAJIMI & ORS v. CHIEF ELIAS OLOYE & ANOR (2017) LPELR-42709(CA)*** The Court of Appeal opined thus:

> ***"These pieces of evidence, elicited under the cross-fire of cross-examination, are potent and run pari passau with the ones from evidence-in-chief, see Gaji v. Paye (2003) 8 NWLR (Pt.823) 583; Akomolafe v. Guardian Press Ltd. (2010) 3 NWLR (Pt.1181) 338. Indeed, the case-law assigns them to the opponent, the respondents, see Omisore v. Aregbesola (2015) NWLR (Pt.1482) 205. Little wonder, the law views evidence procured from the heat of cross-examination as more reliable and compelling than the one oozing out of examination-in-chief, see Adeosun v. Gov., Ekiti."***

Based on the above, we hereby hold that refusal or failure of the Respondents to call witnesses does not mean that they abandoned their pleadings since they cross examined the Petitioner's witnesses. Consequently, the issues formulated by them were quite valid.

Fourthly, the learned silk submitted that where a defendant refuses to challenge the case of a plaintiff as in the instance case by adducing evidence, such defendant(s) is deemed to have admitted the case of the plaintiff as put forward. In support of this, he referred the court to the case of: ***IBWA V IMANO (NIG) LTD., & ANOR. 5 NSCC OR 77 AT 797 – 798***

On this point, we are of the view that reliefs sought in an election petition are in the class of declaratory reliefs. They therefore carry a higher burden of proof which cannot be discharged merely on the admission of the Respondents. Thus a party claiming declaratory reliefs has the burden of proof to establish all the material allegations in the petition with credible, cogent, relevant and probable evidence to the satisfaction of the Tribunal. This burden attains a higher pedestal in view of the fact that an election petition that challenges the result of an election is in actual fact that of a challenge to a ***status quo*** that is presumed in law to be valid.

The court held in the case of: ***CPC V INEC (2011) 18 NWLR (PT 1279) 493*** that in a claim for declaratory reliefs, the onus is on the Plaintiff to establish his claim upon the strength of his case and not on the weakness of the case of the Defendant. The plaintiff must therefore satisfy the court that upon the pleadings and cogent and credible evidence adduced by him that he is entitled to the declaration in his favour.

In the instant case, we have already held in the earlier part of this judgement that not calling evidence by the Respondents is not the same thing as abandonment of pleading. Consequently they cannot be held to have admitted the case of the Petitioners. Furthermore, the fact that the Respondents cross examined the witnesses of the Petitioner shows that they challenged the case of the Petitioners. It behoves the Petitioner to establish his own case to the satisfaction of the Tribunal.

Fifthly, the learned counsel for the petitioners contended that since the 3rd to 16th Respondents did not frontload any witness deposition alongside their reply, their reply is defective and offends paragraph 4 of the first schedule to the Electoral Act 2010 as amended and ought to be struck out. He thus urged the Honourable Tribunal to strike out the reply of the 3rd – 16th Respondents respectively as having been abandoned since no evidence was elicited in proof of same during cross examination of the Petitioners witnesses.

A careful reading of paragraph 4 of the First Schedule to the Electoral Act 2010 as amended shows that all the provisions of that particular paragraph relates to the filing of the petition by the Petitioner, no mention was made of the Respondent under that paragraph. The provisions relating to the filing of replies can be found in paragraph 12 (3) of the First Schedule to the Electoral Act 2010 as amended.

It appears that the failure of the 3rd – 16th Respondent to file any witness statement on oath was an indication that they never intended to call any witness at the trial and they never did. A party is not bound to call witnesses in defence of a suit. He is entirely at liberty to rest his case on that of his opponent or to rely on a valid point of law. Based on the above, we hereby hold that the 3rd to 16th Respondents' Reply filed in this petition was valid and cannot be struck out.

We shall now proceed to determine the petition on its merit.

