IN THE NATIONAL AND STATE HOUSES OF ASSEMBLY
ELECTION PETITION TRIBUNAL
HOLDEN AT SOKOTO
ON THURSDAY THE 5TH DAY OF SEPTEMBER, 2019
BEFORE THIER LORDSHIP

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

PETITION NO:EPT/SKT/HA/15/2019

IN THE MATTER OF THE ELECTION INTO THE OFFICE OF MEMBER HOUSE OF ASSEMBLY REPRESENTATING TANGAZA STATE CONSTITUENCY HELD ON THE 9TH DAY OF MARCH 2019

BETWEEN:

1. ALIYU LUMO USMAN
2. ALL PROGRESSIVES CONGRESS (APC) } **PETITIONERS**

AND
1. MIKO MUSA
2. PEOPLES DEMOCRATIC PARTY (PDP)
3. INDEPENDENT NATIONAL ELECTORAL COMMISSION } **RESPONDENTS**

JUDGEMENT
DELIVERED BY JUSTICE A.N. YAKUBU (1ST MEMBER)

This Judgment is in respect of an election Petition filed by the Petitioners on the 29th of March, 2019 challenging the election and return of the 1st Respondent on the Platform of the 2nd Respondent to the seat of Member State House of Assembly for Tangaza State Constituency of Sokoto State held on the 9th day of March, 2019.

At the said election, the 1st Petitioner scored 16, 444 votes while the 1st Respondent polled 17, 088. Consequently, the 3rd Respondent declared the 1st Respondent as the winner of the said election and issued a Certificate of Return to him.

Dissatisfied with this declaration, the Petitioners filed this Petition before this Tribunal on the 29th day of March, 2019 to challenge the said declaration. The grounds for this Petition are as follows:-

1. The 1st Respondent was not duly elected by the majority of lawful votes cast at the said election.
2. That the election was invalid by reason of non compliance with provisions of the Electoral Act, 2010 (as amended) and the Provisions of INEC Guidelines/Manual 2019 issued by the 3rd Respondent for the conduct of the election in some polling units.

The two grounds are contained in Paragraphs 3 and 13 of the Petition. It is based on the above grounds that the Petitioners prayed this tribunal for the following declarations:-

(a) That the election conducted in Tangaza Constituency by the 3rd Respondent on the 9th March, 2019 was inconclusive.
(b) The declaration of the 1st Respondent as the winner of the said election conducted in Tangaza State Constituency by the 3rd Respondent on the 9th day of March, 2019 was inconclusive.
(c) An Order directing for the conduct of a supplementary or a re-rurn election in all the Polling units mentioned above in Tangaza State Constituency where elections were not conducted or not conducted in accordance with the 3rd Respondent Guidelines/manual for conduct of election.
(d) That the Certificate of Return hitherto issued to the 1st Respondent by the 3rd Respondent be withdrawn forthwith pending the conduct of the said supplementary or re-run election in the affected polling units in the constituency where elections were not conducted or not conducted in accordance with the 3rd Respondent's Guidelines/manual 2019 for conducts of election.
(e) The cost of prosecuting this petition.

On their part the 1st and 2nd Respondents denied the claims of the Petitioners and filed a joint Reply to the said Petition on the 8th April, 2019. The 3rd Respondent also denied the claim and by leave of Tribunal filed a separate Reply to the Petition on the 22nd day of May, 2019.

Upon the denial of the Petition by the Respondents and to prove their case, the Petitioners opened their case and led evidence. The 1st Petitioner and one other witness testified.

In the absence of any objection from the learned counsel for the Respondents the Petitioners tendered some documents which were admitted in evidence as Exhibits PA, PA1-PA10, PB;PB1-PB19. The documents are as follows:

