IN THE NATIONAL AND STATE HOUSE OF ASSEMBLY
ELECTION PETITION TRIBUNAL
HOLDEN AT SOKOTO
ON MONDAY THE 9TH 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

PETITION NO: EPT/SKT/HA/31/2019:

THE ELECTION TO THE OFFICE OF MEMBER HOUSE OF ASSEMBLY REPRESENTING YABO CONSTITUENCY OF SOKOTO STATE HELD ON THE 9TH DAY OF MARCH, 2019.

BETWEEN:
1. YABO GARBA BELLO
2. PEOPLES DEMOCRATIC PARTY (PDP) } PETITIONERS

AND
1. ABUBAKAR SHEHU YABO
2. ALL PROGRESSIVE CONGRESS (APC) } RESPONDENTS
3. INDEPENDENT NATIONAL ELECTORAL COMMISSION

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

This judgment is in respect of an election petition filed by the petitioners on the 31st day of March, 2019 challenging the declaration and return of the 1st Respondent by the 3rd Respondent as the winner of the Election held on 9th March, 2019 for the Yabo Constituency of the Sokoto State House of Assembly.

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

i) The 1st Respondent was not duly elected by majority of lawful votes cast at the election, rather, the 1st Petitioner was the candidate who scored the highest number of lawful

votes cast at the election and ought to have been declared winner and returned as duly elected as member representing Yabo Constituency of Sokoto State at the Sokoto State House of Assembly;

ii) The election of the 1st Respondent is invalid by reason of corrupt practices or non-compliance with the provisions of the Electoral Act, 2010 as amended and the Regulations and Guidelines for the conduct of elections January, 2019, etc.; and

iii) The 1st Petitioner was duly nominated by the 2nd Petitioner as a candidate for election to the office of member of House of Assembly representing Yabo Constituency at the Sokoto State House of Assembly at the election held on 9th March 2019 but was wrongly excluded from participating in same by the 3rd Respondent.

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

i) A declaration that the 1st Respondent did not obtain majority of lawful votes cast at the said election hence was not duly returned as elected to the office of member House of Assembly representing Yabo Constituency of Sokoto State;

ii) A declaration that the 1st Petitioner is the person with the majority of lawful votes cast at the said election held on the 9th March, 2019 and ought to have been declared/returned as the person duly elected to the office of member House of Assembly representing Yabo Constituency of Sokoto State;

iii) An Order setting aside the return of the 1st Respondent for being invalid and contrary to the provisions of the Electoral Act, 2010 (as amended) and the 3rd Respondent's Regulations and Guidelines for Election 2019;

iv) An Order setting aside the certificate of return (if any) issued by the 3rd Respondent to the 1st Respondent and in its stead, direct the 3rd Respondent to issue the certificate of return to the 1st Petitioner being the person duly elected as member, House of Assembly representing Yabo Constituency of Sokoto State;

v) In the Alternative, An Order directing the 3rd Respondent to conduct supplementary elections in the polling units/voting points within the constituency affected by over voting, etc., to determine the person with the majority of lawful votes; and

vi) Such further orders that the Honourable Tribunal may deem fit to make in the circumstances.

The Petitioners accompanied their Petition with Witnesses Statements on Oath, List of Documents to be relied on during trial, List of Witnesses to be called during trial and some frontloaded documents which they relied upon.

Upon filing the Petition, all the Respondents were served with the Petition and they entered their appearances.

The 1st and 2nd Respondents filed a Joint Reply on the 14th of April, 2019; and the 3rd Respondent filed their Reply on the 23rd of April, 2019. The Petitioners filed also filed a Reply to the 3rd Respondent's Reply on the 18th of April, 2019.

In proof off the petition, the 1st Petitioner and his subpoenaed witness testified and the following documents were tendered and admitted as exhibits:

1. Nine Forms EC8A for Fakka ward were admitted as Exhibits PA1 to PA9;
2. Seven Forms EC8A for Bingaje ward –Exhibits PB1 to PB7;
3. Six Forms EC8A for Binji ward-Exhibits PC1 to PC6;
4. Nine Forms EC8A for Toronkawa ward-Exhibits PD1 to PD9;
5. Eleven forms EC8A for Ruggar –Iya ward-Exhibits PE1 to PE11;
6. Twenty Forms EC8A for Yabo A ward – Exhibits PF1 to PF20;
7. Twenty Forms EC8A for Yabo B ward-Exhibits PG1 to PG20;
8. Twelve Forms EC8A for Kilgori ward-Exhibits PH1 to PH12;
9. Six Forms EC8A for Birnin Ruwa ward-Exhibits P11 to P16;
10. Ten Forms EC8A for Bakale ward-Exhibits PJ1 to PJ10;
11. Form EC8E(I) for Yabo Constituency was admitted as Exhibit PK;
12. Ten Forms EC8B(I) for ten wards were admitted in evidence as follows:

(i) Torankawa ward-Exhibit PL1;
(ii) Fakka ward-Exhibit PL2;
(iii) Ruggar Iya ward-Exhibit PL3;
(iv) Binji ward-Exhibit PL4;
(v) Yabo A. ward-Exhibit PL5;
(vi) Bingaje ward-Exhibit PL6;
(vii) Birnin Ruwa ward-Exhibit PL7;
(viii) Kigori ward-Exhibit PL8;
(ix) Yabo B ward-Exhibit PL9; and
(x) Bakale ward-Exhibit PL10.

13. Schedule of INEC ballot papers from Registration Areas in Yabo Local Government Area was admitted in evidence as Exhibit PM;
14. Ballot papers listed in the Schedule admitted as Exhibit PM;
15. Ballot Papers from Fakka 01 ward admitted as Exhibit PM1;
16. Ballot Papers in respect of Bingaje 02 ward admitted as Exhibit P.M 2;
17. Ballot papers for Binji 03 ward admitted as Exhibit PM3;
18. Ballot papers from Torankawa 04 ward admitted as Exhibit PM 4;
19. Ballot papers from Ruggar Iya 05 ward admitted as Exhibit PM5;
20. Ballot papers from Yabo A 06 ward admitted as Exhibit PM6;
21. Ballot papers from Yabo B 07 ward admitted as Exhibit PM7;
22. Ballot papers from Kilgori 08 ward admitted as Exhibit PM8;
23. Ballot papers from Birnin Ruwa 09 ward admitted as Exhibit PM9; and
24. Ballot papers from Bakale 010 ward admitted as Exhibit PM10.

The 1st Respondent testified on behalf of the 1st - 2nd Respondents and the 3rd Respondent did not call any witness.

At the close of evidence, the Honourable Tribunal ordered the filing of written addresses by the learned counsel for the parties.

On the 2nd of August, 2019 the learned counsel for the parties adopted their Written Addresses and the matter was adjourned for judgment.

In a nutshell, the Petitioners' case is that the 1st Petitioner who is a member of the Peoples Democratic Party (PDP), 2nd Petitioner, contested for election to the office of member of House of Assembly representing Yabo Constituency at the election held on the 9th of March, 2019 under the platform of the 2nd Petitioner. That on the said date, the 3rd Respondent deployed its staff both permanent and ad-hoc to conduct the polls, collate results and declare/return winners at various polling units, voting points, wards, local government areas, constituency and collation centres within the Yabo Constituency of Sokoto State for the said election.

That the Yabo Constituency of Sokoto State consists of the following ten wards:

i. Bakale
ii. Bingaje
iii. Binji
iv. Birnin Ruwa
v. Fakka
vi. Kilgori
vii. Ruggara Iya.
viii. Toronkawa.
ix. Yabo A.
x. Yabo B.

That the Yabo Constituency has some approved polling units and voting points and the break down are as follows:

i. Bakale ward – 10.
ii. Bingaje – 7.
iii. Binji – 6.
iv. Birnin Ruwa – 6.
v. Fakka – 9.
vi. Kilgori – 12.
vii. Ruggara Iya - 11.
viii. Toronkawa - 11.
ix. Yabo A - 20.
x. Yabo B - 20.

That the candidates that contested the election for the office of member

representing Yabo Constituency of Sokoto State at the Sokoto State House of Assembly that was held on the 9th day of March, 2019 were as follows:

	CANDIDATES	PARTY
1.	RARUK MALAMI YABO	ADC
2.	YAHAYA ZAKARI	AGA
3.	BELLO MUHAMMAD	APA
4.	ABUBAKAR SHEHU YABO	APC
5.	ISA MOHAMMED SABO	DA
6.	KULU MOHAMMED	JMPP
7.	SALIHU NASIRU	LP
8.	SABO YABO	NCP
9.	YUSHAU UMAR	NRM
10.	YABO GARBA BELLO	PDP
11.	LUKUMAN SHEHU	PPN
12.	UMAR YABO MAIGANDI	SDP
13.	AHMAD MUHAMMAD ALIYU	SNP
14.	BELLO AMINU	UDP
15.	YUSUF ALIYU M.	UPN

That upon conclusion of the election and collation of results on 10/3/2019 the Returning Officer of the 3rd Respondent for Yabo Constituency credited the candidates of various participating political parties with having scored the number of votes stated against the name of candidates/political parties in the 4th column of the Table below: -

S/N.	CANDIDATES	PARTY	VOTES
1.	RARUK MALAMI YABO	ADC	17
2.	YAHAYA ZAKARI	AGA	14
3.	BELLO MUHAMMAD	APA	01
4.	ABUBAKAR SHEHU YABO	APC	16215
5.	ISA MOHAMMED SABO	DA	09
6.	KULU MOHAMMED	JMPP	02
7.	SALIHU NASIRU	LP	05
8.	SABO YABO	NCP	01
9.	YUSHAU UMAR	NRM	01
10.	YABO GARBA BELLO	PDP	12773
11.	LUKUMAN SHEHU	PPN	12

12.	UMAR YABO MAIGANDI	SDP	17
13.	AHMAD MUHAMMAD ALIYU	SNP	34.
14.	BELLO AMINU	UDP	04.
15.	YUSUF ALIYU	UNP	02

That from the table, they claimed that the 1st Petitioner scored a total of 12,773 votes, while the 1st Respondent scored 16,215 votes.

That on the basis of the scores credited to the candidates, the Returning Officer of the 3rd Respondent for Yabo Constituency returned the 1st Respondent as the person duly elected by majority of lawful votes cast to the office of member House of Assembly representing Yabo Constituency at the Sokoto State House of Assembly.

The Petitioners maintained that the 1st Respondent did not score 16,215 lawful votes as declared by the 3rd Respondent and was not validly returned as the person duly elected as member House of Assembly to represent Yabo Constituency of Sokoto State at the Sokoto State House of Assembly. That it was the 1st Petitioner who scored the highest number of lawful votes cast at the election and ought to have been declared winner and returned as the duly elected member representing Yabo Constituency of Sokoto State.

That the election of the 1st Respondent is also invalid by reason of corrupt practices or non-compliance with the provisions of the Electoral Act, 2010 (as amended) and the Regulations and Guidelines for the conduct of elections January 2019, etc.

That the 1st Petitioner was duly nominated by the 2nd Petitioner as a candidate for election to the office of member House of Assembly representing Yabo Constituency at the Sokoto State House of Assembly at the election held on 9th March 2019, but was wrongly excluded from participating in same by the 3rd Respondent.

That the 3rd Respondent credited the Petitioners and the 1st & 2nd Respondents with scoring the following votes in the ten wards within the Yabo Constituency –

i.	Bakale ward – APC:	1192.	PDP:	1162.
ii.	Bingaje ward- APC:	1271	PDP:	1146.
iii.	Binji ward – APC:	1105	PDP	942.
iv.	Birnin Ruwa – APC	549	PDP	529.
v.	Fakka ward– APC	1565	PDP	1229.
vi.	Kilgori ward – APC	1236	PDP	1456.
vii.	Ruggara Iya - APC	1740	PDP	1529.
viii.	Toronkawa – APC	1767	PDP	1379.
ix.	Yabo A ward – APC	2713	PDP	1798.
x.	Yabo B ward - APC	2977	PDP	1703.

That the scores recorded in the 3rd Respondent's forms EC8A(I), EC8B(I), EC8C(I), EC8D(I) and EC8E(I) resulting in the return of the 1st Respondent when compared

with the actual ballot papers cast or used at the said election demonstrates that the 3rd Respondent did not reflect the true result of the election.

That from the reports of their agents all over the constituency the votes actually scored by the candidates at the polling units within the 10 wards, contrary to the result as published and declared by the 3rd Respondent, are as follows:

i.	Bakale ward – APC: 924	PDP: 1402.
ii.	Bingaje – APC: 1087	PDP: 1146.
iii.	Binji – APC: 1005	PDP: 1070.
iv.	Birnin Ruwa – APC: 321	PDP: 721.
v.	Fakka – APC: 1236	PDP: 1480.
vi.	Kilgori – APC: 931	PDP: 1560.
vii.	Ruggara Iya - APC: 1367	PDP: 1653.
viii.	Toronkawa - APC: 1289	PDP: 1592.
ix.	Yabo A - APC: 2215	PDP: 2180.
x.	Yabo B - APC: 2349	PDP: 2087.

That the total votes for the 1st & 2nd Respondents are 12724 votes and that of the Petitioners is 14921 votes.

That after a recount of all the ballot papers used at the said election and reckoning with all necessary deductions for unlawful votes, additions of lawful votes, corrections of errors in calculation/collation and or cancellation of all invalid/unlawful votes from the votes of the Petitioners and the 1st & 2nd Respondents, the Petitioners would emerge with at least a total of 14921 lawful votes as against 12724 votes for the 1st & 2nd Respondents.

That the Petitioners having scored the majority of lawful votes cast at the election for member House of Assembly representing Yabo Constituency at the Sokoto State House of Assembly should have been returned as duly elected by the 3rd Respondent.

That voting was abruptly stopped midway and all persons perceived to be sympathetic to the Petitioners were prevented from voting at Bakale Yauta/Dorai polling unit of Bakale ward by the thugs or miscreants sympathetic to the 1st and 2nd Respondents. That out of the multitude of registered voters at this unit only very few got the chance to vote, while several persons registered to vote at this unit were disenfranchised unlawfully and the 3rd Respondent had a duty to conduct fresh election at this unit.