For the avoidance of doubt, the Issues formulated at the Pre-Hearing are as follows:

(1) Whether the 1st Respondent was qualified at the time of the election to contest the election into the office of Member of House of Representatives for Tangaza/Gudu Federal Constituency of Sokoto State held on the 23rd day of February, 2019;
(2) Whether the 1st Respondent was duly elected by a majority of lawful votes cast at the said election;
(3) Whether the election was invalid by reason of corrupt practices or non-compliance with the provisions of the Electoral Act, 2010 (as amended); and
(4) Whether the 1st Petitioner scored the highest number of lawful votes cast at the election and is entitled to be declared winner and returned as the duly elected Member of House of Representatives for Tangaza/Gudu Federal Constituency of Sokoto State.

We will now proceed to resolve the issues ***seriatim***.

ISSUE 1:

Whether the 1st Respondent was qualified at the time of the election to contest the election into the office of Member of House of Representatives for Tangaza/Gudu Federal Constituency of Sokoto State held on the 23rd day of February, 2019;

This issue bothers on the qualification of the 1st respondent to contest the election for Membership of the House of Representatives. The operative laws with respect to qualification of candidates to contest election for this post can be found in in section 65 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) while section 66(1)

provides for grounds for disqualifications of persons seeking for election to the office of Senate of the House of Representatives.

It is noteworthy that even though the Petitioners pleaded this in paragraph 9(i) of the petition as a ground of the Petition that the 1st Respondent was not qualified to contest the election at the time of the election but no facts were pleaded in the said petition to support the said ground contrary to the mandatory provisions of paragraph 4 (1)(d) of the First Schedule to the Electoral Act, 2010 (as amended).

Based on the above, all the counsels to the Respondents submitted that the said ground of the petition to the effect that the 1st respondent was not qualified to contest the said election is an incompetent ground, same having not been supported by any fact in proof of the said allegation.

It is settled law that parties are bound by their pleadings, their cases stand or fall by the averments in their pleadings and the evidence adduced in support of those averments. Any evidence not supported by pleadings goes to no issue, see the cases of: ***Oladipo V Moba L.G.A (2010) 5 NWLR (PT 1186) 111 307 @ 312, Abubakar V Joseph (2008) 13 NWLR PT 1104***

To further worsen the case presented by the Petitioners, none of the six witnesses as well as the 1st petitioner who testified before this tribunal for the petitioners narrated any fact to the tribunal to support the purported ground of the petition alleging that the 1st respondent was not qualified to contest the said election.

Furthermore, the Petitioners were also silent on this issue in their final written address despite formulating an issue on the said ground. Their Reply on points of law was devoid of any mention of the issue despite lengthy arguments from all the Respondents counsels.

In fact, the learned counsel to the 3rd – 16th Respondent submitted that perhaps if the Petitioner had tendered Form CF001 for the 1st Respondent, it would have been against their interest. According to the said learned counsel, the Petitioners have concealed or withheld evidence which if made available to the Tribunal will be against their interest. Hence he called in aid the application of Section 169 (d) of the Evidence Act, 2011 to hold that the withheld document would have been unfavourable to the Petitioners.

The question of what will amount to withholding of evidence was answered in the case of ***ADEKOYA V THE STATE (2010) LPELR-3604(CA)*** where the court held that ***"a demand has to be made first and the refusal to honour the demand must be established before the presumption of withholding of evidence may be invoked against the party alleged to have withheld the evidence".***

In the instant case, the Respondents reserved the rights to demand for further and better particular but they opted not to. So, in the absence of any demand for better

particulars, the presumption of withholding evidence cannot be invoked against the petitioners.

However, there is no doubt from all the above that the Petitioners have abandoned the first ground of their petition having not furnished any evidence in prove of same or canvassed arguments in support of same. Based on the above, ground one (1) of the petition is hereby struck out and Issue One is resolved against the Petitioners.

ISSUES 2 & 4:

(2) Whether the 1st Respondent was duly elected by a majority of lawful votes cast at the said election; and
(4) Whether the 1st Petitioner scored the highest number of lawful votes cast at the election and is entitled to be declared winner and returned as the duly elected Member of House of Representatives for Tangaza/Gudu Federal Constituency of Sokoto State.

