IN THE NATIONAL AND STATE HOUSE OF ASSEMBLY
ELECTION PETITION TRIBUNAL
HOLDEN AT SOKOTO
ON FRIDAY THE 20TH DAY OF SEPTEMBER, 2019
BEFORE:

HON. JUSTICE P.A. AKHIHIERO----------CHAIRMAN
HON. JUSTICE A.N. YAKUBU----------1ST MEMBER
HIS WORSHIP S.T BELLO----------2ND MEMBER

IN THE MATTER OF THE GENERAL ELECTION TO THE SEAT OF MEMBER OF THE STATE HOUSE OF ASSEMBLY REPRESENTING GWADABAWA SOUTH CONSTITUENCY OF SOKOTO STATE HELD ON THE 9TH DAY OF MARCH, 2019

PETITION NO: EPT/SKT/HA/23/19

1. HON HABIBU MUAZU GIDAN KAYA
2. PEOPLES DEMOCRATIC PARTY (PDP)

} PETITIONERS

AND

1. MOHAMMED BELLO IDRIS
2. ALL PROGRESSIVE CONGRESS (APC)
3. INDEPENDENT NATIONAL ELECTORAL COMMISSION
4. COMMISSIONER OF POLICE, SOKOTO STATE

} RESPONDENTS

JUDGMENT
DELIVERED BY: HON.JUSTICE P.A.AKHIHIERO (CHAIRMAN)

This judgment is in respect of an election petition filed by the petitioners on the 30th day of March, 2019 challenging the election of the 1st Respondent on the platform of the 2nd Respondent to the office of Member, Sokoto State House of Assembly for Gwadabawa South State constituency held on the 9th of March, 2019

wherein the 1st Petitioner was a candidate in the said election and claims to have the right to be returned elected.

At the said election, the 3rd Respondent allegedly returned the 1st Respondent as being purportedly elected and the winner of the election to the office of Member, House of Assembly for Gwadabawa South constituency with a total score of 10,867 (ten thousand, eight hundred and sixty seven) votes.

Dissatisfied with the declaration of the 1st Respondent as the winner of the said election, the petitioners filed this election petition challenging the declaration of the 1st Respondent as the winner of the said election on the following grounds:

1. The election was invalid by reason of corrupt practices and/or non – compliance with the provisions of the Electoral Act 2010 (as amended); and INEC Regulations and Guidelines for the conduct of Election 2019;
2. The 1st Respondent was not duly elected by majority of lawful votes cast at the said election; and
3. The 4th Respondent in their bid to aid the 1st and 2nd Respondents threatened, intimidated the supporters of the 1st and 2nd Petitioners and stood by wherein the agents and supporters of the 1st and 2nd Respondents where snatch the ballot box and also prevented many registered voters from exercising their franchise.

In this petition, the Petitioners are seeking the following declarations:

a. That the Election for the office of member, House of Assembly for Gwadabawa South State Constituency held on 9th day of March, 2019 is invalid by reason of corrupt practices and non-compliance with the provisions of the Electoral Act, 2010 (as amended) and INEC Regulations & Guidelines for the conduct of Elections 2019;
b. That the 1st Respondent, Muhmmad Bello Idris of All Progressive Congress (APC), the 2nd Respondent was not duly elected or returned by majority of lawful votes cast at the Election for the office of Member, House of Assembly for Gwadabawa South State Constituency held on the 9th of March, 2019;
c. That the actions of the 4th Respondent threatening and intimidating the eligible voters which disenfranchised many supporters of the petitioners amounts to infringement on fundamental rights of the petitioners' supporters and therefore null and void;
d. That the certificate of Return issued to the 1st Respondent, Muhammad Bello Idris of the All Progressive Congress (APC) the 2nd Respondent as member, House of Assembly for Gwadabawa

South State Constituency on the election held on the 9th day of March 2019 is null and void and of no effect whatsoever;

e. That the 1st Petitioner, Hon. Habibu Muazu Gidan Kaya of Peoples' Democratic Party, the 2nd petitioner should be returned as member, Sokoto State House of Assembly for Gwadabawa South State Constituency in the Election held on 9th March 2019; and
f. That the 3rd Respondents be directed forthwith to issue the 1st petitioner, Hon. Habibu Muazu Gidan Kaya with a Certificate of Return as member, Sokoto State House of Assembly for Gwadabawa South State Constituency in the election held on the 9th day of March 2019.

The Petitioners pray **ALTERNATIVELY** that the said election should be nullified and/or cancelled and the 3rd Respondent be mandated to conduct a fresh election for the office of Member, Sokoto State House of Assembly for Gwadabawa South State Constituency.

The 1st and 2nd Respondents filed their respective replies on the 12th of April, 2019 and incorporated a preliminary objection to the competence and hearing of the petition on the ground that the election of the 1st respondent into the House of Assembly of Sokoto State is in respect of Gwadabawa North constituency of Sokoto State whereas the petitioners' petition is in respect of Gwadabawa South Constituency of Sokoto State.

The 3rd Respondent equally filed a reply on the 21st of April, 2019 and also contended that the 1st Respondent did not contest election for Gwadabawa South Constituency of Sokoto State but for Gwadabawa North Constituency of Sokoto State.

The petitioners filed a Reply to the 1st and 2nd Respondent's Reply as well as a Reply to the preliminary objection of the 1st and 2nd Respondents' on the 17th of April, 2019 and maintained that the constituency under which the 1st Petitioner and the 1st Respondent contested election for Member, House of Assembly, Sokoto State was Gwadabawa South and not Gwadabawa North as alleged by the 1st and 2nd Respondents. The petitioners placed reliance on FORM EC8E (Exhibit PL) and other documents tendered before the court.

In proof of the petition, the 1st Petitioner testified for himself and called a total of four witnesses. The petitioners also tendered documents through PW3, an official of the 3rd respondent marked as Exhibits PA1-PA3, PB1-PB3, PC1-PC3, PD1-PD3, PE1-PE3, PF1-PF3, PG1-P17, PH1-PH15; PN1-PN12, PI1-PI7, PJ1-PJ15, PK1-PK14, PL and PM.

- Exhibit PA1-PA3, PB1-PB3, PC1-PC3, PD1-PD3, PE1-PE3, PF1-PF3 are some of the ballot papers used in Gwadabawa south State

Constituency for Gidan Kaya Ward, Chimola Arewa Ward, Mammde Ward, Huchi Ward, Chimola Kudu Ward,and Salame Ward respectively.

- Exhibits PG1-PG17 are Forms EC8A i.e. result from polling units for Gidan kaya ward.
- Exhibits PH1-PH15 are Forms EC8A i.e. result from polling units for Chimola Arewa ward.
- Exhibits PN1-PN 12 are Forms EC8A i.e. result of polling unit for Chimola Kudu ward.
- Exhibits PI 1-PI 7 are Forms EC8A i.e. result from polling unit for Huchi ward.
- Exhibits PJ1-PJ15 are Forms EC8A i.e. result of polling unit for Mammande ward.
- Exhibit PK1-PK14 are Forms EC8A i.e. Result of polling unit for Salame ward.
- Exhibit PL is Form EC8E i.e. declaration of result of Gwadabawa South.
- Exhibit PM is a copy of Form CF001 of the 2nd Respondent.

The 1st Respondent testified for himself and called one additional witness. Also, Exhibit R which is the Certificate of Return issued to the 1st respondent by the 3rd respondent was tendered through the 1st Respondent.

The 3rd Respondent did not call any witness but relied on the case of the 1st and 2nd Respondents.

At the close of evidence, the Tribunal ordered the filing of written addresses by parties to the petition.

The Petitioners' case is that the 1st Petitioner who is a member of the People's Democratic Party (2nd Petitioner) contested election to the office of Member, Sokoto State House of Assembly for Gwadabawa South Constituency on the 9th March, 2019 and the 1st Respondent contested as a candidate of the All Progressive Congress (2nd Respondent).

At the conclusion of the election, the 3rd Respondent returned the 1st Respondent as the person duly elected and the winner of the election to the office of members, Sokoto State House of Assembly for Gwadabawa South Constituency with a total score of 10,867 (ten thousand, eight hundred and sixty seven) while the 1st Petitioner was apportioned 8,458 (eight thousand, four hundred and fifty eight).

The scores of the candidates who contested for the office of Member, Sokoto State House of Assembly for Gwadabawa South constituency as entered in form EC8E (I) and announced by the 3rd Respondent are as follows:

S/N	NAMES OF CADIDATE	POLITICAL PARTY	TOTAL VOTES RECEIVED BY CANDIDATE/POLITICAL PARTY	
			IN FIGURES	IN WORDS
1.	Suleiman Abdukadir	ADC	09	Nine
2.	Muhammad Bello Idris	APC	10,867	Ten thousand, eight hundred and sixty seven
3.	Shehu Adamu	APDA	28	Twenty eight
4.	Kasimu Bello	DA	09	Nine
5.	Rufai Aliyu	JMPP	26	Twenty six
6.	Mamman Sendo	NCP	08	Eight
7.	Sanusi Umar	NRM	10	Ten
8.	Habibu Muazu Gidan Kaya	PDP	8,458	Eight thousand, four hundred and fifty eight
9.	Habibatu Momoh	PPN	09	Nine
10.	Shehu Moh'd	SDP	17	Seventeen
11.	Muh'd Kasimu Ashiru	SNP	11	Eleven
12.	Dayyabu Ibrahim	UPN	10	Ten

The Petitioners stated that Gwadabawa South Constituency has six Wards which are as follows:

I. HUCHI WARD
II. MAMMANDE WARD
III. CHIMOLA KUDU WARD
IV. SALAME WARD
V. GIDAN KAYA WARD
VI. CHIMOLA AREWA

The Petitioners alleged that the election was invalid by reason of corrupt practices and/or non – compliance with the provisions of the Electoral Act 2010 (as amended); and INEC Regulations and Guidelines for the conduct of Election 2019.

That the 1st Respondent was not duly elected by majority of lawful votes cast at the said election.

That the 4th Respondent in their bid to aid the 1st and 2nd Respondent threatened, intimidated the supporters of the 1st and 2nd Petitioners and stood by wherein the agents and supporters of the 1st and 2nd Respondents snatched the ballot box and also prevented many registered voters from exercising their franchise.

They stated that the 3rd Respondent is a creation of Section 153 of the Constitution of the Federal Republic of Nigeria 1999 as amended and its constitutional powers are as stated in paragraph 14 of Part 1 of the third (3rd) Schedule to the Constitution of the Federal Republic of Nigeria 1999 (as amended).

That pursuant to its Constitutional and Statutory roles, the 3rd Respondent issued a Guideline for Election (INEC Regulations and Guidelines for the Conduct of Elections 2019).

They stated that in both the Electoral Act, 2010 (as amended) and INEC Regulations and Guidelines for the Conduct of Elections 2019, it is mandatory:

i. To use the Smart Card Reader (SCR) for voters accreditation before voting proper.
ii. To count the votes loudly and announce the results of elections by
    a. The presiding officer at the polling unit;
    b. The ward collation officer at the ward collation center; e.tc.
iii. For electoral officers including presiding officers to be neutral during elections;
iv. For the 3rd Respondent not to appoint persons who have sympathy for a Political Party as electoral officer;
v. For the 3rd Respondent, to provide adequate polling units to accommodate the registered voters.
vi. For the 3rd Respondent or its agent to accredit registered voters with the use of Smart Card Readers (SCR) in polling Units to cast their votes simultaneously.
vii. For the 3rd Respondent or its agents to accredit registered voters at polling units before allowing them to cast their votes;
viii. For the 3rd Respondent not to allow non-accredited persons to vote at the election of 9th March, 2019.
ix. For the Presiding Officers to follow strictly the steps prescribed in the INEC Regulations and Guidelines for the Conduct of Elections 2019 for the sorting and counting of ballots and allow the Polling agents, voters and Observers to watch the process.

According to them, it was the advertised regulation of the 3rd Respondent that accreditation and voting shall take place simultaneously from 8:00 a.m. and end at 2:00 p.m.

That the requirements for the accreditation of voters by the use of Smart Card Reader (SCR) and further verification in the voters register is the benchmark for the credibility of the elections as well as a buffer against multiple voting, falsification of results and other fraudulent activities and electoral malpractices.

They stated that under the Electoral Act 2010 as amended and INEC Regulations and Guidelines for the Conduct of Elections 2019, it is a mandatory requirement that accreditation shall be conducted simultaneously at all polling Units in the States of the Federation and in all the Local Government Areas in Sokoto State, Gwadabawa L.G.A inclusive.

According to them, the mandatory steps for accreditation and voting under the extant law are:

i. Request for the Permanent voters card (PVC) Simpliciter.
ii. Examine the voter's card through the card reader to ascertain that all the biometrics features of a person conforms with the information in the Smart Card Reader (SCR) and the photo on the Permanent voter's card (PVC)is that of the voter and that the polling Unit details are correct for that Polling Unit.
iii. In cases of Smart Card Reader (SCR) failures, check the register of voters to confirm that the voter's name, photo and voter Identification Number (VIN) as contained on the Permanent Voters Card (PVC) are in the Register of voters.
iv. Request the voter to thumb print the appropriate box in the register of voters; provide his/her phone number in the appropriate box in the register of voters.
v. In cases where the Permanent Voters Card (PVC) fails to be read by the Smart card Reader (SRC) then the Assistant Polling Officer (APO I) shall refer the voter to the polling officer (PO) who shall request the voter to leave the polling unit.
vi. In circumstances where the smart card Reader (SCR) shows wrong details but correct details are in the register of voters, the APO I and APO II shall if satisfied that the details of the voter is in the register, record the phone number of the voter in the appropriate box in the register of voters and continue accreditation.
vii. Apply indelible ink to the cuticle of the appropriate finger on the left hand.
viii. Enter form EC.8A and/or EC.8A (I) EC.8A (II) "statement of Result of poll" the number of voters in the register of voters, the number of accredited voters, the number of ballot papers issued in the polling unit, the number of unused ballot papers, the number of

spoiled ballot papers, the number of rejected ballots, the total number of valid votes and the total number of used ballot papers.

ix. Enter in form EC.8A and/or EC.8A (I) EC.8A (II) "statement of Result of poll" the name of the assistant presiding officer, his signature, stamp and date certifying that the information in form EC.8A and/or EC.8A (I) EC.8A (II) "statement of Result of poll" are true and accurate account of votes cast in the polling Unit and that the Election was either contested or not contested.

x. Give a dully completed EC.8A and/or EC.8A (I) EC.8A (II) "statement of Result of poll" to the respective party agent of the political parties.

xi. The mandatory steps for the accreditation; voting, sorting and counting of ballots, procedure for collation and Declaration of results all stated in the INEC Registrations and Guidelines for the conduct of Elections 2019.