That the 3rd Respondent's officers presiding at Adigai/Makera polling unit of Bingaje ward allowed malpractices such as open vote buying, multiple voting, stuffing of ballot boxes with pre-thumb printed ballot papers, voting by persons not duly accredited and voting on behalf of or in the name of dead or relocated persons. That the registered and genuine voters at the polling unit were denied opportunity to exercise their franchise while unregistered or unlawful votes were cast in their place. That the 3rd Respondent had a duty which it failed to discharge to cancel the results of this unit and conduct fresh election.

That at Lambogel/Busa polling unit in Bingaje ward, the presiding officer failed, refused or neglected to count and credit valid votes cast in favour of the Petitioners thus giving the respondents an undue advantage over the petitioner. That the votes actually cast in favour of the Petitioners at this unit far exceeded the votes credited in their favour in the form EC8A (I) issued for the said unit.

That in the course of the election at Sabara K/Gari in Bingaje ward, violence erupted and disrupted the process which caused many intending registered voters to leave the unit for fear of being harmed and thus prevented them from voting in favour of candidates of their choice.

That the conduct of the agents of the Respondents at Shiyar Yabo polling unit in Binji ward in forcefully intercepting female voters and collecting their voter's card to cast votes on their behalf in favour of the 1st and 2nd Respondents caused a considerable number of female voters to leave the unit without exercising their franchise. That an attempt by the agents of the Petitioners to call the said agents to order led to an unpleasant altercation and the 3rd Respondent has a duty to cancel the result of the election at this polling unit.

That at Kibiyare polling unit of Binji ward, intending voters were thoroughly intimidated by thugs or miscreants sympathetic to the 1st and 2nd Respondents who were violently disposed and for no just cause descended on the agents of the Petitioners at the unit by thoroughly beating them up to prevent any dissent. That for fear of their safety, the intending voters left the polling unit without casting their votes. That at Tilen Galabu polling unit in Binji Ward a fight instigated by one Dogo Ali a member of the 2nd Respondent caused the election process to be disrupted and several intending voters were thus compelled to leave the unit without exercising their franchise.

That at Gidan Basa/Rinaye/Manawa polling unit of Birnin Ruwa ward election could not be conducted due to violence which erupted there. That the 3rd Respondent in appreciation of this fact directed supplementary election to be held at this unit and on 23/3/2019 the supplementary election was conducted for only the Governorship office excluding the office of member House of Assembly which was equally affected by the violence.

That all the registered voters at this polling unit were unlawfully disenfranchised by the 3rd Respondent, just as the 1st Petitioner was unlawfully excluded from election at this unit. That the 3rd Respondent had a duty which it failed to discharge to a conduct supplementary election for this polling unit.

That at Birni Usman and Koyo/Olo Rawa/Gidan Hammadu 003 polling units in Fakka ward there was so much over voting that the ballot papers for the elections to the office of member House of Assembly were exhausted, while those of the governorship election were still available at the unit. That the presiding officers at the units could not offer any explanation for the shortfall in ballot papers. That this development prevented many intending voters from exercising their franchise and the 1st Petitioner was unlawfully excluded in

contravention of the provisions of the Constitution, Electoral Act and Regulations & Guidelines issued by the 3rd Respondent for the conduct of the 2019 general elections.

That the votes credited were in favour of the 1st & 2nd Respondents at Mazuru Gidan Galma and Shiyar Magaji Maizane polling units of Ruggar Iya ward where the ballot papers would demonstrate this fact clearly.

That at Danballo of Ruggar Iya ward polling unit there was no proper accreditation of voters and the presiding officer allowed votes to be cast using temporary voter's cards and voters cards of deceased's persons. That the 3rd Respondent had a duty to conduct a supplementary election at this unit to determine the majority of lawful votes as between the Petitioners and the 1st and 2nd Respondents.

That the election at Zezi Rugaldu polling unit of Ruggar Iya ward was violently disrupted following the visit to that unit by one Alhaji Abubakar Umar Yabo, the member-elect for the House of Representatives. They said that this prevented several intending voters from exercising their franchise.

That at Gomara/Kaura Taba Ketare polling unit of Ruggar Iya ward, the presiding officers failed to properly accredit voters and this led to votes being cast using the voter's cards of known deceased persons.

The Petitioners stated that there was failure of accreditation leading to over voting at the following polling units within the constituency:

a. Shiyar Fegin Rafi polling unit of Yabo A ward;

b. Shiyar Magaji G/S/Muza polling unit; and

c. Shiyar Ajiya/G/Sarkin Kabi polling unit.

That the 3rd Respondent is under a duty to cancel the election and the votes recorded for candidates at these units being unlawful.

That at Bayan Bias/Gidan Gamji of Toronkawa Ward, Gela-Tofarka of Toronkawa Ward and Shiyar Ubandawaki Glima polling unit of Yabo A ward, the Petitioners were also unlawfully excluded from participating in the election to the office of member House of Assembly representing Yabo Constituency by the 3rd Respondent. That this was due to the unavailability of ballot papers for the election into the House of Assembly while ballot papers for the other offices were available for use by intending voters.

That at the polling units at Dagwarar Dikko, Toronkawa Shiyar Lelaba and Gamagama in Toronkawa Ward, agents and officials of the Petitioners were beaten and thrown out of the unit and were not allowed to monitor the elections. That in their absence, the presiding officers and agents/supporters of the respondents had ample opportunity to unlawfully thumb print ballot papers, allocate and inflate votes in favour of the Respondents to give them an unfair advantage over the Petitioners.

That at Bulbuli polling unit of Toronkawa Ward, election was disrupted by one military man called Bello Soja Sanyinna and prospective voters left the unit without casting their votes. The Petitioners stated that these infractions, non-compliances, malpractices and or breaches were widespread throughout the Yabo Constituency and substantially affected the fairness of the election and fortunes of the Petitioners.

As earlier stated, the 1st Respondent testified on behalf of the 1st & 2nd Respondents and the 3rd Respondent did not call any witness.

In his evidence the 1st Respondent stated that his testimony was based on what he personally witnessed or heard from his party agents during the Yabo, State House of Assembly Elections held on 9th day of March, 2019 and the collation of results.

He said that upon perusal of the respective forms EC8A, EC8A (I) VP, EC8B, EC8D & EC8E of the various polling units, wards and constituency and the information secured from his party agents, the evidence of the Petitioners are not true. He maintained that he lawfully scored the 16,215 votes as declared by the 3rd Respondent and was validly returned as the elected member for Yabo House of Assembly Constituency. That he was elected by the majority of the lawful votes cast at the election, while the petitioner came second.

He said that the election was conducted free of any malpractices, corrupt practices or non-compliance with the Electoral Act and Guidelines and Rules made thereunder. He stated that the 1st petitioner was not excluded from the election. According to him, the scores recorded and declared by the 3rd Respondent are the actual scores of the candidates, including the 1st Petitioner and the 1st Respondent. He said that the scores were as recorded and declared in forms EC 8 B (i) of the respective Registration Areas/Wards of the Local Government, namely:

1. Bakale-APC 1192, PDP 1162
2. Bingaji--APC 1271, PDP 1146
3. Binji- APC 1105, PDP 942
4. Birnin Ruwa- APC 549, PDP 529
5. Fakka- APC 1565, PDP 1229
6. Kilgori- APC 1236, PDP 1456
7. Ruggar Iya- APC 1740, PDP 1529
8. Toronkawa-APC 1767, PDP 1379
9. Yabo 'A'-APC 2713, PDP 1798
10. Yabo 'B'-APC 2977, PDP 1703.

TOTAL-APC 16215, PDP 12773.

He maintained that the election went smoothly in the polling units and nobody was disenfranchised. That both agents of the Petitioners and their agents signed forms EC8A in Polling Unit 002 of Bakale Registration Area and Polling Unit 007 of Bingaje ward. He

stated that the votes cast for each candidate in the said polling units were counted and recorded by the 3rd Respondent. He denied paragraph 25 of the petition and stated that nobody was prevented from voting in Adigai/Makera polling unit in Bingaje Ward and that among the 453 registered voters, 237 were accredited and 230 voted, so substantial number of voters voted. Also, that agents of the petitioners and the 1st & 2nd respondents signed form EC8A in Polling Unit 006 of Bingaje ward.

Again he denied paragraph 27 of the petition and stated that no such incidents alluded to by the petitioners occurred at the polling unit and that among the 595 registered voters, 334 were accredited and voted, so substantial number of voters voted and agents of the petitioners and the respondents signed form EC8A in polling unit 005 of Binji ward.

He denied paragraph 28 of the petition and stated that no such thing as alleged by the petitioners happened at the polling unit and that among the 430 registered voters, 262 were accredited and agents of the petitioners and respondents signed form EC8A 006 of Binji ward.

He denied paragraph 29 of the petition and maintained that there was a clear winner of the election at Shiyar Yabo polling unit in Binji Ward and as such there was no need for a re-run election.

He denied paragraph 31 of the petition and stated that Polling Unit 003 stated by the Petitioners is not Koyo/Koyo/Olobawa/Gidan Hammadu but Shiyar Shamaki. That there are 463 registered voters in the polling unit, 460 ballots were issued, 238 were accredited and voted, so the number of accredited voters is still less than the issued ballot papers. Also, both agents of the petitioners and the respondents signed form EC8A 007 of Fakka ward.

Again, he denied paragraph 32 of the petition and stated that neither the 1st petitioner nor any voter was excluded or prevented from voting.

He denied paragraph 33 of the petition and stated that his votes were never inflated at any of the polling units. That all the votes credited to him were votes he lawfully scored at the election.

He denied paragraph 34 of the petition and stated that all the persons who voted at Danballo of Rugar Iya ward polling unit are registered voters belonging to the polling unit who used their genuine PVCs for accreditation.

He also denied paragraph 35 of the petition and stated that no disruption occurred at Zezi/Rugaldu polling unit.

He denied paragraph 36 of the petition and stated that accreditation was properly done at Gonara/Kaura Taba/Ketare polling unit and the voters used their genuine PVCs.

He denied paragraph 37 of the petition and stated that there was proper accreditation at the three polling units mentioned therein without any incident of over voting. That Shiyar fegin rafi has three voting points (VP), and the petitioners did not indicate which of the voting point/unit or code they are challenging.

He denied paragraph 38 of the petition and stated that the election was conclusive and there was no basis for any supplementary election.

He denied paragraphs 39 & 40 and stated that the 1st petitioner participated in the election throughout. That there are 352 registered voters in the polling unit, 450 ballots were issued, 352 were accredited and voted, so there was substantial voter's participation in the election at Bawa Bisa/Gidan Gamji 008 polling unit. That the agents of the petitioners and respondents signed the form.

He denied paragraph 41 of the petition and stated that there were adequate ballot papers at polling units 001, 003 & 006 for Torankawa Shiyar Lelaba, Gama-Gama-Gama and Dagwargwa Dikko respectively of Torankawa ward. He also denied paragraph 42 of the petition and stated that no disruption occurred at this polling unit and that all the voters who came to vote did so.

He denied paragraph 43 of the petition and stated that the election in the Yabo Local Government Constituency went on smoothly and in substantial compliance with the Electoral Act and Guidelines and Regulations made thereunder.

As earlier stated, the 3rd Respondent did not lead any evidence in defence of this petition.

At the close of evidence, the learned counsel for the Petitioners and the 1st, 2nd and 3rd Respondents filed their Written Addresses.

In his Final Written Address dated and filed on the 5th of July, 2019, the learned counsel for the 1st and 2nd Respondents, ***Nuhu Adamu Esq.*** identified the three issues for determination as adopted at the Pre-Hearing Session as follows:

1. ***Whether the Petitioners have led sufficient and credible evidence 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, House of Assembly representing Yabo Constituency of Sokoto state held on the 9th day of March, 2019;***
2. ***Whether the Petitioners have led sufficient and credible evidence to prove that the election of the 1st Respondent was invalid by reason of corrupt practices or non-compliance with the provisions of the Electoral Act (as amended) and other Regulations and Guidelines for the conduct of the said elections; and***
3. ***Whether the Petitioners have led sufficient and credible evidence to prove that the 1st Petitioner was duly elected or returned by majority of lawful votes cast at the election into the office of Member House of Assembly representing Yabo Constituency of Sokoto State held on the 9th day of March, 2019.***

Before arguing the issues for determination, the learned counsel for the 1st and 2nd Respondents drew the attention of the Tribunal to the fact that under paragraph 44 of the petition, the Petitioners pleaded results sheets to wit: FORMS EC8 A (1), EC8 B (1), EC8 C (1), EC8 D (1) and EC8E (1). He said that at the trial however, the Petitioners tendered from the bar a different set of forms as follows: EC8A, EC8B, EC8C, EC8D and EC8E. He said that the Petitioners failed to plead the serial numbers of these new forms.

He therefore submitted that all the result sheets tendered by the Petitioners were not pleaded and therefore ought to be discountenanced by the tribunal and he urged the tribunal to so hold. On this point, he referred the Tribunal to the following authorities:

Orji v. Ohuabunwa (2007) ALL FWLR (Pt 351) 1533 at 1536 paragraph E-F where the Court held thus:

> ***"It is trite law, that wrongly admitted evidence not having been pleaded must be expunged from the record because any evidence not pleaded goes to no issue."***

See also the case of: ***Allied Bank Nig. Ltd. V. Akubueze (1997) 6 NWLR (Pt 509)*** where the Court opined thus:

> ***"Although, it is the duty of counsel to object to inadmissible evidence and the duty of the trial court to refuse to admit such inadmissible evidence, if notwithstanding this, evidence not pleaded or which is contrary to the pleadings is inadvertently admitted, it is the duty of the court to disregard it as irrelevant to the issue properly raised by the pleadings and thus to treat such inadmissible evidence as if it had never been admitted." PER IGUH, J.S.C.***

See also: ***CDC Nig. LTD v SCOA Nig LTD (2007) VOL, 30 WRN 81 at 118-119 lines 45-5 (SC)***.

