

IN THE NATIONAL AND STATE HOUSE OF ASSEMBLY  
ELECTION PETITION TRIBUNAL  
HOLDEN AT SOKOTO  
ON THURSDAY THE 5<sup>TH</sup> DAY OF SEPTEMBER, 2019  
BEFORE:

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

IN THE ELECTION TO THE YABO/SHAGARI FEDERAL HOUSE OF  
REPRESENTATIVES ELECTION  
HELD ON THE 23<sup>RD</sup> DAY OF FEBRUARY, 2019

PETITION NO: EPT/SKT/HR/06/2019

BETWEEN:

1. AMINU SHEHU SHAGARI  
2. PEOPLES DEMOCRATIC PARTY  
AND

} PETITIONERS

1. UMAR ABUBAKAR YABO  
2. ALL PROGRESSIVES CONGRESS  
3. THE INDEPENDENT NATIONAL  
ELECTORAL COMMISSION (INEC)

} RESPONDENTS

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

This judgment is in respect of an election petition filed by the Petitioners on the 17<sup>th</sup> day of March, 2019 to challenge the election of the 1<sup>st</sup> Respondent on the

platform of the 2<sup>nd</sup> Respondent to the office of Member, House of Representatives for Yabo/Shagari Federal Constituency of Sokoto State held on the 23<sup>rd</sup> day of February, 2019.

At the said election, the 1<sup>st</sup> Petitioner who was sponsored by the 2<sup>nd</sup> Petitioner polled a total of 24,932 votes while the 1<sup>st</sup> Respondent who was sponsored by the 2<sup>nd</sup> Respondent scored a total of 33,193 votes. Consequently, the 3<sup>rd</sup> respondent declared the 1<sup>st</sup> Respondent as the winner of the said election and issued a certificate of return to him.

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

- a) That the 1<sup>st</sup> respondent was not qualified to contest election under the Constitution of the Federal Republic of Nigeria 1999 (as amended) at the time the election for Yabo/Shagari Federal Constituency of Sokoto State was conducted;
- b) That the election and return of 1<sup>st</sup> respondent was invalid by reason of substantial non-compliance with the provisions of the Electoral Act, 2010 (as amended) and Regulations and Guidelines for the conduct of 2019 general elections and Manual for election officials and/or corrupt practices that substantially affected the result of the election; and
- c) That the 1<sup>st</sup> respondent was not duly elected by majority of lawful votes cast at the election.

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

- (a) A DECLARATION that the return of the 1<sup>st</sup> respondent as the winner of the election for Yabo/Shagari Federal Constituency of Sokoto State held on the 23<sup>rd</sup> February, 2019 is void for corrupt practices and substantial non-compliance with the provisions of the Electoral Act, 2010 (as amended);
- (b) A DECLARATION that the 1<sup>st</sup> respondent was not duly elected or returned in 74 polling units with 114 voting points in Yabo Local Government and in 73 polling units with 148 voting points in Shagari Local Government by majority of lawful votes cast at Yabo/Shagari Federal Constituency held on 23<sup>rd</sup> February, 2019;
- (c) AN ORDER nullifying the election and return of the 1<sup>st</sup> and 2<sup>nd</sup> respondents as winners of the election for Yabo/Shagari Federal Constituency of Sokoto State held on 23<sup>rd</sup> February, 2019;
- (d) AN ORDER for fresh election to be conducted by the 3<sup>rd</sup> respondent.

ALTERNATIVELY THEY SEEK:

- (e) A DECLARATION that the petitioners are the winners of the election for Yabo/Shagari Federal Constituency of Sokoto State held on 23<sup>rd</sup> February, 2019, having polled the majority of lawful votes cast and therefore entitled to be returned accordingly; and
- (f) The cost of this petition.

In proof off the petition the, the petitioners called a total number of 41 witnesses and tendered documentary pieces of evidence which were admitted in evidence. At the close of evidence, the Honourable Tribunal ordered filling of written addresses by the learned counsel for the parties.

On the 8<sup>th</sup> of August, 2019 the learned counsel for the parties adopted their Written Addresses and the matter was adjourned for judgment.

The gist of the Petitioners' case is that the 1<sup>st</sup> Petitioner who is a member of the Peoples Democratic Party (PDP), 2<sup>nd</sup> Petitioner, contested the election for the office of Member, House of Representatives for the Yabo/ Shagari Federal Constituency of Sokoto State held on the 23<sup>rd</sup> of February, 2019.

The 1<sup>st</sup> Respondent who is a member of the All Progressives Congress (APC) 2<sup>nd</sup> Respondent was allegedly sponsored as its candidate for the Yabo/ Shagari Federal Constituency of Sokoto State.

The 3<sup>rd</sup> Respondent is the Constitutional and statutory body charged with the responsibility of organizing and conducting general elections periodically as specified by the provisions of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and the Electoral Act, 2010 (as amended), as well as monitoring and supervision of the affairs of political parties in Nigeria.

At the conclusion of the election it was alleged that the 1<sup>st</sup> Respondent scored 33,193 votes and was returned and declared as winner of election for the Yabo/Shagari Federal Constituency of Sokoto State; while 24,932 votes were recorded for the Petitioners.

The Petitioners stated that the 1<sup>st</sup> Respondent was not sponsored by the 2<sup>nd</sup> Respondent to contest the Yabo/Shagari House of Representative Election held on 23<sup>rd</sup> February, 2019 in accordance with the Electoral Act, 2010 (as amended) and thus was not qualified to contest the said election.

They also stated that the 1<sup>st</sup> respondent was not duly elected by majority of lawful votes cast at the election. That the results from about 74 polling units and 114 voting points in the 10 wards of Yabo Local Government and in 73 polling units and 148 voting points in the 10 wards of Shagari Local Government are invalid by reason of corrupt practices and non-compliance in the form of over-voting, inflation of votes, ballot stuffing, mutilation of Form EC8A and B, mutilation of election result, failure to stamp and sign Forms EC8A and EC8B, the particulars of which are produced in the later part of this petition.

That majority of the votes obtained by the 1<sup>st</sup> Respondent were as a result of non-compliance with the Electoral Act, 2010 (as amended), approved guidelines and manual for Election Officials 2019 issued by the 3<sup>rd</sup> Respondent and other relevant laws.

The Petitioners highlighted an analysis of the total number of invalid votes obtained by the 1<sup>st</sup> Respondents through the irregularities in the table below:

**TOTAL INVALID VOTES ALLOTTED TO APC AND PDP AT YABO AND SHAGARI LOCAL GOVERNMENT**

	APC	PDP
Total Invalid votes wrongly included wrongly allotted by 3 <sup>rd</sup> Defendant (INEC) at Yabo and Shagari Local Government.	23,214	14,454
	APC	PDP
Total votes declared by 3 <sup>rd</sup> Defendant (INEC)	31,193	24,932
Total Invalid Votes deducted from Final Results Announced by 3 <sup>rd</sup> Defendant (INEC)	APC	PDP
	31,193 - 23,214 = 7,979	24,932 - 14,454 = 10, 478
MARGIN OF VICTORY OF PDP OVER APC	2,499	

The Petitioners maintained that based on the analysis of the irregularities, the total number of invalid votes declared for APC will be around 23,214 and about 14,454 invalid votes to PDP. That when the invalid votes are deducted from the votes scored by the 1<sup>st</sup> Petitioner and 2<sup>nd</sup> Respondent respectively, that is (APC =

31,193 - 23,214) and (PDP: 24,932 - 14,454), the actual valid votes scored by the Petitioners will be 10, 478 votes while 1<sup>st</sup> and 2<sup>nd</sup> Respondents will have 7,979 votes. According to the Petitioners, the irregularities which existed in the affected results were as follows:

- i. Recording of votes for parties even when no voters were on queue at the time of commencing balloting as depicted in the series of EC8A's.
- ii. Ascribing votes to candidates where there had been no accreditation of voters at all as depicted in that no card reader machines and incident forms were made available.
- iii. Ascribing votes to candidates without accounting for missing issued ballot papers.
- iv. Ascribing valid votes to candidates based on results that were not authenticated by persons purporting to be presiding officers other than the officially designated presiding officers in the INEC Staff list provided to parties before the date of the election.
- v. Ascribing valid votes to candidates based on results that were not authenticated by presiding officers with the Presiding officer's signature and official stamp and in some cases with no signature to ascertain the date the election was held as depicted in the various result sheets.
- vi. Ascribing votes to candidates even in areas where elections were reported not to have been held.

According to them, the irregularities highlighted above were in breach of the provisions of the Electoral Act and the Guidelines/manual designed to ensure free, fair and credible elections.

Furthermore, they claimed that the votes recorded for the 1<sup>st</sup> Respondent were found to have been procured as a result of various corrupt practices and substantial non-compliance which tainted all the results in 74 polling units with 114 voting points in Yabo Local Government and in 73 polling units with 148 voting points in Shagari Local Government Area. They enumerated the various polling units and voting points whose results they are challenging in this petition. The Petitioners maintained that a large number of their supporters were intimidated, beaten and chased away by the agents of the 1<sup>st</sup> Respondent in areas where the petitioners have strong followership.

The Petitioners alleged that the 3<sup>rd</sup> Respondent did not sign the compulsory Form or Undertaking of Neutrality before, during and after the conduct of the said election. That they also did not sign the Form where they are required to account for

the number of used and unused ballot papers as required by the Electoral Act, Guidelines and Manual for INEC Officials, 2019.

The Petitioners alleged that the acts of corrupt practices compromised the election held in 74 polling units with 114 voting points in Yabo Local Government and in 73 polling units with 148 voting points in Shagari Local Government and was conducted in utter negation of all the safeguard provisions of the Act, right from the stage of voters accreditation to collation of results which the 3<sup>rd</sup> Respondent failed to nullify even in instances where the breach relates to mandatory safeguards of the provision of the Electoral Act, 2010 (as amended).

They also alleged that the results of some polling units issued to the Petitioners by the 3<sup>rd</sup> Respondent on request as entered in Forms EC8 series by the presiding officers of the 3<sup>rd</sup> Respondent were mostly not signed and stamped by the Presiding officers in blatant breach of Sections 63(2),(3), (4) and 74 of the Electoral Act 2010 (as amended).

They alleged that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents had in collusion with the 3<sup>rd</sup> Respondent disregarded rules and regulations made by the 3<sup>rd</sup> Respondent by allowing the 2<sup>nd</sup> Respondent, acting through its agents to forcefully drive voters and observers away from the polling units and compromised timing and all procedures meant to ensure free and credible election and engaged in multiple voting and all manner of irregularities by single personalities in some wards and Local Governments such as:

- i. The summary of the findings of Data analysts engaged to carry out statistical analysis of some of the affected polling units revealed that the summation of unused ballot papers, spoiled ballot papers, rejected ballot papers and valid ballot papers issued do not add up to the issued ballot papers;
- ii. In some polling units, the numbers recorded as valid votes cast is more than the numbers of accredited voters; or
- iii. In some polling units, there is no record to show that voters on the queue were counted before voting; or
- iv. Some recording sheet like EC8A were neither stamped nor signed by the presiding officers of the polling unit(s); or
- v. Multiple voting.

As earlier stated, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents did not call any witness to testify in defence of this petition. However the 3<sup>rd</sup> Respondent called 3 witnesses through whom some documentary pieces of evidence were tendered and admitted as exhibits.

The star witness for the 3<sup>rd</sup> Respondent was one Ya'u Yayeh Kamba the Electoral Officer of Shagari Local Government Area of INEC who testified as R.W.2. In his deposition which he adopted as his evidence, he stated that he supervised and monitored the conduct of the Presidential/National Assembly Election which took place on the 23<sup>rd</sup> February 2019 particularly the election into the House of Representative of Yabo/Shagari Federal Constituency of Sokoto State.

According to him, the conduct of the election was very peaceful without any case of violence and free of any form of malpractices in line with the Electoral Act 2010 (as amended) and its Guidelines and Manual guiding the conduct of the general election. He denied all the allegations of corrupt practices and non-compliance with the Electoral Act 2010 (as amended) and INEC Guidelines and Manual.

He maintained that the 1<sup>st</sup> Respondent scored the highest number of lawful votes cast and was accordingly declared the winner of the election and returned as elected.

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

In his Final Written Address the learned counsel for the 3<sup>rd</sup> Respondent, ***A.T.Ibrahim Esq.*** identified the three Issues for Determination as formulated by the Tribunal at the Pre-Hearing Session which are as follows:

***(1) Whether the return of the 1st Respondent as the winner of the election for Yabo/Shagari Federal Constituency of Sokoto State held on the 23rd February, 2019 is in strict compliance with the provision of the Electoral Act 2010 as amended.***



***(2) Whether the return of the 1st Respondent as the winner of the election for Yabo/Shagari Federal Constituency of Sokoto State held on the 23rd February, 2019 is void for corrupt practices and substantial non-compliance with the provisions of the Electoral Act, 2010 (as amended); and***

***(3) Whether the Petitioners have placed sufficient materials before this Tribunal to entitle them to declare the 1st Petitioner as the rightfully elected Candidate for Yabo/Shagari Federal Constituency of Sokoto State in the election held on the 23rd February, 2019.***

Thereafter, learned counsel articulated his arguments on Issues 1 and 2. He submitted that the two issues are like reverse sides of a coin hence his decision to argue them together.