They stated that due process of election is one that complies with the Electoral Act 2010 as amended and the INEC Regulation and Guidelines for the conduct of elections 2019.

That the purported votes credited to the 1st Respondent are not votes cast by registered voters duly accredited to vote in accordance with the Electoral Act 2010 as amended and INEC regulations and guidelines for the conduct of elections 2019 in the various polling units in which they were alleged to have been scored and the exercise was voided by corrupt practices and non-compliance with (INEC Regulations and Guidelines for the conduct of elections 2019.

That at Asibiti Mulela Y/Gada polling units, code 007 in Gidan Kaya wards of Gwadabawa Local Government Area of Sokoto State, the polling agents of PDP namely: Abdullahi Shamaki and Yusuf Aminu were beaten to unconsciousness and rushed to the general Hospital Gwadabawa where they were admitted for some days before they regained their consciousness.

That the supporters of the petitioners were scared away when they saw what happened to their agents at the aforesaid polling unit. That the thugs of the 1st and 2nd Respondents led by one Alhaji Aliyu Yugada led the violence at this polling unit to the extent that the handset of the presiding officer was snatched.

That a report was made at Gwadabawa police station over the incident that happened at Asibiti Mulela Y/Gada but the 4th Respondent refused to take any step and at the ward collating center there was a complaint about irregularity and violence that happened at polling unit code 007 but the 3rd Respondent proceeded to act on the report of the polling officer.

That to the dismay of the petitioners, a purported result was announced by the 3rd respondent despite the complaint from the petitioners and the 1st Respondent

was returned elected and votes were credited to parties in forms EC8A (II) and EC8B (II).

That at Gidan Dutse polling unit code 014 there was over voting as the number of the valid votes cast was over and above the registered voters. The polling agent of the petitioners in the person of Alh. Shuaibu made a complaint to the 3rd Respondent that the votes at this polling unit should be cancelled but the 3rd Respondent refused to cancel same.

That the men and officers of the 4th Respondent stood by and allowed the thugs of the 1st and 2nd Respondents to drive away the petitioners' agents from the polling unit.

That at Shiyar Ardo Zugana polling unit code 015 the agent of the 1st and 2nd Respondents thumb printed all the ballot papers after they succeeded in driving away the agents of the petitioners.

That at Shiyar Mumini/Kolar Zamana polling unit code 006, one of the APC stalwarts in the person of Sarkin Faru collected the booklet of the ballot papers from the staff of the 3rd Respondent thumb printed same, tied all the ballot papers and put them in the ballot box and the agents of the petitioners were beaten and driven away with serious threats to the life of the supporters of the petitioners.

That at Wurin inji Bamana Gangare polling unit code 009 there was over voting and report was made to the 3rd Respondent to cancel the result however the 3rd respondent went ahead to add the result of this polling unit to the score of the 1st and 2nd Respondents.

The petitioners alleged that elections were not held in some polling units due to non-compliance with INEC Regulations and Guidelines for the conduct of elections, 2019 while in some polling units there was over voting with serious violence.

They maintained that the votes recorded and/or returned in all the polling units complained of in Gwadabawa South State Constituency does not represent lawful votes cast for the 1st and 2nd Respondents having been obtained in vitiating circumstances of substantial non-compliance with the mandatory provisions of INEC Regulation and Guidelines for the conduct of Election 2019 and the acts of non-compliance substantially affected the validity of the said election.

They alleged that the information on the Electoral forms purported to have been used in the said Election were clearly inconsistent with the data base in the smart card Reader.

That some of the purported Electoral forms purportedly used were not stamped and signed thereby vitiating the scores or votes entered thereby especially the polling units the petitioners complained of.

That the purported scores entered for the 1st and 2nd Respondents in forms EC8A (i), EC8A (ii) and EC8B for the various polling units complained of in this

petition in Gwadabawa South State Constituency were not a product of a due election in accordance with INEC Regulations and Guidelines for the Conduct of elections, 2019.

That if the votes from the flawed elections in the aforementioned polling units complained of in this petition which were recorded in favour of the 1st and 2nd respondent are deducted, this Tribunal would easily come to the conclusion that the election into the office of a member representing Gwadabawa South State constituency is inconclusive. Therefore the 1st Respondent cannot be adjudged to have scored a majority of lawful votes.

That some of the polling units under Gwadabawa South State constituency election were cancelled therein for the Governorship election and the same thing affected the petitioners.

On behalf of the 1st and 2nd Respondents, the 1st Respondent testified and they called two witnesses (RW1 and RW2) in defence of the petition. The 3rd Respondent did not call any witness.

In defence of this petition, the 1st and 2nd Respondents stated that the constituency in which the 1st respondent contested an election to the office of Member, Sokoto State House of Assembly on the platform of the 2nd respondent is Gwadabawa North State Constituency of Sokoto State and not Gwadabawa South State Constituency of Sokoto State as claimed by the petitioners in this petition.

That the 1st respondent who was sponsored at the said election by the 2nd respondent won the said election having polled a total of 10,867 votes to defeat the candidate of the Peoples Democratic Party at the said election who polled a total of 8,458 votes.

They emphasized that where there is any allegation that there are incidence of non-compliance with the provisions of the Electoral Act and INEC Guidelines/Manual for the conduct of the said election, the petitioners must prove that the alleged non–compliance substantially affected the result of the said election but that in the instant petition, the petitioners have failed to show that the alleged non-compliance with the provisions of the Electoral Act and INEC Guidelines/Manual have in anyway substantially affected the results of the election conducted by the 3rd respondent for Gwadabawa North State Constituency of Sokoto State on the 9th of March, 2019.

The 1st and 2nd respondents deny all the allegations of corrupt practices and non-compliance with the provisions of the Electoral Act and the INEC Guidelines.

They stated that on the date of the said election, the supporters and agents of the petitioners caused violence to erupt at Asibiti Mulela Y/Gada Polling Unit 007 in Gidan Kaya Ward of Gwadabawa Local Government Area of Sokoto State and as a result, the 3rd respondent cancelled the poll conducted at the said polling unit

and ordered a re-run of the said poll to take place on the next day being the 10th of March, 2019.

That on the said 10th of March 2019, a re-run election was peacefully conducted by the 3rd respondent at the said Asibiti Mulela Y/Gada Polling Unit and the result of the said election was declared by the 3rd respondent.

They denied the allegation of over voting at Gidan Dutse Polling Unit Code 014, neither did the agents of the 1st and 2nd respondents chase away the agents/supporter of the petitioners at the said polling unit.

They stated that no agent/supporter of the 1st and 2nd respondents thumb printed ballot papers in favour of the 1st and 2nd respondents at Shiyar Ardo Zugana Polling Unit 015.

They maintained that the election at Shiyar Mumini/Kolar Zamana Polling Unit 006 was conducted peacefully on the date of the election and at no time did one Sarkin Faru thumb print a booklet of ballot papers in favour of the 1st and 2nd respondents.

They also denied any incidence of over voting at Wurin Inji Bamana Gangare Polling Unit 009 on the date of the election.

The 3rd Respondent did not call any witness in this petition.

At the close of evidence, the learned counsel for the parties filed their Final Written Addresses. On the date for the adoption of addresses, the learned counsels for the Petitioners and the 1st and 2nd Respondents were in the Tribunal to adopt their Written Addresses but the learned counsel for the 3rd Respondent was not in attendance to adopt his Written Address. The matter was thereafter adjourned for judgment.

In their Final Written Address dated on the 20th of July, 2019 and filed on the 22nd of July, 2019, the learned counsel for the 1st and 2nd Respondents, ***Chief J.E.Ochidi*** informed the Tribunal that the 1st and 2nd respondents in its reply to the petition raised a preliminary objection to the said petition in the following terms: -

(i) That the election of the 1st respondent into the House of Assembly of Sokoto State is in respect of Gwadabawa North State Constituency of Sokoto State whereas the instant election petition of the petitioners is in respect of Gwadabawa South State Constituency of Sokoto State;

(ii) That the petitioners have not disclosed any right in the instant petition vesting the said petitioners with any ***locus standi*** to present this petition to challenge the election conducted by the 3rd respondent for Gwadabawa North State Constituency of Sokoto State contrary to the provisions of paragraph 4(b) of the First Schedule to the Electoral Act, 2010 (as amended);

(iii) That this instant election petition as presently constituted is incompetent and ought to be struck out by this Honourable Tribunal; and

(iv) That at the hearing of this preliminary objection, the 1st and 2nd respondents shall rely on the Certificate of Return issued by the 3rd respondent to the 1st respondent to show that it was the House of Assembly seat for Gwadabawa North State Constituency of Sokoto State that the 1st respondent contested and won at the said election and not Gwadabawa South State Constituency as constituted in this petition.

Thereafter, the learned counsel identified the issues for determination as formulated at the Pre-Hearing Session which are as follows:

ISSUE ONE

Whether this petition is not merely academic in nature.

ISSUE TWO

Whether by virtue of Form EC8E (1) (Declaration of result) bearing the names of the 1st petitioner and 1st respondent and produced by the 3rd respondent, the 1st petitioner and the 1st respondent contested election for member representing Gwadabawa South State Constituency for Sokoto State House of Assembly held on the 9th March 2019.

ISSUE THREE

Whether the election of the 1st respondent to office of member House of Assembly of Sokoto State for Gwadabawa South held on the 9th day of March, 2019 ought not to be set aside on grounds of corrupt practices, substantial non-compliance with the provisions of the Electoral Act 2010 (as amended) and INEC Electoral Guidelines 2019.

ISSUE FOUR

Whether the petitioners have led sufficient and credible evidence before this Honourable Tribunal to prove that the 1st respondent was not duly elected or returned by majority of lawful votes cast at the election for the office of Member, Sokoto State House of Assembly for Gwadabawa South Constituency held on the 9th day of March 2019.

Before proffering arguments on the issues for determination learned counsel submitted that the ground for presenting this petition in paragraph 16.3 of the petition is incompetent on the ground that the said ground is not a recognizable ground for questioning an election as stipulated in ***section 138 (1) of the Electoral Act, 2010 (as amended).***The said ground reads as follows:

> ***"The 4th respondent in their bid to aid the 1st and 2nd respondent threaten, intimidated the supporters of the 1st and 2nd petitioners and stood by wherein the agents and supporters of the 1st and 2nd respondents***

where snatch the ballot box and also prevented many registered voters from exercising their franchise." (sic)

He submitted that the above quoted ground in the petition is not competent as the said ground is outside the grounds stipulated in section 138 (1) of the Electoral Act, 2010 (as amended) for questioning an election. Accordingly he urged the Tribunal to strike out the ground for being incompetent.

ARGUMENTS ON ISSUES ONE AND TWO

Learned counsel posited that Issue one formulated for determination by this tribunal is whether this petition is not merely academic in nature while issue two formulated for determination is whether by virtue of Form EC8E (1) (Declaration of result) bearing the names of the 1st petitioner and 1st respondent and produced by the 3rd respondent, the 1st petitioner and the 1st respondent contested election for member representing Gwadabawa South State Constituency for Sokoto State House of Assembly held on the 9th March 2019.

He said that the two issues have arisen in this petition as a result of the preliminary objection raised by the 1st and 2nd respondents in their reply challenging the competence of the petition as particularized in paragraph 2.8 of his written address.

He said that it is on record that in response to the said preliminary objection, the petitioners filed a motion on notice before this tribunal on the 20th day of May 2019 praying this tribunal for leave to amend this instant petition by substituting the constituency in which the 1st petitioner and the 1st respondent contested the said election from Gwadabawa South State Constituency of Sokoto State to Gwadabawa North State Constituency of Sokoto State.

He said that the 1st – 3rd respondents opposed the said application of the petitioners and by the ruling of this tribunal delivered on the 30th day of May 2019, the said application of the petitioners was refused by this tribunal and as such, the petition as originally constituted before this tribunal has remained the same till date.

He submitted that there is no controversy as to the polling units and wards in which the 1st petitioner and the 1st respondent contested the said election. It is clear from the totality of the evidence presented before this tribunal that the said election was conducted in six wards viz:

(i) Huchi ward
(ii) Mammande ward
(iii) Chimolu Kudu ward
(iv) Chimolu Arewa ward
(v) Salame ward

(vi) Gidan Kaya ward

That the only issue in contention between the petitioners and the 1st – 3rd respondents is the name ascribed to the constituency in which the said six wards are situated. While the petitioners have maintained in this petition that the name of the constituency is Gwadabawa South State Constituency of Sokoto State, the 1st – 3rd respondents have maintained that the name ascribed to the said constituency is Gwadabawa North State Constituency of Sokoto State.

That in their bid to prove to this Honourable Tribunal that the correct name of the constituency is Gwadabawa South State Constituency as pleaded in the petition; the petitioners placed reliance on the following documents viz:

(a) 3 ballot papers from Gidan Kaya Ward as Exhibit PA1 – PA3.
(b) 3 ballot papers from Chimola Arewa Ward as Exhibit PB1 – PB3
(c) 3 ballot papers from Mammande Ward as Exhibit PC1 – PC3
(d) 3 ballot papers from Kuchi Ward as Wxhibit PD1 – PD3
(e) 3 ballot papers from Chimola Kudu Ward as Wxhibit PE1 – PE3
(f) 3 ballot papers from Salame Ward as Exhibit PF1 – PF3
(g) 17 copies of Form EC.8A for Gidan Kaya Ward as Exhibits PG1 – PG17
(h) 15 copies of Form EC.8A for Chimola Arewa Ward as Exhibits PH1 – PH17
(i) 12 copies of Form EC.8A for Chimola Kudu Ward as Exhibits PN1 – PN12
(J) 7 copies of Form EC.8A for Huchi Ward as Exhibits PI1 – PI7
(k) 15 copies of Form EC.8A for Mammande Ward as Exhibits PJ1 – PJ15
(l) 14 copies of Form EC.8A for Salame Ward as Exhibits PK1 – PK14
(m) 1 copy of Form EC.8E for Gwadabawa South State Constituency as Exhibit PL (declaration of result)
(n) 1 copy of INEC Form CF 001 completed by the 1st respondent as Exhibit PM.