In the case of: ***OKEREKE V. YARADUA (2008) 12 NWLR (1100) 95 @ 140-141,*** the Supreme Court opined as follows:

> ***"For our purposes here, a petitioner was required to file the copies or list of all or every document he intended to rely on at the hearing of his petition, along with the petition. Of course before filing the said document or list, the Petitioner must plead facts in the petition to which the document/s in question related and since the averments in the petitions are the pleadings, such documents must be mentioned therein. Where therefore a petitioner in his pleadings specifically named or stated the documents he intended to rely on at the hearing of his petition and filed same along with this petition as required by the provisions of paragraph 1 (1) (c) above, he cannot and would not be permitted to tender any other document not listed or accompanied in the petition as it would be outside his pleadings. In law, where a party specifically pleads certain documents to establish his case, he cannot during the trial rely on documents other than those specifically pleaded, see also HASHIDU V. GOJE (2006) 2 EPR 789 @ 816"***

He therefore submitted that, Exhibits P1-P11 were wrongfully admitted in evidence, and urged the Tribunal to expunge them relying on the case of: ***BUHARI V. INEC & OTHERS (2008) LPELR-814 (SC)*** where Tobi JSC held thus:

> ***"… a document which is inadmissible but erroneously admitted, can be expunged from the record at the stage of writing judgment"***

Thereafter, learned counsel articulated his arguments on the issues for determination.

ISSUE ONE:

Whether the Petitioners have led sufficient and credible evidence 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, House of Assembly representing Yabo Constituency of Sokoto state held on the 9th day of March, 2019

Here, learned counsel submitted that the Petitioners merely assembled facts under paragraph 17 of the petition and paragraph 20 of the 1st Petitioner's witness statement on oath and attempted to link same to prove that the 1st Respondent did not score the majority of lawful votes cast at the election.

He said that the Petitioners did not lead any evidence to justify the claim purportedly pleaded under paragraph 18 of the petition. That in the said paragraph they only recorded figures which were the figment of their imagination and came up with a mock election result tending to show that the 1st Petitioner was entitled to be declared and returned as the winner. He said that the Petitioners did not lead any credible evidence to show that the election result that was recorded in the exhibits as listed below were not lawful votes cast at the election:

Exhibits (i) P.A.1 – P.A.9 (ii) P.B.1-P.B.7 (iii) P.C.1-P.C.6 (iv) PD1 – P.D.9 (v) P.E.1-P.E-11 (vi) P.F.1.-P.F.20 (vii) P.G.1 – P.G.20 (viii) P.H.1-P.H.12 (ix) P.1.1.-P.1.6 and (x) P.J.1 – P.J.10.

He further submitted that the Petitioners did not also prove the source of the purported election result pleaded under paragraph 18 and deposed to under paragraph 21 of the witness statement on oath respectively. He said that this is because the polling agents that represented the Petitioners at the various polling units making up the constituency were not in court to give evidence to show how the results in paragraph 18 of the petition were arrived at. He said that under cross examination, the 1st Petitioner admitted that none of the scores of the other parties/candidates that participated in the election were included. That it was held in the case of: ***OKE & ANOR V. MIMIKO & ORS (2013) LPELR-21368 (SC)*** thus:

> ***"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 the state. Even though the 1st Appellant was at liberty to perform the duty of poling agent for himself and his party, being human, he can only be physically present at one polling unit at a given time and so cannot perform the same task with the same title as polling agent in any or all the other polling units, so when the evidence is to be provided as to what happened in disputed units other than the one where he was physically present, he is not qualified to testify thereto. He said that this is because section 45 of the Electoral Act expects evidence directly from the relevant field officer of the required polling unit. Therefore when PW 45 set out to testify as state agent armed with all the evidence of what occurred throughout the state***

in relation to each polling unit, he did so under the misguided understanding of what the electoral act had prescribed."

Counsel also relied on the following decisions: ***Buhari V. Obasanjo (2005) 13 NWLR (pt.941) 1 at 315; A.C.N V. Nyako (2012) 11 MJSC1 reported as A.C.N V. Lamido (2012) 8 NWLR (pt.1303) 560, per Odili JSC.***

He submitted that the Petitioners merely subpoenaed the Electoral officer for Yabo Constituency and tendered ballot papers which were admitted as Exhibits PM1-PM10 and no attempt was made by Petitioners to recount the ballot papers in open court and juxtapose any counted figures with the results contained in the various result sheets which are before court.

He also submitted that the Petitioners have abandoned paragraph 19 of the petition which was drafted in futuristic tense and he urged the tribunal to so hold. That in effect the Petitioners only dumped the ballot papers at the tribunal and he urged us to so hold relying on the following cases as highlighted below.

In the case of ***Ucha v Elechi (2012) ALL FWLR (Pt. 625) 237 at259*** The Supreme Court held thus:

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

See also the case of***: Oyegun v Igbinedion (1992) 2 NWLR 9pt.226) 747@761, paras G-H,*** where the Court of Appeal held thus:-

"The duty of any Court is to decide between the parties on the basis of what has been demonstrated, tested, canvassed and argued in court. It is not the duty of the court to do cloistered justice by making an enquiry into the case outside the Court even if such enquiry is limited to the examination of documents which were in evidence."

Again he referred to the case of ***Sijuade v Oyewole (2012) 11 NWLR (pt.1311) 280@314-315*** where the Court of Appeal observed thus:-

"Often counsel run into difficulties when documents are tendered in a bunch by consent or through the Bar. The fact that a document is tendered through the Bar does not mean that the document should not be pleaded or that evidence should not be led as to what the party wants the document to be used for."

Also in the case of ***Atikpekpe v Joe (1999) 2 LREN 302@324 paras D-H,*** the Court of Appeal held thus:-

"…The role of the Judge is adjudicatory and not investigatory. By its agreement to go into Exhibits P1-P7 or P8-P14 to fish out the evidence, the Tribunal abandoned its role of unbiased umpire and descended into the arena on the side of first Respondent

for reasons not apparent on the record. It finally awarded 44,036 to the first respondent. 5,235 to the appellant and was ominously silent on votes scored by the APP Candidate, Ogboduwa, first petitioners witness, The votes the Tribunal collated are not stated on the face of its records and therefore not in evidence. The tendering of Form EC8A without adducing evidence on their content is fatal to the first respondent's case at the trial. It is not the duty of the Court to examine documents outside the Court."

Learned counsel submitted that neither the subpoenaed witness (the Electoral Officer for Yabo) nor the 1st Petitioner led any evidence to demonstrate in open court the alleged discrepancy between the declared result and the ballot papers tendered or any information received from the purported agents of the Petitioners. He referred to the case of: ***Uchechukwu v. Okpalake (2010) LPELR 5041*** where the Court of Appeal held thus:

"The appellants also contended that the 1st Petitioner won the election by majority of lawful votes at the election. To my mind, the evidence to be led in proof of such assertion which seems to be questioning the figures or scores of candidate at the election must be evidence coming directly from the officers who were at the election ground where votes were cast, counted and or collated" per SANUSI JCA.

Counsel submitted that there is a presumption of genuineness, authenticity and correctness of election result declared by the 3rd Respondent in favour of the 1st Respondent and the burden is on the Petitioners to lead credible evidence to rebut the presumption. He submitted that throughout the length and breadth of the Petition, the witness statement on oath and all the exhibits tendered and admitted, the Petitioners have failed to lead any credible evidence to rebut the presumption of correctness or authenticity and genuineness of the result declared by the 3rd respondent and he urged the tribunal to so hold. He referred the tribunal to the case of: ***Ogu v Ekweremadu (2006) 1 NWLR (pt.961) 255 @ 282 paras.F-G*** where it was held that:-

"The return of the 1st Respondent raises in favour of all the Respondents the presumption of regularity and correctness of the result so declared. It is therefore not incumbent on the Respondent to tender evidence in proof of the due return of the 1st respondent in the circumstance."

Also he relied on the case of: ***Ucha v Elechi & ors (supra)*** where the Court stated 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 with provisions of the Electoral Act, 2010 (as amended), 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 and 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."

Again he relied on the case of*: **Buhari v Obasanjo (2005) 13 NWLR (pt.941) 1 @ 193*** wherein ***Belgore JSC*** (as he then was) said:

> ***"Once the Electoral Commission announces the result of an election it is presumed correct and authentic and the petitioner who alleges the opposite must offer clear and positive proof that the result is incorrect and not authentic..."***

He urged this Tribunal to hold that the Petitioners have not placed or pleaded sufficient particulars to support or prove Ground One of the petition. He submitted that where the Petitioners failed to provide sufficient particulars to prove a ground in an election petition such ground is deemed abandoned and he urged the tribunal to so hold.

He submitted further that, Reliefs 1 & 2 sought by the Petitioners is dependent on Ground One of the Petition. That since Ground One of the petition has failed, Reliefs 1 & 2 cannot be sustained and he urged the tribunal to so hold.

ISSUE TWO:

Whether the Petitioners have led sufficient and credible evidence to prove that the election of the 1st Respondent was invalid by reason of corrupt practices or non-compliance with the provisions of the Electoral Act (as amended) and other Regulations and Guidelines for the conduct of the said elections

Learned counsel submitted that this ground was not accompanied by sufficient particulars to warrant the Tribunal to void the election based on it. He submitted that Yabo Constituency has about 114 polling units, as pleaded under paragraph 9 of the petition. That the Petitioners are complaining of non-compliance with the Electoral Act and INEC Guidelines in only nine (9) polling units of the Yabo Constituency out of about 114 polling units where election was held. That the polling units complained about by the petitioners are as listed under the following paragraphs of the petition: (i) 22 (ii) 24 (iii) 31 (iv) 33 (v) 34 (vi) 36 (vii) 37 (viii) 37(b) (ix) 37(c).

He submitted that during the hearing of the petition, the Petitioners failed to prove the allegation of non-compliance which he said must be proved beyond reasonable doubt, and that the non-compliance if any, had adversely affected the result of the election substantially. He referred to section 139(1) of the Electoral Act, 2010 (as amended) which provides 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."***

He submitted that the petitioners did not plead the total number of registered voters, the total number of accredited voters and the scores of each party that participated in the election in the polling units complained of in order to be able to prove how the alleged non-compliance might have affected the entire election of the constituency. He said that the Petitioners only tendered results sheets from the bar and no evidence was adduced to establish any corrupt practices and or non-compliance in respect of any exhibits attributed to any of the polling units complained of. That the Petitioners only dumped and abandoned all the results sheets without more. He maintained that the onus is on the Petitioners to prove the allegations of corrupt practice and non-compliance.

Counsel referred to the case of: ***Yusuf v Obasanjo (2005) 18 NWLR (Pt. 756)*** where the Court of Appeal per Salami JCA (as he then was) at page 181 restated the principle when he declared:

> ***"Further on this ground of the petition, an election shall not be invalidated merely for the reason that it was not conducted substantially in accordance with the provisions of the Electoral Act. It must be shown that the non-compliance had affected the result of the election. The petitioner must not only show non-compliance but must also demonstrate that the votes attracted or scored through the non-compliance affected the result of the election..."***

Again, he relied on the case of: ***Ojukwu v Yar'adua,*** where Tabai JSC (as he then was) elaborately stated the position of the law as follows:

> ***"This in my view accords with common sense. It is inconceivable to suggest that their bare assertion of non-compliance in an election petition without more is sufficient pleading to sustain the petition, if that were so; then practically every election petition would succeed, in that there is, in practical terms, no election without any form of non-compliance or the other. That obviously cannot be the purpose of the provisions of section 145(1) (b) and 146 (1) of the Electoral Act. I am firmly of the view that for the purpose of sustaining a petition on the allegation of non-compliance with the provisions of the Electoral Act. There must be assertions in the petition that the non-compliance substantially affected the result."***

He submitted that during the trial the Petitioners did not adduce credible evidence to prove that the corrupt practices and non-compliance allegedly committed in nine polling units out of 114 polling units of the Yabo constituency have substantially affected the results of the election to the disadvantage of the 1st Petitioner. On this he urged the tribunal to resolve this proposition in the negative and against the Petitioners.

He further submitted that the Petitioners mixed the allegations of corrupt practices and non-compliance which were clearly directed at the officials of the 3rd Respondent with allegations of thuggery or violence under the following nine (9) paragraphs of the petition: (i) 21 (ii) 25 (iii) 26(iv) 27 (v) 28(vi) 29 (vii) 35 (viii) 41 (ix) 42.

He submitted that these are offences under the Electoral Act which must be proved beyond reasonable doubt by the Petitioners who must adduce sufficient particulars and

credible evidence in order to link the acts of thuggery to the express authorization of the Respondents.

Counsel submitted that during the trial, the Petitioners did not lead credible evidence to prove the commission of the alleged offences of thuggery and violence beyond reasonable doubt. Neither did they link the alleged acts of thuggery and violence to the express authorization of the 1st Respondent. He referred the tribunal to the case of ***Yusuf v Obasanjo (2005) 1 LRECN at P.80 B-D*** where the court held thus:

> ***"The intimidation, thuggery, violent disruption of election led to the votes being "captured" and not won or scored as alleged by the petitioners had not been proved as required by law that is being of criminal nature, they should be proved beyond reasonable doubt and not on the balance of probability."***

He also referred to the case of: ***Buhari v Obasanjo (Supra)*** where it was held:-

> ***"Allegations of the commission of crime must be proved beyond reasonable doubt. Consequently, allegations of manipulation or alteration of election result or acts of violence during election, which are criminal offences, must be proved beyond reasonable doubt whenever they are made in an election petition. It is therefore inappropriate for a Court to infer that a particular candidate at an election was responsible for the violent acts committed during an election in the absence of evidence which shows beyond reasonable doubt that he was responsible."***

Also he referred to the case of ***Aja v Odin (2011) 5 NWLR (pt. 124) 509 @ 54*** where the Court of Appeal, held as follows:-

> ***"To my mind, it will be rather out of place to hold a candidate in an election responsible for any of corrupt practice, intimidation, thuggery or confusion caused by others unless it is shown clearly that he directed or orchestrated such acts. In other words, the people responsible for any unwholesome act during an election must act on the instruction of a candidate or be shown to be his agents."***

He submitted that the Petitioners have failed to lead credible evidence to prove that the alleged act of thuggery committed in only nine (9) polling units mentioned in the nine (9) paragraphs listed above, has affected substantially the result of the election conducted for the entire Yabo Constituency of Sokoto State House of Assembly.

See the case of: ***Ogu v Ekweremadu (2006) 1 NWLR (pt. 961) 255@281*** where the court exposited ***inter alia*** thus:

> ***"…It must be shown that the act adversely affected the conduct of the election and further that the act substantially affected the result of the election."***

In conclusion, he submitted that the Petitioners have failed to lead any credible evidence to prove Ground two of the Petition and he urged the Tribunal to so hold.

ISSUE THREE:

Whether the Petitioners have led sufficient and credible evidence to prove that the 1st Petitioner was duly elected or returned by majority of lawful votes cast at the election into the office of Member House of Assembly representing Yabo Constituency of Sokoto State held on the 9th day of March, 2019.