He submitted that there is a presumption of regularity of the result declared by the 3rd Respondent and referred to the case of: ***ALI UCHA V. ELECHI (2012)LPELR-7823*** where the Supreme Court *per Rhodes-Vivour JSC* stated the law as follows:

***"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, 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, 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. See: Buhari v. Obasanjo 2005 13 NWLR Pt. 941 p.1; Awolowo v. Shagari 1979 6 - 9 SC P.51; Akinfosile v. Ijose 1960 SCNLR P.447."Pp. 33-34, paras."***

Again he referred to the case of: ***BUHARI V. OBASANJO (2005) LPELR-85*** where the *Belgore JSC* held thus:

***“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 submitted that to determine the issues in this Petition, it is expedient to examine the evidence offered by the Petitioners to see if they are strong, cogent, reliable and admissible in law to rebut the presumption of regularity, correctness and authenticity which the law confers on the results. He submitted that the Petitioners have failed to rebut the presumption for the following reasons:

(i) Evidence of all the Petitioners witnesses amount to hearsay evidence which is legally admissible because throughout their testimonies they either based their evidence on assumptions or the reports they allegedly received from the field officers or agents who were not called as witnesses.

He referred to the case of: ***ALAPA & ANOR V. INEC & ANOR (2015) LPELR-41787(CA) Pp. 30-31, para. E*** ) where the Court of Appeal per Oguinya JCA restated the position as follows:

***“... in our adjectival law, a witness is expected to testify on oath, or affirmation, on what he knows personally. Where a witness gives evidence on what another person told him about events, then it is not direct evidence which has acquired the nickname: hearsay or second hand evidence. In the view of the law, hearsay evidence can only be used to inform a Court about what a witness heard another say and not to establish the truth of an event, see Sections 37, 38 and 126 of the Evidence Act, 2011.”***

(ii) The law is that the burden of proof is on the Petitioners to prove that election did not take place or that there was over-voting in their area of complaint. The preponderance of judicial authorities is in unison on this and they have set out what the Petitioners are expected to do in order to discharge the burden.

In ***EMMANUEL V UMANA (2016) LPELR-40037*** the Supreme Court, Per RHODES-VIVOUR, JSC @ P. 84, paras. A-B upon a review of

earlier authorities on what a Petitioner must do to establish disenfranchisement of voters held thus:

***"...When would the Court be satisfied that voters were disenfranchised (a).The disenfranchised voters must give evidence to establish the fact that they were registered but were not allowed to vote. (b) The voters' card and voters register for the polling unit must be tendered.***

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

He submitted that the allegation that the election was not conducted in substantial compliance with the Electoral Act was not really proved through their witnesses. That some documents were simply dumped before this Honourable Tribunal as there were no witnesses called to speak life to them. Also, the allegations that the election was not conducted freely, that voters were intimidated borders on criminality under Section 123(1) - (6) of the Electoral Act 2010 (as amended) and they must be proved beyond reasonable doubt. He said that the Petitioners have failed to discharge the burden placed on them by law in this regard and relied on the case of: ***WAZIRI & ANOR V GEIDAM & ORS (2015) LPELR - 26046*** where the Court of Appeal *Per Tur JCA* held thus:

***"An allegation by a petitioner(s) that no voting occurred in certain polling units or Local Government Areas or a constituency, etc, but votes were credited to the candidates constitutes a criminal offence under Section 123(1)-(6) of the Electoral Act, 2010 as amended." At P. 25, paras. E-F"***

Learned counsel submitted that the allegation of arbitrary allocation of votes against the 3rd Respondent by the Petitioners amounts to falsification of result and that only those who falsified or were present when it was carried out are competent to give oral evidence. He said that the evidence of the Petitioners fell short of this legal standard because allegations of crime in an election petition must be proved beyond reasonable doubt. See: ***NWOBODO V ONOH (1984) SCNLR 1.***

Counsel submitted that the Petitioners must succeed or fail on the strength of their case and not on the weakness of the Respondents' case and relied on the decision in: *CPC v. V. IN.E.C. (2011) 18 NWLR (Pt. 1279) 493 at 538*.

He submitted that the Petitioners failed to substantiate the allegations on all fronts in line with all known principles relating to onus of proof and standard of proof in view of the hearsay evidence before this Tribunal.

He said that assuming without conceding that the evidence are not hearsay, he further submitted that the Petitioners' evidence cannot by any stretch of imagination be said to have met the standard required of them by law as enunciated in *NGIGE V INEC (supra)* and *EMMANUEL V UMANA (supra)* to prove that there were voters' disenfranchisement, voters intimidation as well as falsification of results. Furthermore, learned counsel submitted that documents tendered from the bar without evidence led thereon are dormant and of no value to the party who tendered same. He referred to the case of: *OMISORE V.AREGBESOLA (2015) LPELR-24803*, where the Supreme Court *per NWEZE JSC* had this to say:

*"It has long been settled that a Judge is not permitted to embark on an inquisitorial examination of documents outside the Court room. Worse still, he is not allowed to act on what he discovered in such a document in relation to an issue when that was not supported by evidence or was not brought to the notice of the parties to be agitated in the usual adversarial procedure."*

He said that the Petitioners tendered various documents from the bar and they neither led evidence to link the documents nor extracted any evidence from RW1 – RW3 under cross-examination to support their case. He said that there was no evidence from the Petitioners to speak to the EXHIBITS rather they dumped the documents on this Honourable Tribunal.

On the whole he submitted that the three witnesses called by 3rd Respondent in her defence were indeed corroborative of one another in demonstrating the fact that the election was conducted in the Yabo/Shagari Federal Constituency being disputed by the Petitioners, in substantial compliance with the extant laws.

In conclusion, he urged the Tribunal to dismiss this Petition as the Petitioners have failed to dislodge the presumption of regularity, correctness and genuineness of the election in Yabo/Shagari Constituency and are thus not entitled to the reliefs sought in the Petition.

In his Written Address, the learned counsel for the 1<sup>st</sup> Respondent, **Chief S.U.Nwoke** identified the issues for determination, argued Issues 1 and 2 together and Issue 3 separately.

#### ISSUES 1 AND 2:

Learned counsel submitted that these issues border on non-compliance with the provisions of the Electoral Act 2010 (as amended) and was culled from ground B of the petition. He pointed out that there is no provision in the Electoral Act requiring elections to be conducted in strict compliance with the provisions of the Electoral Act 2010 (as amended). Rather, Section 139 (1) of the Electoral Act 2010 (as amended) only requires that elections be conducted in substantial compliance with the provisions of the Act.

He submitted that an election will not be nullified unless it is shown that it was not conducted in substantial compliance with the provisions of the Act for no election conducted by human beings is perfect. For this view, he relied on the case of: **NGIGE V INEC (2015) 1 NWLR (PT. 1440) 281.**

He posited that the burden of proof in an election petition lies squarely on the petitioner who is to adduce cogent evidence in proof of his assertion. See: **OLUFOSOYE VS. FAKOREDE (1993) 1 NWLR (Pt. 272) 747; Sections 135 and 136 of Evidence Act, 2011; IZE-IYAMU O.ANDREW v INEC (supra) @ 888-889.**

He submitted that the law presumes (albeit rebuttable) that the results of an election officially declared by the Electoral Officers are correct, authentic and valid and a person who denies the correctness of the result has the burden of rebutting this presumption. See: **NWOBODO VS. ONOH (1934) 1 SCNLR 1;** and **OMOBORIOWO VS. AJASIN (1984) 1 SCNLR 108.**

He emphasized that the petitioner has to prove his petition either on the preponderance of evidence or beyond reasonable doubt where his case is built on allegations that are criminal in character. See the decision of the Supreme Court in **UCHA V. ELECHI (2012) ALL FWLR (PT 625) 237 AT 262;** and **C.P.C. V. I.N.E.C. (2012) All FWLR (PT 617) 605 at 6345.**

He submitted that failure of the respondents to call witnesses does not relieve the petitioner of the duty of proving the essential elements of the claim. That if the evidence led by the petitioners have not proved his petition to the level where the respondent would be required to enter his defence, the fact that the respondent did not call witnesses in defence does not mean that the tribunal will grant the claim especially considering the nature of the claim before the tribunal which are declaratory in nature and has to be proved head by head. See: *PDP & ANOR VS INEC (2012) LPELR- 8409(CA)*; *SIJUADE V OYEWOLE (2011) LPELR- 4869 (CA)*; *OGOLO V OGOLO (2006) 5 NWLR (PT.972) 173 @ 184 PARA D-E*; *KWAJAJA V BON LTD (2004) LPELR-1727 (SC)*.

Learned counsel submitted that by electing not to call witnesses, the 1<sup>st</sup> respondent was not admitting any of the claims of the petitioners but was contending that upon the pleadings and evidence before the tribunal the petitioners have not made out a case that is worth defending.

He referred to paragraph 15 of the petition, where the petitioners ground states as follows:

***“The election and return of 1<sup>st</sup> respondent was invalid by reason of substantial non compliance with the provisions of the Electoral Act 2010 (as amended) and Regulations and Guidelines for conduct of 2019 general election and Manual for Election Officials and/or corrupt practices that substantially affected the result of the election.”***

He submitted that where a petitioner challenges the election on the ground that it was not conducted in compliance with the provisions of the Electoral Act, 2010, he must plead facts that not only show the non compliance but also that the non compliance substantially affected the result of the election and how the non compliance has affected the result of the election otherwise the petition would not

have disclosed a reasonable cause of action. See: *OJUKWU V YAR'ADUA (2009) 12 NWLR (PT. 1154) 50.*

He said that to succeed in this case bordering on non compliance with the provisions of the Electoral Act, the petitioners are expected to plead the instances of non compliance polling unit by polling unit, ward by ward and local government by local government with the figures of the affected votes from these units which will enable this tribunal to hold that there was non-compliance and that the non compliance substantially affected the result of the election in the constituency.

He said that in this petition, the petitioners did not plead that the non compliance substantially affected the election. Neither did they state the figures of the affected votes in the polling units, wards and local government areas from which the tribunal would know that the alleged non compliance substantially affected the result of the election in accordance with the combined reading of *Sections 145 (1) (b) and 146 (1) of the Electoral Act 2010 (as amended).*

He referred to Section 139 (1) of the Electoral Act 2010 as amended which provides thus:

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

He maintained that the failure of the petitioners to so plead is fatal to the petition and the petition is liable to be struck out without more. See: *OGU V EKWEREMADU (2006) 1 NWLR (PT961) 255 @ 281- 282; BELGORE V AHMED (201308 NWLR (PT.1355) 60 @95-96.*

He submitted that for an election to be nullified on the ground of non compliance, the petitioners must show by credible evidence that the election was

vitiated by substantial non compliance by proving the votes involved and how it affected the election. See: ***BUHARI V OBASANJO (2005) 7 sc (pt.1) p.1 @ 109-110***

He said that in the instant petition, what the petitioners did was to allege sundry incidents of non compliance in various polling units without stating the figures involved and thereafter tendered a host of documents through PW 7 who was their constituency collation agent and some from the bar and through the 3<sup>rd</sup> respondent's witnesses none of whom in anyway linked the documents to any specific area of the petition with none of them mentioning the relevant figures in his written statement on oath which would enable the tribunal to come to any conclusion on the issues.

He said that the PW 7 was not present at the polling units where these forms were filled or an eye witness to what transpired at the various polling units and therefore his evidence relying on what he allegedly read from the forms are at best, hearsay evidence especially when he admitted under cross examination that he did not visit any other polling unit apart from his own. See: ***INEC V ABUBAKAR 2009 8 NWLR (PT. 1143) 259 @ 295 PARA C-D***; and ***ADEWALE VS OLAIFA (2012) 17 NWLR (PT. 1330) 483***.

**Learned counsel** submitted that every allegation in respect of non compliance with the provisions of the Electoral Act 2010 (as amended) contained in the petition have not been proved in so far as none of the petitioners' polling unit agents who were there when the election was conducted and the forms issued was able to prove any incidence of non compliance before this tribunal.