With respect to the 2nd and 4th issues, in an attempt to show that the 1st Respondent was not elected by majority of lawful votes cast and thus not entitled to be returned as the duly elected member of House of Representative for Tangaza/Gudu Federal Constituency, the Petitioners put forward the argument that card readers were not used in the conduct of the election and so no election was held in some polling units in Tangaza ward. The Petitioners called six witnesses alongside the 1st Petitioner and tendered Exh PD1 which is the card reader print out and some other exhibits.

We are of the view that the evidence of the PW1 shows that accreditation took place since he admitted showing his PVC to INEC officials who cross checked with some documents before he and other voters in his polling units were allowed to vote. The PW2 did not say anything about the use or non-use of smart card readers. The PW3 merely tendered exhibit PD1 i.e the smart card reader report.

As earlier observed, Exhibit PD1 shows that some voters were accredited. The 1st Petitioner insisted that elections did not take place in the polling units itemized by him because accreditation was not done with the use of smart card readers. He however acknowledged the fact that he did not vote or visit the concerned eight (8) polling unit.

Under cross-examination, the 1st Petitioner stated thus: ***"On the date of election I voted in polling unit 001 in Kalenjeni Primary School in Kalenjeni ward in Tangaza Local Government Area. I did not visit any other polling unit but I know what happend in other polling units based on what my agents told me. In paragraph 6 of my deposition I complained of eight polling units where card readers were not used. I did not vote in***

any of the eight polling units. I know that I scored the highest number of votes through our agents"

Upon the above disclosure, we are of the view that his evidence amounts to hearsay which cannot be relied upon to establish the fact in issue.

In the case of: ***BAKUT & ANOR v. ISHAKU & ORS (2015) LPELR-41858(CA)*** a witness testified in a similar vein thus:

"Yes our party agents briefed me on all the polling units upon which I complained. My deposition on all the polling units as to the conduct of the election is based on the results handed over to me by the polling agents."

In rejecting the aforesaid piece of evidence, the Court of Appeal re- emphasized the rule against hearsay evidence when they opined thus:

"From the foregoing, it is not in dispute that the 1st appellant (PW1) was not an eye-witness nor has he direct first-hand information of the events, activities or happening of the 28 polling units, during the election conducted on the 11th of April, 2015 in Zonkwa State Constituency of Kaduna State. By the definition of hear-say evidence under Section 37 of the Evidence Act , and the authorities cited (supra), the deposition in the witness statement on oath of the 1st appellant (PW1), is hear-say… Hear-say evidence is not admissible except as provided in this part or by or under any other provision of this or any other Act"

On the basis of the foregoing authority, we cannot rely on the evidence of the 1st Petitioner of the events that transpired in the various polling units as relayed to him by his agents. The agents should have testified in the Tribunal to give direct evidence.

Furthermore, we are of the view that the PW4 contradicted himself when he claimed that voting took place at his voting point without the use of Smart Card Reader and that nobody was accredited but on being shown Exhibit PD 1, he confirmed that the number of persons accredited with card reader is there.

Also, the PW5 informed the court that voting took place without the use of Smart Card Reader and that nobody was accredited at his polling unit but under cross examination, he admitted that the card reader worked for some time but later malfunctioned. The PW6 also insisted that voting took place without the use of Smart Card Reader and nobody was accredited at his voting point. But he further stated that the 141 votes purportedly recorded for the 1st and 2nd Respondents were as a result of card reader

malfunction. Out of the said 493 registered voters he said he could not remember the number that was accredited. He admitted that he did not vote at this polling unit.

What can be gleaned from the above is that the PW1's evidence shows some form of accreditation, the PW2's evidence is of no evidential value on this point, the 1st Petitioner's evidence is mostly hearsay evidence which is inadmissible in law, see the case of: ***IWEKA V FRN (2010) LPELR-4344 CA.***

The PW3 merely tendered the card reader printout as exhibit without any form of demonstration. Exhibit PD1 which the Petitioners tendered showed that some voters were accredited with the use of smart card reader. The PW4 upon being shown exhibit PD1 admitted and confirmed that the number of persons accredited with card reader is visible in the said exhibit. The PW5 admitted that the card reader worked for some time but later malfunctioned. The PW6 claimed he knows that 141 votes purportedly recorded for the 1st and 2nd Respondents were as a result of card reader malfunction.