Curiously, the learned counsel for the 1st and 2nd Respondents did not argue this issue in his written address. Rather his last argument was on whether the 1st Petitioner was duly nominated by the 2nd petitioner as a candidate for election to the office of member of the House of Assembly representing Yabo constituency at the Sokoto state house of assembly at the election held on 9th March, 2019 but was wrongly excluded from participating in same by the 3rd Respondent. No such issue was formulated at the Pre-Hearing.

Although parties are at liberty to formulate their own issues, by virtue of Paragraph 18 (7) (c), the Tribunal is empowered to settle the issues at the Pre-Hearing session. When the Tribunal has settled the issues, such shall be the issues for determination at the trial of the petition. See ***Order 18 Rule 2 (2) of the Federal High Court Civil Procedure Rules, 2009*** which is applicable to the Tribunal by virtue of ***Paragraph 54 of the 1st Schedule to the Electoral Act, 2010 (as amended).***

In the event, the arguments of counsel on the issue of unlawful exclusion will not be considered in this judgment.

The learned counsel for the 3rd Respondent, ***M.K.Abdulkadir Esq***. filed a Written Address dated on the 15th of July, 2019, filed on the 16th of July, 2019. In his written address, he incorporated a ***Notice of Preliminary Objection*** and adopted the three issues for determination as formulated at the Pre-Hearing session. In his address, he articulated his arguments on the preliminary objection before arguing the issues for determination.

PRELIMINARY OBJECTION

In his Notice of Preliminary Objection, the learned counsel urged the Tribunal to strike out or dismiss the petition for being incurably defective thus robbing the tribunal of the requisite jurisdiction to determine same. The preliminary objection is predicated on the following grounds:

1. That the Petition was filed outside the mandatory statutory period prescribed for filing an election petition;
2. That by the ***sui generis*** nature of election related matters time of filing a petition begins to run from the date of the announcement of result and the date shall not be excluded in the computation of time;

3. That the Petition is incompetent ***ab initio;*** and
4. That this Honourable Tribunal lacks the jurisdiction to entertain and/or determine this petition.

The Objection is supported by a four paragraph affidavit

Arguing the objection, learned counsel submitted that the election was held on **9/03/2019,** the declaration of the result was made on the **10/03/2019** and the Petitioners filed their Petition on **31/03/19** at about 6:03 pm.

He said that given the ***sui generic*** nature of election related matters where the date of the act complained of is reckoned with in the computation of time, the Petition in issue was filed outside the mandatory **21 days** constitutionally prescribed period for filing a petition.

Learned counsel contended that going by decided Supreme Court authorities on the interpretation of the relevant provisions of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and the Regulations for the conduct of electoral matters as regards the filing of the election petition, the instant petition was filed out of time.

See: ***Section 285(5) of the Constitution of the Federal Republic Nigeria 1999 (as amended)***. He said that the Supreme Court recognised the ***sui generic*** nature of election petitions in the case of: ***OKECHUKWU VS. INEC (2014) 17 NWLR (PT. 1436) 255, at 284-285, paragraphs D-A*** where they interpreted the relevant sections of the Constitution being section 285 (5) thus:

> ***"Ordinarily, but for the sui generis nature of election matters, according to the common construction of the English Language, "within any number of days after an act is to be understood exclusive of the day of the act".*** See: ***Williams V. Burgess (1840) 10 LJQB 10 at 11.***

He submitted that in the case of: ***MORTON V. HAMSON, (1962) VR, 364 @365,*** the Court held that the Modern Rule in relation to a period of time fixed by Statute "within" which an act is to be done after a specified event is that the day of the event is to be excluded, the next day is that first day of the stipulated period and the time expires on the last day of the period counting from and of course including the first day.

> ***"However, being aware of the sui generis nature of election and election related matters in which time is of essence, and the stand of this Court on the interpretation of the Practice Direction vis-à-vis the Interpretation Act, I hold no hesitation in concluding that the provisions of the Interpretation Act on computation shall not apply to the requirement of time by the Practice Directions. Time shall run, in the peculiarity of our Electoral Act, Practice Direction and the 1999 Constitution of the Federal Republic of Nigeria (as amended) from the day of the act and the day shall not be excluded***." (bold italics supplied by counsel for emphasis).

He said that with the position of our law currently, it is crystal clear that this petition was filed outside the mandatory statutory period and is therefore incompetent, liable to be dismissed and he urged the Tribunal to dismiss same with substantial costs.

Learned counsel however submitted that on the unlikely event that the preliminary objection is dismissed, he proceeded to argue the issues as formulated for determination in this Petition.

He informed the Tribunal that he would argue all the issues jointly.

Opening his arguments, he submitted that it trite law that a Petitioner must succeed on the strength of his own case and not to rely on the weakness of the Respondent's case. For this view, he relied on the case of: ***DPP & Anor V INEC& ORS (2008) 3 LRECN 14***.

Furthermore, he submitted that where the petitioner is alleging crime such must be proved beyond reasonable doubts. See: ***Ngige V Obi (2006) LREAN***. He said that the petitioner must prove pleadings contained in paragraphs **18.1 – 18.40** of his Petition through sufficient evidence because these are assertions which the petitioner relies upon for the success of his petition. He referred the Tribunal to the case of: ***Mark V Abubakar (2008) 1 LREAN*** where the court stated thus:

> ***"In every civil case including election petition a party stands or falls by his pleadings and the evidence he adduces in support of the pleadings. The maxim being that he who asserts must prove. That is, a party who makes an assertion must prove that assertion in order to succeed and any assertion in an averment of a pleading must be proved by concrete evidence. See Ikpang V Edoho (1978) All NNLR 196."***

Learned counsel submitted that the fact that the 3rd respondent rested its case on that of the Petitioner does not amount to an admission of any fact nor does it create a fatal scenario to the case of the 3rd respondent. For this view, he referred to the case of: ***OKPOKO COMMUNITY BANK LTD V IGWE (2013) 15 NWLR pt. 1376, 167 @ 188*** where the court held that:

> ***"Where a defendant rests his case on that of the plaintiff, such a stance is a legal strategy and not a mistake. According to the apex court, the implication is that:***
>
> ***a. the defendant is stating that the plaintiff has not made out any case for the defendant of respond to; or***
>
> ***b. he admits the facts of the case as stated by the plaintiff ; or***
>
> ***c. he has a complete defence in answer to the plaintiff's case".***

He reiterated that a petitioner must succeed on the strength of his case and failure of the 3rd Respondent to call any witness does not mean that the 3rd respondent have admitted the facts contained in the petition.

He said that in proving their case the petitioner called one subpoenaed witness PW1 who tendered a sack of ballot papers and was discharged. He said the petitioner testified as **PW2**, adopted his witness statement, identified some documents and did not go any further to demonstrate these documents to explain them or relate them to the matter at hand on how the irregularities has affected the election. On the need to link the documents to specific areas of the petition, counsel referred to the case of: ***ANPP V. USMAN (2008) 2 LRECN*** where the court held thus:

> ***"It is settled law that a party relying on documents in proving his case must relate each of such document to the specific area of his case in respect of which the document is being tendered in support of his case i.e. there must be a link between the document and the specific area of the petition. See Jalingo V Nyame (1192) 3 NWLR (pt. 231) page 538, Terab v. Lawal (1992) 3 NWLR 9PT 231."***

Counsel submitted that to prove that the 1st Respondent was not duly elected by majority of lawful votes; the polling units in which various irregularities are complained of must be proved. He posited that the testimony of the petitioner under paragraphs 21 to 46 are not what **PW2** witnessed personally but rather what he was informed by his agents. He said that during cross examination, the PW2 acknowledged the fact that he had agents all over the Polling Units and he got information from them but none of them was called as a witness. Counsel concluded that the deposition of P.W.2 is all hearsay evidence and the court cannot rely on it and he urged us to so hold relying on the case of: ***AJADI V AJIBOLA (2004) 1 LRECN*** where the court stated thus:

> ***"The tribunal considered the evidence of Pw6 and Pw8 as against that of Dw2. Dw3 who gave evidence about the election at this station relied on information by Dw2. I agree with the tribunal that it amounts to hearsay."***

He submitted that the vital witnesses that would have explained what happened at their various Polling Units are the Polling Agents and this is because they witnessed all these facts first hand.

Counsel submitted that the evidence taken together with the deposition of the witness reveal facts that were not elaborated upon to warrant the consideration of the court. That paragraphs 16, 17, 18, 19 and 20, of the petition and 18, 21, 22 and 23 and 30 of the Witness Statement of **PW2** all alleged that it was not the true result that was announced by the 3rd Respondent. He stated that paragraph 21 of the witness deposition of **PW2** contains a result stating figures of votes obtained by the petitioners being more than that of the Respondent and submitted that allegation of falsification of result is not proved by mere speculation but by providing the real result. He stated that under cross examination, the Petitioner told the Tribunal that he does not have any official result apart from the one which was announced by the 3rd Respondent. He submitted that the lack of such result weakens the allegation of falsification of result and relied on the case of: ***ADUN V OSUNDE (2003)1 LRECN*** where the court stated thus:

"***The issue of inflation of result is a criminal allegation which required proof beyond reasonable doubts. Proof is the logically sufficient reason for asserting the truth of a proposition advanced. In its juridical sense, proof will include and comprehend everything that may be adduced at the trial, within legal rules for the purpose of producing conviction in the mind of the judge or jury''.***

Counsel submitted that it has been held by various judicial authorities that a petitioner challenging election result can produce duplicate copies of the results he intends to rely on in order to substantiate his claim. See the case of: ***Aja V Odin (2011)41 WRN*** where the court stated thus:

"it seems to me that duplicates or carbon copies of results given to agents of political parties that participated in an election can be tendered and admitted in evidence without much ado of having them certified. Such carbonated copies are as good as the original copy within the contemplation of section 94(4) of the Evidence Act and this constitutes primary evidence."

Counsel submitted that no duplicate result was produced before the Tribunal for the purpose of evaluation and that failure to produce a duplicate result where the original is challenged was explained in the case of: ***Agbeotu V Brisibe (2004) 2 LRECN*** where the court stated that :

"It is evident from the above that the appellant did not place two set of results before the tribunal for comparison. The failure to do so leave the tribunal with no option but to reject the scores set out by the appellant in his petition. In other words, the appellant did not tender any reliable result which has formed the basis of such comparison."

Furthermore, counsel submitted that paragraphs 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31,32,33,34, 35, 36, 37, 38, 39, 40, 41, 42 and 43 all alleged non-compliance. That the presiding officer was repeatedly mentioned in paragraphs 24,31,34,36 of the petition levelling all sorts of complaints against his conduct yet the name of the presiding officer was not mentioned anywhere in the petition. He then posed the question: whether the law should take its course against an unknown person? He answered in the negative and submitted that even if his name was mentioned, that it was not enough to justify any complaint against the said presiding officer. He submitted that where a singular act of an electoral officer is complained of, such an officer must be joined as a party in the petition. On the consequence of not joining the presiding officer against whom the petitioners complained against, he referred to the case of: ***KALU V UZOR (2004) 2 LERCN*** where the court held thus:

"by virtue of duties of the presiding officers set out in sections 39 – 59 of the Electoral act, 2002, allegations of malpractices, irregularities, falsification of

votes and allocation of fictitious votes directed at the polling stations are directed against officers who are in charge of the polling units. Where the petitioner did not join the presiding officer as necessary parties who ought to be joined, non-joinder makes the petition incompetent, and consequently the tribunal lacks jurisdiction to entertain it. Failure to join the presiding officers is a breach of fundamental right of fair hearing under section 36 of the 1999 constitution. Egolum V Obasanjo (1999)7 NWLR [pt 6 NWLR [pt 611] 423, [1999] 3 LRECN 304

He submitted that failure to join the presiding officer whose conduct was complained against in the above mentioned paragraphs of the petition makes this petition incompetent and he urged us to so hold.

Learned counsel submitted that paragraphs 27, 28, 29, 35, 41, of the petition are all allegations of crime which ought to be proved beyond reasonable doubts and relied on the case of: ***Buhari V INEC [2008]1 LRECN*** where the court held thus:

"***It cannot be disputed that the allegation made against unidentified policemen and soldiers are criminal in nature. As well, the alleged thugs of the 3rd respondent whom the petitioners also tried to incriminate have also not been identified. The standard of proof in criminal allegations is one of proof beyond reasonable doubts.''***

He submitted that from the paragraphs mentioned above and the evidence of the Pw2, the criminal allegations were not proved beyond reasonable doubts and the lack of proof of the above allegations further weakens this petition and the most appropriate action this tribunal can do is to dismiss it.

Finally, he urged the Tribunal to uphold the election and the return of the 1st Respondent by the 3rd respondent having scored the highest majority of lawful votes cast at the election held on 9th March, 2019 for the office of member House of Assembly Sokoto Yabo constituency and dismiss this petition with substantial costs.

The Petitioners final Written Address dated 11th of July, 2019 was filed on 14th of July, 2019 by his counsel ***J.C.Shaka Esq.*** In the said address, the learned counsel for the petitioners identified the three Issues for Determination as formulated at the Pre-Hearing Session and argued them in the following order: Issues 1 and 3 together and Issue 2 separately.

ISSUES 1 & 3:

Opening his arguments, counsel submitted that it is the position of the law that he who asserts must prove affirmatively that which he asserts and the standard required of him is on the balance of probability**.** See ***sections 131(1), 132 and 136 of the Evidence Act***

2011 as amended. He said that the court re-asserted the same position in the case of: ***Chinekwe v. Chinekwe(2010)12 NWLR PT 1208 PG 226 AT 231 RATIO 4,*** where the Court of Appeal held as follows:

> ***"The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence. In other words, whoever desires any court to give judgement as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist."***

He said that the Petitioner clearly stated in his Statement on oath that the 1st Respondent was not duly elected and returned by majority of lawful votes cast at the election to the office of Member House of Assembly representing Yabo Constituency of Sokoto State held on the 9th of March, 2019. That the result collated from his Agents in all the polling units and ward shows that the PDP obtained more votes than the APC. He said that this was also confirmed on the inspection performed by the Petitioners via the order of this Tribunal. He submitted that exhibits PM1 – PM10 which were recounted by the Petitioners with necessary deductions for unlawful votes, additions of lawful votes, corrections of errors in calculation, collation, and cancellation of invalid/lawful votes of the Petitioner proved that the 1st Respondent was not duly elected by majority of lawful votes cast at the election.