1. Two voters registers for Ruwa Wuri ward 02 were admitted in evidence as follows:
   (i) Voters Register for Tuni Gara-Dunfili 007 Polling unit was admitted as Exhibit PA1
   (ii) Voters Register for Tuni Gara-Primary School 006 Polling unit-Exhibit PA2
2. Two voters Registers for Tangaza ward 01 were admitted as follows:
   (i) Voters Register for Rugga Ruwa//Shiyar Hakimi 008 polling unit-Exhibit PA3
   (ii) Voters Register for Garin sarki/Shiyar Hakimi 005 polling unit-Exhibit PA4
3. Voters Register for Kwafa-Danfili 004 Polling unit in Magonho ward 09-Exhibit PA5
4. Two voters Register for Raka ward 03.
   (i) Raka primary School 001 polling unit-Exhibit PA6
   (ii) Raka Dutsi-Danfili 002 polling unit-Exhibit PA7
5. Voters Register for K/Busharu Primary School 001 polling unit in Kalenjeni School 001 polling unit in Kalenjeni ward-Exhibit PA8
6. Voters Register for Rimi-Danfili 004 Polling unit in Suhi ward 06-Exhibit PA9

7. Voters Register for Kwacce-Huru Primary School 001 Polling unit in Kwacce-Huru 07 ward-Exhibit PA10
8. INEC receipt for certification of INEC documents-Exhibit PB
9. Form EC8B for Sakwa ward Code 10 was admitted as Exhibit PB 1
10. Form EC8B for Tangaza ward Code 01 was admitted as Exhibit PB2
11. Form EC8B for Salewa ward Code 04 was admitted as Exhibit PB3
12. Form EC8B for Kwacce huru ward Code 07 was admitted as Exhibit PB4
13. Form EC8B for Raka ward Code 03 was admitted as Exhibit PB5.
14. Form EC8B for Kalanjeni ward 08 was admitted as Exhibit PB6
15. Form EC8B for Ruwa Wuri ward Code 02 was admitted as Exhibit PB7
16. Form EC8B for Magonho ward Code 09 was admitted as Exhibit PB8
17. Form EC8B for Gidan Madi ward was admitted as Exhibit PB9
18. Form EC8E(I) for Tangaza Local Government was admitted as Exhibit PB10
19. Form EC8A(I) for Tuni Gara-Danfili 007 polling unit in Ruwa Wuri ward 02 was admitted as Exhibit PB11
20. Form EC8A(I) for Rugga Ruwa/Shiyar hakimi 008 Polling unit in Tangaza ward 01 was admitted as Exhibit PB12
21. Form EC8A(I) for Garin Sarkin/Shiyar Hakimi 005 Polling unit in Tangaza ward 01 was admitted as Exhibit PB13
22. Form EC8A(I) for Kwaifa-Danfili Code 004 polling unit in Magonho ward 09 was admitted as Exhibit PB14
23. Form EC8A(I) for Raka Primary School Code 001 for Raka ward 03 was admitted as Exhibit PB15
24. Form EC8A(I) for Rake Dutsi-Danfili code 002 Polling unit in Raka ward 03 was admitted as Exhibit PB16
25. Form EC8A(I) for K/Bushari Primary School Code 001 polling unit in Kalanjeni ward was admitted as Exhibit PB17

26. Form EC8A(I) for Rimi-Danfili code 004 polling unit in Sutti ward 06-Exhibit PB18
27. Form EC8A(I) for Kwacce-Huri primary School code 001 polling unit in Kwacce-Huru 07 ward was admitted as Exhibit PB19.

The 1st Petitioner testified for himself and adopted his witness statement on oath. He identified all the exhibits (voter's registers and ward result forms) tendered in the evidence. He stated in his deposition among others that he contested the election into the Sokoto State House of Assembly for Tangaza State Constituency for Membership. That as a candidate, he went to many polling units of the nine wards, received and reviewed the electoral forms used at the election and received reports from his party agents from various polling units on the election day.

He said that there were serious over voting in some polling units in all the nine wards. That there was equally no election conducted in some polling units.

The wards where he alleged malpractices occurred are:-

(1) Ruwa Wuri ward.
(2) Kalajeni ward.
(3) Raka ward.
(4) Tangaza ward.
(5) Salewa ward
(6) Magonho ward.
(7) Kwacce horo ward
(8) Sutti Kwaraki ward.

He stated further that votes recorded in some polling units in Gidan Madi ward does not represent lawful votes.

Under cross-examination by G.O Uwadiae Esq. learned counsel to the 1st and 2nd Respondents, the 1st Petitioner said that he signed his deposition in the Tribunal. That it was not what his agents told him that was in his deposition. That he has polling agents in all the polling units and that he is a candidate and not a polling agent.