That on the other hand, the 1st – 3rd respondents are placing reliance on Exhibit R which is the Certificate of Return issued by the 3rd respondent to the 1st respondent in which it is clearly stated that the 1st respondent has been elected as member, Sokoto State House of Assembly to represent Gwadabawa North State Constituency of Sokoto State. The 1st – 3rd respondents are also placing reliance on INEC Form CF 001 completed by the 1st respondent and submitted to the 3rd respondent before the conduct of the said election in which the 1st respondent stated the constituency he was contesting the said election to be Gwadabawa North State Constituency. The said INEC Form CF 001 of the 1st respondent is Exhibit PM.

He submitted that if this Honourable Tribunal agrees with the contention of the 1st – 3rd respondents to the effect that the correct name of the constituency in which the said election was conducted is Gwadabawa North State Constituency, then, the preliminary objection of the 1st – 3rd respondents is sustained and the petition as presently constituted becomes incompetent and merely academic.

He also submitted that if on the other hand this Honourable Tribunal is satisfied with the documents presented before it by the petitioners and agrees that the name of the constituency in which the 1st petitioner and the 1st respondent contested the said election is Gwadabawa South State Constituency of Sokoto State as presently constituted in the petition, then the preliminary objection of the 1st – 3rd respondents would be overruled and the petition cannot be defeated solely on the ground that same is incompetent.

Learned counsel submitted that there is abundance of evidence before this tribunal to show that the constituency in which the 1st petitioner and the 1st respondent contested the said election is Gwadabawa North State constituency of Sokoto State. In this wise, he relied on the Certificate of Return issued by the 3rd respondent to the 1st respondent and submitted that by the provisions of ***Section 75(1) of the Electoral Act, 2010 (as amended),*** the 3rd respondent is mandated to issue a Certificate of Return to every candidate who has won an election. The said ***Section 75(1) of the Act*** under reference states as follows:-

> ***"A sealed Certificate of Return at an election in a prescribed form shall be issued within 7 days to every candidate who has won an election under this Act."***

He submitted that it was in compliance with the provisions of Section 75(1) of the said Electoral Act that the 3rd respondent issued Exhibit R to the 1st respondent. He further submitted that INEC Form CF 001 which was completed by the 1st respondent before the conduct of the said election and which was admitted in evidence before this tribunal as Exhibit PM, shows that the constituency in which the 1st respondent applied to the 3rd respondent to contest the said election is Gwadabawa North State Constituency of Sokoto State.

He observed that while the petitioners were quick to cause INEC Form CF 001 which was completed by the 1st respondent to be produced and tendered in evidence before this tribunal, curiously they deliberately failed to call for the production and tendering before this tribunal, the INEC Form CF 001 which was completed and submitted to INEC by the 1st petitioner prior to the conduct of the said election. He submitted that if the said INEC Form CF 001 which was completed and submitted by the 1st petitioner to the 3rd respondent were produced and tendered in evidence before this tribunal, same would definitely reveal to this tribunal that the 1st petitioner actually indicated his interest to contest the said

election under Gwadabawa North State Constituency of Sokoto State and not under Gwadabawa South State Constituency of Sokoto State.

He submitted that it is settled law that by virtue of the provision of ***Section 167(d) of the Evidence Act, 2011,*** where a piece of evidence is withheld, it is presumed that if it had been offered, it would have been unfavourable to the party who withheld it. See the following cases: ***AJAO V. ADEMOLA (2005) 3 NWLR (PT 913) 638, ADEDIJI V. KOLAWOLE (2004) ALL FWLR (PT 214) 91 and OKUNZHUA V. AMOSU (1992) 6 NWLR (PT 248) 416***.

He therefore urged the Tribunal to apply the presumption prescribed under Section 167(d) of the Evidence Act, 2011 against the petitioners for their failure to produce and tender in evidence the INEC Form CF 001 which the 1st petitioner completed and submitted to the 3rd respondent before the conduct of the said election.

He said that the petitioners have heavily relied on the declaration of result (INEC Form EC.8E) which was admitted in evidence before this tribunal as Exhibit PL to contend that the constituency in which the 1st petitioner and the 1st respondent contested the said election is Gwadabawa South State Constituency of Sokoto State. He however submitted that the said exhibit PL is subordinate to the Certificate of Return issued to the 1st respondent as mandatorily required by the provisions of Section 75(1) of the Electoral Act, 2010 (as amended).

He therefore submitted that the 1st and 2nd respondents have proffered sufficient and credible evidence before this Honourable Tribunal to show that the constituency in which the 1st petitioner and the 1st respondent contested the said election is Gwadabawa North State Constituency of Sokoto State and not Gwadabawa South State Constituency of Sokoto State as presently constituted in this petition. He urged the Tribunal to uphold the preliminary objection of the 1st and 2nd respondents on this issue and to hold that this petition is incompetent, and an academic exercise especially having regard to the reliefs being claimed by the petitioners in this petition which centers on nullification of the election conducted by the 3rd respondent for membership of Sokoto State House of Assembly for Sokoto South State Constituency. He urged us to resolve the two issues in favour of the 1st and 2nd respondents.

ARGUMENT ON ISSUE THREE AND FOUR

Learned counsel posited that the issue three formulated by the Honourable tribunal for determination is whether the election of the 1st respondent to the office of Member House of Assembly of Sokoto State for Gwadabawa South State Constituency held on the 9th day of March, 2019 ought not to be set aside on grounds of corrupt practices, substantial non-compliance with the provisions of the

Electoral Act, 2010 (as amended) and INEC Electoral Guidelines 2019 while issue four formulated for determination is whether the petitioners have led sufficient and credible evidence before this Honourable Tribunal to prove that the 1st respondent was not duly elected or returned by majority of lawful votes cast at the election for the office of Member, Sokoto State House of Assembly for Gwadabawa South Constituency held on the 9th day of March 2019.

He said that the two issues are interwoven and are therefore argued together. That it must however be noted that the said two issues are herein argued only in the ALTERNATIVE that the issue one and issue two hereinbefore argued are resolved by this tribunal against the 1st and 2nd respondents.

He said that in the course of trial of this petition, it became apparent that the concentration of the petitioners was in proving before this tribunal that the constituency in which the election in issue was conducted is Gwadabawa South State Constituency of Sokoto State as opposed to Gwadabawa North State Constituency of Sokoto State as being claimed by the 1st – 3rd respondents. That on this note, no attempt was made by the petitioners to prove the allegation of corrupt practices, substantial non-compliance with the provisions of the Electoral Act in the conduct of the said election nor was any attention paid by the petitioners in proving that the 1st respondent was not duly elected or returned by majority of lawful votes cast at the said election.

He said that in this petition, the reliefs being claimed by the petitioners against the respondents are declaratory in nature. That the law is settled that the petitioners in such circumstance must succeed on the strength of their case and cannot rely on the weakness of the case of the respondents to succeed. See the decision of the Supreme Court in ***UCHA V. ELECHI (2012) ALL FWLR (PT 625) 237 AT 262*** where Mohammed JSC held as follows: -

> ***"The appellants have also laid a lot of emphasis on the requirement of minimal proof of their petition because of the failure of the respondents to call relevant evidence in support of their case as found by the trial tribunal. The appellants seemed to have forgotten that having regard to the nature of the reliefs sought by them in their petition which are declaratory in nature, the law is indeed well settled that in such claims for declaratory reliefs which are infact the backbone in all election petitions, the onus remains on the petitioners to prove and establish their claim on their own evidence without relying on the weakness of the case of the respondents. In other words, the petitioners must satisfy the Election Tribunal upon enough credible and***

cogent evidence which ought reasonably to be believed and which, if found established, entitles the petitioners to the declaration sought."

See also the decision of Adekeye JSC in ***C.P.C. V. I.N.E.C. (2012) All FWLR (PT 617) 605 at 6345*** where the Learned Jurist held thus: -

"The burden of proof generally in the sense of establishing a case virtually lies on a plaintiff or the initiator of a suit. He who asserts must prove what he asserts, i.e. qui affirmat non a qui negat incumbat probat. The party who asserts in his pleadings the existence of a particular fact is required to prove such fact by adducing credible evidence. If he fails to do so, his case fails. A plaintiff would be expected to succeed on the strength of his own case and not on the weakness of the defence. On the other hand, if he succeeds in adducing evidence to prove pleaded facts, he is said to have discharged the burden of proof that rests on him. The burden then shift to his adversary to prove that the fact established by the evidence adduced would not, on the preponderance of evidence, result in the court giving judgment in favour of the party. The same burden is applicable to election cases. Until the plaintiff or petitioner has discharged the onus cast on him by law, the onus does not shift to the respondents."

See also ***BUHARI V. OBASANJO (2005) 2 NWLR (PT 910) 241***.

He posited that in this petition, the declaration of the result of the election in issue is as disclosed in Exhibit PL. That in the said Exhibit PL, it is evident that the 1st respondent scored 10,867 votes while the 1st petitioner scored 8,458 votes thereby creating a margin of lead between the said parties to be in the figure of 2,409 votes in favour of the 1st respondent.

That it is settled law that there is a presumption of correctness of results declared by INEC and that until that presumption is successfully rebutted, the declared result stands correct and 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 said that in an attempt by the petitioners to dislodge the presumption of correctness of the result of the said election as declared by the 3rd respondent in Exhibit PL, the petitioners called 4 witnesses as well as the 1st petitioner to testify in this petition. PW1 (Alhaji Isah Dahiru) was the petitioners' polling agent for Gidan Dutse 014 polling unit in Gidan Kaya ward. His evidence is to the effect that there was ballot box stuffing and over voting at this polling unit. PW2 (Yusuf Mamman) was petitioners' polling agent at Ashibiti Mulela Y/Gada 006 polling unit in Gidan Kaya ward. His testimony was to the effect that one Alhaji Aliyu Yargada (who was not joined as a party to the petition) instigated violence at this polling unit and that as a result, supporters of the 2nd petitioner could not cast their votes at this polling unit. The PW2 also added that there was over voting at this polling unit. PW3 was INEC subpoenaed witness through whom Exhibits PA1 – PM were tendered and admitted in evidence. As PW3 did not enter the witness box and was not sworn to testify, this witness was not cross-examined by the respondents' counsel. The 1st petitioner (Hon. Habibu Muazu Gidan Kaya) also testified and repeated the allegations of electoral malpractices as contained in the petition. PW4 (Kabiru Sani) was petitioners' polling agent at Shiyar Mumini Kolar Zamana 006 polling unit. His testimony is to the effect that there was violence at the said polling unit instigated by thugs of the 2nd respondent and as a result, supporters of the 2nd petitioner could not cast their votes. This witness also alleged that there was over voting at this polling unit.

He said that the foregoing is the graphic testimony of the witnesses called by the petitioners in this petition in proof of the allegation of the petitioners that the 1st respondent did not score majority of the lawful votes cast at the said election. He said that the first point to be made in respect of the witnesses that testified for the petitioners in this case is that the evidence of the 1st petitioner detailing the alleged electoral malpractices that purportedly occurred at various polling units mentioned by him is of no evidential value as the 1st petitioner who was a candidate of the 2nd petitioner at the said election was never a polling agent at any of the polling units in the constituency where he alleged occurrence of electoral malpractices. That the law is trite that it is only polling agents that are material and competent witnesses to prove allegations of electoral malpractices at polling units. See ***AJIMOBI V. INEC (2009) ALL FWLR (PT 477) 91 AT 102*** where Omage JCA held thus: -

> ***"It is settled that only polling agents are material witnesses to establish and prove allegations of malpractices. This was further confirmed in the case of Yusuf v. Obasanjo (2005) 10 NWLR (Pt 956) 98 at 118."***

See also the case of ***ANDREW V. INEC (2018) 9 NWLR (PT 1625) 507 AT 575 – 576*** where Okoro JSC held thus: -

> ***"The functions of polling agents are defined in Section 45 of Electoral Act, 2010 (as amended). Polling agents represent the respective political parties at the numerous polling units in obvious recognition of the enormity of the task of those monitoring the election in all the polling units of a state. A polling agent, being human, can only be physically present at only one polling unit at a given time and so cannot perform in the other polling units. Therefore, when evidence is to be provided as to what happened in disputed units other than the one he was physically available at, then, he is not qualified to testify thereto. This is because Section 45(2) of the Electoral Act, expects evidence directly from the relevant field officer at the required polling unit."***

Further, at page 558 paragraph B of the same decision, Okoro JSC also held as follows: -

> ***"A court or tribunal has no business to entertain, consider or rely on the evidence of persons who did not have a first hand, direct, actual and positive interaction with the facts in issue, and in the unlikely event that the testimony of such person is received in evidence, the court is under a bounden duty to expunge the testimony of such witness from its judgment."***

Accordingly, he submitted that the testimony of the 1st petitioner in this petition as it relates to alleged electoral malpractices which purportedly occurred at several polling units mentioned by him in his evidence before this tribunal is of no evidential value in this petition as the said PW1 was never a polling agent at any of the polling units in the State Constituency complained of by the said PW1. He therefore urged us to discountenance the said testimony of PW1 in this regard.

Next, he submitted that the allegations of the said PW1, PW2 and PW4 on the said issue of alleged electoral malpractices and non-compliance with the provisions of the Electoral Act can be categorized into the following heading viz:

(a) Ballot box stuffing or multiple voting;
(b) Over voting;
(c) Disenfranchisement of voters;
(d) Violence instigated by thugs of the 2nd respondent.

He thereafter addressed the shades of malpractices *et al* seriatim.

BALLOT BOX STUFFING OR MULTIPLE VOTING

He said that the PW1 made allegation of ballot box stuffing at Gidan Dutse 014 polling unit in Gidan Kaya ward and the allegation was denied by the 1st and 2nd respondents. He said that the law is settled that a petitioner who alleges multiple voting or stuffing of ballot box must tender in evidence the stuffed ballot box in issue alongside the ballot papers therein. See the decision of Omage JCA in ***AJIMOBI V. INEC (2009) ALL FWLR (PT 477) 91 AT 107*** where his lordship held thus:

> ***"A petitioner who claims that a ballot box in the election was stuffed must tender before the court the stuffed ballot box with the ballot papers therein. A failure to do so cast doubt on the evidence. The appellant failed to do this in the instant case, he must therefore fail."***

He said that in the instant petition, the petitioners who are alleging multiple voting or ballot box stuffing at Gidan Dutse 014 polling unit in Gidan Kaya ward neither tendered the stuffed ballot box in issue nor the thumb printed ballot papers therein as required by law. He therefore submitted that the petitioners have failed to prove the alleged head of malpractice before this Honourable Tribunal.