The foregoing evidence shows that the smart card reader was actually used contrary to the contention of the petitioners.

In any case going by the decisions of court earlier cited, non-accreditation by the use of smart card reader alone will not render an election invalid.

The learned silk however argued in the alternative: ***Whether having regard to the provisions of the Electoral Act, 2010(as amended) and Paragraph 39(b), INEC Regulations and Guidelines for Conduct of Election 2019, the 3rd Respondent's declaration and return of 1st Respondent as member of House of Representatives for Tangaza/Gudu Federal Constituency of Sokoto State is valid in law.***

While articulating his arguments to invalidate the declaration and return of 1st Respondent as member of House of Representatives for Tangaza/Gudu Federal Constituency of Sokoto State the learned senior advocate canvased the margin of lead principle.

According to him where the margin of lead between the two leading candidates in an election is not in excess of the total number of voters registered in the polling units where elections were not held or voided in line with section 26 and 53 of the Electoral Act, the Returning officer shall decline to make a return until polls have taken place in the affected Polling Units and the results collated into the relevant forms for Declaration and Returning.

He submitted further that if the number of registered voters of the affected polling units is reckoned with, the computation will be as tabulated by him in his written address. However a careful perusal of the petition, the written statement on oath of the witnesses and their viva voce evidence in court could not validate his claims.

It is settled law that counsel's address no matter how cogent cannot take the place of legal proof, see the case of: ***THE M. V. "CAROLINE MAERSK" SISTER VESSEL TO M.V. "CHRISTIAN MAERSK" & ORS V. NOKOY INVESTMENT LIMITED (2002) LPELR-3182(SC).***

Apart from the above, as can be seen from the wordings of paragraph 39 (b), INEC Regulations and Guidelines for Conduct of Election 2019, where the margin of lead between the two leading candidates is not in excess of the total number of registered voters of the polling units where election was cancelled or not held in line with section 26 and 53 of the Electoral Act 2010 (as amended), the returning officer shall decline to make a return until polls have taken place in the affected polling units.

The first question that readily comes to mind is whether the petitioners were able to establish that elections were cancelled or not held in any polling unit or ward without the use of card reader. We have already held above that the petitioners were unable to show that elections were not held or cancelled in the alleged polling units. It is noteworthy that, the petitioners did not canvass cancellation of election in any polling unit or ward by demonstrating documents to that effect during the trial.

The total number of registered voters in the polling units complained of was stated in the petition and the voters registers tendered but the voters registers were never demonstrated to tie each one to each polling unit complained of. The petitioners once again failed to discharge the burden of proof on them in this regard. The position of the law is that it is not the duty of the Tribunal to go on a voyage of discovery in linking documents tendered with the pleadings of the parties, see the case of ***AFRICAN PETROLEUM PLC. & ANOR. V. FARAYOLA (2009) LPELR-8902(CA).***

Apart from the above, a combined reading of paragraphs 8, 20, 21 and 22 of the Petitioners placed the margin of lead in the realm of 1,173 votes and according to the Petitioners themselves if the 140 votes are added to the votes of the Petitioners while 13 votes are removed from the scores of the 1st and 2nd Respondent, the final scores of the Petitioners will be 25, 459 while that of the 1st and 2nd Respondents will be 26, 229. By the petitioners own showing in their petition, the 1st Respondent will still be in the lead with 770 votes.

It is settled law that parties are bound by their pleadings, their cases stand or fall by the averments in their pleadings and the evidence adduced in support of those averments. Any evidence not supported by pleadings goes to no issue, see the cases of: ***Oladipo V Moba L.G.A (2010) 5 NWLR (PT 1186) 111 307 @ 312, Abubakar V Joseph (2008) 13***

NWLR PT 1104. This defect can certainly not be cured by a written address no matter how brilliantly written.