**He said that** the petitioners called 41 witnesses in this petition. Twenty three (23) of these witnesses were polling unit agents, fifteen (15) were ward agents, two (2) were local government agents while PW 7 was the constituency collation agent. **He said that** none of these witnesses mentioned the votes scored by the parties in any polling unit, ward or local government area in his written statement on oath



adopted in this tribunal. He said that they could not have mentioned it because it was also not mentioned in any of the paragraphs of the petition except the final result announced by the 3<sup>rd</sup> respondent. He said that the petitioners pleaded what they called the summary of votes affected by non compliance in paragraphs 56 to 59 of the petition but none of their witnesses gave any evidence on the facts pleaded in these paragraphs so they were abandoned. See: ***EGBUNIKE V AFRICAN CONTINENTAL BANK LTD (1995)2 NWLR (PT. 375) 34.***

Learned counsel submitted that to determine whether the election to the House of Representatives for Yabo/Shagari Federal constituency was conducted in substantial compliance with the provisions of the Electoral Act 2010 (as amended), the members of this Tribunal will have to retire to their chambers to sort out these documents or to follow the submissions of Petitioners' counsel as they have canvassed in their address. He posited that the law does not allow the Tribunal or the petitioners to do so where the documents have not been demonstrated in open court. He said that what the petitioners failed to do through their witnesses, they are now trying to do *vide* paragraph 5.111 of their written address in which they drew charts spanning pages 54 to 56 of their written address and gave the backup evidence in paragraphs 5.112 to 5.115 of their address.

Learned counsel therefore urged us to discountenance the charts because they are not backed up by any pleading or evidence before this tribunal as the address of counsel cannot take the place of evidence. See: ***UCHA V ELECHI (2012) 3SC PT.1 P. 26 @62 PARAS 15-25*** where the Supreme Court stated thus:

***"The chart contained in the appellants' final address was a brilliant idea, but it was not tested under cross examination, and it does not show that the figures were arrived at as a result of careful examination and comparison of Exhibits p.95 - p111 document that were dumped on the trial Court. We must point out that a brilliant***

*address is no substitute for evidence, Counsel submission no matter how brilliant and alluring cannot take the place of legal proof. See Ishola v Ajiboye (1998) 1 NWLR (pt 532) P.71; Chukujekwu v Olalere (1992) 2 NWLR (Pt221) P.86. The chart relied on by learned counsel for the appellants are of little or no evidential value."*

He maintained that it is not within the jurisdiction of the Tribunal to start adding figures ex-curiae to find out what the lawful votes are when in actual fact none of the witnesses of the petitioners have shown to the tribunal that any particular vote was unlawful. See the case of TERAB VS LAWAN (1992) 3 NWLR (PT.231) P 569 particularly at 575.

He therefore urged the Tribunal to hold that all the documentary evidence were dumped on the tribunal by the petitioners and to discountenance them.

On the alleged incidents of non compliance he referred to paragraphs 65 – 86 of the petition where the petitioners alleged sundry incidents of corrupt practice in vague, nebulous and imprecise manner and submitted that Paragraph 4(1) (d) of the 1<sup>st</sup> schedule to the Electoral Act 2010 makes it compulsory that the petitioners ought to specifically plead the facts relating to the alleged “corrupt practices and /or non compliance with the provisions of the Electoral Act”.

He submitted that it is trite law that by the very nature of election petitions, evidence alleging election malpractices or irregularity must not only be precise and definite but must also be unequivocal and certain. He said that a vague and imprecise pleading is unacceptable in an election petition. See: OJO VS ESOHE (1999) 5 NWLR (PT. 603) 44.

He said that in paragraphs 71 and 72 of the petition, the petitioners alleged 1. Disenfranchisement; 2. Vote buying 3. Failure to use card reader; 4. Rigging; 5. Intimidation of voters; 6. Lack of accreditation; 7. Mutilation of figures in election result sheets; and 8. Over voting and ballot stuffing.

On over voting, he submitted that a petitioner who seeks to prove over voting at a polling unit has to prove how the over voting arose by showing the number of registered voters in the unit, the total votes cast in the unit and a host of other matters stated by the Supreme Court in: *EMERHOR V. OKOWA (2017) All FWLR (pt. 896) pg.1868 at Page 1905* where the learned Jurists held as follows: -

*“In a plethora of decisions of this court, we have made it abundantly clear that a petitioner seeking to prove over voting in an election must do the following:*

- 1. Tender the voters register to show the total number of registered voters in each unit.*
- 2. Tender the statement of result in the appropriate forms which would show the total number of votes cast.*
- 3. Relate each of the documents to the specific area of his case in respect of which the documents are tendered.*
- 4. Show that the figure representing the over voting if removed would result in victory for the petitioner; and*
- 5. In view of the introduction of card reader machines in elections, I will add that the petitioner should tender the card reader report if it did not fail to function.”*

Counsel submitted that instances of over voting which is a form of non compliance can only be proved by an eye witness at the polling unit who witnessed the event in the result sheet. See: *INEC V ABUBAKAR (2009) 8 NWLR (Pt 1143) 259 at 295 paragraph C-D*. He maintained that entries in election forms do not constitute evidence of disputed scores unless there is direct evidence linking the forms to the polling units complained of. See: *ADEWALE V OLAIFA (2012) 12 NWLR (Pt 1330) 483*.

He posited that in the instant petition, none of the polling unit agents called by the petitioners was able to establish over voting in their polling units when shown form EC 8A (11) from their polling units in Exhibit P3. Therefore, a mere allegation of over voting which did not show how many votes were recorded in a polling unit and the extent of the over voting will not suffice. He maintained that allegation of non compliance cannot be proved by information received by the petitioner, a roving party agent or a witness who just reviewed information contained in an election result. See: *GUNDIRI V NYAKO (2014) 2 NWLR (Pt 1391) 211 at 246 paragraph DC*.

He said that where a petitioner has not been able to do this, he cannot rely on the fact that the respondent has not called evidence to submit that he has proved his case because he needed to prove his case before the respondent can be expected to give evidence in rebuttal. See: *UCHA V ELECHI (2012) 13 NWLR (Pt 1317) at 359*.

On the allegations of disenfranchisement of voters, vote buying, rigging, intimidation of voters, mutilation of figures in election result sheets and ballot stuffing, learned counsel submitted that these allegations border on the commission of crimes which by *Section 135 (1) of the Evidence Act, 2011*, must be proved beyond reasonable doubt. He submitted that the evidence of the petitioners' witnesses did not prove the allegations of crime beyond reasonable doubt as most of the polling unit witnesses could not defend the allegations in their written statements on oath.

Learned counsel submitted that it is not enough for the petitioners to make allegations of mutilation, cancellation and falsification of results. That the petitioners needed to prove that they were dishonestly made with a view to altering

the outcome of the election in favour of the respondent and not that they were made at all with a view to correcting a mistake in calculation. He referred to the case of: *ABDULMALIK V TIJANI (2012) 12 NWLR (pt. 1315) 461* where the Court held thus:

*“It is trite that a petitioner who based his case on fraudulent cancellations, mutilations or alterations must establish two ingredients, i.e.:*

*(a) That there were cancellations, alterations or mutilations in the electoral document;and*

*(b) That the cancellations, alterations or mutilations were dishonestly made with a view to falsifying the result of the election.*

*The two ingredients must be established together before the result of an election can be cancelled on those grounds.*

*This court in TERAB V LAWAN (1992) 3 NWLR (pt. 231) p.569, paraa c-d held as follows:*

*“While it is true that some of these forms show that alterations and cancellations were made on them, it has not been made clear at what stage the alterations and cancellations were made. In order to prove that these alterations and cancellations were made so as to falsify the results of the election, the appellant will need to tender copies of the forms EC8A given to his agents at polling stations so that this could be compared with the originals tendered. A falsification of*

*results at the election in December 1991 is a criminal offence which requires proof beyond reasonable doubt.”*

Furthermore, he submitted that to succeed, the petitioners must prove that if the allegations are true, that they were perpetrated by agents of the respondents or at his behest. See: *Section 124(6) of the Evidence Act, 2011; BUHARI V OBASANJO (2005) 13 NWLR (Pt 941) 1 at 209 paragraph D and P.311 paragraph F; OMISORE V. AREBESOLA, (2015) 15 NWLR (PT.1482) 205 @ 334-335 PARA G-C; and AJA V. ODIN,(2011)5NWLR (PT.1241) 509 @ 54.*

On the allegation of disenfranchisement counsel pointed out that no single witness was called to show that he or she was prevented from voting by harassment or intimidation. Also, that no witness was presented to show that he was a registered voter, had his voter’s card and was prevented from voting. He said that without this type of evidence, the allegation of disenfranchisement has not been proved. See: *ADEWALE V OLAIFA (2012) 17 NWLR Pt. (1330) 478.*

On the allegation of non-accreditation and failure to use card reader, counsel submitted that in majority of the polling units which the witnesses complained about, they ended up admitting that they were accredited by the use of carder. He said that in most cases, they said the card reader stopped working after they were accredited with it. He referred to the evidence of RW1, who gave evidence for the 3<sup>rd</sup> respondents and tendered exhibits R2 and R3 which are the card reader printout for the Federal constituency and stated that card readers were used in the Federal constituency in 203 of the 206 polling units in the Federal constituency.

He submitted that the concept of accreditation with the use of card reader is an innovation introduced during the 2015 election by the 3<sup>rd</sup> respondent. That it is an instruction given to presiding officers to augment the process of accreditation and its introduction has not done away with accreditation by the use of the voters register. He referred to the case of: ***IKPEAZU v. OTTI & ORS (2016) LPELR-40055 (SC)***, where the Supreme Court Nigeria held thus:

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

Counsel submitted that failure by the 3<sup>rd</sup> respondent's ad hoc staff to use the card reader does not amount to non-compliance under ***Section 138 (1) of the Electoral Act*** and therefore cannot constitute a basis for the nullification of an election. He also relied on the cases of: ***IKPEAZU v. OTTI & ORS (2016) LPELR-40055 (SC)***; and ***NYESOM v. PETERSIDE & ORS (2016) LPELR-40036(SC)***.

Again, he submitted that failure by any ad hoc staff of the 3<sup>rd</sup> Respondent to follow the instructions of the 3<sup>rd</sup> Respondent cannot invalidate an election by virtue of the provisions of ***Section 138 (2) of the Electoral Act 2010 (as amended)*** which states:

***"An act or omission which may be contrary to an instruction or directive of the Commission or of an officer appointed for the purpose of the election***

*but which is not contrary to the provisions of this Act shall not of itself be ground for questioning the election.”*

He emphasized that the petitioner will not only prove non-compliance but also that the non-compliance substantially affected the result of the election. He submitted that the issue of the non-compliance, if any, substantially affecting the result of the election was not pleaded by the petitioners. That since it was not pleaded, evidence cannot be led on it and any evidence so led goes to no issue.

### ISSUE THREE:

He said that Issue three is whether the petitioners have placed sufficient materials before the tribunal to entitle them to declare the 1<sup>st</sup> petitioner as the rightfully elected candidate for Yabo/Shagari Federal constituency of Sokoto State in the election held on the 23<sup>rd</sup> February 2019.

He submitted that a complaint that a duly returned candidate in an election did not score the majority of lawful votes cast at the election is a direct challenge to the result declared by the 3<sup>rd</sup> respondent. That it presupposes that the petitioner has in his possession another set of results from which it can be ascertained that he indeed scored the majority of lawful votes cast at the election and should have been declared the duly elected candidate. See: *AUDU V INEC (NO.2) (2012) 12 NWLR (PT. 1315) 461 @473-474*

He posited that it is therefore an invitation for the tribunal to compare and contrast competing figures. He said that for a petitioner to succeed under this heading he must plead and prove the scores by which he believes him and not the respondent should have been declared the winner of the election. He said that to achieve this, he must plead and prove the votes cast at the various polling units, the votes that were unlawfully credited to the respondent who won the election and the votes that



ought to be deducted from the votes of the respondent which would enable him emerge the winner of the election. See: *NADABO V DABAI (2011) 7 NWLR (PT. 1245) 155 @177.*

Learned counsel referred to the petitioners' pleadings in paragraphs 57, 58 and 59 of the petition as follows:

*57. That based on the analysis of irregularities carried out by the Respondents as shown above, the total number of invalid votes from the total votes declared for APC will be around 23,214 invalid votes and about 14,454 invalid votes to PDP.*

*58. Your petitioners aver that when the invalid votes are deducted from the votes scored by the 1<sup>st</sup> Petitioner and 2<sup>nd</sup> Respondent respectively, that is (APC=31,193-23,214) and (PDP=24,932-14,454), the actual valid votes scored by the Petitioners will be 10,478 votes while 1<sup>st</sup> and 2<sup>nd</sup> Respondents will have 7,979 votes.*

*59. Your Petitioners further state that if the tribunal makes a finding based on the above analyses, and/or after a recount of the ballot papers in the ballot boxes from 74 polling units with 114 voting points in Yabo Local government and in 73 polling units with 148 voting points in Shagari Local Government as the winner of the Yabo/Shagari Federal Constituency election, it will be revealed that the 1<sup>st</sup> Petitioner won the majority of lawful votes cast and satisfied the Constitutional requirement of winning 25% of votes cast in 2/3 of the 20 wards that make up the Yabo/Shagari Federal Constituency of Sokoto State.*

He posited that if the Tribunal takes a critical look at the second column of the table drawn by the petitioners and compare same with paragraph 13 of the petition, it will be observed that even though the petitioners pleaded that the 2<sup>nd</sup> respondent scored 33,193 votes in the election, in drawing up the table contained in paragraph 56 of the petition they credited the 2<sup>nd</sup> respondent with 31,193 votes, a deduction of 2,000 votes, in a bid to convince this tribunal that they and not the 1<sup>st</sup> and 2<sup>nd</sup> respondent won the election. He said that the petitioners also reproduced this table in paragraph 5.79 at page 46 of their written address.