OVER VOTING

Counsel posited that the PW1, PW2 and PW4 alleged that incidence of over voting occurred at Gidan Dutse 014 polling unit, Ashibiti Mulela Y/Gadi 006 polling unit and at Shiyar Mumini Kolar Zamani 006 polling unit respectively where they acted as petitioners polling agents and this allegation was denied by the 1st and 2nd respondents. He said that the law is settled that a petitioner who seeks to prove over voting at a polling unit has to take the several steps outlined by his lordship, Okoro JSC in ***EMERHOR V. OKOWA (2010) ALL FWLR (PT 896) 1868 AT 1905*** where the learned jurist held thus: -

> ***"In a plethora of decisions of this court, we have made it abundantly clear that a petitioner seeking to prove over voting in an election must do the following:***
>
> ***1. Tender the voters register to show the total number of registered voters in each unit.***
>
> ***2. Tender the statement of result in the appropriate forms which would show the total number of votes cast.***
>
> ***3. Relate each of the documents to the specific area of his case in respect of which the documents are tendered.***
>
> ***4. Show that the figure representing the over voting if removed would result in victory for the petitioner and***

5. In view of the introduction of card reader machines in elections, I will add that the petitioner should tender the card reader report if it did not fail to function."

He said that in the instant petition, the petitioners who made an allegation of over voting as one of the heads of non-compliance with the provisions of the Electoral Act in this petition did not follow the procedure in proving the said allegation as enunciated by the Supreme Court in the case of Okowa cited above.

He submitted that no registers of voters in respect of the polling units where the alleged over voting took place were tendered and analyzed before this tribunal to show the total number of registered voters in such polling units. Furthermore, the petitioners have not shown by evidence the number of votes recorded at each of the said polling units and the excess votes which were over and above the number of registered voters in each of the said polling units complained of and neither have the petitioners shown that if the excess votes representing the over voting are removed, the petitioners will win the said election.

He observed that the petitioners dumped INEC Forms EC.8A in respect of some of the polling units in each of the wards which make up the constituency on this tribunal. He submitted that dumping of documents before a court or tribunal without linking the documents to the specific area of a party's case is not permissible in any judicial proceedings (election petitions inclusive). 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 analyzed as in the instant case by the party who tendered them."

He submitted that where an allegation of over voting is made in an election, it is not enough for the petitioner to rely on the information provided in the polling unit result (Form EC.8A) to prove the said allegation of over voting. See the case of ***ACN V. ADELOWU & ORS (2012) LPELR – 19718 (CA)***, where the Court of Appeal held as follows:

"The position of the law has recently been clearly re-stated in recent decisions of this court and division to show that allegations in forms or result sheets are not enough. The register of voters of the polling units that have been faulted by the appellant would clearly show the number of registered voters, in the units and wards complained about as against those that actually voted, to prove over voting and disenfranchised voters. In the consolidated cases of CA/I/EPT/OG/LH/33/11, CA/I/EPT/OG/LH/34/11, CA/I/EPT/OG/LH/35/11 and CA/I/EPT/OG/LH/36/11 Peoples Democratic Party & Anor v. Independent National Electoral Commission (INEC) and 2 Ors delivered on 24th February, 2012 (unreported) my learned brother, Ikeyegh, JCA held in a similar situation thus: -

"The voters register of the polling unit must also be put in evidence to establish that the voters allegedly disenfranchised are registered votes in the unit and, evidence of their registration in the polling unit must be proved by the tendering in evidence of their voter's cards and evidence that they presented themselves to vote in their polling units at the election, but were denied the right to vote by non-accreditation or non ticking of their names in the voters' register of the unit; while allegation of over voting would be determined by checking the number of registered voters in the voter's

register of the polling unit against the number of voters that voted in the unit to show that the latter was in excess of the former." In the present case, the voters register of the units and wards complained of were not tendered in evidence. The allegedly disenfranchised voters were not called to testify in proof of the allegations. See also another decision of this court and division delivered on 5th January, 2011 in Appeal No. CA/I/EPT/OG/GOV/21/2011, Peoples Democratic Party v. INEC and others (unreported). Thus, over voting which is the main thrust of the appellant's case before the tribunal was not proved in absence of the voters register. The evidence of PW41 and DW38 explained discrepancies that could occur as a result of ballot paper booklets containing more or less than 100 leaflets they are supposed to contain. In respect of the over voting still in LAWAL V. MAGAJI (2010) 8 WRN 102 AT PAGE 176 lines 5 – 20, the court held that: "In order to prove over voting, a party is required to place before the tribunal the register of registered voters. This is to show that the votes cast at the election exceeded the number of registered voters."

Accordingly he submitted that as the petitioners did not tender the voters register in respect of the polling units where the alleged over voting took place, it cannot be said that the petitioners have proved the said allegation in this petition and he urged the Tribunal to so hold.

DISENFRANCHISEMENT OF VOTERS

He said that the PW2 and PW4 in their respective depositions before this tribunal, made allegations of disenfranchisement of registered voters. He said that the law is settled that in order for a petitioner to prove disenfranchisement of registered voters at a polling unit, it is mandatory for the registered voters in the said polling units who did not vote at the said election to personally testify before the tribunal and also to tender the register of voters where the disenfranchisement took place. See the case of ***NGIGE V. INEC (2015) 1 NWLR (PT 1440) 281 AT 326*** where the Supreme Court held thus:-

"A voter is disenfranchised when his right to vote is taken away. That is to say he claims to be registered but was not allowed to vote. When would the court be satisfied that voters were disfranchised?

(a) The disenfranchised voters must give evidence to establish the fact they were registered but

were not allowed to vote.

(b) The voters card and voters register for the polling unit must be tendered.

(c) All the disenfranchised voters must testify to show that if they were allowed to vote, their candidate would have won."

See also the case of ***KAKIH V. PDP (2014) 15 NWLR (PT 1430) 374 AT 419*** where the Supreme Court also held as follows:-

> ***"He made non-voting or misconduct or non-conduct of election the pivot of his case. It beholves on him to call at least one disenfranchised voter from each of the polling booths or units or stations in the affected constituencies or district/area as a witness to testify in support of this allegation."***

See also the case of ***YARO V. WADA (2009) ALL FWLR (PT 472) 1084 AT 1098*** where Belgore JCA held as follows:-

> ***"Without the voters' register, it is impossible, in the circumstances of this case, to ascertain whether the witnesses voted or not. It is not enough to produce the voter's card of certain persons alleged to be unable to exercise their right to vote. And unmarked voter's card is no evidence of non-voting. That evidence can only be ascertained by tendering the voters register which will indicate whether a registered voter had indeed voted."***

He said that in the instant case, none of the alleged disenfranchised voters was called as a witness before this tribunal by the petitioners. Again, the registers of voters in respect of the polling units where the alleged disenfranchisement of voters occurred were not tendered in evidence before this tribunal. He therefore submitted that the petitioners have equally failed to prove this head of alleged non-compliance before this Honourable Tribunal.

VIOLENCE ALLEGEDLY INSTIGATED BY THUGS OF THE 2ND RESPONDENT

Counsel posited that the PW2 averred in his deposition before this tribunal that there were acts of violence at Ashibiti Mulela Y/Gadi 006 polling unit in Gidan Kaya ward perpetuated by one Alhaji Aliyu Yargada said to be a thug of the 2nd respondent. That the said Alhaji Aliyu Yargada was not joined as a party to this petition by the petitioners. Again, that the PW4 averred in his deposition that un named thugs of the 2nd respondent instigated violence at Shiyar Mumini Kolar Zamana 006 polling unit. He submitted that the said allegation is criminal in nature

and must be proved beyond reasonable doubt by the petitioners. That in the instant case, no such proof beyond reasonable doubt has been made by the petitioners. That the alleged thugs of the 2nd respondent who instigated the alleged violence at Shiyar Mumini Kolar Zamana are not named while the allegation that one Alhaji Aliyu Yargada instigated violence at Ashibiti Mulela Y/Gada 006 polling unit cannot stand as the said Alhaji Aliyu Yargada was not joined as a party in this petition.

Furthermore, he said that it is settled law that occurrence of violence at a polling unit is not a ground for setting aside the conduct of an election. See the decision of Omage JCA in ***AJIMOBI V. INEC*** supra at Page 103 where his lordship held thus:-

> ***"Recently, in the Court of Appeal Benin Division, in Appeal No. CA/B/EPT/3/12A/08, the Honourable President of the Court of Appeal in his judgment in the appeal ruled inter alia that the reported incidence of violence is not a sufficient ground to set aside the election especially when the charge is not fixed on any person."***

He therefore submitted that the petitioners have failed to prove any incidence of violence in any of the polling units in the constituency and ***a fortiori*****,** the petitioners have also failed to prove that the alleged occurrence of violence at the said two polling units substantially affected the result of the said election.

Counsel further submitted that where a petitioner contends in an election petition such as in the instant case that an election or return of a respondent should be nullified by reason of non-compliance with the provisions of the relevant electoral statutes and guidelines, such a petitioner must prove that the non-compliance actually took place and that same substantially affected the result of the said election. He said that the two conditions must be proved cumulatively by the petitioner before such a petitioner can succeed on the allegation. 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***.

He further submitted that in establishing the substantiality of the 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 Peter – 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*** where Rhodes – Vivour JSC stated thus: -

"*It is manifest that an election by virtue of Section 135(1) of the Act shall not be invalidated by mere reason that it was not conducted substantially in accordance with the provisions of the Act. It must be shown clearly by evidence that the non-compliance has affected the result of the election. The petitioner must not only show substantial non-compliance but also the figures; i.e. votes that the non-compliance attracted or omitted. The elementary evidential burden of the "person asserting must prove" has not been derogated from by Section 135(1). The petitioners must not only assert but must satisfy the court that the non-compliance has so affected the election result to justify nullification."*

Learned counsel submitted that where in an election petition a petitioner contends that the 1st respondent was not duly elected by majority of lawful votes cast at the said election as in the instant petition, it is incumbent on such a petitioner to plead and tender in evidence two sets of result of the election to enable the tribunal determine the authentic result for the said election. See the case

of ***HERO V. SHERIFF (2016) ALL FWLR (PT 861) 1309 AT 1363 – 1364*** where Barka JCA held thus: -

> ***"Counsel further argued that a petition predicated on the ground that 1st respondent was not duly elected by majority of lawful votes are required to plead two set of results and to tender same to enable the tribunal determine the actual result and to add them up. The issue in contention was considered at length in the judgment of the lower tribunal at pages 82 to 85 of the judgment. Therein, the lower tribunal held that the petitioner is obligated to plead two set of results, one being the result declared by INEC, while the other result will be the one based on the results available to the petitioner upon which he wants the court to declare that 1st respondent did not score majority of lawful votes. It is only when the two set of results are placed before the tribunal, which the tribunal will do a comparative analysis to determine whether the comparison arrived at was right or not. I think the tribunal is correct. The position of the law has been established to the effect that in proving falsity or falsification of declared results, there should be two set of results, one to be genuine and the other false or falsified."***

See also the case of ***ATAMAH V. EBOSELE (2009) ALL FWLR (PT 473) 1385 AT 1397*** where Shoremi JCA held as follows:-

> ***"Where a petitioner alleged that the 1st and 2nd respondents did not score a particular number of votes alleged to have been awarded to them, they simply meant that the figures awarded to them were falsified. For the pleadings to be meaningful, the petitioner ought to have pleaded two sets of results, The real score of the 1st and 2nd respondents as well as the total scores in the petition."***

He said that in the instant case, there are no two sets of result tendered before this Honourable Tribunal by the petitioners. That the only result available before this tribunal is as shown on Exhibit PL where the 1st respondent scored 10,867 votes while the 1st petitioner scored 8,458 votes. That by the said result therefore, it is clear that the 1st respondent scored majority of the lawful votes cast at the said election and was therefore validly declared the winner of the said election by the 3rd respondent.

In view of the foregoing, he urged the Tribunal to hold as follows: -

(a) That there is no proof before this tribunal that the election of the 1st respondent as Member of Sokoto State House of Assembly in issue is vitiated by any act of corrupt practices, substantial non-compliance with then provisions of the Electoral Act, 2010 (as amended) and INEC electoral guidelines;

(b) That the petitioners on whom the burden of proving their case lies have not led any credible evidence before this Honourable Tribunal to prove that the 1st respondent was not duly elected or returned by majority of lawful votes cast at the said election.

In conclusion learned counsel submitted that this petition is incompetent having been instituted under a wrong constituency in which the 1st petitioner and the 1st respondent contested the said election and in the unlikely event that this Honourable Tribunal holds that the petition is competent, he urged us to hold that the petitioners have failed to prove any of the allegations contained in the petition to vitiate the election of the 1st respondent at the said election. Accordingly he urged us to dismiss this petition with substantial cost.

As we earlier observed, the learned counsel for the 3rd Respondent filed a Written Final Address but on the day of adoption of addresses, he did not appear before the Tribunal to adopt the said address. No reason was given for his dereliction. Going through the entire gamut of the address of the learned counsel, we observed that he did not articulate any arguments whatsoever on Issues 1 and 2 which border on the crucial aspect of the proper constituency that was contested for in this election.

At this trial it was our expectation that the 3rd Respondent who is the statutory body vested with the powers to conduct the said election would have led cogent and credible evidence to clarify this fundamental issue of the proper constituency that was contested for in this election. Strangely, they kept mute all through even in their address.

The address of the 3rd Respondent's counsel on Issues 3 and 4 was more or less a succinct regurgitation of the more comprehensive address of the learned counsel for the 1st and 2nd Respondents.

The learned counsel for the Petitioners, ***Mohammed Adeleke Esq.*** filed a Written Final Address dated and filed on the 27th of July, 2019 which he adopted as his final arguments in support of this petition.

In his written address, the learned counsel for the Petitioners identified the four issues for determination and argued them seriatim.

ISSUE 1

He posited that Issue one is whether this petition is not merely academic in nature.

He submitted that it is trite law that a court does not concern itself with academic issues but are enjoined to adjudicate between parties in relation to their compelling legal interest and never to engage in mere academic questions or arguments or discourse, no matter how erudite or beneficial they may be to the public at large. See the case of: ***ATTORNEY GENERAL FEDERATION V. ANPP (2003) 18 NWLR (pt. 851) 182 at 210-211*****,** where it was held thus:
"Courts of law do not embark on academic exercise institutions. Therefore, there must exist between the parties to a suit or an appeal a matter in actual controversy which the court is called upon to decide as a living issue. This is because on the basis of the extant grund norm upon which the judicial authority of the courts is based, courts in Nigeria have no jurisdiction to give advisory opinions. Any Judgment which does not decide a living issue is academic or hypothetical. It stands in its best quality only as an advisory opinion."