Still under cross-examination, the 1st Petitioner said he went round all the Polling units that he complained about. That he knows one Isa Salihu Bashar Kalenjine. That his agent complained that the said Salihu Bashar came with hoodlums and took away the Ballot Box at Kalenjeni Polling unit. That apart from the result declared by INEC he has no other result.

One Mohammed Tafidan testified as the P.W.1. He also adopted his witness statement on Oath and testified that he was a collation agent during the election. That part of his duties was to collect and collate duplicates copies of form EC8A, and EC8B from polling unit agents of the Petitioners from all the wards in the Local Government.

The rest of his evidence was similar to that of the 1st Petitioner.

Under cross-examination, the P.W.1 stated that he was at the final collation centre. He said they have polling agents in each of the Polling units and they are still alive. That he visited the polling units during the election. That he got the facts stated in his deposition from the Collation Centre. He stated that he knows Isa Salihu Bashar who came with hoodlums, took away the ballot paper and box and went away with it together with INEC officials. He also stated that apart from the result declared by INEC, he has no other result.

At the end of the case for the Petitioners, the Respondents opened their defence. One Tukur Mode testified as the RW1. He lives in Kwaccehoro town of Tangaza Local Government Area. He adopted his witness statement on Oath. His deposition among others is to the effect that he was a polling unit agent for the 1st and 2nd Respondents at Kwaccehoro polling unit code 001(A). That voting started around 8 O0 a.m. That the Card Reader was used in accreditation. That after voting and counting of votes in the two voting points, the total number of vote, scored was 601 while the number of accredited voters was 612. That these results were reflected in form EC8A for the respective polling units.

Under cross-examination the witness stated that he was at the polling unit when the results were declared. That he was the only agent of the P.D.P in the polling unit and signed the result sheet. He stated that Exhibit PB19 bears the name of one Shehu Wanzam as the PDP agent, and that he is not Shehu Wanzan. Still under cross-examination, he stated that there was no over voting in that polling unit.

The next witness was R.W2, one Alhaji Garba Wayagi. He adopted his witness statement on Oath. Under cross-examination by Petitioner's counsel the witness stated that he voted at Wayagi polling unit. That he visited some polling units on the election day and he signed his deposition.

R.W3 was one Tasiu Liman. He adopted his statement. He stated in his deposition that he was an agent of the 1st and 2nd Respondents in Rugar Ruwa polling units. That in this polling unit 369 voters were accredited and the vote scored was 369. That there was no over voting.

Under cross-examination the witness said INEC is the body responsible for the conduct of elections in Nigeria. That the election in his polling unit was well conducted. That there were no irregularities.

Still under cross-examination the witness stated that he does not know there was any over voting in his polling unit. That it is the duty of INEC to know if there was over voting.

At the end of the case for the 1st and 2nd respondents, Counsel to the 3rd Respondent M. Shehu Esq. informed the tribunal that he did not intend to lead any evidence, but would rely on the evidence of the 1st and 2nd Respondents.

At the end of the case for all the parties, the Tribunal ordered for the filing of Written Addresses by learned counsel for the parties. Addresses were filed and adopted by counsel.

At the Pre-Hearing Session, the Tribunal distilled the following two issues for determination in this petition:-

(1) ''Whether the 1st Respondent was duly elected by majority of the Lawful votes cast at the election to the office of member of House of Assembly representing Tangaza state Constituency of Sokoto State in the State House of Assembly Election held on the 9th March, 2019''

(2) ''Whether the election of the 1st Respondent is vitiated by reason of non compliance, malpractice and irregularities with the provisions of the Electoral Act, 2010 (as amended) and INEC Regulations and Guide lines for the conduct of the Elections January, 2019.''

In his Written Address, the learned counsel for the Petitioners, ***Chief S.U.Nwoke*** argued the two issues seriatim.