He submitted that the duty of a petitioner who wants the tribunal to hold that the respondent did not win the majority of lawful votes cast at the election does not stop at pleading but must lead evidence to prove the content of his petition.

He emphasized that the petitioners did not plead any other result apart from the one declared by the 3<sup>rd</sup> respondent which shows that the 1<sup>st</sup> respondent scored 33,193 votes while the 1<sup>st</sup> petitioner scored 24,932 votes. He submitted that the petitioners failed to prove that they instead of the 1<sup>st</sup> and 2<sup>nd</sup> respondents should have been declared the winners of the election. That none of their witnesses even mentioned the fact that they won the election or mention the figures by which they won the election.

He said that the allegation that the petitioners won the election by majority of lawful votes were merely pleaded by the petitioners and abandoned in the petition and they remain what they are, mere pleadings without evidence to back them up. See: *MONKON V ODILI (2010) ALL FWLR (PT. 536) 1542*; and *DUROSARO V AYORINDE (2005) 3-4 SC 14*.

He said that the bottom line is that there is no scintilla of evidence placed before this tribunal to come to the conclusion that the 1<sup>st</sup> petitioner was the candidate duly elected by majority of the lawful votes cast at the election.

He said that the petitioners did not plead the figures from the polling units level to the ward, local government and the Federal constituency levels in their petition and there is no evidence of how the figures stated in paragraphs 57 and 59 of the petition was arrived at. He said that the attention of the tribunal was never drawn to the scores of the candidates in either the evidence of the witnesses or in the petition. That the only figures pleaded in the petition was the scores of the candidates as stated by the 3<sup>rd</sup> respondent in Exhibit P3 (No.228), form EC8E (11) for the constituency and the petitioners left the job of determining how many votes were scored by the candidates to the tribunal to sort out while writing their judgment.

He submitted that the tribunal can do no such thing as that would amount to the tribunal descending into the arena or doing the case of the parties for them. See: *ACN V LAMIDO (2012) 8 NWLR (pt. 1303) 560 @ 584- 585*.

He submitted that without the result from each polling unit being pleaded and evidence led on them and without the petitioners tendering a different result from which this tribunal can see that the result declared by the 3<sup>rd</sup> respondent is wrong, the petitioners have not discharged the rebuttable presumption that the result declared by the 3<sup>rd</sup> respondent is correct.

He posited that the petitioners have not placed sufficient materials before the Tribunal to enable us hold that the 1<sup>st</sup> petitioner and not the 1<sup>st</sup> respondent was the candidate rightfully elected to the office of member, House of representatives for

Yabo/Shagari Federal constituency. He urged us to hold that the petitioners have not proved their petition.

In his Final Written Address, the learned counsel for the 2<sup>nd</sup> Respondents, **Chief J.E.Ochidi** identified the three issues for determination and observed that the three issues are inter-related. So he decided to argue the said them together.

Learned counsel posited that the said 41 witnesses that testified for the petitioners can be grouped into three categories viz:

- (a) Petitioners' polling unit agents;
- (b) Petitioners' ward collation agents; and
- (c) Petitioners' constituency collation agent.

He said that the witnesses that testified as petitioners' polling unit agents are PW1, PW2, PW3, PW4, PW5, PW6, PW8, PW9, PW10, PW11, PW12, PW13, PW14, PW15, PW16, PW17, PW18, PW19, PW30, PW39, PW40 and PW41 while the petitioners' witnesses that testified as ward collation agents are PW20, PW21, PW22, PW23, PW24, PW25, PW26, PW27, PW28, PW29, PW31, PW32, PW33, PW34, PW35, PW36, PW37 and PW38. The petitioners' sole witness that testified as Yabo/Shagari Federal Constituency collation agent is PW7.

He also observed that the said 41 witnesses who testified as PW1 – PW 41 gave identical pieces of evidence before this Honourable Tribunal viz:

- (a) That before voting commenced, INEC officials did not allow inspection of materials meant for the conduct of the election;
- (b) That card readers deployed for the conduct of the election were grossly mal-functional and no effort was made to rectify them;
- (c) That female voters were denied voting at late hours of the day by reason of card reader failure;
- (d) That there was massive voter's disenfranchisement and voters were harassed by members of the All Progressives Congress;

- (e) That the election was tainted with corrupt practices and non-compliance with the provisions of the Electoral Act;
- (f) That there was serious over voting and vote buying; and
- (g) That there was serious mutilations and cancellation of votes of the petitioners by officers of the 3<sup>rd</sup> respondent on Form EC.8A for the several polling units mentioned.

Counsel therefore submitted that the allegations of the petitioners in challenge of the declaration of the 1<sup>st</sup> respondent as the winner of the said election as shown in the respective depositions of the 41 witnesses that testified for the petitioners can be categorized under the following heads of malpractices or of non-compliance with the provisions of the Electoral Act, 2010 (as amended) viz:

- (i) ***Card Reader malfunctioning;***
- (ii) ***Disenfranchisement of voters;***
- (iii) ***Harassment of voters by the supporters of All Progressives Congress;***
- (iv) ***Over – voting;***
- (v) ***Vote buying;***
- (vi) ***Rigging;***
- (vii) ***Mutilation and cancellation of vote by officers of the 3<sup>rd</sup> respondent;***  
***and***
- (viii) ***Corrupt practices and non-compliance with the provisions of the Electoral Act, 2010 (as amended).***

Again, learned counsel observed that the testimonies of all the witnesses that testified for the petitioners in respect of the aforementioned allegations as contained in the depositions of the said witnesses before this tribunal are virtually the same. He therefore submitted that the similarity in the said depositions of PW1 – PW41 is suggestive of the fact that the said testimonies are fabricated stories which ought not to be believed by this tribunal. For this view, he relied on the case of: ***MADUABUM V. NWOSU (2010) 13 NWLR (PT 1212) 623 AT 656 – 657 PARAS A – F.***

Learned counsel submitted that a close scrutiny of each of the heads of malpractices and of non-compliance as earlier enumerated would reveal that the petitioners have not proved any of the said allegations. He then proceeded to articulate his arguments under the various heads of allegation one after the other.

Most of his arguments are quite similar to the arguments already canvassed by the learned counsel for the 1<sup>st</sup> and 3<sup>rd</sup> Respondents. To avoid repetition we will simply highlight some new areas captured in his address.

### **CARD READER MALFUNCTIONING:**

He submitted that failure to use card reader as alleged by the petitioners in this petition cannot be sustained in law because the law is settled that even though card reader machine is an innovation introduced by INEC to bolster the transparency and accuracy of the accreditation process and to maintain the democratic norm of “one man one vote” by preventing multi-voting by a voter. That nevertheless, Section 49(1) and (2) of the Electoral Act, 2010 (as amended) which provide for manual accreditation of voters is extant and remains a vital part of our Electoral Law. He relied on the following decisions on the point: *SHINKAFI ANOR V. YARI & ORS (2016) LPELR – 26050 (SC)*; *OKEREKE V. UMAHI & ORS (unreported) SC. 1004/2015*; and *NYESOM V. PETERSIDE & ORS (2016) LPELR – 40036 (SC)*.

He submitted that failure to use the card reader machine cannot invalidate an election contrary to the claims of the petitioners in this petition and relied on the decision of the Supreme Court in: *NYESOM V. PETERSIDE & ORS (supra)*.

Furthermore, learned counsel observed that through RW1, Exhibit RA2 which is the card reader machine report was tendered and admitted in evidence before this tribunal but unfortunately, the said Exhibit RA2 was merely dumped on the tribunal as its content was not related by any witness to any particular polling unit where the petitioners are complaining of card reader malfunctioning. He said

that the law is settled that documents that are dumped on a court or tribunal have no evidential value and relied on the decisions in: *UCHA V. ELECHI (2012) ALL FWLR (PT 625) 237 AT 258*; *MAKU V. AL-MAKURA (2017) ALL FWLR (PT 909) 1 AT 77*; and *DANLADI V. EL-RUFAI (2018) ALL FWLR (PT 924) 118 AT 160*. Counsel therefore submitted that the petitioners have failed to prove that the card reader machines deployed by the 3<sup>rd</sup> respondent for the conduct of the said election malfunctioned in the polling units mentioned by PW1 – PW41 in their respective testimonies before this tribunal. He further submitted that even if this tribunal is prepared to embark on a voyage of discovery into the card reader machine report (Exhibit RA2), the tribunal will discover that the said Exhibit RA2 is indicative of the fact that card reader machines deployed to polling units in Shagari/Yabo Federal Constituency actually worked on the day of the said election and never malfunctioned contrary to the claims of the petitioners before this Honourable Tribunal. Accordingly, he urged the Tribunal to hold that the petitioners have failed to prove this head of allegation contained in the petition as required by law.

### **DISENFRANCHISEMENT OF VOTERS:**

Learned counsel submitted that in order to prove an allegation of disenfranchisement in an election petition, the following pieces of evidence must be presented before the tribunal viz:

- (a) The register of voters for the polling units where the alleged disenfranchisement occurred;
- (b) The voters card of each of the disenfranchised voters: and
- (c) The personal testimony of the disenfranchised voters to the effect that they were duly registered to vote at a particular polling unit but were prevented from voting at that particular unit on the day of the election.

See the case of *NGIGE V. INEC (2015) 1 NWLR (PT 1440) 281 AT 326*; and *KAKIH V. PDP (2014) 15 NWLR (PT 1430) 374 AT 419*.

He submitted that in the instant case, there is no evidence of any registered voter who was denied the right to vote on the date of the said election. Similarly, no voter's card of any registered voter in any of the polling units in Yabo/Shagari Federal Constituency was tendered in evidence by the petitioners before this tribunal in the course of trial. Again, he said that even though the register of voters in some of the polling units in Yabo/Shagari Federal Constituency were tendered in evidence in defense as exhibits RB1 – RB20, he maintained that same were merely dumped on the tribunal by the petitioners as the said register of voters (exhibits RB1 – RB20) were not related to specific areas of the case of the petitioners by any of the witnesses called by the petitioners, neither did the RW1 – RW3 relate the said exhibits to any of the specific area of complaint of the petitioners as disclosed in the petition. He said that the witnesses called by the petitioners should have narrated in their depositions, the number of registered voters in each of the polling units where the alleged disenfranchisement of voters took place. He said that a close observation of the depositions of all of the 41 witnesses called by the petitioners in this petition shows that none of them mentioned the actual number of registered voters at each of the polling units where the alleged disenfranchisement took place.

He said that in this petition, a schedule of voters register was tendered in evidence as Exhibit RB in the course of trial. He said that Exhibit RB was not pleaded or referred to in the petition of the petitioners or in the reply of any of the respondents. That the said Exhibit RB was merely tendered and admitted in evidence without objection for the sake of convenience in the trial. That in this petition, the petitioners are seeking to rely on the tabulation of the total number of registered voters at the polling units indicated on exhibit RB without linking same to the actual register of voters which are in evidence as exhibits RB1 – RB20. He therefore submitted that there is no evidence before this tribunal respecting the actual number of registered voters in each of the polling units where the alleged



disenfranchisement of voters took place. That Exhibit RB is of no help to the petitioners in this regard while exhibits RB1 – RB20 which were merely dumped on the tribunal have no evidential value in law. See the cases of *UCHA V. ELECHI (2012) ALL FWLR (PT 625) 237 AT 258*, *MAKU V. AL-MAKURA (2017) ALL FWLR (PT 909) 1 AT 77*, *DANLADI V. EL-RUFAI (2018) ALL FWLR (PT 924) 118 AT 160*; and *ACN V. LAMIDO (2012) 8NWLR (PT 1303) 560 AT 584 – 585*.

He therefore submitted that the petitioners have failed to prove the allegation of disenfranchisement of voters as required by law in the several polling units mentioned in the petition of the petitioners. Accordingly, he urged us to dismiss this head of complaint of the petitioners.