He also referred to the case of: ***PLATEAU STATE OF NIGERIA V. A.G., of Fed (2006) 25 WRN page 18 Ratio 9*** where they stated thus:

"A suit is said to be academic where it is merely theoretical, makes empty sounds, and of no practical utilitarian value to the plaintiff even if the judgment is given in his favour. A suit is academic if it is not related to practical situations of human nature and humanity".

See also the case of ***C. P. C V. INEC 29 WRN page 28 Ratio 12*** where they stated thus:

"An academic issue or question is one which does not require any answer or adjudication by a court of law because it is not necessary. An academic issue or question does not relate to the live issues in the litigation because it is spent as it will not ensure any right or benefits on the successful party".

Learned counsel posited that the question now is whether there exist live or living issues between the parties in the instant petition having regard to the petition filed, the reliefs sought therein, the result of the election contested, the complaint made by the parties and the evidence led in the course of trial.

He posited that from the petition and the evidence led in the instant petition, it is evident that there exist not just practical issues but also a good cause of action. He submitted that the subject matter in this petition is justiciable and not just a mere intellectual mater.

Learned counsel posited that in this petition, the 1st petitioner alleged that he contested election for the office of Member, Sokoto State House of Assembly for Gwadabawa South Constituency along with the 1st Respondent who was purportedly returned elected under the platform of the 2nd Respondent.

He said that the petitioners tendered documents through a subpoenaed witness, an officer of the 3rd Respondent to show that the election conducted on the 9th March, 2019 between the 1st Petitioner and the 1st Respondent was indeed an election for member, House of Assembly for Gwadabawa South Constituency and the petitioners led evidence to show that the election they contested for was for Gwadabawa South constituency.

He said that the 1st and 2nd Respondents on their part alleged that the election for which the 1st Respondent contested and was returned as member, Sokoto State house of Assembly is for Gwadabawa North State Constituency and they tendered documents to prove same.

He said that from the above, there are triable issues which this court is bound to determine as it cannot be said to be a mere academic exercise.

He further submitted that the reliefs sought in this petition support living issues between the parties, and that this petition is not a mere academic exercise as wrongly stated by the 1st and 2nd Respondents counsel, as what is presented before this Honourable Tribunal for a decision, when decided will affect the parties and would change the circumstances of the suit. That based on the reliefs sought and evidence led there is proof that there exist live and actionable issues between the parties. He therefore urged this Honourable Tribunal to resolve issue 1 in favour of the petitioners.

ISSUE 2

Learned counsel submitted that the election conducted and contested for by the 1st petitioner and the 1st Respondent on the 9th March, 2019 was for Gwadabawa South State constituency for Sokoto State House of assembly which election. That Gwadabawa South constituency has six wards which are as follows;-

i. HUCHI WARDS
ii. MAMMANDE WARD
iii. CHIMOLA KUDU WARD
iv. SALAME WARD
v. GIDAN KAYA WARD
vi. CHIMOLA AREWA WARD

He said that the 1st and 2nd Respondents admitted that the above stated wards are the wards wherein the 1st Petitioner and 2nd Respondent contested the elections held on the 9th of March, 2019 but by paragraph 6 of their Reply, they maintained that the said election was conducted in Gwadabawa North state Constituency of Sokoto State.

He said that the 1st and 2nd Respondents placed heavy reliance on Exhibit R which is the certificate of return issued to the 1st Respondent by the 3rd Respondent and the petitioners on their part vigorously contended that the said election was conducted & contested for under Gwadabawa South constituency of Sokoto State for Member, Sokoto State House of Assembly.

He said that the petitioners relied on Exhibit PL which is FORM EC8E (Declaration of result) and other Exhibits consisting of ballot papers, results of elections from polling units etc. tendered by PW3, the electoral officer of the 3rd Respondent for Gwadabawa Local Government. That it is not in dispute that Exhibit PL i.e. FORM EC8E is the declaration of result which produced the 1st Respondent as the purported winner of the election of 9th March, 2019 upon which the certificate of return, exhibit R was issued to the 1st respondent. That it is however clear from the face of exhibit PL that the election contested for by the 1st Petitioner and the 1st Respondent was in Gwadabawa South Constituency of Sokoto State. He said that it is equally not in dispute that Exhibit PL (Form EC8E) is a document of the 3rd Respondent.

He said that the 1st petitioner who testified for himself maintained that the election conducted by the 3rd Respondent on the 9th March, 2019 was for Gwadabawa South Constituency, that the wards in Gwadabawa South constituency are Huchi Ward, Mamande Ward, Chimola Kudu Ward, Salame Ward, Gidan Kaya Ward and Chimola Arewa Ward. That Exhibits PA 1-PA3, are ballot papers used for election of 9th March,, 2019 for Gidan kaya ward of Gwadabawa South constituency of Sokoto State House of Assembly elections. That Exhibits PB1-PB3 are ballot papers used for election of 9th March, 2019 for Chimola Arewa ward, in Gwadabawa South, Exhibits PC1-PC3 are the ballot papers used for election of 9th March, 2019 for Mammande ward, in Gwadabawa South; Exhibits PD1 – PD3 are the ballot papers used for election of the 9th March, 2019 for Huchi ward of Gwadabawa South constituency; Exhibits PE1-PE3 are the ballot papers used for the election of 9th March, 2019 for Chimola Kudu ward of Gwadabawa south constituency while exhibits PF1-PF3 are ballot papers used for Salame ward of Gwadabawa South State Constituency.

Counsel maintained that PW1, PW2, and PW3 also gave uncontroverted evidence that the election conducted on the 9th March, 2019 between the 1st Petitioners and the 1st Respondent was for Gwadabawa South Constituency corroborating the evidence of the 1st petitioner. That from the face of other exhibits which are the documents of the 3rd Respondent it cannot be stated that the said election was contested for under Gwadabawa North. That no other documents were tendered by the 3rd Respondent to contradict the above documents tendered by the petitioners. He said that the 1st Respondent under cross examination equally identified 6 wards in Gwadabawa North constituency to be Gidan Kaya Ward, Chimola Kudu Ward, Chimola Arewa Ward, Huchi Ward, Salame Ward, & Mammande Ward. That from exhibits PA1-3, PB1-3, PC1-3, PD1,3, PE1-3, PF1-3, the above wards identified by the 1st Respondent are in Gwadabawa South state constituency as no such wards exist under Gwadabawa North state constituency.

Learned counsel posited that it is the law that oral evidence cannot be used to vary the contents of a document and relied on the case of: ***BALIOL V. NAVCON (2010) 5 SCNJ P. 125 @ 1228 Ratio 8*****,** where the Supreme Court held thus:

Where a document is clear and unambiguous, parole evidence cannot be led to contradict it. In other words, extrinsic evidence is basically inadmissible to add or to alter the content of a document.

He also referred to the case of: ***EGHAREVBA V. OSAGIE (2009) 12 SCNJ P.166 @ 167 RATIO 1 PER I.F. OGBUAGU JSC AT PAGE 168-169***, where it was held thus:

"that documentary evidence is the best evidence. It is the best proof of the contents of such document and no oral evidence will be allowed to discredit or contradict the contents therefore except where fraud is pleaded."

He said that in ***RATIO 2 OF EGHAREVBA V. OSAGIE (supra)*** the Supreme Court held thus:

"Where there is oral as well as documentary evidence, the latter should be used as a hanger from which to assess the oral evidence. This is because documentary evidence is said to be more reliable than oral evidence and it is used as a hanger to test the credibility of oral evidence."

Also, in ***OGUNDELE V. AGIRI (2009) 12 SCNJ P.141 @ 146 RATIO 6.*** The Supreme Court held thus:

Oral evidence is inadmissible to contradict the contents of a document in other words oral testimony cannot be used to alter the contents of a document ….. and no extraneous matter can be imported into the record of proceedings per J.A Fabiyi.

In ***RATIO 7 OF OGUNDELE V. AGIRI (SUPRA)*** the Supreme Court held thus:

"Documents when tendered and admitted in court are like words altered and do speak for themselves. They are more reliable and authentic than words from the vocal cord of men as they are neither transient nor subject to distorting and misrepresentation but remain permanent and indelible through ages".

He submitted that from Exhibit PL i.e. Form EC8E, bearing the names of the 1st Petitioner and 1st Respondent which was produced by the 3rd Respondent, it is clear that the 1st Petitioner and the 1st Respondent contested election for member representing the Gwadabawa South state constituency for Sokoto State House of Assembly held on the 9th March, 2019. That other Exhibits in this case particularly Exhibits PA1-3, PB1-3, PC1-3, PD1-3, PE1-3, and PF1-3 all point to the fact that the said election was contested by the 1st Petitioner and the 1st Respondent under Gwadabawa South Constituency of Sokoto State.

He said that more damaging is the testimony of RW1 under cross examination wherein he testified that he voted under Gwadabawa East Constituency Member, House of Assembly, Sokoto State (sic).

He said that apart from the evidence of the 1st Respondent and Exhibit R, there is no document to convince the court that the 1st Petitioner and the 1st Respondent contested the election of 9th March, 2019 in Gwadabawa North Constituency and not Gwadabawa South as contended by the petitioners.

That the 3rd Respondent also did not produce/tender any document before this court to convince the court neither did the 3rd Respondent call evidence to prove that the election of 9th March, 2019 between 1st Petitioner and 1st Respondent for member House of Assembly Sokoto State was indeed conducted in Gwadabawa North Constituency. That the 3rd Respondent's reply that the election of the 1st Respondent was for Sokoto State House of Assembly, Gwadabawa North Constituency goes to no issue as there is no evidence to prove same. He referred to the case of: ***ABACHA V. EKE-SPIFF (2010) 14 W.R.N. P. 1 @ 13, RATIO 16*** where the Supreme Court held thus:

Where pleadings are not supported by evidence, such pleading are deemed to have been abandoned.

See also **NWOKKORO V. ASHUE (2010) 29 WRN P.118 @125, RATIO 9** where they stated thus:

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 remained moribund, if not dead of all times and for all times to procedural disadvantage of the owners, in context the appellant.

Also he said that ***MUKHTAR, JCA HELD IN PUNCH (NIG) LTD V. JUMSUM (NIG) LTD (2010) 36 WRN P. 93 @ 102 RATIO 7*** thus:

Pleadings no matter how beautifully couched cannot constitute evidence. The appellant who failed to lead evidence on the averments in its pleadings is deemed to have not only abandoned such averments but also admitted the truth off the respondent's averments other than those on which admissible evidence was imported through cross-examination.

He submitted therefore that the 3rd Respondent who is the electoral umpire did not call any evidence to clarify the discrepancies and that being so, the pleadings of the 3rd respondent has been abandoned, more so that no evidence was elicited under cross-examination to support the 3rd Respondent's case. He urged the Tribunal to hold that the pleadings of the 3rd Respondent are abandoned.

He maintained that there is also no evidence to rebut or contradict the documentary evidence tendered by the petitioners and the law is trite that oral evidence cannot be used to contradict, vary or add to the content of a document in this case Exhibits PL, PA1-PA3, PB1-PB3, PC1-PC3, PD1-PD3, PE1-PE3, PF1-PF3, Exhibit and all other Exhibits tendered by the petitioners.

He referred to the case of: ***OGUNDELE V. AGIRI (SUPRA) PER I.F OGBUAGU JSC RATIO 2 P. 144*** where it was held that ***"the court can also examine the documents and exhibit in question in this case and draw necessary inferences"***

That in ***IMERH V. OKON (2012) 3 WRN P.179 @ 181 AND 184 PARA 29-30*** the court held that no oral evidence may be used to contradict, vary, alter or add to the contents of Form EC8E (I) (i.e. Form or Declaration of result) in line with section 132 (I) of Evidence Act 2004.

See also ***UBN PLC V. ONWUKWE (2018) 14 WRN P. 141 @ 143 RATIO 1*** where documentary evidence was held to be the best type of evidence and cannot be wished away or supplanted by oral evidence.

See also ***SARAKI V. FRN (2018) 42 WRN P.18 @92 AND C.N.I.S.A.S.V. SAIDU (2018) 154 @158.***

He therefore urge the Tribunal to critically look into the Exhibits tendered before this court particularly Exhibits PL(Form EC8E) PA1-3, PB1-3, PC1-3, PD1,3, PE1-3, and PF1-3 (ballot papers for Gwadabawa South vis-à-vis the wards written therein); Exhibits PG1-PG17, Exhibits PH1-PH15, Exhibit PN1-PN12, Exhibit PI1-PI7, Exhibit PJ1-PJ15, Exhibit PK1-PK14, in arriving at the conclusion that indeed the 1st Petitioner and the 1st Respondent contested election for Member representing Gwadabawa South State Constituency For Sokoto State House Of Assembly held on the 9th March, 2019 thereby resolving issue 2 in favour of the petitioners.

ISSUE THREE

Learned counsel submitted that by virtue of ***Section 112 of the 1999 Constitution of the Federal Republic of Nigeria*****,** the responsibility of delineation of states into state constituencies rest with the 3rd respondents who is a party to this suit and from which all the documents tendered in this action emanated from.

That Exhibits PA1 - PA3, PB1 - PB3, PC1-PC3, PD1 to PD3, PE1-PE3, and PF1 -PF3 are the ballot papers for Gidan Kaya ward, Chimola Arewa ward, Mammande ward, Huchi ward, Chimola Kudu and Salame ward respectively tendered in evidence by PW3, the electoral Officer for Gwadabawa Local Government as well as Exhibit PL which is the final declaration of result and they all contain Gwadabawa South as the constituency in issue. That Exhibit R which is the certificate off return issued the 1st Respondent however bears Gwadabawa North as the state constituency in issue.

He maintained that the situation is further compounded by the fact that Exhibits PG1 to PG17, PN1 to PN 12, PI1 to PI 7, PJ 1 to PJ 15, and PK 1 to PK 14 which are copies of Form EC8A purportedly used at the election and Exhibit PM all contain varying appellations for the state constituency in issue which include Gwadabawa East, Gwadabawa West etc.

He reiterated that the 3rd Respondent did not lead any evidence to clarify these serious discrepancies in the results as well as other electoral documents

emanating from it upon which it claims that the 1st Respondent was returned as winner at the said elections.