ARGUMENTS ON ISSUE. 1

Arguing Issue 1, Chief S.U. Nwoke submitted that in an election petition, the burden of proof lies on the petitioners. He cited in support the case of **ADEYEMO ONIFADE VS. MUSLIM RAHEEM (1999) LPELR CC/1/2/99 at 21.** That the burden of proof is on he who would fail if no evidence is led in proof of the claim before the court. That the burden is not static but shifts from one side to the other. He relied on the case of **BUKOYE VS. ACTION CONGRESS (2009) 36 WRN 20 at 40 ratio 10.**

He stated that paragraphs 10-15 of the petition states clearly the polling units and wards where irregularities, misconduct and non compliance with the Electoral Act, 2010 (as amended) took place. He referred the tribunal to the evidence of the 1st Petitioner which he said analysed and specified the polling units where elections were not conducted in accordance with the electoral Act. He referred the tribunal to paragraphs 12-18 of his written deposition and stated further that PW1 referred to forms EC8As of all the polling units to show where over voting took place. That PW1 also identified all the documents and exhibits shown to him. He argued that the evidence of PW1 was neither challenged nor discredited by cross-examination. Counsel specifically referred to petitioner's deposition in paragraphs 14-15 which gave figures for over voting but that the said figures were never challenged by the Respondents notwithstanding the fact that the figures were supported by Exhibits-PB19.

Commenting on the evidence of the Respondents, learned counsel submitted that the RW1 is not a witness of truth and the tribunal cannot act on evidence.

He pointed out that the RW1 earlier claimed that he was the only agent of the 1st and 2nd Respondent, and signed the result sheet but later agreed that it was one Shehu Wanzan whose name appeared on the result sheet that signed it as the agent. Counsel cited the case of:-

GBADAMOSI VS. STATE (1991)6 NWLR (pt. 196) 182 at 206-207.

It was counsel's further submission that the evidence of the Respondents has not dislodged the evidence of the petitioners on over voting. He therefore

submitted that where evidence is unchallenged, the court is duty bound to rely and act on it in passing its Judgment. He cited in support the case of **EGBOR & ANOR. VS. OGBEBOR (2015) LPELR 24902(CA).** Counsel argued further that the Petitioners have successfully discharged the burden of prove placed on them and tendered exhibits P to PB19 to prove the authenticity of the oral testimonies of the petitioner on over-voting.

He further submitted that documentary evidence remains the best evidence of its content. He cited in support the case of **EMEJE VS. POSITIVE (2010)1 NWLR (PT.1174)48 at 56.**

He also submitted that where irregularities, malpractices, or non compliance is alleged the party alleging must prove the impact of same on the result of the election. He relied on the case of SIRINI VS. MARDUN (2009) 11 WRN p. 126 at 132-133. He argued that exhibits PB1-PB19 have disclosed series of over voting which was demonstrated by the 1st Petitioner in his deposition and also identified same.

It was counsel's further submission that based on the evidence of 1st Petitioner, PW1 and the documents tendered, there is sufficient proof that the 1st Respondents was not duly elected or returned by majority of lawful votes cast at the election. He urged us to resolve this issue in favour of the Petitioners.

ARGUMENTS ISSUE 2

On this issue learned counsel quoted the provisions of section 138(I)(B) of the Electoral Act to show that election can be questioned on the ground that it was invalid by reason of corrupt practices or non compliance with the Electoral Act. Counsel stated that the malpractice the petitioners are alleging centres on over voting and non conduct of election. For over-voting, counsel said this can be seen in exhibits PB11-PB19. That these documents when admitted become the best evidence which the court cannot disregard. He cited the case of **EMEJE VS. POSITIVE (2010) 1 NWLR (pt. 1174) 48 at 69**. For non conduct of election, counsel referred the tribunal to Tunigara Primary School Polling unit 006 as reflected in Exhibit PB7 for Ruwa-Wuri ward 02 result sheet. He repeated his submission on the RW1, which he said is not a witness of truth and urged us to disregard his evidence.

He cited in support the case of **AYANWALE VS. ATANDA (1988)1 S.C. 1 at 5.** Learned counsel argued that the analysis of the petitioners and the evidence