He said that the counsel for the 1st & 2nd Respondents argued in their address that the Petitioner could not prove the purported election result pleaded under Paragraph 18 of the Petition because the petitioners' agents who were at the various polling units were not called to give evidence and supported same with the case of ***OKE & ANOR v. MIMIKO & ORS (2013) LPELR – 21368 (SC).***

He submitted that in the ***OKE & ANOR v. MIMIKO & ORS supra*** case, the court states thus:

> ***"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 the state. <u>Even thougn the 1st Appellant was at liberty to perform the duty of polling Agent for himself and his party</u>"*** (underlining, his)

He submitted that the underlined sentence implies that the Petitioner can testify in respect of any polling unit where he performed the duty of a polling unit agent for himself and his party.

He said that the Petitioner admitted on cross examination of the 1st, 2nd & 3rd Respondents that he performed the duty of a polling agent in some other polling units so he has the locus to testify of what happened in those polling units and he urged us to so hold.

He contended that the Petitioner did not abandon Exhibits Pm1 – Pm10 as alleged by the 1st – 2nd Respondents. That Exhibits Pm1 – Pm10 were tendered by the subpoenaed witness and the 1st Petitioner identified and linked them during the examination-in-chief. He explained that the extant law governing frontloading of

documents does not allow witnesses to link and explain to the court the content of the documents frontloaded.

Learned counsel urged the Tribunal to hold that the Petitioners have led sufficient and credible evidence to prove that the 1st Respondent was not duly elected or returned by majority of lawful votes cast at the election but that the 1st Petitioner was duly elected or returned by majority of lawful votes cast at the election for the office of member House of Assembly representing Yabo Constituency of Sokoto State held on the 9th day of March, 2019.

ISSUE 2:

Whether the Petitioner have led sufficient and credible evidence to prove that the election of the 1st Respondent was invalid by reason of corrupt practice or non – compliance with the provisions of the Electoral Act (as amended) and other Regulations and Guidelines for the conduct of the said elections.

Counsel submitted that it is crystal clear that the election of the 1st Respondent was marred by substantial irregularities and non – compliance with the provisions of the ***Electoral Act (as amended) and other Regulations and Guidelines for the conduct of the said elections***. That the 1st Petitioner deposed in paragraphs 24, 25 & 26 of his statement on oath that in Bakale/Yauta/Dorai polling units of Bakale ward and Adigai/Makera polling unit of Bengaje ward, thugs and miscreants sympathetic to the 1st and 2nd Respondents prevented people who were sympathetic to the Petitioner from voting. That there was open vote buying, multiple voting, stuffing of ballot boxes with pre-thumb printed ballots, voting by persons not accredited and voting on behalf of or in the name of dead or relocated persons, all by 1st and 2nd Respondents' thugs. He said that the Petitioner stressed the above in his answers on cross examination thus:

"my complaints were on thuggery and violence…
I complained to DPO,Yabo police station on some of the cases
…yes like the one in BuliBuli ..."

He said that the Petitioner equally deposed in paragraph 7, how the presiding officer failed, refused or neglected to count and credit valid votes cast in favour of the Petitioner at Lambogel/Busa polling unit in Bingaje ward, and same gave undue advantage to the 1st Respondent.

Counsel pointed out that the 3rd Respondent did not challenge these allegations neither did they call any witness to debunk them. He said that the allegations were unchallenged and uncontroverted during cross examination and referred to the case of ***Okoro V. Okoro (2011) All FWLR [Pt. 572] Pg. 1749 @ 1787, paras D – F*****,** where the court held thus:

"The law is that evidence not successfully challenged or discredited and which is relevant to the facts in controversy is entitled to be relied on"

Learned counsel referred to paragraphs 28, 29, 30, 31, 32 & 33 of the Petitioner's deposition on how violence erupted, forceful intercepting of female voter's card by agents of the 1st & 2nd Respondents, thugs intimidating voters and beating up agents of the Petitioners in some polling units mentioned. He maintained that the Respondents counsel did not challenge these in their pleadings nor under cross examination and the law is settled that where the evidence given by a party to any proceeding was not challenged by the adverse party, the court can act on such unchallenged evidence before it. See: ***ATIKU ADERONPE v. ALH. SOBALAJE ELERAN & 2 ORS (2019) 25 WRN 58 SC***.

He submitted that there was over voting in Birnin Usman and Koyololo, Rawe/Gidan Hammadu 003 polling unit in Fakka. That the Petitioner under cross examination confirmed that he visited/performed his agent duty at about 20 polling units and these polling units mentioned above where among the polling units. He said that the Respondents did not object to it and the 1st Respondent did not perform the duty of an agent and his agents (if any) where not called to testify to contradict the Petitioners.

Counsel submitted that the actions of the Respondents are a ground to nullify the election in the affected areas and conduct a supplementary election. For this view, he relied on ***section 140 (2) of the Electoral Act (as amended).***

In conclusion, he submitted that with all the credible evidence led before this Tribunal, the Petitioners have successfully proved their case and he urged us to grant all the reliefs of the Petitioner.

During his final address, the learned counsel for the Petitioners informed the Tribunal that they were also relying on their Reply to the 3rd Respondent's Preliminary Objection, dated 20/7/19, filed on 22/7/19 together with their 4 paragraph counter affidavit.

In answer to the Preliminary objection, learned counsel posited that the election to the office of Member representing Yabo Constituency at the Sokoto State House of Assembly that is being challenged was conducted on 9th March 2019 and the result was declared by the 3rd Respondent on 10th March 2019.That this Petition was thus filed exactly 21 days after the date the result was declared by the 3rd Respondent.

He submitted that the Respondents had filed their Replies to the petition and joined issues with the Petitioner on the merit without any objection on grounds of the petition being statute barred and the Tribunal lacking jurisdiction to adjudicate same.

Counsel submitted that the 3rd Respondent erred in its interpretation of the provision of section 285(5) of the Constitution. He posited that ***Section 285(5) of the 1999 Constitution, as amended by the 4th Alteration NO. 21 Act, 2017*** in limiting time for an aggrieved person to file a petition challenging the result of an election to any elective office under the Constitution provides as follows:

"An election petition shall be filed within 21 days after the date of the declaration of results of the election." {underlining for emphasis}

He submitted that in interpreting the above provision, recourse must be had to the provision of section 318 of the Constitution, as amended, dealing with interpretation. That the Constitution remains the '***grund norm'*** or ultimate law from which all other laws must draw their strength and any law or decision of court in conflict with it is unlawful, null void and of no effect whatsoever. Section 3 18(4) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) in its PART IV subtitled: "Interpretation, Citation and Commencement", provides thus:

"318(4) The Interpretation Act shall apply for the purposes of interpreting the provisions of this Constitution."

Counsel posited that this provision is couched in simple, clear and mandatory terms and leaves no room or discretion for any court of law to do otherwise than to apply the provisions of the Interpretation Act in interpreting the provisions of the Constitution, including an amendment thereto.

He submitted that although authorities are legion on this principle of the mandatory interpretation of the word "shall" and how a court may proceed to interpret the clear words of a statute, he referred to a few decisions on the point. He said that in the case of: ***Nwankwo & Ors v. Yar' Adua & Ors(2010) LPELR -2109 (SC)*** the Supreme Court in construing **Paragraph 6(1)** of the **1st Schedule to the Electoral Act**, (which is ***in pari materia*** with **paragraph 47(1)** of the **First Schedule** to the **Electoral Act, 2010)** which provides that, ***'No motion shall be moved. All motions shall come up at the pre-hearing session except in extreme circumstances with the leave of the Tribunal or Court.'*** held thus:

"The foregoing is surely a mandatory provision because the operative word there is "shall". The word shall when used in a statutory provision imports that a thing must be done. It is in form of a command or mandate. It is not permissive, it is mandatory. The word shall in its ordinary meaning is a word of command which is normally given a compulsory meaning as it is intended to denote obligation."

Also, on the appropriate manner to interpret clear and unambiguous provisions of a statute he cited the old case of: ***Olalere Obadara &Ors v. The President, Ibadan West District Customary Court (1964) 1 All NLR 33*** where the Court held as follows:

"Where the words of a statute are clear and unambiguous, the courts shall give effect to their literal meaning. It is only where the literal meaning may result to ambiguity or injustice that the courts may seek internal aid and within the body of the statutes itself or external aid from statute in pari materia in order to resolve the ambiguity or avoid doing injustice."

Learned counsel also relied on the Supreme Court decision in: ***BRITTANIA-U NIGERIA LTD V. SEPLA T PETROLEUM DEVELOPMENT COMPANY LTD & ORS (2016) LPELR- 40007 (SC)***.

Based on the above authorities, he submitted that the wordings of section 318 of the Constitution, which is yet an extant provision of the Constitution and are most lucid, clear and unambiguous to the effect that the Interpretation Act shall apply to the interpretation of the provisions of the 1999 Constitution and being so should be given their ordinary and natural meaning and application in the construction or interpretation of the provisions of **section 285(5) of the Constitution**.

He emphasised that by their ordinary and natural meaning this provision allows an aggrieved candidate to file a petition within 21 days after the declaration of result of the election being challenged. He said that the use of the word "after" demonstrates conclusively that the legislator intended to exclude the date of the declaration of the result from the reckoning of the 21 days filing period.

He reiterated that the Interpretation Act is a general controlling statute regulating the construction/interpretation of the Constitution and other statutes in Nigeria, including electoral statutes and legislations made thereunder, except where a particular statute expressly provides for other interpretations in which case such interpretation will govern the statute concerned.

He maintained that this has been the position of the law even in recent times in the determination of both criminal and civil matters, including election matters said to be ***sui generis***. He referred to the decisions of the Supreme Court and Court of Appeal, in the following cases: ***Iyirhiaro v. Uso (1999) 4 NWLR (Pt.597) 41; Adefemi v. Abegunde(2004) 15 NWLR (895) 1; Awuse v Odili(2004) 8 NWLR (Pt.876) 481; Galaudu v. Kamba(2004) 15 NWLR (Pt.895) 31; PDP v. Haruna (2004) 16 NWLR (Pt.900) 597; Kamba v. Bawa (2005) 4 NWLR (Pt.914) 43Yusufv. Obasanjo (20O3) 16 NWLR (Pt.847) 554; Ezeigwe v. Nwawulu (2010) 4 NWLR (Pt. 1183) 159; Kabir & Anor v. Action Congress & Ors (2011) LPELR-8929 (CA) and Adesule v. Mayowa (2011) 13 NWLR (Pt.1263) 135.***

Learned counsel referred to the case of: ***AKEREDOLU V. AKINREMI (1985) 2 NWLR (Pt. 10) 787 at 794*** where the Supreme Court, per ***Aniagolu, JSC*** held thus:

"It would follow that in computing the period for filing of appeal in this matter the date- 10" April, 1985- on which the Court of Appeal delivered its judgment must be excluded…".

Again, he referred to the case of: ***Iyirhiaro v. Usoh (supra)*** where it was held that the day on which the election result is announced is not inclusive in calculating time. That time begins to run on the following day of the happening of the event and if the last day of the time limited falls on a holiday the day following the holiday becomes the last day. See further: ***Afe Babalola, Election Law and Practice (Ibadan, Afe Babalola, 2003)p. 214-215.***

He also relied on the case of: ***Yusuf v. Obasanjo (supra)*** where Uwais, JSC relied on ***section 15(2) (a) of the Interpretation Act*** and held that –

"S.132 (of the Electoral Act, 2002) provides that: "An election petition may be presented within thirty (30) days from the date the result of the election is declared." It is not in dispute that the Presidential election result in question was declared on 22 April, 2003. The Petitioners in this case had 30 days within which to appeal against it. The 30 days will be calculated from 23 April, 2Q03."

Learned counsel made copious references to similar decisions of superior courts in the following cases*:* ***Ezeigwe v. Nwawulu(supra); Kabir & Anor v. AC & Ors (2011) LPELR-8929 (CA); Adefemi v. Abegunde(supra) 421***.

He submitted that there is no word in the ***4th Alteration Act No. 21 of 2017*** that suggest an intention by the legislator to exclude the application of the provision of ***section 318 of the Constitution supra*** or section 15(2) (a) of the Interpretation Act in the construction of the provision of section 285(5) of the Constitution.

He referred to the following decisions which are in support of the interpretation that in relation to election petitions, the day of the declaration of the result is to be included in computing the limitation period: ***Fadare v. A.G., Oyo State (1982) 13 NSCC 52; Odubeko v. Fowler (1993) 7 NWLR (Pt.308) 637; JalIco Ltd v. Owoniboys Technical Services Ltd (1995) 4 NWLR(Pt.391) 534; Ogbebor v. Danjuma (2003) 15 NWLR (Pt.843) 403; Akume v. Lim (2008) 16 NWLR (Pt.1 114) 490; AC v. Jang (2009) 4 NWLR (Pt. 1132) 474; Kumaita v. Sheriff (2009) 9 NWLR (Pt. 1146)420; Ikharaiale v. Okoh(2009) 12 NWLR (Pt. 1154)1; Umaru & Anor v. Aliyu & Ors (2009) LPELR- 5052(CA); Adesule v. Mayowa & Ors(201 1) LPELR -36919(CA); Okechukwu v. INEC (2014) 17 NWLR (Pt.1436) 255; and PDP v. INEC (2014) 17 NWLR (Pt.1437) 525,*** and most recently in the decision of ***Daniel Donald Onjeh & Anor v. David Mark & 2 Ors, Appeal No: CA/MK/EPT/SEN/01/2016 (unreported), delivered on Friday, the 22nd day of July, 2016.***

He observed that a striking feature in all the aforesaid decisions is that they all held that the Interpretation Act does not apply to construction of electoral statutes on the ground that election matters are ***sui generis***. He forcefully submitted that the idea of election matters being regarded as sui generis is neither anchored on any statutory or constitutional provision that may be said to have an overriding effect on a clear and unambiguous constitutional provision such as ***section 318 and section 1 5(2)(a) of the Interpretation Act supra***. He maintained that there is nothing sacrosanct in election petitions being ***sui generis*** such that it becomes an excuse for any court to completely disregard clear provisions of the constitution (the ***grund norm***) and other relevant extant statute such as the Interpretation Act.