That the situation becomes more worrisome due to the fact that the 1st respondent who the 3rd respondent declared winner had in Exhibit PM which is headed as "Affidavit in support of Personal Particulars of person seeking election to the office of member House of Assembly" and which was sworn to at the High Court of Sokoto State as required by **section 31(2)** of the **Electoral Act** Stated that the state constituency which he was contesting is "Gwadabawa East " and even though he strenuously during cross-examination sought to show where in the same affidavit document he had cancelled East to write North, same was never counter signed by him nor was it attested to by the person before whom the affidavit was taken as required by **section 117 (2) of the evidence Act, 2011** or re-sworn as required by **section 118 of the Evidence Act**. He said that such cancellation is therefore of no effect whatsoever in the consideration of the content of Exhibit PM.

He said that the serious question of non-compliance therefore is: ***how could somebody who contested for election into Gwadabawa East state constituency have been returned as the winner for Gwadabawa North State constituency based on a final declaration of result for Gwadabawa South State constituency?***

He said that the 1st Petitioner during cross-examination stated that he was elected twice before to the House of Assembly (i.e. 2011 and 2015) and this was under Gwadabawa south State constituency which was in respect of the same wards complained of in this petition. On this he referred to ***section 114 (1) of the 1999 Constitution (as amended)*** which provides;

> ***"The Independent National Electoral Commission shall review the division of every State into constituencies at intervals of not less than ten years, and may alter such constituencies in accordance with the provisions of this section to such extent as it may consider desirable in the light of the review."***

He said that from the above cited provision of the 1999 Constitution the 1st Petitioner and the 1st respondent actually contested under Gwadabawa South State constituency and not North and urged us to so hold.

Furthermore, on the petitioners' complaint of corrupt practices and non-compliance with the provisions of the Electoral Act as well as INEC Guidelines, he said that PW1 testified that at Gidan Dutse 014 polling unit Gidan kaya ward, there was violence caused by the 2nd Respondent's thugs who beat up and drove away other polling agents and the petitioners supporters from the polling unit and thumb printed ballot papers which they stuffed into ballot boxes. He also gave evidence as

to over voting. That the evidence of PW1 was not shaken during cross examination and the Respondent did not lead any evidence to contradict same.

Also that on Asibiti Mulela Y/Gada polling unit 007, PW2 gave evidence that there was violence at the polling unit caused by the 2nd Respondent's thugs who were instigated by one Alhaji Aliyu Yargada, a stalwart of the 2nd Respondent who wanted women to vote twice for which the 2nd Petitioner's polling agents refused, whereupon the said Alhaji Aliyu Yargada personally snatched the phone of the senior polling officer and instructed his thugs to beat up the polling agents of the petitioner. He said that the testimony of PW2 was not shaken during cross examination and was in fact corroborated by RW1 who stated under cross examination by the petitioner that there was trouble at the said polling unit.

He said that while the 1st and 2nd Respondents claimed that a rerun election was conducted at the said polling unit, which the petitioners deny, they failed to tender any result of the said re-run wherein the 1st Respondent scored the votes alleged by the 1st and 2nd Respondents in their Reply, neither did the 3rd Respondent call any evidence to prove this fact. He said that the Petitioners on their part tendered a certified true copy of the Result for that polling unit from Exhibit PG1 to PG17 which was identified by RW1 during cross examination. That the position of the law is that the burden of proving this particular fact of re-run election lies on the party alleging same. ***Section 136 (1) of the Evidence Act, 2011*** provides thus;

"The burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence…"

Similarly he referred to the case of: ***BUKOYE & 7 ORS V. ACTION CONGRESS & ORS (2009) 36 WRN 30 AT 40 RATIO 10*****,** where the court held that:

"Election Petition are civil matters. The burden of proof in civil matters is not static or rigid on one side as in criminal cases. It shifts from one side to the other, depending on the state of pleadings and the evidence led in support …"

Thus he submitted that the Tribunal is entitled to take the fact of violence as proved and that of the re-run as unproved.

He said that the 1st petitioner while identifying and demonstrating the exhibits drew the attention of the Tribunal to the fact that the results from polling units i.e. Form EC8A produced by the 3rd Respondent as the purported results upon which the 1st Respondent was returned elected as member of Sokoto State House

of Assembly for Gwadabawa North State constituency were not indeed results for that constituency as they carried different wards from that for which the 1st Respondent was returned. He said that for instance, Exhibits PH 1 to PH 15 contained Gwadabawa South as the Constituency, Exhibits PI1 to PI7 largely contained Gwadabawa South as the Constituency, some of Exhibits PK1 to PK 14 largely contained Gwadabawa South while on others the field for constituency was left blank. He said that the question therefore is how can one say what constituency those results were meant for since they do not say so on their faces. He said that the Respondents did not lead any evidence to aid the court in this regard and therefore such results which do not say what Constituency they are from or which state a Constituency different from the one for which the 1st Respondent was returned cannot at this stage be presumed to have come from the Constituency for which the 1st Respondent was returned that is: Gwadabawa North State constituency as stated in Exhibit R.

Learned counsel submitted that all the above are evidence in proof of substantial non-compliance. He submitted that these non-compliances were indeed substantial and affected the result as one cannot exactly say from which constituencies those results emanated from going by the various appellations on the results with respect to the all-important issue of constituency and how they were used as results for elections to Gwadabawa South State constituency or Gwadabawa North as the 1st Respondent alleges. He said that without any explanations from the 3rd Respondent from whom all the electoral documents tendered in this petition emanated, these must be taken as substantial non-compliance that affected the results.

Thus learned counsel contended that even though there is a presumption of regularity of election as provided in **section 146 and 168 (1) of the Evidence Act, 2011,** same cannot apply in this case as that presumption is one of fact and by all the materials before the court showing substantial and material inconsistencies in the election result, those results cannot be said to be presumed regular. In ***Congress for Progressive Change (CPC) V. independent National Electoral Commission (INEC) & 41 others (2011) LPELR – SC. 426/2011 at p.57*** the Supreme Court had this to say;

"Any evidence produced by the appellant to rebut the presumption of regularity enjoyed by INEC by virtue of Section 168 of the Evidence Act 2011 (as amended) can only be rebutted by congent, credible and acceptable evidence.

A court of law can only pronounce judgment based on credible evidence presented and properly established before it. A court is not at liberty to go outside the evidence and search for extraneous evidence in favour of the parties."

He submitted that cogent evidence has been led before this tribunal in rebuttal of this presumption of regularity and he urged the Tribunal to so hold.

ISSUE FOUR

Under this issue, learned counsel contended that the petitioners have led sufficient evidence to show that the 1st Respondent was not duly elected or returned by majority of the lawful votes cast at the election for the office of Member Sokoto State House of Assembly for Gwadabawa South constituency. He adopted his arguments on issue three above in urging this Tribunal to resolve this issue in favour of the petitioners.

He further contended that in election petitions, the tribunal is in a good position to assess from the documents before it, how the 1st Respondent was returned as winner since documents speak for themselves. He relied on the case of: ***SAMUEL ONU AJA V. ABBA ODIN & 9 OTHERS (2011) 41 WRN AT 39 P. 73*** where the court held thus;

"An election matter, in which substantial part of the evidence is documentary in value, the trial Tribunal is in a good position to examine the documentary evidence and draw inference therefrom as was done in this case see MBUKURTA V. ABBO (1998) 6 NWLR (pt. 554) 456."

He submitted that from all the exhibits tendered before this court by the petitioner, it is clear that the documents do not connect with Exhibit R, which is the certificate of return. That the certificate is the product of every Exhibit in this case and where there are discrepancies the tribunal will make an order to nullify the election and order a re-run. He therefore urged this Tribunal to grant the reliefs of the petitioners.

In response to argument in paragraph 5.14 of the 1st and 2nd Respondents' address learned counsel submitted that it is baseless and of no moment as same is based on suspicion, speculation and mere assumption. That it is trite law that no amount of speculation can take the place of legal evidence and mere suspicion will not amount to legal proof and urged this Tribunal to so hold. He referred to the

case of: ***WAZIRI V. GEIDAM (2016) 49 WRN 1 @ 10 ratio 9*** where the court held thus:

"Mere suspicion which is now settled no matter how strong the suspicion may be, it cannot take the place of legal proof"

He further submitted in response to the issue raised by the learned counsel to the 1st and 2nd Respondents' under paragraph 5.15 of his address alleging that the petitioners withheld the evidence as to Form CF001 of the 1st Petitioner that the petitioners are not the custodian of the said document and cannot be held to be persons who withheld the said document as is envisaged under ***section 167 (1) of the Evidence Act 2011.*** He said that the 3rd Respondent who is the custodian of Form CF001 filed by the 1st Petitioner did not deem it necessary to tender same nor call any witness to defend this petition but relied on the witnesses of the 1st and 2nd respondents'.

Again, he submitted that the arguments of the learned counsel to the 1st and 2nd respondent under paragraph 5.16 of his address are misleading and a total misconstruction. He submitted that the document in the nature of Exhibit PL is procedurally the natural precursor to the existence of any document in the nature of Exhibit R. That Exhibit R could not have emanated from the blues. That ***Section 75(1) of the Electoral Act*** made it expressly clear that a certificate of return is issued to a winner in an election. He submitted that such a winner can only be determined based on the declaration of result Form which in this petition is Exhibit PL (Form EC8E (1)). He therefore submitted that Exhibit PL cannot therefore be subordinate to Exhibit R and he urged this Honourable Tribunal to so hold.

In response to the argument of the 1st and 2nd Respondent under paragraph 6.4 of their final address when they argued that the claim of the petitioner is declaratory in nature and for which the petitioner must succeed on the strength of their case and not on the weakness of the respondent, he submitted that it is also trite law that where the respondent's case is in support of that of the petitioner as in this instant petition, the court is bound to act on same in favour of the petitioner.

He referred to paragraph 6 of the 1st and 2nd respondents' reply to the petition where they admitted paragraph 11, 12 and 13 of the petitioner's petition. It is trite law that facts admitted need no further proof and referred the tribunal to the following decisions on the point: ***OKEREKE V. THE STATE (2016)45 WRN, 36 @ 41 RATIO 4****; and* ***UNI ILLORIN AGAINST THE ADESHINA (2009) 25 WRN 97 @ 105 RATIO 8.***

He submitted that parties are bound by their pleadings and the law does not allow parties to resile from the contents of their pleadings and referred to the case of: ***ONIGBATA V. OBI (2011) 55 WRN 19 @ 38 RATIO 21*** where the Supreme Court held thus:

"The law is well settled that parties are bound by their pleadings and therefore confined within the parameters of such pleadings in conducting their case."

In response to the argument of the learned counsel to the 1st and 2nd Respondents in paragraph 6.15 of their address, he submitted that the petitioners have proved non-compliance via documentary and parole evidence adduced before this Honourable Tribunal and the said non-compliance substantially goes to the root of the conduct of the election between the 1st petitioner and 1st Respondent.

He further submitted that the appearance of the 1st respondents' name on Exhibit PL does not ordinarily qualify him as a lawful candidate who contested the elective post as a member of the Sokoto State Houses of Assembly under Gwadabawa South State constituency or any other constituency whatsoever known to law. He urged us to look into Exhibit PM (which in Form CF001) filled by the 1st respondent indicating that he contested for Gwadabawa East and not any of the constituencies under the Gwadabawa Local Government known to law and to the 3rd Respondent and urged the Tribunal to so hold.

In conclusion learned counsel submitted that the case of the respondents is an illusion not a reality as one cannot put something on nothing and expect it to stand. That the petitioners were able to prove their case with cogent, credible and convincing evidence that the 1st respondent was not validly elected by the majority of lawful votes cast at the election conducted by the 3rd Respondent to the office of Member of Sokoto State House of Assembly under Gwadabawa South State constituency held on the 9th March, 2019. He therefore urged the Tribunal to withdraw the certificate of return issued in error to the 1st respondent and return the 1st petitioner as member representing Sokoto State House of Assembly for Gwadabawa South constituency due to the fact that it was established that there were clear irregularities and non-compliance with the Electoral Act 2010 as amended and INEC Guidelines and Regulations for the conduct of election 2019 having polled majority of lawful votes cast.

ALTERNATIVELY he urged the Tribunal to nullify and/or cancel the said election thereby mandating the 3rd Respondent to conduct a fresh election for the office of Member, Sokoto State House of Assembly for Gwadabawa South

Constituency in other to regularize the discrepancies, misconduct and irregularities in the said election.

Finally he urged the Tribunal to grant all the reliefs of the petitioners as contained in this petition.

We have carefully considered all the processes filed in respect of this Petition together with the arguments of learned counsels for the parties on all the issues formulated together with some other ancillary objections raised in this petition.

Before we determine this petition on the merits, we shall resolve these ancillary and preliminary objections raised in this petition by the 1st and 2nd Respondents.

The first objection is on one of the grounds for presenting this petition appearing in paragraph 16.3 of the petition which reads as follows:

> ***"The 4th respondent in their bid to aid the 1st and 2nd respondent threaten, intimidated the supporters of the 1st and 2nd petitioners and stood by wherein the agents and supporters of the 1st and 2nd respondents where snatch the ballot box and also prevented many registered voters from exercising their franchise." (sic)***

The objection is that the alleged ground is not a cognizable ground for questioning an election as stipulated in ***section 138 (1) of the Electoral Act, 2010 (as amended).***

In his written address, the learned counsel for the Petitioners did not advance any arguments to validate the ground. For the avoidance of doubt ***Section 138 (1) of the Electoral Act, 2010 (as amended)*** provides as follows:

> ***"138. (1) 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 reason of corrupt practices or non- compliance with the provisions of this Act;***
>
> ***c) that the respondent was not duly elected by 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 settled law that before a Petitioner can question the election of the Respondent, his petition must fall within the grounds specified by the Act. See: ***Oyegun v.***

Igbinedion & Ors. (1992) 2 NWLR (Pt. 226) 947; (1991) 2 LRECN 1}. (P. 302, para. B); Okonkwo v INEC & Ors (2003) 3 LRECN 599

Under ***section 138 (1) of the Electoral Act***, a petitioner is free to present his petition before any election tribunal to challenge or question the return of any candidate in an election under one or more or all the grounds specified under the section, depending on the circumstances of each case. Any ground which is not cognizable under the Electoral Act or the Constitution is liable to be struck out for being incompetent. See: ***OSHIOMHOLE v. AIRHIAVBERE (2013) 7 NWLR (Pt. 1353) 376 @ 396 (SC); IBRAHIM v. UMAR (2012) 7 NWLR (Pt.1300) 502.***

It is evident that the ground in question is not cognizable under the relevant statutes and it is accordingly struck out.