of RW1 under cross-examination show that the vote of parties exceeded the accredited voters which was not challenged under cross-examination.
That RW3 confirmed during cross-examination that Exhibit PB12 shows over voting in Ruga-Ruwa polling unit-008. Counsel argued that out of the 9 polling units they are challenging, Respondents, only called witness in respect 2 polling units.
That their evidence on the remaining seven polling units was not denied or challenged.
Learned counsel submitted further that where a petitioner has discharged his burden, it shifts to the Respondents to prove otherwise. That if he fails to do so, the court would enter Judgment for the Petitioner. He relied on the case of **C.P.C VS. INEC (2012) ALL FWLR (pt. 617) 605 at 6345.** Learned counsel argued that the petitioners have proved that the evidence of non compliance is substantial and has also substantially affected the result of the election to the state House of Assembly election for Tangaza State Constituency. That the petitioner has shown that if the illegal votes credited to the party from the 9 wards where there is over voting are deducted from the total score of both candidates, the margin of lead will be 521 votes, whereas the total number of registered voters is 5,854. That this analysis was not challenged.
Counsel contended vehemently that the inability of the 3rd Respondent to call any evidence shows that it has admitted the case of the Petitioners.

By way of Reply to the 1st and 2nd Respondents written address, counsel argued that they have abandoned the issues formulated by the tribunal at the close of Pre-hearing and argued their own issue at page two of their written address. According to counsel, by so doing the 1st and 2nd Respondents are taken to have conceded them in favour of the Petitioners. Counsel further argued that the issue of competence of the Tribunal raised by the Respondents is misconceived. That the petitioner is not seeking for nullification of the election but rather a declaration that the election is inconclusive. In closing, counsel urged us to resolve all the issues in this petition in favour of the petitioners.

On his part counsel to the 1st and 2nd Respondents G.O. Uwadiae Esq lumped the two issues formulated by the court as one issue which he argued together. He submitted under this issue that allegation of non compliance must be proved

polling unit by polling unit and by agents who were physically on the ground. He cited the case of CAN VS. NYAKO (2012)11 MJSC 1 at 66. He argued that the evidence of PW2 for the petitioner, shows that he was not at any polling units and did not witness any of the events alleged because he was at the collation centre. He argued further that the evidence of the 1st Petitioner did not state the source of his information as he did not personally observe any of the irregularities complained of. That the 1st Petitioner and his witness admitted under cross-examination that the petitioner had polling agents who were still alive and ought to have called them to testify. He relied on the cases of GUNDIRI VS. NYAKO (2014)2 NWLR pt. 1391 211 at 245. **INEC VS. BUHARI (2008)LPER 23 SUIT NO: CA/J/EP/SN/114B/2008, BUHARI VS. INEC (2008) B6 pt. NSCQR at 693.** He submitted that the evidence on Oath of the two witnesses who were not physically on the ground or polling booth is hearsay and cannot sustain the allegation of non compliance be it over voting or by whatever name called. He contended further that the affidavit of the 1st and 2nd Respondents were not rebutted, and remain the truth. That the court ought to act on such evidence. He cited the case of **IYKE VS. LAWAL (1994)1NWLR (pt. 356)263 at 275.** In closing, he urged the tribunal to dismiss the petition. On Reply on Point of Law raised by the petitioner's counsel, he stated that the issues raised by the court was not abandoned as they were argued under the heading of issue B.

M. Shehu Esq Counsel to the 3rd respondent submitted on issue 1 that the 1st Respondent was not duly elected by majority of lawful votes cast at the election.

He argued that to succeed on this issue, the petitioners must prove this fact by calling credible witnesses who were present when the votes were cast and not those who rely on the testimony of other people. That for a witness statement on Oath to have probative value it must be from direct personnel knowledge of the witness. He cited in support the cases of **ATTAHIR & ANOR. VS. MUSTAPHA & ORS., KAKIH VS. PDP (2014)15 NWLR (pt. 1430)374 at 418-419.** It was counsel's submission that the two witnesses called by the petitioner are not competent to testify as to what transpired in all the polling units, wards and in the various Local Government Area where they were not present. He relied on the case of **OKE VS MIMIKO (2014)13 NWLR (pt**

1388)332 at 376 paragraphs D-F. He urged us to resolve this issue in favour of the Respondent.

On issue two, 3rd Respondent's counsel submitted that the burden of proving the invalidity of an election by reason of non compliance with the Electoral Act is on the petitioner. He relied on the case of **AUDU VS. INEC & ORS. (2010)13 NWLR (pt. 1212)456 at 519.** He submitted that an election will not be invalidated if the non compliance does not substantially affect the result of the election. He cited Section 139(I) of the electoral Act, and also the case of **NGIGE VS INEC (2015) 1 NWLR (pt. 1440)281.** He argued further that the petitioner has not in any way proved to the satisfaction of the court that the election was characterised by irregularities, violence non compliance, nonvoting, corrupt practices, malpractices and criminal acts.