**HARASSMENT OF VOTERS BY THE SUPPORTERS OF ALL PROGRESSIVES CONGRESS:**

On the allegation of harassment of voters, learned counsel submitted that none of the alleged harassed voters testified before this tribunal as a witness. He submitted that harassment of voters is an incident of electoral malpractice and of non – compliance with the provisions of the Electoral Act and that before the petitioners can succeed on this head of allegation, the petitioners must prove that the harassment of voters as alleged actually took place and that it affected the result of the election declared in Yabo/Shagari Federal Constituency. See the decision of Supreme Court in the cases of *OGBORU V. ARTHUR (2016) ALL FWLR (PT 833) 1805 AT 1855* and *NYESOM V. PETERSIDE (2016) ALL FWLR (PT 842) 1573 AT 1635*.

He submitted that the petitioners have equally failed to prove this head of allegation and urged us to dismiss same.

**OVER VOTING:**

On the allegation of over voting counsel submitted that there is no iota of evidence before this tribunal in proof of the said allegation of over voting as

required by law. He said that the type of evidence required of a petitioner to prove over voting in an election is as laid down by the Supreme Court in the case of: ***EMERHOR V. OKOWA (2017) ALL FLWR (PT 896) 1868 AT 1905*** where *Okoro JSC* held as follows:

***“In a plethora of decisions of this court, we have made it abundantly clear that a petitioner seeking to prove over voting in an election must do the following:***

- 1. Tender the voters register to show the total number of registered voters in each unit.***
- 2. Tender the statement of result in the appropriate forms which would show the total number of votes cast.***
- 3. Relate each of the documents to the specific area of his case in respect of which the documents are tendered.***
- 4. Show that the figure representing the over voting if removed would result in victory for the petitioner and***
- 5. In view of the introduction of card reader machines in elections, I will add that the petitioner should tender the card reader report if it did not fail to function.”***

Learned counsel submitted that even though the statement of result in respect of some of the polling units in the Federal Constituency were tendered and admitted in evidence as Exhibit P3 and even though the register of voters in respect of some of the polling units in the Federal Constituency in issue are in evidence before this tribunal as Exhibits RB1 – RB20, yet, the said pieces of evidence have not been related to the specific polling units where the petitioners are alleging occurrence of over voting in Yabo/Shagari Federal Constituency by the petitioners’ witnesses or by the other witnesses that testified before this tribunal in respect of this petition. He said that the same argument also goes for the card reader report which has been admitted before this tribunal as Exhibit RA2. He said Exhibit RA2 was merely dumped on this tribunal and has not been linked by the petitioners’ witnesses to any

specific polling unit where the alleged over voting occurred in the Federal Constituency.

He therefore submitted that Exhibits P3, RB1 – RB20 and RA2 have no evidential value before this tribunal as they were merely dumped on the tribunal. He said all the documentary pieces of evidence have not in any way aided the petitioners to prove the said allegation of over voting at the said polling unit. Moreover, that there is no evidence before this tribunal showing the figure representing the alleged over voting and *a fortiori*, the petitioners have failed to prove that the figure representing the over voting if removed from the overall score of the respective candidates that contested in the said election, that they (the petitioners) would have emerged victorious.

He further submitted that a petitioner who alleges over voting at an election is as well challenging the legality or the lawfulness of the votes cast at the said election and the result declared thereat. That in such a case the petitioner must prove how the alleged illegal votes affected the result of the election. See the decision of Tobi JSC in *ABUBAKAR V. YAR’ADUA (2008) 18 NWLR (PT 1120) 1 AT 173 – 174* where his lordship of blessed memory held thus:

***“A petitioner who contests the legality or lawfulness of votes cast in an election and subsequent result, must tender in evidence all necessary documents by way of forms and other documents used at the election. He should not stop there. He must call witnesses to testify that the illegality affects the result of the election. The witnesses are those who saw it all on the day of the election, not those who picked the evidence from eye witnesses. No, they must be eye witnesses too.”***

He posited that in view of the foregoing lapses, the petitioners have failed to prove the said allegation in this petition as required by law and urged us to so hold.

### **VOTE BUYING:**

Counsel submitted that an allegation of vote buying as made by the petitioners in this petition is an allegation bothering on commission of crime which must be proved by the petitioners beyond reasonable doubt. See the case of: ***IKPEAZU V. OTTI (2016) ALL FWLR (PT 833) 1946 AT 1974.***

He said that in the instant case, the voters whose votes were allegedly bought over with money were never named nor identified neither in the petition nor in the respective depositions of the petitioners' witnesses. Again, the individuals who allegedly bought the votes were never named nor identified in the petition or in the respective depositions of petitioners' witnesses. Also, the amount of money that purportedly changed hands for votes were never mentioned neither in the petition nor in the respective depositions of PW1 – PW41 before this tribunal. In view of these *lacunae* in the case of the petitioners, he submitted that the petitioners have failed to prove the said allegation of vote buying and urged us to dismiss this head of allegation.

### **RIGGING, CORRUPTION AND NON-COMPLIANCE WITH THE PROVISIONS OF THE ELECTORAL ACT:**

Counsel submitted that the said allegations of rigging and corruption are criminal in nature and as such, the petitioners are expected to prove the same beyond reasonable doubt. See the case of: ***IKPEAZU V. OTTI (2016) ALL FWLR (PT 833) 1946 AT 1974.*** That in this petition however, the petitioners have failed to prove the said allegations beyond reasonable doubt as required by law.

With particular reference to the allegation of rigging, he maintained that the said allegation is tantamount to an allegation that the 1<sup>st</sup> respondent was not duly elected by majority of lawful votes cast at the said election. He submitted that in such circumstance, the petitioner is obliged to plead and tender before the tribunal two sets of result i.e. the result declared by INEC which the petitioner claimed to be falsified and the other result being the one available to the petitioner and which the

petitioner claims to be genuine. See the case of: ***HERO V. SHERIFF (2016) ALL FWLR (PT 861) 1309 AT 1363 – 1364.***

He said that in the instant case, the only result of the said election which is available before this tribunal is the result declared by INEC as shown in Exhibit PB3 item 228 wherein the 1<sup>st</sup> petitioner scored 24,932 votes while the 1<sup>st</sup> respondent scored 33,193 votes. He therefore submitted that the petitioners have failed to prove before this tribunal the alleged rigging and falsification of the result and he urged us to so hold.

On allegations of corrupt practices and noncompliance with the Electoral Act and INEC Guidelines, he submitted that it is settled law that to succeed: a petitioner must prove that the corrupt practice or non-compliance actually took place and that same substantially affected the result of the said election. That the two conditions must be proved cumulatively by the petitioner before such a petitioner can succeed on the allegation. See the cases of: ***OGBORU V. ARTHUR (2016) ALL FWLR (PT 833) 1805 AT 1855:***

***NYESOM V. PETERSIDE (2016) ALL FWLR (PT 842) 1573 AT 1635;***  
***EMERHOR V. OKOWA (2017) ALL FWLR (PT 896) 1868 AT 1927;*** and  
***UCHA V. ELECHI (2012) ALL FWLR (PT 625) 237 AT 256.***

He said that in the instant case, the petitioners have failed to prove any act of non-compliance with the provisions of the Electoral Act or the INEC guidelines in the conduct of the said election. That the petitioners have not shown before this tribunal how the alleged non-compliance has affected the result of the said election. He therefore urged us to hold that this head of allegation has not been established by the petitioners as required by law and same ought to be dismissed accordingly.

**MUTILATION AND CANCELLATION OF VOTES BY OFFICERS OF THE 3<sup>RD</sup> RESPONDENT:**

Counsel submitted that in respect of the allegation of falsification of results as averred by the petitioners in this petition and as deposed to by PW1 – PW41 in

their respective statement on oath before this tribunal, no cogent evidence has been adduced by the petitioners' witnesses in proof of this head of allegation. He said that the law is settled that a petitioner who challenges the lawfulness of votes cast in an election and the subsequent result declared thereat must tender in evidence and openly analyze all the necessary INEC documents used in the conduct of the said election. He posited that the witnesses in respect of such an allegation must also show by their testimonies that the unlawful votes recorded at the said election affected the result of the said election. See the decision of the Supreme Court in the case of: *EMERHOR V. OKOWA (2017) ALL FLWR (PT 896) 1868 AT 1911*

Again, he submitted that an allegation of falsification of election results is a criminal offence which must be proved by the petitioners beyond reasonable doubt. See the case of: *IYAGBA V. SEKIBO (2009) ALL FWLR (PT 466) 1951 AT 1970* where *Kekere – Ekun JCA* (as he then was) held as follows:-

***“The appellant contended that the results published by the 2<sup>nd</sup> respondent were falsified and at the same time insisted that if the votes were recounted, the figures would show that the 1<sup>st</sup> respondent did not win the election on the valid votes cast at the election. The falsification of election results is a criminal offence which must be proved beyond reasonable doubt: Nwobodo v. Onoh (2007) 3 EPR 180, Omoboriowo v. Ajasin (2007) 3 EPR 489. Not only was the appellant unable to prove his allegations, his evidence was completely discredited by the evidence of the respondent’s witnesses.”***

He submitted that in the instant case, the petitioners have not proved that the result of the said election was falsified. That the bundles of Form EC.8A (ii) which were tendered in evidence and marked as Exhibit P3 were merely dumped on the tribunal as their content were never analyzed in open court by any of the witnesses

that testified for the petitioners nor were the contents of the said Exhibit P3 captured in the respective depositions of PW1 – PW41.

He submitted that the said Exhibit P3 which has been dumped on this tribunal by the petitioners cannot be used by the petitioners to prove falsification of result of the election at any of the polling units in the Federal Constituency in issue. He posited that in the unlikely event that this tribunal is prepared to venture into a voyage of discovery into the Forms EC.8A (ii) admitted as Exhibit P3, the tribunal will discover that same do not contain alterations or falsification of the result of the election as being alleged by the petitioners in this petition. He therefore urged us to hold that this head of allegation has equally not been proved by the petitioners as required by law.

In totality learned counsel submitted that there is no iota of evidence before this tribunal to prove any of the allegations of the petitioners in challenge of the conduct of the said election and the declaration of the 1<sup>st</sup> respondent as the winner of the said election by the 3<sup>rd</sup> respondent.

In conclusion, learned counsel submitted that this petition is devoid of any merit and he urged us to dismiss same with substantial costs awarded in favour of the 2<sup>nd</sup> respondent.

In his Final Written Address, the learned counsel for the Petitioners *Mahmud Abubakar Magaji, SAN* articulated his arguments on the three issues for determination.

## ISSUES 1 & 2

The learned silk posited that since the facts and circumstances of the Petitioners case of non-compliance and corrupt practices are interwoven, he would argue issues one and two together but under distinct sub-heads.

He submitted that the term “election” has been judicially defined by our Courts in a plethora of cases as the process constituting accreditation, voting, collation, recording on all relevant INEC forms and declarations of results. He said that the collation of all results of the Polling Units making up the wards and the declaration of results are the constituent elements of an election as known to law. See the cases of: *INEC Vs. Ray (2005) All FWLR (Pt. 265) 1047, (2004) 14 NWLR (Pt. 892) 92 at 123 Paras F – G, Igodo Vs. Owulo (1999) 5 NWLR (Pt. 601) 70 at 77 Paras C – E, 78 Para H & 79 Paras A – B, APGA Vs. Ohakim (2009) 4 NWLR (Pt. 1130) 116 at 177. See also Section 156 of the Electoral Act, 2010 (as amended).*

He submitted that the conduct of an election must comply with the provisions of the Electoral Act, 2010. In this regard, he relied on the provisions of *section 138 (1) (b) of Electoral Act, 2010 (as amended)* and posited that the election and return of a candidate at an election can be nullified where a petitioner successfully establishes that the conduct of the election was marred by corrupt practices and non-compliance with the provisions of the relevant laws regulating the election.

He said that the relevant laws here are the *Electoral Act, 2010 (as amended)*, the *1999 Constitution of the Federal Republic of Nigeria (as amended)* and other laws and regulations on the conduct of the election made by INEC pursuant to section 153 of the Electoral Act, 2010 (as amended). They include the *Regulations and Guidelines for the Conduct of the Elections and Independent National Electoral Commission Manual for Election Officials 2019*. See the case of: *Agballah Vs. Chime (2009) 1 NWLR (Pt.1122) 373 at 459 Paras C-D*.

He maintained that the procedure for the proper conduct of a free and fair election by the Independent National Electoral Commission (INEC) under the



Electoral Act, 2010 (as amended) is adequately provided for under Regulations and Guidelines for the Conduct of Elections, 2019 and the Manual for Election Officials, 2019. That they are subsidiary laws and this Honourable Tribunal can take judicial notice of them by virtue of *section 122 (2) (a) (b) of the Evidence Act, 2011*. See *INEC & ANOR v. Asuquo & Ors (2018) LPER-43885 (SC) pp 27-29 paras B-A, per Okoro, JSC*.