He observed that a second feature of all these decisions is that they omitted to refer to or consider the earlier Supreme Court decisions on the point in the cases of ***Yusuf v. Obasanjo (supra) and Ezeigwe v. Nwawulu (supra)*** though these were also election petition matters. He said that a third feature of these decisions is that the interpretation of provisions of the Constitution relating to the time for presenting an election petition was not directly in issue or consideration in those cases.

Counsel submitted that the ***4th Alteration Act 2017*** introduced a remarkable clarity to the provision of ***section 285(5) of the Constitution of the Federal of Nigeria, 1999 (as amended)*** in relation to time for presentation of election petition. He said that this amendment removed any other word such as ***"from"*** and introduced the word ***"after"*** to show clearly that time for presentation of an election petition begins to run following the event of declaration of result of the election complained of.

He posited that this was a very bold attempt by the legislator to avoid the controversy and confusion that has attended the tendency of various courts to engage in judicial legislation which has the effect of reading into statutes words that are not there probably because the law as it is not satisfactory. He submitted that courts are enjoined not to read into statutes words that are not there or meanings that are obviously not intended by the law giver, but to apply the law as it is.

He submitted that in the face of such conflicting decisions on the point whether section 318 of the Constitution and Interpretation Act supra should be applied in determining the limitation period for presentation of an election petition, this Tribunal is at liberty to choose which of the several conflicting decisions to follow. He reiterated that the decisions of the Supreme Court and the Court of Appeal which excludes the day of the event from the computation of the limitation period accords more with extant constitutional and statutory provisions and are to be preferred.

He emphasised that the Interpretation Act applies to all statutes except where its application to a particular statute is expressly excluded either by the provision of the Interpretation Act itself or by the provision of the statute concerned and referred to Section 1 of the Act which stipulates as follows:

"This Act shall apply to the provisions of any enactment except in so far as the contrary intention appears in this Act or the enactment in question."

He also relied on: ***Crabbe on Legislative Drafting "(London, Cavendish Publishing Ltd, 1998), Vol. 1, p.168*;** and the case of: ***Kabir v. AC (2011) LPELR-8929 (CA)*** where the court held as follows:

"Let me place on record, ex abundanti cautela, that the Interpretation Act is applicable to all legislations. …Interestingly, throughout the length and breadth of the 166 sections of the Electoral Act, 2006, it never barred the application of the Interpretation Act to it. Nor does the Act exclude the Electoral Act 2006 from its domain of application."

Learned counsel contended that in view of the decision of the Court of Appeal in ***Kabir v. AC (supra),*** it cannot be correct, as suggested by the Court of Appeal in ***Adesule v. Mayowa (2011) LPELR- 3691*** when they stated thus:

"If the legislature intended a resort to the Interpretation Act in the construction of the provision of the Electoral Act, the intention would have been expressly stated or implied from the Act itself. See s.99 (4) of Decree No.36, 1998 which states 'subject to the express provisions of the decree, the Interpretation Act shall apply to the interpretation of the provisions of the decree.' <u>The absence of similar provision in the Electoral Act, 2006 means that the Act did not authorize a resort to the Interpretation Act in the construction of its provisions.</u> "(Underlining supplied by counsel)

Learned counsel urged this Tribunal to seize this opportunity provided by this Petition to restate the correct .position of the law as it relates to limitation of time in election petitions. He submitted that in view of the foregoing arguments, since the result of the election was declared on 10th March, 2019 and this petition was filed on 31st of March, 2019, the Petitioners were well within the limitation period stipulated by ***section 28 5(5) of the Constitution supra*** when they instituted their petition. He said that by simple arithmetic, 21 days after the 10/3/2019 when the 3rd Respondent declared the result would end at midnight of 3l/3/2019 instant.

He therefore urged the Tribunal to hold that the preliminary objection lacks merit and strike it out.

We have carefully considered all the processes filed in respect of this Petition together with the arguments of learned counsel for the parties on all the issues formulated together with the preliminary objection and other ancillary issues.

The essence of a preliminary objection is to terminate at infancy, or to nip in the bud, without dissipating unnecessary energies in considering an unworthy or fruitless matter in a court's proceedings.

In other words, it forecloses hearing of the matter in order to save time. See: ***Efet vs. I.N.E.C. (2011) 7 NWLR (Pt.1247) 423; and A.P.C. vs. I.N.E.C. (2015) 8 NWLR (Pt.1462) 531 at 541.***

Furthermore, where there is a preliminary objection, that objection should be determined first before going into the substantive matter. See: ***A.P.C. vs. I.N.E.C. (2015) 8 NWLR (Pt.1462) 531 at 541.***

In the event, we will deal with the preliminary objection before we determine the main issues in this Petition.

Essentially, the preliminary objection raised by the learned Counsel for the 3rd Respondent is predicated on the ground that the Petition was filed outside the mandatory statutory period of 21 days prescribed for filing an election petition.

In his Reply to the Preliminary Objection, the learned counsel for the Petitioners consistently referred to the provisions of s***ection 285(5) of the 1999 Constitution, as amended by the 4th Alteration No. 21 Act, 2017*** which he alleged introduced the provision that: ***"An election petition shall be filed within 21 days after the date of declaration of result of the election."***

Actually, the provision was first introduced by the ***1st and 2nd Alteration Acts of 2010***. See: ***section 29(5) of the Constitution of the Federal Republic of Nigeria (First Alteration) Act, 2010*** and ***section 9(5) of the Constitution of the Federal Republic of Nigeria (Second Alteration) Act, 2010*** respectively.

The issue to be determined in this preliminary objection is: ***whether the time for filing the petition started to run on the day the results were declared or the next day?***

On this fundamental issue, the amended Section 285 (5) of the 1999 Constitution provides thus:

> ***"An election petition shall be filed within 21 days after the date of declaration of result of the election."***

The controversial aspect of the amendment is in relation to the word ***'after'*** which the Petitioners insist excludes the day of the declaration of the result. They have relied heavily on the provisions of the Interpretation Act and some decisions of the Court of Appeal and the Supreme Court which authoritatively stated that in the computation of time for filing an election petition, the day of declaration of the result is excluded. We agree with learned counsel for the Petitioners that those cases were decided specifically, on the computation of time as enshrined in Section 285 (5) of the 1999 Constitution as amended.

It is evident that a plain interpretation of the words ***"after the date of declaration of result of the election"*** should exclude the day of declaration. That is quite in tandem with the provisions of ***section 15 (2) (a) of the Interpretation Act*** which stipulates as follows:

> ***"15. (2) A reference in an enactment to a period of days shall be construed-***
> ***(a) Where the period is reckoned from a particular event, as excluding the day on which the event occurs;"*** (underlining for emphasis)

That was the simple interpretation given by the earlier decisions in consonance with the provisions of the Interpretation Act. But the law has since changed. Sometime in 2014, the Supreme Court introduced a radical departure in their interpretation of such provisions in statutes relating to election petitions. In the case of: ***Okechukwu v. INEC (2014) 17 NWLR (Pt.1436) 255***, the apex Court categorically stated that not only in Practice Directions, but in the 1999 Constitution as amended and in the peculiarity of our Electoral Act, ***"Time shall run..... from the day of the act and the day shall not be excluded."***

Also in the case of: ***AKPAN & ANOR v. LUKE & ORS (2015) LPELR-41651(CA)*** the Supreme Court re-emphasised the position when they stated thus: ***"So, whether the 1999 Constitution, the Electoral Act 2010 or the Practice Directions state that an event shall be done, 'after, or of or from' in election or election-related matters, the day of the event is to be included, not excluded."***

Incidentally, in the very recent case of: ***BELLO v. YUSUF & ORS (2019) LPELR-47918(SC)*** the Supreme Court restated the position thus:

> ***"This Court has also held in decisions too numerous to call that time begins to run against a plaintiff, for the purpose of limitation, from the date the cause of action accrues which, generally, is the date on which the incident or event giving rise to the cause of action occurs. See: JOHN EBOIGBE V.NNPC (1994) LPELR 992 (SC) and ACTION CONGRESS OF NIGERIA & ANOR V. INEC (2013) LPELR 20300 (SC)."***

We wish to emphasise that the facts in the cases of: ***AKPAN & ANOR v. LUKE & ORS (2015) supra*** and ***BELLO v. YUSUF & ORS (2019) supra*** are almost on all fours with the present one.

So the apex Court has voiced its opinion on the vexed issue. The very learned counsel for the Petitioners while acknowledging the radical departure of the apex Court from the previous interpretations has tried to fault the current interpretation and has urged us not to follow the new line of authorities. In essence, he is of the view that the recent authorities were given ***per in curiam.*** Learned counsel therefore urged this Tribunal to ***seize this opportunity provided by this Petition to restate the correct position of the law as it relates to limitation of time in election petitions.***

That appears to be a very tall order which is almost tantamount to rebellion. In our judicial hierarchy, the Supreme Court is the apex Court in Nigeria. When the Supreme Court decides an issue and very clearly too, every Court below it must adhere to it. By the doctrine of ***stare decisis***, the Courts below are bound to follow the decisions of the Supreme Court.

Even if the decision of a higher Court was reached ***per in curiam,*** an inferior court must follow the decision. In the old case of: ***Tsamiya v. Bauchi Native Authority (1957), NRNLR 72, 83***, the Supreme Court affirmed their supremacy thus:

> ***"...it is not for an inferior Court to say that a decision of the higher Court was reached per in curiam, that is a privilege of the higher Court if, after reconsidering its former decision, it is satisfied that the previous decision has been reached per in curiam".***

See also the decisions of the same Court in the following cases: ***Yusuff v. Dada , (1990) 4 NWLR (Pt.146) 657;*** and ***Attorney-General of Ogun State v. Dr. Egenri (1986) 3 NWLR (Pt. 28) 265.***

The Court of Appeal deprecated such rebellious tendencies in the recent case of: ***NDILI v. AKINSUMADE & ORS (2000) LPELR-6910(CA***) when they opined thus:

> ***"It remains to correct the erroneous argument of learned counsel for the respondents who canvassed with the feverish excitement of an adolescent set out for the carnival that the decision of this Court in Okara v. Ndili, supra, was reached per in curiam. It is a piece of judicial solecism bordering on heresy to say that the decision of a higher Court was reached per in curiam as the learned trial Chief Judge who set the tone had expressed with obvious diffidence."***

In the celebrated case of: ***ADEGOKE MOTORS LTD v. ADESANYA & ANOR (1989) LPELR-94(SC), Oputa JSC*** explained the infallibility of the Supreme Court thus:

> ***"Whether there is a conflict between the Supreme Court cases of <u>Skenconsult v. Ukey</u> and <u>Ezomo v. Oyakhire,</u> my simple answer is that it is not part of the jurisdiction or duties of this Court to go on looking for imaginary conflicts. <u>We are final not because we are infallible; rather we are infallible because we are final</u>."***

So the voices of infallibility have spoken. It does not lie in our mouths to question their decisions. In the light of the foregoing authorities, this Tribunal is constitutionally bound to follow and apply the current decisions of the more superior courts on the computation of time in election petition matters.

In the instant Petition, it is an undisputed fact that the result of the election was declared on the 10th of March, 2019. By simple arithmetical calculation, the 21 days stipulated by Section 285 (5) of the 1999 Constitution as amended, including the 10th of

March, 2019 expired on the 30th of March, 2019. However, the petition was filed on the 31st of March 2019 which was on the 22nd day. It was therefore filed out of time by one day. For the instant petition to be maintainable, it ought to have been filed within the stipulated 21 days. It is therefore statute-barred and the Tribunal has no jurisdiction to entertain it because a Court is not competent to entertain an action and determine it if the case was initiated by the process of law ***without fulfilling a condition precedent for the exercise of the court's jurisdiction***. See: ***MADUKOLU vs. NKEMDILIM (1962) 2 SCNLR 341; and OHAKIM vs. AGBASO (2010)19 NWLR (Pt. 1226) 172.***

Since the matter is statute barred we are tempted to strike out the petition at this stage without going into the merits. However, in the very unlikely event that we are wrong in our decision on the matter being statute barred, to be on the safe side, we will still proceed to determine the petition on the merits.

At the Pre-Hearing Session, we distilled the following focal issues for determination in this Petition:

(1) Whether the Petitioners have led sufficient and credible evidence 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, House of Assembly representing Yabo Constituency of Sokoto state held on the 9th day of March, 2019 ;

(2) Whether the Petitioners have led sufficient and credible evidence to prove that the election of the 1st Respondent was invalid by reason of corrupt practices or non-compliance with the provisions of the Electoral Act (as amended) and other Regulations and Guidelines for the conduct of the said elections; and

(3) Whether the Petitioners have led sufficient and credible evidence to prove that the 1st Petitioner was duly elected or returned by majority of lawful votes cast at the election into the office of Member House of Assembly representing Yabo Constituency of Sokoto state held on the 9th day of March, 2019.

Before we resolve the issues for determination in this petition it would be expedient to determine an ancillary point that was raised by the learned counsel for the 1st and 2nd Respondents in his Written Address. He drew the attention of the Tribunal to the fact that under paragraph 44 of the petition, the Petitioners pleaded results sheets to wit***: FORMS EC8 A (1), EC8 B (1), EC8 C (1), EC8 D (1) and EC8E (1).*** But at the trial, they tendered from the bar a different set of forms as follows: ***FORMS EC8A, EC8B, EC8C, EC8D and EC8E***. He said that the Petitioners did not plead these new forms which they tendered and he urged us to expunge them, citing several authorities.

We have examined the said paragraph 44 of the petition, and confirmed that the Petitioners pleaded results sheets to wit***: FORMS EC8 A (1), EC8 B (1), EC8 C (1), EC8 D (1) and EC8E (1).*** Curiously at the trial, they tendered from the bar some other Forms EC8A simpliciter as follows:

1. Nine Forms EC8A for Fakka ward are admitted as Exhibits PA1 to PA9;
2. Seven Forms EC8A for Bingaje –Exhibits PB1 to PB7.
3. Six Forms EC8A for Binji ward-Exhibits PC1 to PC6.
4. Eleven Forms EC8A for Toronkawa ward-Exhibits PD1 to PD11.
5. Eleven forms EC8A for Ruggar –Iya ward-Exhibits PE1 to PE11.
6. Twenty Forms EC8A for Yabo A ward – Exhibits PF1 to PF20
7. Twenty Forms EC8A for Yabo B ward-Exhibits PG1 to PG20.
8. Twelve Forms EC8A for Kilgori ward-Exhibits PH1 to PH12
9. Six Forms EC8A for Birnin Ruwa ward-Exhibits P11 to P16
10. Ten Forms EC8A for Bakale ward-Exhibits PJ1 to PJ10.