He contended further that Tangaza State constituency has 108 polling units, and the petitioners are complaining of only 12 polling units out of 108 that assuming it is correct that election did not take place in those polling units, an election tribunal will uphold the result and refuse to nullify the election if satisfied that the election was conducted in substantial compliance with the provisions of the Electoral Act. He cited in support the case of **ISIAKA VS. AMOSUN (2016) 2 SC (pt. 1148 at 177**. In conclusion counsel urged the tribunal to resolve issue two in favour of the 3rd Respondent.

Upon a careful examination of the Issues formulated by the learned Counsel for the parties, we wish to observe that the two issues for determination as formulated by the Tribunal at the Pre-Hearing Session are as follows:

(1) ***Whether the 1st Respondent was duly elected by majority of the Lawful votes cast at the election to the office of member of House of Assembly representing Tangaza state Constituency of Sokoto State in the State House of Assembly Election held on the 9th March, 2019; and***

(2) ***Whether the election of the 1st Respondent is vitiated by reason of non compliance, malpractice and irregularities with the provisions of the Electoral Act, 2010 (as amended) and INEC Regulations and Guide lines for the conduct of the Elections January, 2019.***

We will proceed to resolve the issues seriatim.

ISSUE 1:

Whether the 1st Respondent was duly elected by majority of the Lawful votes cast at the election to the office of member of House of Assembly representing Tangaza state Constituency of Sokoto State in the State House of Assembly Election held on the 9th 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.

This 1st issue is that the 1st Respondent was not elected by majority of lawful votes. The particulars of this are said to be over-voting, non conduct of election in some polling units, and snatching of Ballot Box. This is contained in Paragraph 10 of the petition. It is settled law that for over-voting, the petitioner must tender in evidence the statement of result in the appropriate form which will show:-

1. The number of registered voters.
2. The number of accredited voters
3. The number of actual voters.

See **KALGO VS. KALAO (1999) 6 NWLR (pt. 608) 639.** In the instant case even though they were tendered, there was no competent evidence to analyse or link them to the relevant area of claim. The exhibits cannot stand alone. The claim of over voting therefore was not proved.

The next allegation is non conduct of election. This also amount to disenfranchisement. To prove this allegation, the petitioner must call at least one disenfranchised voter from each of the polling unit/booth or unit or station in the affected constituency or district/Area as a witness to testify in the case. See **KAKIH VS. PDP (2010) supra**. This was not done in present case.

For the allegation of snatching of Ballot Box. This is a criminal offence which must be proved beyond reasonable doubt. The petitioner must prove that the respondent committed the offence personally, aided or abetted, counselled, or procured the commissioning of the offence. If it was done through agent it must be shown that Respondent expressly authorized same. Very shortly, we will subject the entire evidence to a more holistic analysis.

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.

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.***

Again, where a ground of the petition is that the Respondent was not duly elected by majority of lawful votes as in the instant case, the petitioner ought to plead and prove the votes cast at the various polling station, 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. See **AWOLOWO VS. SHAGARI (1976) 6-9 S.C. 51.**

In proof of their case, the 1st Petitioner testified for himself and called one other witness. They also tendered some documents which were admitted in evidence as Exhibits PA, PA1-PA10, PB; PB1 to PB19.

Under cross-examination by the learned counsel for the 1st Respondent the 1st Petitioner said he has polling agents in all the polling units. He also admitted that he is a candidate and not an agent. That he has no other result apart from INEC Result. The PW1 also stated that he was a collation agent that they had polling agents in each polling unit and all of the agents are still alive. That he got his facts in his deposition from the collation centre. Still under cross-examination by the learned counsel for the 3rd Respondent, the PW1 stated that his duty is at the collation centre when it is time for collation of results.

A careful examination of the evidence of the 1st Petitioner and the P.W.1 will reveal that both of them were not agents in any polling unit. Neither of them was able to give direct evidence of what transpired in the various polling units which are in issue in this petition.