The major preliminary objection was raised in the Reply of the 1st and 2nd Respondents in the following terms:

1. That the election of the 1st respondent into the House of Assembly of Sokoto State is in respect of Gwadabawa North State Constituency of Sokoto State whereas the instant election petition of the petitioners is in respect of Gwadabawa South State Constituency of Sokoto State;
2. That the petitioners have not disclosed any right in the instant petition vesting the said petitioners with any *locus standi* to present this petition to challenge the election conducted by the 3rd respondent for Gwadabawa North State Constituency of Sokoto State contrary to the provisions of paragraph 4(b) of the First Schedule to the Electoral Act, 2010 (as amended);
3. That this instant election petition as presently constituted is incompetent and ought to be struck out by this Honourable Tribunal; and
4. That at the hearing of this preliminary objection, the 1st and 2nd respondents shall rely on the Certificate of Return issued by the 3rd respondent to the 1st respondent to show that it was the House of Assembly seat for Gwadabawa North State Constituency of Sokoto State that the 1st respondent contested and won at the said election and not Gwadabawa South State Constituency as constituted in this petition.

Incidentally when the Issues for Determination were formulated at the Pre-Hearing Session, this Preliminary Objection was captured and subsumed under Issues 1 and 2.

Consequently, the objection will be determined as we resolve the aforesaid issues.

For the avoidance of doubts, the Issues for Determination in this Petition are as follows:

1. ***Whether this Petition is not merely academic in nature.***
2. ***Whether by virtue of Form EC8E (1) (Declaration of result) bearing the names of the 1st Petitioner and 1st Respondent and produced by the 3rd Respondent, the 1st Petitioner and the 1st Respondent contested election for member representing the Gwadabawa South State Constituency for Sokoto State House of Assembly held on the 9th March 2019.***
3. ***Whether the election of the 1st Respondent to office of member House of Assembly of Sokoto State for Gwadabawa South held on the 9th day of March, 2019 ought not to be set aside on grounds of corrupt practices, substantial non-compliance with the provisions of the Electoral Act 2010 (as amended) and INEC Election guidelines 2019.***
4. ***Whether the Petitioners have led sufficient and credible evidence before this Honourable Tribunal to prove that the 1st Respondent was not duly elected or returned by majority of lawful votes cast at the election for the office of Member Sokoto State House of Assembly for Gwadabawa South Constituency held on the 9th day of March 2019.***

We will proceed to resolve Issues 1 and 2 together while Issues 3 and 4 will be resolved individually.

ISSUES 1 AND 2

Essentially the gravamen of these two issues is on the vexed question of whether the electoral contest between the 1st Petitioner and the 1st Respondent is for the office of ***member representing the Gwadabawa South State Constituency for Sokoto State House of Assembly*** as contended by the Petitioners or for the office of ***member representing the Gwadabawa North State Constituency for Sokoto State House of Assembly*** as contended by the Respondents.

In order to validate their positions, both parties adduced oral and documentary evidence at the trial. To resolve this controversy we need to consider the evidence adduced at the trial in order to make our findings.

In their bid to prove that the correct name of the constituency is Gwadabawa South State Constituency as pleaded in this petition, the petitioners tendered the following INEC documents:

(a) 3 ballot papers from Gidan Kaya Ward as Exhibit PA1 – PA3.
(b) 3 ballot papers from Chimola Arewa Ward as Exhibit PB1 – PB3
(c) 3 ballot papers from Mammande Ward as Exhibit PC1 – PC3

(d) 3 ballot papers from Kuchi Ward as Wxhibit PD1 – PD3
(e) 3 ballot papers from Chimola Kudu Ward as Wxhibit PE1 – PE3
(f) 3 ballot papers from Salame Ward as Exhibit PF1 – PF3
(g) 17 copies of Form EC.8A for Gidan Kaya Ward as Exhibits PG1 – PG17
(h) 15 copies of Form EC.8A for Chimola Arewa Ward as Exhibits PH1 – PH17
(i) 12 copies of Form EC.8A for Chimola Kudu Ward as Exhibits PN1 – PN12
(J) 7 copies of Form EC.8A for Huchi Ward as Exhibits PI1 – PI7
(k) 15 copies of Form EC.8A for Mammande Ward as Exhibits PJ1 – PJ15
(l) 14 copies of Form EC.8A for Salame Ward as Exhibits PK1 – PK14
(m) 1 copy of Form EC.8E for Gwadabawa South State Constituency as Exhibit PL (declaration of result)
(n) 1 copy of INEC Form CF 001 completed by the 1st respondent as Exhibit PM.

On the part of the 1st and 2nd Respondents, they are relying on Exhibit R which is the Certificate of Return issued by the 3rd respondent to the 1st respondent where it was stated that the 1st respondent has been elected as member, Sokoto State House of Assembly to represent Gwadabawa North State Constituency of Sokoto State. They are also relying on INEC Form CF 001 completed by the 1st respondent and submitted to the 3rd respondent before the conduct of the said election in which the 1st respondent stated the constituency he was contesting the said election to be Gwadabawa North State Constituency. The said INEC Form CF 001 of the 1st respondent was admitted in evidence as Exhibit PM.

The Respondents also relied on ***Section 75(1) of the Electoral Act, 2010 (as amended)*** which provides as follows:

"75. (1) A sealed Certificate of Return at an election in a prescribed form shall be issued within 7 days to every candidate who has won an election under this Act- PROVIDED that where the Court of Appeal or the Supreme Court being the final appellate court in any election petition as the case may be nullifies the Certificate of Return of any candidate, the Commission shall, within 48 hours after the receipt of the order of such Court, issue the successful candidate with a valid Certificate of Return."

We have carefully examined the exhibits which both sides are relying upon to validate their respective claims. The contents of the documents are quite disturbing and embarrassing. As rightly posited by the petitioners, many of the

documents listed in paragraphs (a) to (n) above indicate that they relate to Gwadabawa South State Constituency of Sokoto State. Some of them do not even indicate any constituency.

Coming to the documents relied upon by the 1st and 2nd Respondents; they also validate the claim of the Respondents that the election was conducted in respect of Gwadabawa North State Constituency of Sokoto State.

This is a case where the 3rd Respondent ought to have led cogent and credible evidence to clarify the apparent conflict in documents emanating from them. Although the parties made some effort to tender vital INEC documents through their respective witnesses, the 3rd Respondent who was the official umpire in the contest owed this Tribunal a statutory obligation to lead evidence to clarify the mumbo jumbo of conflicting INEC documents.

From the evidence before us, the elections have been held and the Result of the Election released in INEC Form EC.8E which was admitted in evidence before this tribunal as Exhibit PL. The said Exhibit PL bears Gwadabawa South State Constituency of Sokoto State. Thereafter, INEC issued the Certificate of Return Exhibit R which boldly and clearly indicated Gwadabawa North State Constituency of Sokoto State. What a confused situation. In a bid to wriggle out of the quagmire, the learned counsel for the 1st and 2nd Respondents argued quite ingeniously that the Certificate of Return Exhibit R supersedes the Declaration of Result Form (Exhibit PL). However, the very learned counsel for the Petitioners countered that argument with an equally brilliant submission that Exhibit PL is procedurally the natural precursor to the existence of Exhibit R. In other words that the certificate of return (Exhibit R) ought to be predicated on the Result (Exhibit PL).

However, amidst this heavy exchange of legal fireworks, we must make a finding on the actual constituency which the 1st Petitioner and the 1st Respondent contested for. To ascertain the truth, we need to go to the very beginning when the two candidates set out on their mission to contest this election. What constituency were they actually vying for?

This is where the INEC Form CF 001 which was filled by the parties before the election becomes relevant. That of the 1st respondent was admitted in evidence as Exhibit PM to show that the constituency in which he applied to the INEC to contest the said election was for Gwadabawa North State Constituency of Sokoto State. Curiously, that of the Petitioner was never tendered to ascertain the constituency he was vying for. The learned counsel for the 1st and 2nd Respondents has urged the Tribunal to invoke the provisions of section 167(d) of the Evidence Act, 2011 to hold that he withheld it because it would be unfavourable to him. However as the learned counsel for the Petitioners rightly pointed out, the presumption of withholding evidence cannot be invoked against a party who was

not in possession of the evidence. See the following decisions on the point***: Lawson vs. Afani Continental Co. Nig. Ltd. (2002) FWLR (Pt.1736) 1767; and PML Securities Company Ltd. vs. FRN (2014) LPELR 22768 (CA).*** The INEC Form CF 001 which was filled by the 1st Petitioner ought to be in the custody of INEC not in the custody of the 1st Petitioner.

However it is pertinent to note that during the Pre-Hearing Session, the petitioners filed a motion on notice before this tribunal on the 21st day of May 2019 praying this tribunal ***inter alia*** for: "***AN ORDER of this Honourable Tribunal granting leave to the Petitioners/Applicants to amend their Petition No: EPT/SKT/HA/23/2019 and the accompanying process by substituting the word Gwadabawa South with Gwadabawa North as per the Amended Petition and accompanying processes herein annexed as Exhibit C."***

Some of the paragraphs in support of that motion are quite revealing. We will reproduce the contents of ***paragraph 3 (i) to (vii)*** as follows:

"3.That on the 18th day of May at about 3:00pm, I was informed by F.E. Okotete Esq. Lead counsel for the Petitioners/Applicant in the chambers of my employers of the following facts which I verily believe to be true.

i. That the Petitioner/Applicant had on the 29/3/2019 filed their petition complaining against the election for the office of member representing Gwadabawa South state constituency at the Sokoto State House of Assembly held on the 9th March 2019.

ii. That the Petition was based on the information contained in Form EC8E (I) i.e. Declaration of results produced by the 3rd Respondent and bearing the names of the 1st Petitioner/Applicant and that of the 1st Respondent under Gwadabawa South. A certified True Copy of the said Form EC8E (I) is herein attached as Exhibit A.

iii. That during the 2015 general elections the state House of Assembly constituencies in Gwadabawa were delineated into Gwadabawa East and Gwadabawa West and the aspirants were not familiar with the new Gwadabawa South/North delineation made by the 3rd Respondent in the 2019 general Elections.

iv. That further to paragraph 3(c) above some of the aspirants in Gwadabawa Local Government like the 1st Petitioner were not familiar with the new delineation made by the 3rd Respondent, including the 1st Respondent who purportedly won the seat of member representing Gwadabawa North State Constituency as he filled "Gwadabawa East" in his Form CF001. A Certified True Copy of Form CF001 for Muhammed Bello Idris is herein attached and marked as Exhibit B.

v. ***That the Petitioners/Applicants were misled by the content of Form EC8E(I) produced by the 3rd Respondent to bring their Petition under Gwadabawa South whereas their Petition ought to have been brought under Gwadabawa North State constituency.***

vi. ***That it is not in Issue between the parties that the 1st Petitioner and the 1st respondent contested for house of Assembly seat for the state constituency covering Huchi Ward, Mammande Ward, Chimola Kudu Ward, Salame Ward, Gidan Kaya Ward, Chimola Arewa ward as contained in paragraph 15 of the petition under the platform of the 2nd Petitioner and the 2nd Respondent respectively whether called Gwadabawa South or Gwadabawa North in respect of which the substance of the Petitioners Petition is based and containing all the polling units for which the petitioners complain of in their petition.***

vii. ***That the use of "Gwadabawa South" instead of "Gwadabawa North" in the Petition is a misnomer or an irregularity which is not substantial and which this Tribunal can correct by an amendment to enable the Tribunal fully determine the real dispute between the parties as per the Amended Petition and accompanying processes herein attached as Exhibit C."***

From the contents of the above affidavit in support of their motion for amendment, the Petitioners clearly admitted that ***"that the use of "Gwadabawa South" instead of "Gwadabawa North" in the Petition is a misnomer or an irregularity".***

It is settled law that a Court can take judicial notice of documents and processes in its file**.** See the following cases: ***Osafile v Odi (1990) 5 S.C. (Pt. 11) 1; Lajibam Auto & Agric Concerns Ltd v UBA Plc (2013) LPELR- 20169(CA); Okediran v Ayoola (2011) LPELR-4063(CA). See also Garuba v Omokhodion*** (supra), per Chukwuma-Eneh, JSC, where the Supreme Court said: ***"It is trite that the Court before whom a proceeding is pending or has been completed takes judicial notice of all processes filed in the proceedings as well as the proceeding itself including the judgment as the case may be and so following from this proposition of law all the processes to be relied upon in any application made before that Court in the proceeding are judicially noticed."***

In the face of the admission of the Petitioners that they erroneously put ***"Gwadabawa South" instead of "Gwadabawa North"*** in the petition, we are of the view that the preponderance of evidence shows clearly that the appropriate constituency which both parties contested for is Gwadabawa North and not Gwadabawa South which the Petititioners admitted was an error.

Unfortunately for them, their application for amendment was refused by this Tribunal hence their desperate insistence that the correct constituency is

Gwadabawa South. We are of the view that the Petitioners cannot approbate and reprobate in the same case. As soon as the amendment was refused, they should have seen the handwriting on the wall and thrown in the towel instead of embarking on this fruitless venture.

With this salient finding that the contest was on Gwadabawa North State Constituency of Sokoto State, it is apparent that the substratum has been taken away from this petition and all other issues which have been canvassed will be a mere academic exercise. It is settled law that Courts only exercise jurisdiction on live issues and not issues that can be termed as academic or hypothetical. See the cases of: ***ODOM & ORS v. PDP & ORS (2013) LPELR; EPEROKUN V. UNILAG (1986) 4 NWLR (PT. 34) 152.***

A suit is considered academic where it is merely theoretical, makes an empty sound and of no practical utilitarian value to the plaintiff even if the judgment is given in his favour. A matter unrelated to the practical situation of human nature and humanity. Matters such as described are certainly not for the precious time of the Courts which being saddled with more useful adjudicatory issues. See: ***Plateau State v Attorney General of the Federation (2006) 3 NWLR (Pt. 967) 346; Ugba v Suswan (2014) 14 NWLR (pt. 1427); Adepoju v Yinka (2012) 1 SC 125 at 147; Salik v Idris (2014) 15 NWLR (Pt. 1429) 36 at 54 .***

In view of the foregoing, we wholly agree with the contention of the 1st and 2nd respondents that this petition is now a mere academic exercise. Furthermore, we hold that 1st Petitioner and the 1st Respondent contested for Gwadabawa North State Constituency of Sokoto State. Issues 1 and 2 are therefore resolved in favour of the Respondents.

We ought to strike out the petition at this stage but in the unlikely event that we are wrong; we will proceed to determine it on the merits.

ISSUE 3

Whether the election of the 1st Respondent to office of member House of Assembly of Sokoto State for Gwadabawa South held on the 9th day of March, 2019 ought not to be set aside on grounds of corrupt practices, substantial non-compliance with the provisions of the Electoral Act 2010 (as amended) and INEC Election guidelines 2019.