The law on pleadings is firmly established. The law is that parties are strictly bound by their pleadings and they are not allowed to make a case that is at variance with their pleadings. Evidence which is at variance with the averments in the pleadings goes to no issue. See: ***Buhari vs. Obasanjo (2005) 2 NWLR (Pt. 910) 241, Makinde vs. Akinwale (2000) 1 SC 89 and Allied Bank (Nig) Ltd vs. Akubueze (1997) 6 NWLR (Pt. 509) 374.***

Moreover, where a party specifically pleads a document in any proceedings, he cannot be allowed to rely on any other document different from the one pleaded. This is because the aim of pleadings is to narrow down the case of the parties and to avoid surprises.

In the case of ***Hashidu vs. Goje (2003) 15 NWLR (Pt.843) 352*** which is almost on all fours with the instant case, the Petitioners pleaded Forms EC8A, EC8B, EC8C and EC8D to prove allegations of inflation of vote and falsification of election results. At the trial, they tendered Forms EC8A1, EC8B1 and EC8C1 which the Tribunal admitted and acted upon. On appeal, the Court of Appeal held that Forms EC8A1, EC8B1 and EC8C1 were wrongly admitted by the Tribunal and ought to have been rejected.

In the light of the foregoing, we hereby uphold the submissions of the learned counsel for the 1st and 2nd Respondents on the challenge to the admissibility of all the Forms EC8A enumerated in Nos. 1 to 10 above. In the case of: ***BUHARI V. INEC & OTHERS (2008) LPELR-814 (SC)*** aptly relied upon by learned counsel for the 1st and 2nd Petitioners, Tobi JSC held thus:

> ***"… a document which is inadmissible but erroneously admitted, can be expunged from the record at the stage of writing judgment"***

Consequently, Exhibits PA1 to PA9; PB1 to PB7; PC1 to PC6; PD1 to PD11; PE1 to PE11; PF1 to PF20; PG1 to PG20; PH1 to PH12; P11 to P16; and PJ1 to PJ10 are all expunged from the records.

We shall now proceed to resolve the issues for determination in this petition on the merits by considering Issues 1 and 3 together while Issue 2 will be determined separately.

ISSUE 1 & 3:

The law is that in an election petition, the burden is on the petitioner to adduce cogent evidence in support of the allegations and assertions in the petition he has filed being the party that will lose if no evidence were adduced on the case, see: ***Olufosoye vs. Fakorede (1993) 1 NWLR (pt. 172) 742; Buhari vs. INEC (2009) ALL FWLR (pt. 459) 119; Ajadi vs. Ajibola (2004) 10 NWLR (Pt.910) 241; and Buhari V. INEC (2008) 19 NWLR (Pt. 1120)246 at 350 para. E.***

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 but it was the 1st Petitioner who ought to have been returned by majority of lawful votes cast at the election, the onus is on them to prove the allegations on the balance of probability.

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 it was the 1st Petitioner and not the 1st respondent who obtained 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 off the petition, the 1st Petitioner and his subpoenaed witness testified and the following documents were tendered and admitted as exhibits:

1. Nine Forms EC8A for Fakka ward were admitted as Exhibits PA1 to PA9;
2. Seven Forms EC8A for Bingaje –Exhibits PB1 to PB7;
3. Six Forms EC8A for Binji ward-Exhibits PC1 to PC6;
4. Nine Forms EC8A for Toronkawa ward-Exhibits PD1 to PD9;
5. Eleven forms EC8A for Ruggar –Iya ward-Exhibits PE1 to PE11;
6. Twenty Forms EC8A for Yabo A ward – Exhibits PF1 to PF20;
7. Twenty Forms EC8A for Yabo B ward-Exhibits PG1 to PG20;
8. Twelve Forms EC8A for Kilgori ward-Exhibits PH1 to PH12;
9. Six Forms EC8A for Birnin Ruwa ward-Exhibits P11 to P16;
10. Ten Forms EC8A for Bakale ward-Exhibits PJ1 to PJ10;
11. Form EC8E(I) for Yabo Constituency is admitted as Exhibit PK;
12. Ten Forms EC8B(I) for ten wards were admitted in evidence as follows:

(i) Torankawa ward-Exhibit PL1;
(ii) Fakka ward-Exhibit PL2;
(iii) Ruggar Iya ward-Exhibit PL3;
(iv) Binji ward-Exhibit PL4;
(v) Yabo A. ward-Exhibit PL5;
(vi) Bingaje ward-Exhibit PL6;

(vii) Birnin Ruwa ward-Exhibit PL7;
(viii) Kigori ward-Exhibit PL8;
(ix) Yabo B ward-Exhibit PL9; and
(x) Bakale ward-Exhibit PL10.

13. Schedule of INEC ballot papers from Registration Areas in Yabo Local Government Area was admitted in evidence as Exhibit PM;
14. Ballot papers listed in the Schedule admitted as Exhibit PM;
15. Ballot Papers from Fakka 01 ward admitted as Exhibit PM1;
16. Ballot Papers in respect of Bingaje 02 ward admitted as Exhibit P.M 2;
17. Ballot papers for Binji 03 ward admitted as Exhibit PM3;
18. Ballot papers from Torankawa 04 ward admitted as Exhibit PM 4;
19. Ballot papers from Ruggar Iya 05 ward admitted as Exhibit PM5;
20. Ballot papers from Yabo A 06 ward admitted as Exhibit PM6;
21. Ballot papers from Yabo B 07 ward admitted as Exhibit PM7;
22. Ballot papers from Kilgori 08 ward admitted as Exhibit PM8;
23. Ballot papers from Birnin Ruwa 09 ward admitted as Exhibit PM9; and
24. Ballot papers from Bakale 010 ward admitted as Exhibit PM10

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,"***

Thus in the determination of this issue, we will focus much on documentary exhibits. In the instant case, the Petitioners tendered a host of documents as earlier

enumerated. Unfortunately, some of them have been expunged. The learned counsel for the Respondents has contended that most of these documentary exhibits were merely dumped before the Tribunal. It is settled law that documentary exhibits must be analysed by the party tendering same and not by the court.

In the case of: ***Ucha v. Elechi (2012) 13 NWLR (Pt. 1317) 330 at 360, Rhodes-Vivour (JSC),*** incisively, re-echoed the principle thus:

> ***"...When a party decides to rely on documents to prove his case, there must be a link between the document and the specific areas 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 would spend precious judicial time linking documents to specific areas of a party's case. See: A.A.P.P.P. v. I.N.E.C. (2010) 13 NWLR (Pt. 1212) p. 549.***
> ***See also Bornu Holding Co. Ltd. v. Bogogo (1971) 1 All NLR 324 at 330-331; Onibudo v. Akibu (1982) 7 SC 29; Ivienagbor v. Bazuaye (1999) 5 SCNJ 235 (1999) 9 NWLR (Pt. 620) 552; A.C.N. v. Lamido (2012) 8 NWLR (Pt. 1303) 560; A.C.N. v. Nyako (2013) All FWLR (Pt. 636) 424; Sa'eed v. Yakowa (2013) 7 NWLR (Pt. 1352) 124."***

Upon a careful review of the documentary exhibits tendered on behalf of the Petitioners, we observed that most of the exhibits were tendered from the Bar by the learned counsel for the Petitioners without any objection from the Respondents. The only documents that were tendered through a witness were Exhibits PM to PM 10 which were produced to the Tribunal by the P.W.1, one Mahmud Usman Mohammed, the Electoral officer of INEC for Yabo Local Government Area. He was subpoenaed to produce ballot papers for Yabo Local Government Constituency for Sokoto State. The P.W.1 was not sworn and he did not make any deposition. The only witness who testified for the Petitioners was the 1st Petitioner.

During his testimony, the 1st Petitioner identified all the documentary exhibits as part of the documents which he mentioned in Paragraph 47 of his deposition. He said that he was granted leave by this Tribunal to inspect some INEC materials and from his inspection he found that there were discrepancies between what was in Form EC8A and the contents of the ballot papers as contained in the respective bags admitted as Exhibits PM1 to PM10.

It is noteworthy that in his deposition and his oral evidence, apart from identifying the exhibits, the 1st Petitioner made no attempt whatsoever to analyse, demonstrate or explain any of the documentary exhibits in relation to his case.

Curiously, in his written address, the learned counsel for the Petitioners submitted that the extant law governing frontloading of documents does not allow witnesses to link and explain the contents of the documents. We are of the view that this submission is quite unfounded and erroneous. In a plethora of cases, the courts have

consistently harped on the need to link documentary exhibits with the case through sufficient evidence to demonstrate and explain the relevance of such documentary pieces of evidence.

In the case of: ***PDP v. ALI & ORS (2015) LPELR-40370(CA),*** the Court of Appeal emphasised the point when they stated as follows:

> ***"A document no matter how valuable if not demonstrated would amount to very little in the consideration and resolution of issues in dispute between the parties. At any rate, documents not linked or tied to the case of the party are incapable of by themselves being cross examined upon and therefore in law documents tendered in Court but not demonstrated in the open Court remain, in my view, dormant and of no significant value or use to the party who tendered it as well as the Court or Tribunal and authorities on this long established principles of law are legion.***
>
> ***See: Duriminiya V. COP. (1961) NNLR 70 @ p. 74. See also Saude V Abdullahi (1999) 5 NWLR (Pt. 601) 94 @ p. 99; Omisore V. Aregbesola (Supra); Ivienagbor V. Bazuaye (1999) 9 NWLR (Pt. 620) 552; Owe V. Oshinbanjo (1965) 1 All NLR 72; Alhaji Onibudo V. Alhaji Akibu (1982) 7 SC 60; Jalingo V. Nyame (1992) 3 NWLR (Pt. 231) 538; Ugochukwu V. Co Operative Bank Ltd. (1996) 7 SCNJ 22; The Queen V. Wilcox (1961) SCNLR 296; Adesoye V. Gardner (1977) NNLR 136; Adike V. Obiareri (2002) 4 NWLR (Pt. 758) 537; ACN V. Lamido (2012) 8 NWLR (Pt. 1303) 560; Sijuade V. Oyewole (2012) 11 NWLR (Pt. 1311) 280; Adewale V. Olaifa (2012) 17 NWLR (Pt. 1330) 478; Tunji V. Bamidele (2012) 12 NWLR (Pt. 1315) 477; Ucha V. Elechi (2012) 13 NWLR (Pt. 1317) 330.***

In the case of: ***Omisore v. Aregbesola (2015) 15 NWLR (Pt. 1482) 205 at 308-309***, ***Ogunbiyi, JSC*** elucidated on the matter thus:

> ***"... documentary evidence, no matter its relevance, cannot on its own speak for itself without the aid of an explanation relating to its existence, the validity and relevance of documents to admitted facts or evidence is when it is done in the open Court and not a matter for Counsel's address. It is not also the duty of the Court to speculate or work out either mathematically or scientifically a method of arriving at an answer on an issue which could only be elicited by credible and tested evidence at the trial."***

Furthermore, in the case of: ***CPC v. INEC & ORS (2012) LPELR-15522(SC)*** the Supreme Court exposited on the matter thus:

> ***"This issue has raised a pertinent question of the Court evaluating documents allegedly dumped on it where there is no oral evidence linking the documents to the appellant's case. It is significant that these documents as per Exhibits P1-***

P201 have been tendered from the Bar with the consent of both sides. The appellant's contention is that they have been taken as read and that it is the duty of Court to appraise the documents without more. I think the appellant has misconceived the law in this regard that where the documents so tendered are not examined in the open Court by oral evidence showing the purpose for tendering them and thus linking them precisely to a part of the case of the appellant as per the pleadings of the petition. Otherwise there is no duty on the Court to embark on a cloistered justice to examine them on its own outside the Court. The Court is not supposed to do a party's case for him. I am fortified for so holding by a plethora of cases including Jang v. Dariye (supra), Anyanwu v. Uzowuaka (supra) to mention but a few. To contend that the documents speak for themselves thereof is not to appreciate that it is the appellant's duty to call direct evidence to support its case."

As a matter of fact, quite contrary to the submission of Petitioners' counsel that ***the extant law governing frontloading of documents does not allow witnesses to link and explain the contents of the documents,*** in the ***PDP v. ALI & ORS (2015) case supra***, ***Georgewill, J.C.A.*** who delivered the lead Judgment emphatically stated thus:

"In my view, Paragraph 41(3) of the First Schedule to the Electoral Act 2010 as amended did not exclude demonstration of documents tendered in evidence by the parties in an Election Petition."

Applying the foregoing principles to the instant case, we are of the view that the Petitioners failed in their adjectival duty to connect these documents with the Petitioners case. In essence, the learned counsel for the Petitioners simply dumped them before the Tribunal. He never bothered to examine any of his witnesses to analyse or demonstrate any of the exhibits in the open Court. In the absence of such analysis we cannot attach any weight to the host of documentary exhibits tendered in this trial. They have no evidential value.

In the absence of the documentary exhibits, we a left with the ***viva voce*** evidence of only the 1st Petitioner. On this aspect of majority of lawful votes, the relevant portion of his evidence is captured in paragraphs 20 to 23 of his deposition. In the said paragraphs he stated That the scores recorded in the 3rd Respondents forms EC8A (I), EC8B (I), EC8C (I), EC8D (I) and EC8E (I) resulting in the return of the 1st Respondent when compared with the actual ballot papers cast or used at the said election demonstrates that the 3rd Respondent did not reflect the true result of the election.

That from the reports of their agents all over the constituency the votes actually scored by the candidates at the polling units within the 10 wards, contrary to the result as published and declared by the 3rd Respondent, are as follows:

I. Bakale ward – APC: 924 PDP: 1402.
II. Bingaje – APC: 1087 PDP: 1146.

III.	Binji	– APC: 1005	PDP: 1070.
IV.	Birnin Ruwa	– APC: 321	PDP: 721.
V.	Fakka	– APC: 1236	PDP: 1480.
VI.	Kilgori	– APC: 931	PDP: 1560.
VII.	Ruggara Iya	- APC: 1367	PDP: 1653.
VIII.	Toronkawa	- APC: 1289	PDP: 1592.
IX.	Yabo A	- APC: 2215	PDP: 2180.
X.	Yabo B	- APC: 2349	PDP: 2087.