Counsel stated that in the 2019 General Election, the voting procedure adopted by the 3<sup>rd</sup> Respondent is the Continuous Accreditation and Voting System (CAVS) whereby the voters will come to the Polling Unit, get accredited and vote immediately. See: *section 49 of the Electoral Act, 2019 (as amended)*.

He contended that the Petitioners have led documentary and oral evidence in proof of their case as it relates to the allegation of corrupt practices and non-compliance in the conduct of the National Assembly Election for Yabo/Shagari Federal Constituency held on 23<sup>rd</sup> of February, 2019. He posited that these allegations of non-compliance and corrupt practices are weighty and substantial that this Honourable Court would nullify elections in all the Polling units, wards and Local Governments where they occurred.

### **CORRUPT PRACTICES:**

Learned counsel submitted that the election of 23<sup>rd</sup> February, 2019 for the House of Representatives for the Yabo/Shagari Federal Constituency organised by the 3<sup>rd</sup> Respondent was marred by corrupt practices which ultimately inured in favour of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents as against the Petitioners.

He posited that the law is that where a Petitioner demonstrates to the satisfaction of a tribunal or Court that an election was marred by corrupt practices and/or non-compliance with the Electoral Act, substantial enough to affect the

result declared, the election is bound to be invalidated. See: *Section 139 (1) of the Electoral Act 2010 (as amended)*.

The learned silk posited that corrupt practice for the purpose of election is generally viewed as any step taken by any of the contestants or the umpire to provide undue advantage to one party or contestant and undue disadvantage on the other party or contestant.

He conceded straight away that to prove allegations of corrupt practices, the burden of proof on a Petitioner is beyond reasonable doubt because such allegations are criminal in nature. See: *Sections 138(1) (b) and 139(1) of the Evidence Act, 2011 as well as the cases of Wike E. Nyesom vs. Hon. (Dr.) Dakuku A. Peterside & Ors. (2016) 7 NWLR (Pt.1512) 452 at pp. 520-521; Mr. Labaran Maku vs. Alhaji Umaru T. Al-Makura & ors. (2016) 5 NWLR (Pt.1505) p 201 at 227 and Chime vs. Onyia (2009) 2 NWLR (Pt.1124) 1 at 62.*

Learned counsel posited that in this Petition the Petitioners clearly and unequivocally pleaded instances of such corrupt practices and allegations of acts aimed at conferring undue advantage to the 1<sup>st</sup> and 2<sup>nd</sup> Respondent over the Petitioners in the election of 23<sup>rd</sup> February, 2019 in all the 20 (twenty) Wards that make up Yabo/Shagari Federal Constituency in paragraphs 66-77, pages 17-30 of the Petition such as: vote buying, failure to use card reader machine, rigging, intimidation of voters (thuggery), lack of accreditation, mutilation of figures in the election results sheets, over-voting and ballot stuffing. See the cases of: *Haruna v Modibbo [2013] 16 NWLR (pt 900) 487, pp 542 paras A – C; Muazu v ANPP [2013] All FWLR (pt 660) 1376, p 1405, paras G-H; Maku v Al-Makura [2016] 5 NWLR (Pt.1505) 201, p 227, paras F-H; Shinkafi v Yari [2016] All FWLR(pt 862)1399, p 1442 paras A-D; Buhari vs. Obasanjo (2005) 13 NWLR (Pt.941) 1 at 295.*

He submitted that although the Petitioners did not plead the allegations of underage voting and voter impersonation, during examination of witnesses, the Petitioners' witnesses testified about the incidences of corrupt practices on the 23<sup>rd</sup> February, 2019 when the election was conducted and were accordingly cross-examined thereon in accordance with Section 215 (3) of the Evidence Act 2011.

That in proof of the above allegations of corrupt practices, the Petitioners tendered various electoral materials, such as INEC Forms EC8 A, B, C, D and D (Exhibit P3), Voters Register used in all the Polling Units (Exhibit RB1 – RB20) and CTC of Card Reader Machine Report (Exhibit RA2) etc. and led oral testimony through its witnesses, in the manner appearing on pages 3 -27 of his Final Address.

He said that the Petitioners led oral and documentary evidence in respect of all the Polling Units and Wards clearly explained and captured as follows:

- **Lambogel/Bussa 002 Polling Unit, Bingaje Ward, Yabo Local Government:** Abubakar Maidawa (PW1) in respect of Lambogel/Bussa 002 Polling Unit, Bingaje Ward, Yabo Local Government. In paragraphs 9 – 14 of his witness statement on oath, PW1 testified about the existence of corrupt practices such as harassment, vote buying, serious over voting and mutilations/cancellations of votes in the polling unit where he voted and his testimony remained unshakable during cross examination. Similarly, that the Respondent’s counsel failed/refused to cross examine him on the alleged corrupt practices;
- **Polling Unit (001) Shiyar Yamma, Sanyinnawal Ward, Shagari Local Government:** Sadiq Abubakar Tukkuwa (PW2) in his adopted statement on oath with the initials “SAQ” which appears on pages 274 – 276 (second set of pagination) of the Petition in respect of Polling Unit (001), Sanyinnawal Ward, Shagari Local Government testified about the existence of corrupt practices such as inflation of votes, harassment, vote-buying, serious over voting and mutilations/cancellations of votes in the polling unit where he voted. He said his testimony remained unshakable during cross examination and the Respondents’ counsel failed/refused to cross examine him on the alleged corrupt practices;
- **Shiyar Shamaki polling Unit (Code 003) Fakka ward, Yabo Local Government:** Alhaji Sahabi Bala (PW3) in his witness statement on oath which appears on pages 13 – 15 (second set of pagination) of the Petition with respect to Sarul Delbegiya (Nem tree) Shiyar Shamaki polling Unit (Code 003) Fakka ward, Yabo Local Government, testified about the existence of corrupt practices such as inflation of votes, harassment, vote-buying, serious over voting and mutilations/cancellations of votes in the polling unit where he voted. His testimony remained unshakable during cross examination and the Respondents’ counsel failed/refused to cross examine him on the alleged corrupt practices. In his testimony during re-examination by the Petitioner’s Counsel, K.D Ogbonna Esq., PW3 stated that “...there was a problem in the polling unit”. PW3 further stated that “there were under aged voters allowed to vote in the polling unit”. “While voters were still on the line the presiding officer did not allow them to vote”;

- **Shiyar Sarkin Burmi Fakka polling Unit (code 001) Fakka Ward, Yabo Local Government:** Sani Maidamma (PW4) in his adopted witness statement on oath with the initials “YCC” which is contained in pages 4 – 6 (second set of pagination) of the petition, testified with respect to Shiyar Sarkin Bunmi Fakka polling Unit (code 001) Fakka Ward, Yabo Local Government where he voted. In paragraphs 9 – 13 of his witness statement on oath, PW4 testified about the existence of corrupt practices such as harassment, vote-buying, serious over voting and mutilations/cancellations of votes in the polling unit where he voted. He maintained that his testimony remained unshakable during cross examination and under cross examination by the 2<sup>nd</sup> Respondent’s Counsel, Chief J.E Ochidi, P.W.4 stated that “there was over voting at the polling unit...” Similarly, in answering the questions posed to him under cross examination by learned counsel for the 3<sup>rd</sup> Respondent, A.T Ibrahim, PW4 stated that “there was problem in that polling unit” “there were issues of over-voting, under-aged voters, vote buying, intimidation of voters”;
- **Transformer Sabon Gari (Fakka Shiyar Abn Gali) Polling Unit (code 002) Fakka Ward, Yabo Local Government:** Nafi’u Bello (PW5) in his adopted witness deposition with the initials “YBE” as contained in pages 7 – 9 (second set of pagination) of the Petition, testified as the agent of the petitioners in Transformer Sabon Gari (Fakka Shiyar Abn Gali) Polling Unit (code 002) Fakka Ward, Yabo Local Government. In paragraphs 9 – 13 of his witness statement on oath, he testified about the existence of corrupt practices such as harassment, vote-buying, serious over voting and mutilations/cancellations of votes in the polling unit where he voted. His testimony remained unshakable during cross examination. Under cross examination by learned counsel for the 1<sup>st</sup> Respondent Chief S.U Nwoke Esq., PW6 answered that “the APC members and security agents rigged the election in that polling unit. I do not know the names of those who rigged”. Under cross-examination by the 2<sup>nd</sup> Respondent’s Counsel, Chief J.E Ochidi, P.W.5 stated thus: “there were mutilations and cancellations of votes in that polling unit. Some voters were harassed by the APC agents but I cannot remember the names of such voters. I was also harassed by the APC agents...” During re-examination by the Petitioner’s Counsel, Udeoyibo Esq., P.W. 5 informed the Court thus:

“The problems at the polling unit were:

- (i) Some of the APC officials used the opportunity to buy voters at the election;

- (ii) Some women with hijab used the voter's cards of dead people to vote;
- (iii) Underage voters voted.”

- **MPS Sage Fili (013), Shagari Ward, Shagari Local Government:** Mustapha Maga Shagari (PW 6) in his witness deposition which is contained in pages 271 – 273 (second pagination) of the petition, testified in respect of MPS Sage Fili (013), Shagari Ward, Shagari Local Government. In paragraphs 8 – 13 of his witness statement on oath, he testified about the existence of corrupt practices such as inflation of votes, harassment, vote-buying, serious over voting and mutilations/cancellations of votes in the polling unit where he voted;
- **Constituency Collation Centre:** Shehu Dantuni Shagari (PW7) in his adopted witness statement on oath with the initials “A.A.I” testified that as the Chief collation officer of the Petitioners for the Yabo/Shagari Federal Constituency he received reports from the various agents at all levels, of corrupt practices in the polling units and wards listed in paragraphs 42 – 48 at pages 49-51 of the Petition. He said that Exhibits P1, Exhibits P2 and Exhibit P3 which are INEC official receipts of payment for Certified True Copies (CTC) of results sheets dated 22<sup>nd</sup> May, 2019 (admitted as Exhibit P1), the Petitioners’ schedule of documents containing comprehensive list of results of polling units (Forms EC8A), copies of INEC’s Form EC8B, Form EC8C, Form EC8D, Form EC8E for Yabo/Shagari Federal Constituency, Sokoto State (admitted as Exhibit P2) as well as, the bundle of result sheets listed in Exhibit P2 (admitted as Exhibit P3) respectively were tendered through him at the trial;
- **Kaura/Shiyar/Hakimi (005) Shagari Ward, Shagari Local Government:** Sani Aliyu Kaura (PW8) in his witness statement on oath with the initials “SAK” testified that he was the polling unit agent of the 2<sup>nd</sup> petitioners in Kaura/Shiyar/Hakimi (005) Shagari Ward, Shagari Local Government where he also voted. In paragraphs 7 – 14 of his witness statement on oath, he testified about the existence of corrupt practices such as inflation of votes, harassment, vote-buying, serious over voting, deliberate misuse of card reader machine and mutilations/cancellations of votes in the polling unit where he voted.
- **Wanke MPS (007), Shagari Ward, Shagari Local Government:** Garzali Aliyu (PW9) in his witness statement on oath with the initials “S.A.M” testified that he was the agent of the Petitioners at Wanke MPS (007), Shagari Ward, Shagari Local Government, where he also voted. In paragraphs 8 – 13 of his witness statement on oath, he testified about the

existence of corrupt practices such as inflation of votes, harassment, vote-buying, serious over voting, deliberate misuse of card reader machine and mutilations/cancellations of votes in the polling unit where he voted. PW8 remained unshaken during cross examination.