Whenever a petitioner alleges that the respondent was not duly elected by majority of the lawful votes cast at the election, it is an invitation to compare and contrast figures. To sustain a petition under the above ground, there must be specific pleadings of the existence of two sets of results emanating from the same election, see the case of: ***Abubakar v Yar'adua (2008) 19 NWLR (1120) 1 @155***. Thus, from the pleadings filed and exchanged, it is incumbent on the petitioner to establish by credible evidence that the respondent did not score the majority of the lawful votes at the election but the petitioner. The petitioner is to plead and prove the votes cast at the various polling stations, the votes illegally credited to the respondent ,the votes which ought to be deducted from the respondent to see if it will affect the result of the election, see the case of: ***Nadabo V Dabai (2011) 7 NWLR (PT 1245) 155 @ 177.***

In the instant case, according to the Petitioners themselves, if the 140 votes allegedly deducted from the Petitioners votes are added to his votes while 13 votes are removed from the scores of the 1st and 2nd Respondent, the final scores of the Petitioners will be 25, 459 while that of the 1st and 2nd Respondents will be 26, 229. This clearly shows that the 1st and 2nd Respondent will still be in the lead. This in effect means that the petitioners' complaints did not affect the results declared by INEC substantially.

It is noteworthy that the analysis of the petitioners' counsel in their written address tabulating figures not canvassed at the trial has been held to be unsubstantiated because a counsel's address cannot be a substitute for evidence. Based on all the above, we hereby hold that the petitioners have not substantiated the allegation that the 1st and 2nd Respondents did not score majority of the lawful votes cast.

In view of the above, the 2nd and 4th issues are hereby resolved against the petitioners.

ISSUE 3:

Whether the election was invalid by reason of corrupt practices or non-compliance with the provisions of the Electoral Act, 2010 (as amended).

In an Election Petition, the burden of proof rests permanently on the Petitioners, to prove their petition. Under this ground the burden is on them to prove that the election was invalid by reason of corrupt practices or non- compliance with the provisions of the Electoral Act.

In the case of: ***ORAEKWE & ANOR v. CHUKWUKA & ORS (2010) LPELR-9128(CA),*** the Court of Appeal shed some light on this ground thus:

"***The Appellants challenged the Petition at the Tribunal on the grounds of - (a) Corrupt practices, and (b) Substantial non-compliance with the provisions of the Electoral Act. The two grounds have a common base. Every established act of corrupt practice amounts to non-compliance with the provisions of the Electoral act, but it is not every act of non-compliance that would amount to corrupt practice because corrupt practice imputes a criminal element, the burden of which is proof beyond reasonable doubt. In effect, the burden of proof in any allegation of corrupt practice is higher than the burden on a Petitioner who alleges a mere non-compliance with the provision of the Electoral Act, 2006. Any allegation of corrupt practice must be proved beyond reasonable doubt, and the burden is on the Petitioner to prove same - see Onuigwe V. Emelumba (2008) 1 NWLR (Pt. 1092) 371; ANPP v. Usman (2008) 12 NWLR (Pt. 1100) 1."***

To determine this issue we will first of all look at the aspect of corrupt practices. In the case of: ***IBEZI & ANOR v. INEC & ORS (2016) LPELR-41574(CA),*** the Court of Appeal made some salient pronouncements on the proof of corrupt practices thus:

"The term Corrupt Practices denote or can be said to connote and embrace certain perfidious and debauched activities which are really felonious in character being redolent in their depravity and want of ethics. They become hallmark of a decayed nature lacking in conscience and principle. The charges of corrupt practices are in nature criminal charges and ought to be proved beyond reasonable doubt. It is not sufficient to show that there are reasonable grounds to believe or suspect that there has been a corrupt practice. See NWOBODO v. ONOH (1984) 1 SCNLR page1; OMOBORIOWO v. AJASIN (1984) 1 SCNLR page 108; Oyegun v. Igbinedion & Ors (1992) 2 NWLR (pt.226) at 747…..

To discharge the burden, it must be established that the respondents, particularly, the 1st respondent before the Tribunal (appellant herein), committed the act personally or aided, abetted, counseled or procured the commission of these alleged wrong doings. Moreover, the acts were committed by an agent or servant, there must be evidence that the agent was permitted to act in that capacity or had a general authority to act. Our law did not say that if the winner of the election benefitted from the alleged irregularities and or malpractices then the election or votes will be nullified. It says, participated either directly or indirectly.(Underlining, ours)

In the case of: ***Wali v. Bafarawa (2004) 16 NWLR (pt.898) 1 at 44-45*** the Court of Appeal, Kaduna Division, said:

"A respondent who is a candidate in an election cannot be held responsible for what

other people did in the form of unsolicited acts of which the candidate or his agent was ignorant."