It is trite law that in proving the facts of events that occurred during the conduct of elections, it is the evidence of categories of persons who had direct experiences of the events that took place during the conduct of election at different levels that are admissible in the court or tribunal. See **HASHIDU VS. GOJE (2003)15 NWLR (pt. 843)352;** and **BUHARI VS. OBASANJO (2005)13 NWLR (pt. 941)1.** Both the 1st petitioner and PW1 said they had agents during the election who are still alive. The question is where are these agents? Why did they not call them to give direct evidence?

All these salient questions are begging for answers. Failure to answer them has left some gaps in the Petitioners' case.

The importance of polling agents at the polling units was re-stated more recently by the Apex Court in the case of: ***Gundiri v. Nyako (2014) 2 NWLR (pt. 1391) 211 at 245***, thus:

> ***"The significance of the polling units' agents cannot therefore be under estimated in the case at hand if the appellants must have the facts to prove their case. The best evidence the appellants could have had was that of the agents at the polling units who were physically on ground and in true position to testify as to what transpired at the election. The consequence of shutting them out for whatever reason is very detrimental to the appellant's case. See the case of Hashidu v. Goje (2003) 15 NWLR (pt. 843) 352 and Buhari v. Obasanjo (2005) ALL FWLR (pt. 273) 1 at 164 165; Oke v. Mimiko (No. 2) (2014) 1 NWLR (pt. 1388) 332 at 376; and Adewale v. Olaifa (2012) 17 NWLR (pt. 1330) 478."***

Again in the case of: ***Boniface Sunday Emerengwa & Anor V. Independent National Electoral Commission & Ors (2017) LPELR-43226(CA)*** the Court of Appeal opined thus:

> ***"It is for this reason that this Court agrees with learned counsel for the 3rd respondent that no other person can competently give evidence on the polling units' results other than the party agents and presiding officers, having regard to the case presented by the appellants in their pleadings at paragraph 23 among others."***

In the case of: ***Barrister Oche Emmanuel & Anor V. Anthony Odeh Ogbu & Anor (2015) LPELR-41775(CA) the*** Court stated thus:

> ***"In our adjectival law, a witness is expected to testify on oath, or affirmation, on what he knows personally. Where a witness gives evidence on what another person told him about events, then it is not direct evidence which has acquired the nickname: hearsay or second hand evidence. In the view of the law, hearsay evidence can only be used to inform a Court about what a witness heard another say and not to establish the truth of an event. See: Sections 37 and 38 of the Evidence Act, 2011; (former Section 77 of the Evidence Act, 2004); F.R.N. v. Usman (2012) 8 NWLR (Pt. 1301) 141; Doma v. I.N.E.C. (2012) 13 NWLR (Pt. 1317) 297; Onovo v. Mba (2014) 14 NWLR (Pt. 1427) 391."***

We have carefully examined the testimony of the Petitioners on the salient aspect of how they attempted to prove that the 1st Respondent did not score the majority of lawful votes. Their evidence is mostly based on what their agents told them. Those pieces of evidence, no matter how impregnable, cannot be of any judicial utility to the Petitioners because they came outside their personal knowledge. They amount to hearsay evidence.

The evidence of the 1st Petitioner is not improved by the merely stating in paragraph 14 of his deposition that he visited some of the polling units personally. The said paragraph is hereunder reproduced for better comprehension:

> *"That in my position as a candidate at the election, I had the opportunity during and at the conclusion of the election to observe the election in may polling units in the nine wards received and review the electoral forms used at the election and heard from my agents from various polling units on the 9th March, 2019 and which I verily believe to be correct that there were series of over voting in some polling unit……''*

From the above paragraph it is clear that the facts contained therein are based on two or three sources of information namely: - Petitioners direct personal knowledge gained from his observations at the polling units, his review of electoral forms which he received, and lastly his information from agents.