- **Kaura primary School (010) polling unit, in Shagari Ward of Shagari Local Government:** Dantani Danlarai (PW10) testified that he was a polling unit agent of the Petitioners at Kaura primary School (010) polling unit, in Shagari Ward of Shagari Local Government, where he also voted. He testified about the existence of corrupt practices such as inflation of votes, harassment, vote-buying, rigging, serious over voting, deliberate misuse of card reader machine and mutilations/cancellations of votes in the polling unit where he voted;
- **Primary School (Gidan Ruwa) (Shiyar Fada Udurega) (Code 005) Polling Unit in Fakka Ward, yabo Local Government:** Namiru Abubakar (PW11) testified that he was agent at Primary School (Gidan Ruwa) (Shiyar Fada Udurega) (Code 005) Polling Unit in Fakka Ward, Yabo Local Government where he also voted. He testified about the existence of corrupt practices such as harassment, vote-buying, rigging, serious over voting, deliberate misuse of card reader machine and mutilations/cancellations of votes in the polling unit where he voted;
- **Yar Madalisa (Shiyar Ajiya Gudurega) (006) Fakka Ward, Yabo Local Government:** Zaharadeen Hussaini (P.W. 12) in his witness statement on oath with the initials “YDD” he testified as a registered voter who voted and also participated in the elections of 23<sup>rd</sup> February, 2019 as the polling unit agent of the petitioners’ at Yar Madalisa (Shiyar Ajiya Gudurewa) (006) Fakka Ward, Yabo Local Government. In paragraphs 7 – 14 of his witness statement on oath, he testified about the existence of corrupt practices such as inflation of votes, harassment, vote-buying, serious over voting, deliberate misuse of card reader machine and mutilations/cancellations of votes in the polling unit where he voted;
- **Layi (Rugger kaya) Polling Unit Code 004:** Bashiru Gandu (PW13) in his witness statement he testified as agent at Layi (Rugger Kaya) Polling Unit (Code 004) in Fakka Ward, Yabo Local Government where he also voted. He adopted his written statement on oath with the initials “YMD” and testified about the existence of corrupt practices such as harassment, vote-buying, rigging, serious over voting, deliberate misuse of card reader machine and mutilations/cancellations of votes in the polling unit where he voted;
- **Torankawa Shiyar Lelaba Polling Unit 001, Torankawa Ward, Yabo Local Government:** Aliyu Muhammed (PW14) testified as Petitioners’ agent at

Torankawa Shiyar Lelaba Polling Unit 001, Torankawa Ward, Yabo Local Government where he also voted. In his witness statement on oath with the initials “YBA” he testified about the existence of corrupt practices such as harassment, vote-buying, rigging, serious over voting, deliberate misuse of card reader machine and mutilations/cancellations of votes in the polling unit where he voted;

- **Primary Sch. Nizamyia Dispensary (Shiyar Galadima Torankawa) Polling Unit 002, Torankawa Ward, Yabo Local Government:** Abubakar Sahabi (PW15) testified as agent at Primary School, Nizamyia Dispensary (Shiyar Galadima Torankawa) Polling Unit 002, Torankawa Ward, Yabo Local Government where he also voted. In his adopted written statement on oath with the initials “YBC” he testified about the existence of corrupt practices such as harassment, vote-buying, rigging, serious over voting, deliberate misuse of card reader machine and mutilations/cancellations of votes in the polling unit where he voted;
- **Baware Polling Unit (Code 005) Yabo B Ward, Yabo Local Government:** Hassan Umar (PW16) in his witness statement on oath with the initials “RIM” testified as a registered voter who voted and also participated in the elections of 23<sup>rd</sup> February, 2019 as the polling unit agent of the petitioners’ at Baware Polling Unit (Code 005) Yabo B Ward, Yabo Local Government. In paragraphs 7 – 13 of his witness statement on oath, he testified about the existence of corrupt practices such as harassment, vote-buying, serious over voting, deliberate misuse of card reader machine and mutilations/cancellations of votes in the polling unit where he voted;
- **Kaura polling unit (code 006) Yabo B Ward in Yabo Local Government:** Mubarak Sabo (PW17) in his witness statement on oath with the initials “RIZ” he testified as a registered voter who voted and also participated in the elections of 23<sup>rd</sup> February, 2019 as the polling unit agent of the petitioners’ at Kaura polling unit (code 006) Yabo B Ward in Yabo Local Government. In paragraphs 7 – 13 of his witness statement on oath, PW17 testified about the existence of corrupt practices such as harassment, vote-buying, serious over voting, deliberate misuse of card reader machine and mutilations/cancellations of votes in the polling unit where he voted;
- **Baich/Masallaci Gabas Polling Unit (Code 004) in Yabo B Ward of Yabo Local Government:** Sufiyani Sani (PW18) in his witness statement on oath with the initials “VRM” testified as a registered voter who voted and also participated in the elections of 23<sup>rd</sup> February, 2019 as the polling unit agent of the petitioners’ at Baich/Masallaci Gabas Polling Unit (Code 004) in Yabo B Ward of Yabo Local Government. In paragraphs 7 – 13 of his witness statement on oath, he testified about the existence of corrupt practices such as

harassment, vote-buying, serious over voting, deliberate misuse of card reader machine and mutilations/cancellations of votes in the polling unit where he voted;

- **Dagwarga Dikko (006) polling Unit in Torankawa Ward of Yabo Local Government Umar Bafashi:** (PW19) in his witness statement on oath with the initials “YBE” testified as a registered voter who voted and also participated in the elections of 23<sup>rd</sup> February, 2019 as the polling unit agent of the petitioners’ at Dagwarga Dikko (006) polling Unit in Torankawa Ward of Yabo Local Government Umar Bafashi. In paragraphs 7 – 14 of his witness statement on oath, he testified about the existence of corrupt practices such as harassment, vote-buying, serious over voting, deliberate misuse of card reader machine and mutilations/cancellations of votes in the polling unit where he voted;
- **Jaredi Ward in Shagari Local Government:** Ammar Mohammed (PW20) in his witness deposition with the initials “SHA” he testified that he was the Ward Supervisory Agent of the 2<sup>nd</sup> Petitioner in Jaredi Ward in Shagari Local Government. He testified about massive voters disenfranchisement, harassment of voters and malfunctioning of card readers at Majikira MPS 002; Ruggar Gamau 006; Sire 007; Ruggar Tudu 008 and Ludi 010 all of Jaredi Ward;
- **Lambara Ward (06), Shagari Local Government:** Luqman Mohammed (PW21) in his witness statement with the initial “SHE” testified that he voted at Duwoji/Dalijan/Dundeji (code 004). He stated in paragraphs 5 and 6 of his Witness Statement on Oath that there was massive disenfranchisement and harassment of members of the 2<sup>nd</sup> Respondent in the following polling units:
  - i. Duwoji/Dalijan/Dundeji (004)
  - ii. Guloru Shiyar Makera (015)
  - iii. MPS Badiyawa (006),
  - iv. MPS Gidan Maskayau (010),
  - v. Jandutse Shiyar Hakimi (013),
  - vi. Guloru Shiyar Makera (015) all in Lambara Ward.
- **Shagari Ward (006), Shagari Local Government:** Mubarak Ahmad (PW22) in his witness statement on oath with the initials “SHF” stated that he was the supervisory agent for Shagari Ward Code (006) in Shagari Local Government Area and that he voted at G.S.S Shagari Polling Unit code (003). He said that there was mass voters disenfranchisement, voters harassment by members of All Progressive Congress (APC) and malfunctioning of the card Readers in the following polling units:



- i. Shiyar magaji (001),
- ii. Wanke MPS (007),
- iii. GSS Shagari (003)
- iv. Kaura/Shiya/Hakimi (005)
- v. Wanke (006)
- vi. Wanke MPS (007)
- vii. Marake MPS (008),
- viii. Gadara Shiyar Hakimi (009),
- ix. Kaura Primary School (010),
- x. Tungar Bawa Shiyar Hakimi (011),
- xi. MPS Janzomo (012),
- xii. MPS Sage Fili (013) and
- xiii. Shagari GSS (014) all in Shagari ward;

- **Gangam Ward (005), Shagari Local Government:** Alhaji Usman Shagari (PW23) testified as the Ward Supervisory Agent of 2<sup>nd</sup> Petitioner at Gangam (005) Ward of Shagari Local Government. In his deposition with the initial “SHD” he testified of massive disenfranchisement of voters and malfunctioning of the card readers at the following polling units:

- i. Gangam Badi (002),
- ii. Ruggar Buda MPS (003),
- iii. TakalMaawa (004),
- iv. Tungar Barki (006)
- v. Aske Dodo (007),
- vi. Banga Hurdu (008),
- vii. Yandun Daji (009) and
- viii. Lokoka (010) all in Gangam Ward.

He alleged that similar occurrences of corrupt practices marred the election of 23<sup>rd</sup> February, 2019 in the following polling units:

- i. Horo PS Polling Unit (Code 003) in Horo Birni Ward, Shagari Local Government
- ii. Shiyar Wambai Polling Unit (Code 003) in Yabo B Ward, Yabo Local Government.
- iii. Kajiji Shiyar Ajiya Polling Unit (Code 003) in kajiji Ward, Shagari Local Government

- iv. Shiyar Della Bakale (Bakale/Doral) Polling Unit (Code 010) in Bakale Ward, Yabo Local Government
- v. Sire Polling Unit (Code 007) in Jaredi Ward, Shagari Local Government
- vi. Kanwuri Polling Unit (002) in Sanyinnawal Ward, Shagari Local Government, where PW 24, 28, 30, 39, 40 and 41 testified, respectively, as polling unit agents of the Petitioners in those polling units where there were massive incidences of corrupt practices like vote buying which ultimately inured in favour of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.

He also led evidence to show that the polling units in the following wards listed hereinafter were affected by corrupt practices:

- i. Horo Birni Ward, Shagari Local Government (PW25)
  - ii. Torankawa Ward, Yabo Local Government (PW26)
  - iii. Ruggar Iya Ward, Yabo Local Government (PW27)
  - iv. Bingaje Ward, Yabo Local Government (PW 29)
  - v. Sanyinawal Ward (08), Shagari Local Government (PW31)
  - vi. Birinin Ruwa Ward, Yabo Local Government (PW32)
  - vii. Fakka Ward, Yabo Local Government (PW33)
  - viii. Binji Ward, Yabo Local Government (PW34)
  - ix. Bakale Ward, Yabo Local Government (PW35)
  - x. Kilgori Ward, Yabo Local Government (PW38)
- **Kilgori Ward:** PW 38 (Isah Aliyu) testified as Ward Supervisory agent of the Petitioners. He stated that agents of the 2<sup>nd</sup> Respondents were engaged in paying for votes at the election of 23<sup>rd</sup> February 2019 in Kilgori Ward of Yabo Local Government.

Learned counsel submitted that out of the 82 polling units of the 10 Wards in Yabo Local Government, and the 124 polling units of the 10 Wards in Shagari Local Government, the Petitioners successfully called a total number of 41 witnesses cut across the various wards and local governments that make up the Yabo/Shagari Federal Constituency in Sokoto in proving the Petitioners' case of corrupt practices in the election of 23<sup>rd</sup> February, 2019.

He submitted that the Petitioners successfully tied the oral testimony of their witnesses along with the witnesses of 3<sup>rd</sup> Respondent (RW1, 2 and 3) to the various result sheets and other documentary evidence tendered in court in demonstration of its allegations of corrupt practices. He said that the PW 36 who was the Local

Government Area Returning Officer/Supervisor of the Petitioners for Yabo Local Government and voted at Shiyar Sarkin Fawa Polling Unit (P.U Code:00 1) was consistent and unwavering in his testimony under cross-examination by counsel to the 1<sup>st</sup> Respondent (B.M Jodi Esq.) in the proceeding of 15<sup>th</sup> June, 2019.

Counsel submitted that the following cases of over-voting were visible from the results entered in Forms EC8C for both Yabo and Shagari Local Government as contained in Exhibit P3 listed at Serial No. 226 of Exhibit P2: (1) Bakale Ward (010) Yabo Local Government, the Number of Registered Voters is 4, 414 while the Total Valid Votes cast is 4, 872; (2) Kilgori Ward Yabo Local Government, Number of Registered Voters is 4, 302 while Total Valid Votes cast is 4, 685; (3) Kambama Ward (04) Shagari Local Government, the Number of Registered Voters is 4, 211 while Total Valid Votes cast is 4, 284.

Learned counsel submitted that the glaring mutilations and cancellations made on the various INEC results, particularly in Forms EC8As, B and C by the 3<sup>rd</sup> Respondent's officers especially in the Forms EC8 C of Yabo and Shagari Local Government Areas in Bakale, Kilgori and Kambama Wards were done with the fraudulent intent to inflate, alter result and cause over-voting in favour of the 1<sup>st</sup> Respondent at the election.

On what constitutes "over-voting", learned counsel referred to the case of *Terab Vs. Lawan (1992) 3 NWLR (Pt.231) 569 at 587* where the court held that, the electoral malpractice of over-voting occurs where the votes scored by parties exceed the number of accredited voters. See also: *Malumfashi vs. Yaba (1999) 4 NWLR (Pt.598) 230 at 237 and Awuse Vs. Odili (2005) 16 NWLR (Pt. 952) 416 at 490 – 491.*

He also relied on *section 53(2) of the Electoral Act, 2010 (as amended)* which provides thus:

***“Where the votes cast at an election in any polling unit exceed the number of registered voters in that polling unit, the result of the election for that polling unit shall be declared void by the Commission and another election may be conducted at a date to be fixed by the Commission where the result at that polling unit may affect the overall result in the Constituency”.***

Again he referred to similar provisions in *paragraph 23 (a) and (b) of the INEC Regulations and Guidelines for the Conduct of General Elections, 2019* and submitted that all the processes leading to the final declaration and return of a winner must be done according to law and devoid of irregularities or sharp practices of any kind.