Coming to the instant case, in order to establish corrupt practices, the learned counsel for the Petitioners highlighted some of the evidence adduced to substantiate the allegations of corrupt practices. We will scrutinise the allegations and make some preliminary findings on them as we proceed.

With regards to allegations of over voting, the learned silk submitted that in Paragraphs 18, 20 and 25 of the petition, the petitioners made allegations of over voting. To substantiate the allegations, he referred to the evidence of the 1st Petitioner and to Forms EC 8A Exhibits PF series and Forms EC8A (II) for Tangaza Local Government Area which they tendered in further proof of the following Polling Units; Kannawa Primary School Polling Unit, Baidi Primary School Polling Unit, Mano Primary School Polling Unit, Ruwa Wuri III Polling Unit, Gabro Polling Unit, Labsani Polling Unit.

The learned counsel did not seem to have adverted his mind to the fact that to establish over voting, the tendering of voters register, ballot boxes containing ballot papers and statement of results from the affected polling units are ***sine qua non*** in cases of this nature. See the case of: ***Audu V INEC (NO2) (2010) 13 NWLR (PT 1245) 1.***

Furthermore, the Petitioners did not call any witness from the listed polling units apart from the PW4 who informed the Tribunal that he was the PDP polling unit agent at Ruwa Wuri 001 while the PW5 claimed to have represented the Petitioners at Ruwa Wuri 002. None of the witnesses bothered to inform the Tribunal whether Ruwa Wuri 001 or 002 is the same as Ruwa Wuri III.

Unfortunately, the documentary evidence relied on in proof of the above was never demonstrated by the 1st Petitioner to show each polling unit in the open court thus the Tribunal is precluded from checking the documents tendered and linking same with each polling unit in the absence of such demonstration by the party concerned. The Petitioners also did not tender any ballot boxes containing ballot papers and statement of result from the affected polling unit. It is not the duty of the Tribunal to go on a voyage of discovery on behalf of parties.

Based on the above, we hereby hold that the Petitioners have failed to establish over voting at Kannawa Primary School Polling Unit, Baidi Primary School Polling Unit, Mano Primary School Polling Unit, Ruwa Wuri III Polling Unit, Gabro Polling Unit, Labsani Polling Unit.

With regards to the allegations of suppression of votes, the learned silk submitted that in Paragraphs 19 of the petition the petitioners made allegations of suppression of votes and the PW2 and PW4 testified to that effect. Forms EC8C for Tangaza Local Government Results (Exhibit PC2) was tendered and identified by PW2 and PW4 respectively but the said exhibits were not analysed by the witnesses to prove the alleged suppression of votes. We therefore hold that the Petitioners have not established that votes were suppressed.

With regards to the allegations of inflation of votes, the learned silk submitted that in Paragraphs 22 of the Petition the Petitioners made allegation of inflation of votes of the 1st and 2nd Respondent and the PW2 and PW4 testified to that effect. Forms EC8B for Kalenjeni Ward was tendered and admitted in evidence and duly marked as exhibit PB.

It is settled law that to establish inflation of votes, it is imperative that the petitioners must have two sets of results, one considered genuine authentic and the other considered falsified. The two will then be compared to determine falsity.

In the case of: ***ABARI & ORS v. ADUDA & ORS (2011) LPELR-19750(CA),*** the Court of Appeal stated the position thus:

"It is more than settled in a long line of cases by both this Court and the Supreme Court that when a Petitioner challenges the return of a statutory Respondent on account of falsity of result, it is incumbent on such Petitioner to plead and produce in evidence two sets of results one correct and the other stigmatized as false."

In the instant case, the petitioners did not place two sets of results before the Tribunal to establish inflation apart from the tabulated figures the learned counsel to the Petitioners attempted to foist on the Tribunal in his written address which cannot take the place of legal proof. The 1st Petitioner while testifying admitted that the only result he has is the one declared by INEC. In as much as the Petitioners in this case did not place two sets of results before the Tribunal for it to establish which is fake and which is authentic *vide* credible evidence, we hereby hold that the petitioners failed to establish that votes were inflated.