This issue is based on the Ground of the Petition which is an off-shoot ***of Section 138(1) (b) of the Electoral Act, 2010 (as amended)*** which stipulates as follows:

"138. (1) An election may be questioned on any of the following

grounds, that is to say:
(b) that the election was invalid by reason of corrupt practices or non- compliance with the provisions of this Act."

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. The Petitioner i.e. the 1st Respondent herein and his witnesses had alleged in their statements on oaths that there was violence, and threats to the peaceful atmosphere at C.B.N. Enugu where the materials for the election were

to be collected. In my humble view, where as in this case a petitioner makes an allegation of crime against a respondent in an election petition, and makes the commission of crime the basis of his petition as could be seen from Paragraphs 12B and 12C of the petition that there were no ballot boxes, no forms EC8A and no ballot papers or any other electoral materials for election on both 14/4/2007 and 28/4/2007 and further that there was violence on 14/4/2007 such a petitioner has a strict burden by virtue of Section 138(1) of the Evidence Act to prove the commission of the crime beyond reasonable doubt. If the petitioner fails to discharge this burden his petition fails.

And in Eze v. Okoloagu (2013) 3 NWLR (pt.1180) 183 at 233, this Court again stated thus:

My Lords, the case of malpractices, constitute allegation of commission of criminal activities, in an election petition, the petitioner had the burden of proving the allegation beyond reasonable doubt. 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 Wali v. Bafarawa (2004) 16 NWLR (pt.898) 1 at 44-45 this Court, 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 act of which the candidate or his agent was ignorant."

Coming to the instant case, in order to establish corrupt practices, the 1st Petitioner testified for the Petitioners and they called a total of four witnesses. They also tendered several documentary exhibits.

The allegations of the Petitioners' witnesses on the allegations of corrupt practices and non-compliance with the provisions of the Electoral Act can be categorized into the following heading viz:

(a) Ballot box stuffing or multiple voting;
(b) Over voting;
(c) Disenfranchisement of voters;
(d) Violence instigated by thugs of the 2nd respondent.

We will examine the evidence led by the Petitioners to prove each of these allegations and make our findings on them

BALLOT BOX STUFFING OR MULTIPLE VOTING

The PW1 made allegations of ballot box stuffing at Gidan Dutse 014 polling unit in Gidan Kaya ward which was denied by the 1st and 2nd respondents.

The law is settled that a petitioner who alleges multiple voting or stuffing of ballot box must tender in evidence the stuffed ballot box in issue alongside the ballot papers therein. See the decision of Omage JCA in ***AJIMOBI V. INEC (2009) ALL FWLR (PT 477) 91 AT 107***

In the instant petition, the petitioners who alleged multiple voting or ballot box stuffing at Gidan Dutse 014 polling unit in Gidan Kaya did not tender any ballot box so they failed to prove that alleged malpractice.

OVER VOTING

The PW1, PW2 and PW4 alleged incidence of over voting at Gidan Dutse 014 polling unit, Ashibiti Mulela Y/Gadi 006 polling unit and at Shiyar Mumini Kolar Zamani 006 polling unit respectively where they acted as petitioners polling agents. These allegations were also denied by the 1st and 2nd respondents.

The law is settled that a petitioner who seeks to prove over voting at a polling unit has to take the several steps outlined by his lordship, Okoro JSC in ***EMERHOR V. OKOWA (2010) ALL FWLR (PT 896) 1868 AT 1905*** where the learned jurist held thus: -

> ***"In a plethora of decisions of this court, we have made it abundantly clear that a petitioner seeking to prove over voting in an election must do the following:***
>
> ***1. Tender the voters register to show the total number of registered voters in each unit.***
>
> ***2. Tender the statement of result in the appropriate forms which would show the total number of votes cast.***
>
> ***3. Relate each of the documents to the specific area of his case in respect of which the documents are tendered.***
>
> ***4. Show that the figure representing the over voting if removed would result in victory for the petitioner and***
>
> ***5. In view of the introduction of card reader machines in elections, I will add that the petitioner should tender the card reader report if it did not fail to function."***

In the instant petition, the petitioners who made an allegation of over voting as one of the heads of non-compliance with the provisions of the Electoral Act in this petition did not establish the conditions enumerated by the Supreme Court in the ***Okowa supra***. In particular, no register of voters in respect of the polling units where the alleged over voting took place was tendered and analyzed before this tribunal to show the total number of registered voters in such polling units.

Furthermore, the petitioners did not show by evidence the number of votes recorded at each of the said polling units and the excess votes which were over and above the number of registered voters in each of the said polling units complained of. Neither have the petitioners shown that if the excess votes representing the over voting are removed, the petitioners will win the said election.

Consequently, the petitioners have not proved the allegation of over voting.

DISENFRANCHISEMENT OF VOTERS

On disenfranchisement, it is settled law that to prove disenfranchisement, it is mandatory for the registered voters in the said polling units who did not vote at the said election to personally testify before the tribunal and also to tender the register of voters where the disenfranchisement took place. See the case of ***NGIGE V. INEC (2015) 1 NWLR (PT 1440) 281 AT 326; KAKIH V. PDP (2014) 15 NWLR (PT 1430) 374; and YARO V. WADA (2009) ALL FWLR (PT 472) 1084 AT 1098*.**

In the instant case, none of the alleged disenfranchised voters was called as a witness before this tribunal by the petitioners. Again, the registers of voters in respect of the polling units where the alleged disenfranchisement of voters occurred were not tendered in evidence before this tribunal. Thus the petitioners have equally failed to prove any disenfranchisement of voters.

VIOLENCE ALLEGEDLY INSTIGATED BY THUGS OF THE 2ND RESPONDENT

The PW2 made some allegations of acts of violence at Ashibiti Mulela Y/Gadi 006 polling unit in Gidan Kaya ward perpetuated by one Alhaji Aliyu Yargada said to be a thug of the 2nd respondent. However, the said Alhaji Aliyu Yargada was not joined as a party to this petition by the petitioners.

Again, PW4 averred in his deposition that unnamed thugs of the 2nd respondent instigated violence at Shiyar Mumini Kolar Zamana 006 polling unit. These are criminal allegations which were not proved beyond reasonable doubt by the petitioners. The alleged thugs of the 2nd respondent who instigated the alleged violence at Shiyar Mumini Kolar Zamana were not named. The allegation that one Alhaji Aliyu Yargada instigated violence at Ashibiti Mulela Y/Gada 006 polling unit cannot stand as the said Alhaji Aliyu Yargada was not joined as a party in this petition and he cannot be tried in abstentia.

Furthermore, we uphold the submission of the 1st and 2nd respondents that the petitioners have failed to prove any incidence of violence in any of the polling units in the constituency and ***a fortiori***, the petitioners have also failed to prove that

the alleged occurrence of violence at the said two polling units substantially affected the result of the said election.

It is settled law that the Petitioners must link the Respondents directly with the said corrupt practices to justify the conclusion that they were responsible for them. See: ***Onyema v. Ekweremadu 9 EPR. 705.***

In the instant case, the evidence of the Petitioners' witnesses has not sufficiently linked the 1st and 2nd Respondents with the alleged corrupt practices which they testified of. Furthermore, nothing to show that the 1st and 2nd Respondents aided, abetted, counseled or procured the alleged thugs to commit the alleged corrupt practices.

Next we come to the aspect of non-compliance with the provisions of the Electoral Act and the INEC Guidelines. In his written address, the learned counsel for the petitioners highlighted the alleged non-compliance with the provisions of the Electoral Act (as amended) and the INEC guidelines and regulations for the conduct of the 2019 general elections.

To establish the allegations of substantial non-compliance, the Petitioners relied heavily on some manifest irregularities which they found in some INEC documents such as ballot papers and INEC Forms. He referred to Exhibits PA1 - PA3, PB1 - PB3, PC1-PC3, PD1 to PD3, PE1-PE3, and PF1 -PF3 which are the ballot papers for Gidan Kaya ward, chimola Arewa ward, Mammande ward, Huchi ward, Chimola Kudu and Salame ward respectively tendered in evidence by PW3, the electoral Officer for Gwadabawa Local Government as well as Exhibit PL" which is the final declaration of result all contain Gwadabawa South as the constituency in issue, Exhibit R which is the certificate off return issued the 1st Respondent bears Gwadabawa North as the state constituency in issue.

He said that the situation is further compounded by the fact that Exhibits PG1 to PG17, PN1 to PN 12, PI1 to PI 7, PJ 1 to PJ 15, and PK 1 to PK 14 which are copies of Form EC8A purportedly used at the election and Exhibit PM all contain varying appellations for the state constituency in issue which include Gwadabawa East, Gwadabawa West etc.

It is settled law that 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 actually 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 the position 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 although there are identified cases of irregularities and non-compliance with INEC regulations, 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 importantly, they failed to establish that the alleged non-compliances were substantial and how they affected the election result.

In view of the foregoing, we hold that the Petitioners have not proved that the election of the 1st Respondent should be set aside on grounds of corrupt practices, and substantial non-compliance with the provisions of the Electoral Act 2010 (as amended) and INEC Election guidelines 2019. This issue is therefore resolved in favour of the Respondents.

ISSUE 4

Whether the Petitioners have led sufficient and credible evidence before this Honourable Tribunal to prove that the 1st Respondent was not duly elected or returned by majority of lawful votes cast at the election for the office of Member Sokoto State House of Assembly for Gwadabawa South Constituency held on the 9th day of March 2019.

It is settled law that in election petition matters, the petitioner who filed the petition has the burden to prove the grounds. This is because he is the party alleging the grounds and he has a duty to prove the affirmative. He is the party who will lose if no evidence is given on the grounds. If the petitioner does not prove his case, the petition will be dismissed.

In the case of: ***Buhari V. INEC (2008) 19 NWLR (Pt. 1120)246 at 350 para. E; Tobi, J.S.C*** enunciated and restated the time honoured legal principle on the fixation of the burden of proof in election petitions when he exposited thus:

> ***"The petitioner who files a petition under Section 145 (1) of the Electoral Act has the burden to prove the grounds. This is because he is the party alleging the grounds and he has a duty to prove the affirmative. He is the party who will lose if no evidence is given on the grounds. If the petitioner does not prove his case under Section 145 (1) of the Act, the action fails."***

Where as in the instant case, the Petitioners are alleging that the 1st respondent was not duly elected or returned by majority of lawful votes cast at the election, the onus is on them to prove the allegations on the balance of probability, otherwise their petition would be dismissed.

Thus, the burden is on the Petitioners to adduce evidence to establish their case before the Respondents can become obliged to call any evidence in rebuttal of the evidence adduced by the Petitioners.

The question now is whether the Petitioners have adduced sufficient evidence before this Tribunal to prove that the 1st respondent did not obtain the majority of lawful votes cast at the election.

In order to ascertain whether the Petitioners discharged the burden on them it will be expedient to carefully examine the evidence adduced in that regard.

In proof of this issue, the Petitioners relied mostly on the evidence of their witnesses who mainly testified about acts of malpractices in some polling units. Their witnesses did not lead evidence on the votes scored in each polling unit to enable us ascertain whether the 1st Respondent actually failed to obtain the majority of votes scored.

It is settled law that where a ground of petition is that the respondent was not elected by majority of lawful votes, the ***petitioner ought to plead and prove the votes cast at the various polling stations, the votes illegally credited to the "winner", the votes which ought to have been credited to him and also the votes which should be deducted from that of the supposed winner*** in order to see if it will affect the result of the election. Where this is not done, it will be difficult for the Court to address the issue. See***: Awolowo vs. Shagari (1976) 6-9 S.C.51; and Nadabo vs. Dubai (2011) 7 NWLR (Pt.1245) 155 at 177.***

Furthermore, it is settled law that in order to prove the aforementioned salient factors; the proof is largely based on documentary evidence. In the reported case of: ***IKPONMWOSA V. EGHAREVBA & ORS (2009) LPELR-4685(CA),*** the Court opined thus:

"It is settled law that in an election petition, the decision on who had majority of lawful votes is based largely on documentary evidence mainly election results Forms. This is because documents when tendered and admitted in Court are like words uttered and do speak for themselves. They are more reliable and authentic than words as they bear an eloquent testimony of what really transpired. See NGIGE V. OBI (2006) 14 NWLR (PT. 999) 233 and AIKI V. IDOWU (2006) 9 NWLR (PT. 984) 47."

In this case, although the Petitioners tendered some documentary exhibits, we observed that the exhibits were not analysed by any of the witnesses to show that the 1st Respondent did not obtain the majority of lawful votes.

It is settled law that a ground in an election petition alleging that the respondent was not duly elected by majority of lawful votes cast at the election is tantamount to an allegation that the declaration of result made by the 3rd respondent is a falsified result. To establish such an allegation, the petitioner must tender in evidence two set of results: one being the result declared by INEC and the other being the result available to the petitioners upon which they are urging the tribunal to declare that the respondent was not duly elected by majority of lawful votes.

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."

See also the case of: ***HERO V. SHERIFF (2016) ALL FWLR (PT 861) 1309 AT 1363 – 1364*** aptly cited by the learned counsel for the 1st and 2nd Respondents.

In the instant case, there no two sets of results tendered before this Honourable Tribunal by the petitioners. The only result available before this tribunal is as shown on Exhibit PL and the said Exhibit PL shows that the 1st respondent scored 10,867 votes while the 1st petitioner scored 8,458 votes. By the said result therefore, it is clear that the 1st respondent scored majority of the lawful votes cast at the said election and was therefore validly declared the winner of the said election by the 3rd respondent.

Furthermore, applying the principle laid down in the earlier cited decisions of: ***Awolowo vs. Shagari (1976) 6-9 S.C.51; and Nadabo vs. Dubai (2011) 7 NWLR (Pt.1245) 155 at 177,*** we are of the view that the petitioners also failed to plead and prove the votes cast at the various polling stations, the votes illegally credited to the 1st Respondent, the votes which ought to have been credited to him and also the votes which should be deducted from that of the 1st Respondent in order to see if it will affect the result of the election. Having failed to do this, it will be impossible to resolve this issue in favour of the Petitioners**.**

In view of our findings made so far, we are of the view that the Petitioners have not led sufficient and credible evidence to prove that the 1st and 2nd Respondents were not duly elected or returned by majority of lawful votes cast at the election for the office of Member Sokoto State House of Assembly held on the 9th day of March 2019.

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

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3. KELECHI D.OGBONNA ESQ……..……...3RD RESPONDENT