That the total votes for the 1st & 2nd Respondents are 12724 votes and that of the Petitioners is 14921 votes.

According to him after a recount of all the ballot papers used at the said election and reckoning with all necessary deductions for unlawful votes, additions of lawful votes, corrections of errors in calculation/collation and or cancellation of all invalid/unlawful votes from the votes of the Petitioners and the 1st & 2nd Respondents, the Petitioners would emerge with at least a total of 14921 lawful votes as against 12724 votes for the 1st & 2nd Respondents.

That the Petitioners having scored the majority of lawful votes cast at the election for member House of Assembly representing Yabo Constituency at the Sokoto State House of Assembly should have been returned as duly elected by the 3rd Respondent.

From the oral evidence of the 1st Petitioner he admitted that his finding that he scored the majority of lawful votes was from ***the reports of their agents all over the constituency.*** The crucial questions to be asked at this stage are: ***Who are these anonymous agents? Why they were not called as witnesses to give these salient pieces of evidence? Why did they not come to tender their individual result sheets to analyse them to establish the fact that the 1st Petitioner scored the majority of lawful votes? More fundamentally, why did these agents not come to the Tribunal to demonstrate or prove the contents of the host of documents that were tendered at the trial?***

All these salient questions are begging for answers. Failure to answer them has left some gaping 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."

Again in the case of: ***IGWEBUIKE Vs EZEONWUKA (2015) LPELR-40675***, still on the effect of failure to call a Polling Agent as witness in Election Petition, ***YAKUBU, J.C.A*** stated thus:

"Therefore, even if the said additional evidence had been received, it would have had no weight as it did not come from a person conversant with the entries in the electoral forms in question, nor from a person that personally witnessed the election in the affected units of the ward- see Buhari and Another v. Obasanjo and Others (2006) 2 EPR 295 at 559 -560, (2005) 13 NWLR (pt.941) 1 at 315-316 paras. B-C thus: "On the question whether the evidence led in support is sufficient to warrant the decision reached on the point by the Court below, it is necessary to examine the said evidence led. The position of the law regarding the type of evidence which must be led in support of allegations in which figures or scores of candidates at an election are being challenged should come direct from the officers who were on the field where the votes were counted and/or collated ... See Omoboriowo v. Ajasin (1984) 1 SCNLR 108; and Hashidu v. Goje (2003) 15 NWLR (pt.843) 352 at 366. In the Hashidu v. Goje Case, supra, I stated the position of the law on the point on page 393 of the report as follows ... None of these party agents was called to testify. Similarly none of the INEC polling agents was called to testify and confirm the figures since they should be the makers of the forms on which the figures given were written. It follows therefore that the evidence given by the said PW1 on the figures and relied on by the lower Court was totally inadmissible because it is hearsay evidence. The Court below was therefore wrong in relying on the figures". See also Buhari v. INEC (2009) All FWLR (pt.459) 1 at 568-569 and Buhari v. INEC and Others (2008)

We have carefully examined the testimony of the 1st Petitioner on the salient aspect of how he attempted to prove that he scored the majority of lawful votes. His

evidence is based on what the agents told him. Those pieces of evidence, no matter how impregnable, cannot be of any judicial utility to the Petitioners because they came outside the personal knowledge the 1st Petitioner. They amount to hearsay evidence.

In his evidence in chief as encapsulated in his deposition, he said that after a recount of all the ballot papers used at the said election and reckoning with all necessary deductions for unlawful votes, additions of lawful votes, corrections of errors in calculation/collation and or cancellation of all invalid/unlawful votes from the votes of the Petitioners and the 1st & 2nd Respondents, the Petitioners would emerge with at least a total of 14921 lawful votes as against 12724 votes for the 1st & 2nd Respondents. All these sweepy assertions and assumptions are not backed up with any tangible evidence. There is no evidence of any recounting of ballot papers, or deductions, corrections of errors in calculation or cancellation of invalid votes. In the absence of the particular polling agents, the total figure allegedly collated from all the centres amounts to hearsay.

In the case of: ***APGA vs. INEC & Ors (2012) LPELR-19952(CA)*** the Court exposited thus:

> ***"It is clear and quite trite that the PW8 could not have given evidence of results of polling units he did not visit during the election as he stated clearly that he was in one polling unit only. The table of chart prepared by the PW8 remains hearsay unless and until he calls witnesses who were present in those polling units to substantiate those figure either positively or negatively depending on what he intends to achieve. It is elementary to say that hearsay evidence is inadmissible and where a Court has inadvertently admitted such evidence, it should be at liberty to strike it out. The fact that no cross examination was made on it does not make otherwise inadmissible evidence admissible. It remains legally inadmissible. See Owoniyi v. Omotosho (1961) 1 ALL NLR 304, Kate Enterprises Limited v. Daewoo Nigeria Limited (1985) 2 NWLR (pt. 5) 116."***

In view of our findings made so far, we are of the view that the Petitioners have not led sufficient and credible documentary or oral evidence 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 House of Assembly representing Yabo Constituency of Sokoto state held on the 9th day of March, 2019.

The 1st and 3rd issues are therefore resolved in favour of the Respondents.

ISSUE 2:

Whether the Petitioners have led sufficient and credible evidence to prove that the election of the 1st Respondent was invalid by reason of corrupt practices or non-

compliance with the provisions of the Electoral Act (as amended) and other Regulations and Guidelines for the conduct of the said elections.

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 Petitioners called one witness and the 1st Petitioner who testified of the events that transpired in some polling units on the Election Day.

As we have already held, the documentary exhibits tendered at the trial were not analysed or demonstrated at the trial thus they have no evidential value. We are the left with the evidence of the 1st Petitioner. In his evidence before the Tribunal, the 1st Petitioner made some allegations of corrupt practices. We will scrutinise the allegations and make some preliminary findings on them as we proceed.

He testified that at Bakale Yauta/Dorai polling unit of Bakale ward, voting was abruptly stopped midway and all persons perceived to be sympathetic to the Petitioners

were prevented from voting by the thugs or miscreants sympathetic to the 1st and 2nd Respondents. That out of the multitude of registered voters at this unit only very few got the chance to vote, while several persons registered to vote at this unit were disenfranchised unlawfully.

That the 3rd Respondent's officers presiding at Adigai/Makera polling unit of Bingaje ward allowed malpractices such as open vote buying, multiple voting, stuffing of ballot boxes with pre-thumb printed ballot papers, voting by persons not duly accredited and voting on behalf of or in the name of dead or relocated persons. That the registered and genuine voters at the polling unit were denied opportunity to exercise their franchise while unregistered or unlawful votes were cast in their place.

That at Lambogel/Busa polling unit in Bingaje ward, the presiding officer failed, refused or neglected to count and credit valid votes cast in favour of the Petitioners thus giving the respondents an undue advantage over the petitioner. That the votes actually cast in favour of the Petitioners at this unit far exceeded the votes credited in their favour in the form EC8A (I) issued for said unit.

That in the course of the election at Sabara K/Gari in Bingaje ward, violence erupted and disrupted the process which caused many intending registered voters to leave the unit for fear of being harmed and thus prevented them from voting in favour of candidates of their choice.

That the conduct of the agents of the Respondents at Shiyar Yabo polling unit in Binji ward in forcefully intercepting female voters and collecting their voters card to cast votes on their behalf in favour of the 1st and 2nd Respondents caused a considerable number of female voters to leave the unit without exercising their franchise. That an attempt by the agents of The Petitioners at the unit to call the said agents to order led to an unpleasant altercation.

That at Kibiyare polling unit of Binji ward, intending voters were thoroughly intimidated by thugs or miscreants sympathetic to the 1st and 2nd Respondents who were violently disposed and for no just cause descended on the agents of the Petitioners at the unit by thoroughly beating them up to prevent any dissent. That for fear of their safety, the intending voters left the polling unit without casting their votes.

That at Tilen Galabu polling unit in Binji Ward a fight instigated by one Dogo Ali a member of the 2nd Respondent caused the election process to be disrupted and several intending voters were thus compelled to leave the unit without exercising their franchise.

That at Gidan Basa/Rinaye/Manawa polling unit of Birnin Ruwa ward election could not be conducted due to violence which erupted there. That the 3rd Respondent in appreciation of this fact directed supplementary election to be held at this unit and on 23/3/2019 the supplementary election was conducted for only the Governorship office excluding the office of member House of Assembly which was equally affected by the violence.

That all the registered voters at this polling unit were unlawfully

disenfranchised by the 3rd Respondent, just as the 1st Petitioner was unlawfully excluded from election at this unit.

That at Birni Usman and Koyo/Olo Rawa/Gidan Hammadu 003 polling units in Fakka ward there was so much over voting that the ballot papers for the elections to the office of member House of Assembly were exhausted, while those of the governorship election were still available at the unit. That the presiding officers at the units could not offer any explanation for the shortfall in ballot papers. That this development prevented many intending voters from exercising their franchise and the 1st Petitioner was unlawfully excluded in contravention of the provisions of the Constitution, Electoral Act and Regulations & Guidelines issued by the 3rd Respondent for the conduct of the 2019 general elections.

That the election at Zezi Rugaldu polling unit of Ruggar Iya ward was violently disrupted following the visit to that unit by one Alhaji Abubakar Umar Yabo, the member-elect for the House of Representatives. They said that this prevented several intending voters from exercising their franchise.

That at Gomara/Kaura Taba Ketare polling unit of Ruggar Iya ward, the presiding officers failed to properly accredit voters and this led to votes being cast using the voter's cards of known deceased persons.

That at Bayan Bias/Gidan Gamji of Toronkawa Ward, Gela-Tofarka of Toronkawa Ward and Shiyar Ubandawaki Glima polling unit of Yabo A ward, the Petitioners were also unlawfully excluded from participating in the election to the office of member House of Assembly representing Yabo Constituency by the 3rd Respondent. That this was due to the unavailability of ballot papers for the election of member House of Assembly while ballot papers for the other offices were available for use by intending voters.

That at the polling units at Dagwarar Dikko, Toronkawa Shiyar Lelaba and Gamagama in Toronkawa Ward, agents and officials of the Petitioners were beaten and thrown out of the unit and were not allowed to monitor the elections. That in their absence, the presiding officers and agents/supporters of the respondents had ample opportunity to unlawfully thumb print ballot papers, allocate and inflate votes in favour of respondents to give the said respondents an unfair advantage over the petitioners.

That at Bulbuli polling unit of Toronkawa Ward, election was disrupted by one military man called Bello Soja Sanyinna which caused intending voters to leave the unit without casting their votes. The Petitioners stated that these infractions, non-compliances, malpractices and or breaches were widespread throughout the Yabo Constituency and substantially affected the fairness of the election and fortunes of the Petitioners.

Upon a careful review of the alleged corrupt practices they range from incidents of vote buying, thuggery, violent assaults, multiple voting by unlawful thumb printing of ballot papers, over voting etc., etc. All these are criminal allegations which must

be proved beyond reasonable doubt. See the cases of: ***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.***

In the case of: ***ORAEKWE & ANOR v. CHUKWUKA & ORS (2010) supra***, the Court held that: "***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."***

In the present case, the Petitioners alleged that the perpetrators of these corrupt practices were agents of the 1st and 2nd Respondents. They even mentioned the names of some of the suspects who disrupted voting activities such as one Dogo Ali who allegedly disrupted the voting at Tilen Galabu Polling Unit, one Alhaji Abubarkar Umar Yabo who allegedly disrupted the voting at Zezi Rugaldu polling unit of Ruggar Iya ward and at Bulbuli polling unit, one Bello Soja Sanyinnma caused apprehension to the voters and scared them away.

In the case of: ***Wali v. Bafarawa (2004) 16 NWLR Pt. 899 Page 1 at 44 - 43*** , the Court held that where in an election, the allegation is that malpractices or corrupt practices were committed by agents of the person returned as duly elected, the person challenging the election must prove:

(a) That the alleged agent claimed to be the agent of the elected person;

(b) That the offences were committed in favour of the elected person with his knowledge, or under the general or special authority of such candidate with respect to the election.

That where the Petitioner fails to establish the above, then he cannot attribute any offence committed by the agents to the candidate.

Upon a careful review of the evidence adduced in this case we are of the view that the Petitioners have not met any of the above requirements. They failed to establish that the alleged agents were acting for the Respondents on the authority and with the consent of the Respondents. Moreover as we have held, in so far as the Petitioners did not call the polling agents from all the affected polling units, the evidence of the 1st Petitioner in respect of these alleged corrupt practices amount to hearsay evidence which cannot be relied upon.

In the event, we hold that the Petitioners have failed to prove that the election of the 1st Respondent was invalid by reason of corrupt practices.

The second aspect of this Issue Two is on 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.

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. We will examine these allegations of non-compliance and make our findings on them.

Learned counsel referred to paragraphs 24, 25 & 26 of the 1st Petitioner's statement on oath that in Bakale/Yauta/Dorai polling units of Bakale ward and Adigai/Makera polling unit of Bengaje ward, thugs and miscreants sympathetic to the 1st and 2nd Respondents prevented people who were sympathetic to the Petitioner from voting. That there was open vote buying, multiple voting, stuffing of ballot boxes with pre-thumb printed ballots, voting by persons not accredited and voting on behalf of or in the name of dead or relocated persons, all by 1 & 2 Respondents thugs.

He also referred to paragraph 7 of the deposition where he stated that the presiding officer failed, refused or neglected to count and credit valid votes cast in favour of the Petitioner at Lambogel/Busa polling unit in Bingaje ward, and same gave undue advantage to the 1st Respondent.

He also submitted that there was over voting in Birnin Usman and Koyololo, Rawe/Gidan Hammadu 003 polling unit in Fakka.

Counsel concluded that the actions of the Respondents are a ground to nullify the election in the affected areas and conduct a supplementary election. For this view, he relied on ***section 140 (2) of the Electoral Act (as amended).***

It is settled law that 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 did not call witnesses from the particular polling units where they complained of the alleged non-compliance. They relied entirely on the hearsay evidence of the 1st Petitioner. Thus they were unable to prove the allegations of non-compliance in each of the affected polling unit on the balance of probabilities. Furthermore, they 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 how the alleged non-compliances substantially affected the result of the election.

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 was invalid by reason of corrupt practices or non – compliance with the provisions of the Electoral Act (as amended) and other Regulations and Guidelines for the conduct of the said elections. 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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3. M.K.ABDULKADIR ESQ……...3RD RESPONDENT