In this case, the petitioners made some criminal allegations against one Babba and Abdullahi but were also unable to establish same. In the case of: ***OMISORE VS. AREGBESOLA (SUPRA) AT PAGE 334-335 (G - C),*** the Supreme Court per OKORO JSC held as follows:

> ***"I need to emphasize that in election petitions, where allegations of corrupt practices are made, the petitioner making these allegations must lead cogent and credible evidence to prove them beyond reasonable doubt because they***

are in the nature of criminal charges. Being criminal allegations, they cannot be transferred from one person to another. It is personal. Thus, it must be proved as follows: 1. That the respondent whose election is being challenged personally committed the corrupt acts or aided, abetted, consented or PROCURED THE COMMISSION of the alleged corrupt Practices. 2. That where the alleged act was committed through an agent, that the agent was expressly authorized to act in that capacity or granted authority; and 3. That the corrupt practice substantially affected the outcome of the election and how it affected it." Per BOLAJI-YUSUFF ,J.C.A (Pp. 25-26, para. C) in the case of MARK v. CHUKWUEMEKA & ORS(2015) LPELR-40708(CA)"

The petitioners in the instant case were unable to prove that the 1st Respondent herein personally committed the corrupt acts or aided, abetted, consented or procured the commission of the alleged corrupt practices, that the Respondent herein was the one who expressly authorized the said Babba and Abdullahi to commit the alleged infractions of the law and further that the corrupt practices substantially affected the outcome of the election and how it affected it. Finally, the aforementioned Babba and Abdullahi were never made parties to this suit to defend themselves bearing in mind that criminal allegations in civil suits require proof beyond reasonable doubt, see the case of ***OKOLI & ORS v. ONWUGBUFOR(2018) LPELR-46660(CA)***

In view of the above, we hereby hold that the petitioners did not establish that the election was marred by corrupt practices.

Coming to the aspect of non-compliance with the Electoral Act and other subsidiary regulations and guidelines, the burden of prove has been held to be on the petitioners to prove not only that the election was invalidated by reason of the non-compliance but that the non-compliance was so substantial that the result of the election was affected thereby, see the case of: ***Doma V INEC (2012) 13 NWLR (PT 1317) 297 @ 327.***

Furthermore, where a petitioner complains of non-compliance with the provisions of the Electoral Act, the petitioner has a duty to prove the non-compliance alleged based on what happened at each polling unit. The import of that duty is that the petitioner has to ***call witnesses who were at each of the affected polling unit during the election.*** See the cases of: ***Gundiri v. NYAKO (2014) 2 NWLR (Pt.1391) 211;*** and ***Abubakar v. Yar'Adua (2008) 19 NWLR (Pt.1120) 1 @ 173.***

Also, a petitioner who alleges in his petition a particular non-compliance has the

onus to establish the non-compliance and satisfy the court that it affected the result of the election. See: ***Dzungwe v. Swem 1960-1980 LRECN 313*.**

In election petitions based on non-compliance with the Electoral Act, the intendment of the statute is to ensure ***substantial compliance with the provisions of the Electoral Act*** and not an ***absolute compliance*** with the Act. This principle of substantial compliance is enshrined in ***Section 139(1) of the 2010 Electoral Act (as amended)*** which stipulates as follows:

> ***"139.(1) An Election shall not be liable to be invalidated by reason of non- compliance with the provisions of this Act if it appears to the Election Tribunal or Court that the election was conducted substantially in accordance with the principles of this Act and that the non-compliance did not affect substantially the result of the election."***

Consequently, a petitioner who alleges non-compliance with the Electoral Act must call credible witnesses to prove that there was substantial non-compliance with the Electoral Act: see the cases of: ***EMMANUEL v. UMMANAH (No. 1) (2016) 12 NWLR (Pt.1526) 179 @ 256-257 paras G-C; NYEMSON v. PETERSIDE (2016) 7 NWLR (Pt.1512) 425.***

In the case of: ***Buhari v. I.N.E.C. (2008) 19 NWLR (Pt. 1120) 746, @ p. 442*** the Supreme Court restated thus:

"…the mere fact that there were irregularities or failure to strictly adhere to the provisions of the Act is not sufficient to void the election. In order to void the election it must be shown that:

(1) That the irregularities or failures constitute a substantial departure from the principles of the Act and that;

(2) The irregularities or failures have substantially affected the results of the election.