It is trite law that where in a statement on oath, account of direct evidence is lumped with information received from other persons, all the evidence given by such

witness will be treated as hearsay and therefore inadmissible. See **GUNDIRI VS. 15 NYAKO (2013) ALL FWLR (pt. 698) 816, 841-842. See also KAKIH VS. PDP (2014) NWLR. (pt.1430) 374 at 418-419** paragraphs H where the Supreme Court held thus:

> *"Once it is found out that a deposition is laced with hearsay, the court cannot ascribe value to it. To do otherwise is like asking the court to sieve the oral evidence (in the form of written statement on oath) of witnesses to determine which part of it is hearsay or not so as to give probative value to the aspect of the evidence that is not hearsay.''*

Furthermore, the 1st petitioner narrated in the same paragraph sundry allegations of over-voting, snatching of Ballot Box, non conduct of election in some polling units, and scores for all the parties in the Polling units complained of.

He failed to differentiate between the facts he gained from his personal knowledge and the ones he received from other sources. The law is that a deponent must distinguished between the two facts. See ***GUNDIRI VS. NYAKO (SUPRA)*** where the Supreme Court explained the position thus:

> ***"It is on record that the witnesses PW1-PW65 being supervisors, their testimonies were based on what they were told by the polling agents appointed by the appellants, as well as what they did witness themselves. In their testimonies, they gave evidence as to what they alleged transpired at the polling station, and the evidence which they did not distinguish between what they saw which is within their knowledge as against that which was told to them by the polling agents. By the provision of section 115 of the evidence Act, the law treats facts derived from personal knowledge differently from information obtained from some other sources. The implication is that a deponent ought not to lump facts derived from personal knowledge with those obtained from other sources without distinguishing between the two....in the absence of any distinction therefore the deduction is to expect the tribunal to sort out which of the mixed up evidence was to be allocated to either the witness or the polling agent.....the entire evidence constitute hearsay and was properly rejected.''***

In view of the above, we hold that the entire evidence of the 1st Petitioner as contained in his deposition and that of the PW1 is hearsay evidence and accordingly rejected.

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 Respondent was not duly elected by majority of the Lawful votes cast at the election to the office of member of House of Assembly representing Tangaza state Constituency of Sokoto State in the State House of Assembly Election held on the 9th March, 2019

Issue 1 is therefore resolved in favour of the Respondents.

ISSUE 2:

Whether the election of the 1st Respondent is vitiated by reason of non compliance, malpractice and irregularities with the provisions of the Electoral Act, 2010 (as amended) and INEC Regulations and Guide lines for the conduct of the Elections January, 2019.

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

Also, a petitioner who alleges in his petition a particular non-compliance has the onus to establish the non-compliance and satisfy the court that it affected the result of the election. See: ***Dzungwe v. Swem 1960-1980 LRECN 313.***

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

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

in accordance with the principles of this Act and that the non-compliance did not affect substantially the result of the election."

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

In the case of: ***Buhari v. I.N.E.C. (2008) 19 NWLR (Pt. 1120) 746, @ p. 442*** the Supreme Court restated 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 the Petitioners were unable to prove the allegations of non-compliance in each of the affected polling units on the balance of probabilities. The evidence of the 1st Petitioner and the PW1 has been declared hearsay which attracts no weight. We agree with the learned counsel for the 1st respondent that the petitioners have failed to prove that even if there was non compliance it did not substantially affect the result of the election. To prove his point counsel drew our attention to the fact that Tangaza State Constituency has a total of 108 polling units, and the petitioner is complaining of just twelve polling units. We agree with him that even if there is non compliance, it did not substantially affect the result of the election.

One of the particulars cited for non compliance is the non-use of card Reader in Tunigara polling unit 006 of Ruwa Wuri ward. It should be noted that non-use of card Reader in an election does not vitiate the election. **See NYISOM VS. PETERSIDE & ORS.(2016) supra.**

Besides, if a card malfunctions, there is provision for manual accreditation. In any case it is the petitioners who ought to prove that no card reader was used in the election. Again this has not been proved by any admissible oral evidence from the petitioners.

In view of the foregoing, we are of the view that the petitioners have not led sufficient and credible evidence to prove that the election of the 1st Respondent is vitiated by reason of non compliance, malpractice and irregularities with the provisions of the Electoral Act, 2010 (as amended) and INEC Regulations and Guide lines for the conduct of the Elections January, 2019.

Issue Two is therefore resolved in favour of the Respondents.

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

HON. JUSTICE P.A. AKHIHIERO
CHAIRMAN

HON. JUSTICE A.N. YAKUBU
1ST MEMBER

HIS WORSHIP S.T BELLO
2ND MEMBER

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