From the foregoing, it is clear that for any Court or tribunal to proceed to invalidate an election the conditions set out above must be met.

It follows therefore that a situation where the irregularities do not constitute a substantial departure from the principles of the Act and had not been shown to have affected the result of the election the Court or tribunal has no power to invalidate the election. Even in a situation where the Court considers that the proven irregularities constitute non-compliance, the Court still has to be satisfied that the non-compliance has affected the result of the election before election can be nullified."

Again, in the case of: ***Ucha & Anor v. Elechi & 1774 Ors (2012) 13 NWLR (Pt.1317) p.330,*** the Court emphasised the principle of substantial compliance thus:

"The results declared by INEC are prima facie correct and the onus is on the petitioner to prove the contrary. Where a petitioner complains of non-compliance with provisions of the Electoral Act, 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...."

In the instant case the Petitioners were unable to prove the allegations of non-compliance in each affected polling unit on the balance of probabilities. The common complaint of non-compliance is the failure to use the Smart Card Reader to accredit some of the voters in some polling units. We have made enough findings on the effect of non-use of the card reader. Furthermore, the Petitioners could not show definite figures that the 1st and 2nd Respondents were credited with as a result of the alleged non-compliance. More fundamentally, they failed to establish that the alleged non-compliances were substantial and how they affected the election result.

In view of the foregoing, we are of the view that the petitioners have not led sufficient and credible evidence to prove that the election of the 1st respondent held on the 23rd day of February, 2019 for the office of Member, House of Representatives for Tangaza /Gudu Federal Constituency of Sokoto State was invalid by reason of corrupt practices and non-compliance with the provisions of the Electoral Act, 2010 (as amended) and INEC guidelines and regulations for the conduct of the 2019 general elections.

On a final note, we observed that in his Written Address, the learned counsel to the petitioners urged the Honourable Tribunal to order a supplementary election in all the polling units complained of because according to him, the alleged margin of lead between the 1st Petitioner and 1st Respondent is far less than the number of registered voters in the affected polling units making it inconclusive to determine the winner of the majority of lawful votes cast at the election without the holding of a supplementary election.

It is noteworthy that the petitioners did not pray for supplementary election in the Petition neither was it made a part of the reliefs sought from the Tribunal. The prayer for supplementary election came up for the first time in the written address of the learned

counsel for the petitioners. It has been held in a myriad of cases that the court is not Father Christmas to grant reliefs not sought.

In the case of ***Kayili V Yilbuk &Ors (2015) LPELR-44401***, the Supreme Court observed thus: ***"...there is no doubt that a court of law is not a charitable institution or Father Christmas and this court has held time and again that a court of law has no jurisdiction to grant a relief not claimed. See: AG Abia State V. AG Federation (2006) 16 NWLR (pt. 1005) 265; Agbi v. Ogbeh (2006) 11 NWLR (pt. 990) 65; Shena Security Co. Ltd. v. Afropak (Nig) Ltd. & ors. (2008) 34 NSCQR pt. II 287."***

Based on the above, we hold that the Petitioners cannot ask for an order for supplementary elections at this stage.

Based on all the above, Issue Three is hereby 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.***

HON. JUSTICE P.A. AKHIHIERO
CHAIRMAN

HON. JUSTICE A.N. YAKUBU
1ST MEMBER

HIS WORSHIP S.T BELLO
2ND MEMBER

COUNSEL:

1. **SULAIMAN USMAN S.A.N……..…….PETITIONERS**
2. **CHIEF J.E.OCHIDI…….…….……1ST RESPONDENT**
3. **CHIEF S.U.NWOKE…….…….……..2ND RESPONDENT**
4. **OLADIPO TOLANI ESQ…….….3RD – 16TH RESPONDENTS**