Counsel posited that where the results/entries of an election as contained in INEC Form EC8As of the various polling units of Bakale Ward, Kilgori Ward all of Yabo Local Government as well as Kambama Ward in Shagari Local Government have been tinkered with and inflated during collation, giving rise to a totally contradictory and irreconcilable result whereby the Total Valid Votes in particular Wards are higher than the Total Registered Voters in that Ward, there is much to be explained. He therefore urged the Tribunal to reject the results of the affected Wards and consequently polling units as same cannot be explained away and is tainted by obvious inflation of scores (Total Valid Votes) at the local government collation level visible on the surface of FORM EC8C for both Yabo and Shagari Local Government.

He said that the INEC Forms EC8As of the affected polling units were admitted as Exhibit P3 and listed accordingly in Exhibit P2 as follows:

- i. Serial Nos. 151 – 160 are result sheets for Polling Units under Bakale Ward, Yabo Local Government
- ii. Serial Nos. 194 – 199 are result Sheets for Polling Units under Kilgori Ward, Yabo Local Government.
- iii. Serial Nos. 90 – 97 are result sheets for Polling Units under Kambama Ward, Shagari Local Government

He said that PW 37 testified as the Returning Officer/Supervisor of the Petitioners in Shagari Local Government during the election of 23<sup>rd</sup> February, 2019 and identified the various INEC Forms EC8Bs and INEC Form EC8C for Shagari Local Government Area which were tendered in evidence through him as Exhibits P5A1 to P5A10. He said that under cross examination by learned counsel for the 1<sup>st</sup> Respondent, the PW37 stated that he voted at the election at Asarara polling unit and visited some of the wards in Shagari Local Government Area after voting.

### **INCIDENTS OF MASSIVE CANCELLATION/MUTILATION OF RESULT SHEETS**

Counsel submitted that in addition to the testimonies of Petitioners' Witnesses above, the Petitioners, through the 3<sup>rd</sup> Respondent's witnesses (RW1 and RW 2) were able to demonstrate and show the serious mutilations/cancellations and permutations on the result sheets for Yabo and Shagari Local Governments of Sokoto State as generated from the various polling units.

He submitted that the sweeping cancellations/mutilations of entries or scores on the face of INEC Form EC8C for the two local governments of Yabo and Shagari were not only done without complying with the INEC Guidelines for Conduct of 2019 Election but with an intent to confer some benefit upon the 1<sup>st</sup> and

2<sup>nd</sup> Respondents. See: *Muazu v ANPP [2013] All FWLR (Pt.660) 1376, p 1405, paras G-H* where *Peter-Odili JCA(as he then was, now JSC)* stated thus:

***“...Malpractices in an election include over-voting, riggings etc. Where proved the whole election is rendered void”.***

He submitted that these cancellations/mutilations of records of election or scores of election without countersigning by the authorised staff/officer of the 3<sup>rd</sup> Respondent on INEC Form EC8C for Yabo and Shagari Local Governments was too widespread and far reaching, touching all the Wards in the two Local Governments to be ignored or shoved under the rug. Also, that the 3<sup>rd</sup> Respondent could not offer credible explanation as to why the results were so mutilated in that manner or why the Total Number of Valid Votes was higher than the number of registered voters in the affected wards of the local governments.

#### **ALLEGATIONS OF VOTE BUYING AND HARASSMENT OF VOTERS BY AGENTS OF 1<sup>ST</sup> AND 2<sup>ND</sup> RESPONDENTS**

Learned counsel submitted that in the course of trial in this Petition, the Petitioners were able to lead credible, direct and unequivocal evidence in proof of the allegation of vote buying and harassment of voters by agents of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents. But the 1<sup>st</sup> and 2<sup>nd</sup> Respondents refused to lead any evidence in rebuttal. He said that PW14, who testified for the Petitioners as the polling unit agent at Torankawa Shiyar Lelaba Polling Unit 001, in Torankawa Ward of Yabo Local Government stated under cross examination that “the vote buyers wore the APC tags but I do not know their names. Many people were selling their votes”.

In the same vein, PW 29, Mohammed Sahabi who was the Ward Supervisory Agent of the Petitioners for Bingaje Ward, Yabo Local Government stated under cross examination that the APC thugs that disrupted voting in his ward and APC people were giving some voters N5,000, N3, 000 or N2, 000. He said that one Alhaji Dan Musa, Alhaji Ruwa and Ali Sani were giving money to voters like Alhaji Umaru, Ibrahim Sani and Awawu Umar all registered voters.

Similarly, PW 30, Modi Monde voted at Kajiji Shiyar Ajiya polling unit (code 003) in Kajiji Ward, Shagari Local Government. During his cross examination by learned counsel for the 2<sup>nd</sup> Respondent, Chief Ochidi, PW 30 stated thus:

***“By corrupt practices I meant that the APC people used money to buy votes. I know one of those who gave money Alhaji Hassan gave money. I do not know the names of those who received money. The same is what I meant by vote buying in paragraph 12 of my deposition...The other party used money to achieve what they wanted. That is what I termed corrupt***

***practices. I personally witnessed these corrupt practices at Kajiji Shiyar Ajiya 003. I did not collect any money from them.”***

Again, PW32, Isa Aliyu, the Ward Supervisory Agent for Birnin Ruwa Ward in Yabo Local Government, said that he voted at Birsawa/Dalijen polling unit. He stated under cross examination by learned counsel for the 1<sup>st</sup> Respondent thus:

***“APC supporters were buying vote...  
I reported the vote buying to the Police but they did nothing about it.”***

PW35 who was the Ward Agent of Bakale Ward, Yabo Local Government and voted at Birsawa/Dalijen Polling unit code 005 in Birnin Ruwa Ward also testified to the fact that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents were engaged in corrupt practices such as vote buying when he stated under cross examination that:

***“Corrupt practices we observed included vote buying. APC members were the ones buying the votes with N2, 000 and wrappers, some were giving fertilizers. It is a criminal offence to buy votes...  
I cannot mention the number of votes bought by the APC.”***

He submitted that the Petitioners have successfully proved the allegations of corrupt practices in the form of vote buying in the above polling units and wards. He said that although the standard of proof required where a Petitioner makes allegations which are criminal in nature, is ‘proof beyond reasonable doubt’, the law does not expect such a petitioner in the circumstance, to attain ‘proof beyond any iota’ or ‘shadow of doubt’. See: *State vs. Okpala (2012) 3 NWLR (Pt.1287) 390 – 391 and Abokokuyanro vs. State (2012) 2 NWLR (Pt.1285) at 533*. He submitted that the PW’s 29, 30, 32 and the other witnesses who testified on behalf of the Petitioners as eye witnesses to these incidences at their various polling units, have by their testimonies, both in chief and under cross examination, dispelled any reasonable doubt that might linger in the mind of this Honourable Tribunal with respect to the Petitioners’ case of corrupt practices and malpractices.

Finally, he submitted that the widespread incidence of malpractices and corrupt practices that marred the elections of 23<sup>rd</sup> February, 2019 substantially affected the results/ outcome of the said elections.

He said that the Petitioners’ case is that the results from about 74 polling units in the 10 wards of Yabo Local Government Area and 73 polling units in the

10 wards of Shagari Local Government are invalid by reason of corrupt practices and non-compliance in the form of over-voting, inflation of votes, ballot stuffing, mutilation of Form EC8A and B, mutilation of election result, failure to stamp and sign Forms EC8A, EC8B and EC8C in the National Assembly Election for Yabo/Shagari Federal Constituency held on 23<sup>rd</sup> February, 2019.

That for ease of reference, the Petitioners’ analysis of the total number of invalid votes by reason of the irregularities and non-compliance is contained in the tabular analysis appearing at paragraphs 56(a) - (y), 57, 58 and 59 on pages 14 – 16 of the Petition. He said that they are relying on them and urged us to take a calm perusal of the stated paragraphs of the petition.

**TOTAL INVALID VOTES ALLOTTED TO APC AND PDP AT YABO AND SHAGARI LOCAL GOVERNMENT AREAS**

	APC	PDP
Total Invalid votes wrongly included wrongly allotted by 3 <sup>rd</sup> Defendant (INEC) at Yabo and Shagari Local Government.	23,214	14,454
	APC	PDP
Total votes declared by 3 <sup>rd</sup> Defendant (INEC)	31,193	24,932
Total Invalid Votes deducted from Final Results Announced by 3 <sup>rd</sup> Defendant (INEC)	APC 31,193 - 23,214 = 7,979	PDP 24,932 - 14,454 = 10, 478
MARGIN OF VICTORY OF PDP OVER APC	2,499	

Counsel submitted that based on the analysis of irregularities carried out by the Respondents as shown above, the total number of invalid votes from the total votes declared for APC will be around 23,214 invalid votes and about 14,454 invalid votes to PDP. That when the invalid votes are deducted from the votes

scored by the 1<sup>st</sup> Petitioner and 2<sup>nd</sup> Respondent respectively, that is (APC = 31,193 - 23,214) and (PDP: 24,932 - 14,454), the actual valid votes scored by the Petitioners will be 10,478 votes while 1<sup>st</sup> and 2<sup>nd</sup> Respondents will have 7,979 votes.

Furthermore, he contended that if the tribunal makes a finding based on the above analyses of evidence led in respect of the affected Polling Units and Wards, it will be revealed that the 1<sup>st</sup> Petitioner won the majority of lawful votes cast and satisfied the Constitutional requirement of winning 25% of votes cast in 2/3 of the 20 wards that make up the Yabo/ Shagari Federal Constituency of Sokoto State.

He said that from the evidence led, the Petitioners have established through oral and other documentary evidence serious incidents of lack of accreditation, failure to tick the appropriate boxes in the voters register, over-voting and inflation of votes in Form EC8A, EC8B and EC8Cs (results from the polling units, wards and Local Government Area Collation Centres), over-voting and inflation of votes in a total of 147 Polling Units of Yabo/Shagari Federal Constituency election conducted on the 23<sup>rd</sup> of February, 2019.

In line with the Petitioners' analysis as can be found in paragraphs 56-59 of the Petitioners' pleadings in pages 14 -16 of the Petition, he urged this Honourable Tribunal to cancel the result of the elections in the affected polling units as shown therein.

## **NON-COMPLIANCE WITH ELECTORAL LAWS**

Learned counsel submitted that the term "Non-compliance" with the Electoral Act as provided for under Section 138(1) (b) of the Electoral Act, 2010 (as amended) has been defined as the conduct of an election contrary to the Act or the rules and regulations made there under. That non-compliance may result not only from the degrees of, but also from the nature of compliance and question in every case as to whether or not in view of the findings, the constituencies as such was allowed to elect its representatives. See: *INEC vs. Oshiomole (2009) 4 NWLR (Pt. 1132) 607 at 675.*

He said that in the proceedings of 12<sup>th</sup> July, 2019 when the 3<sup>rd</sup> Respondent called its witnesses, the Petitioners tendered the following Exhibits through the 3<sup>rd</sup> Respondent's witnesses, namely:

- i. A copy of Certificate of compliance with section 84 of the Evidence Act, 2011 accompanying the Card Reader Machine Report admitted as Exhibit RA1;



- ii. The CTC of Card Reader Machine Report of Accreditation admitted as Exhibit RA2; and
- iii. INEC Receipt for certification admitted as Exhibit RA3. (*Exhibit RA1, Exhibit RA2, Exhibit RA3* were tendered by Aliyu Badamasi, R.W1, Deputy Director in the ICT Department INEC Headquarters, Abuja).
- iv. Schedule of voters Registers used in the conduct of Shagari/Yabo Federal Constituency admitted as Exhibit RB. (Exhibit RB was tendered through Ya'u Yayeh Kamba (R.W. 2).
- v. Register of voters for Kilgori, Bakale and Ruggar Iya Wards collectively admitted as Exhibits RB1, RB2 and RB3.
- vi. Register of voters for Birmin Ruwa and Yabo B Wards admitted as Exhibits RB4 and RB5.
- vii. Register of voters for Torankawa and Fakka Wards admitted as Exhibits RB6 and RB7.
- viii. Register of voters for Binji and Bingaje Wards admitted as Exhibits RB8 and RB9.
- ix. Register of voters for Yabo A Wards was admitted as Exhibit RB10.
- x. Register of voters for Kambama, Sanyinnawal and Horo Birni Wards admitted as Exhibits RB11, RB12 and RB13 respectively.
- xi. Register of voters for Shagari Ward admitted as Exhibit RB14.
- xii. Register of voters for Jaredi and Kajiji wards admitted as Exhibits RB15 and RB16.
- xiii. Register of voters for Mandera, Lambama and Gamgam wards admitted as Exhibits RB17, RB18 and RB19.
- xiv. Register of voters for Dandin-Mahe Ward admitted as Exhibit RB20.

- xv. INEC Receipts of payment for certification of documents admitted as Exhibit RB21. (Exhibits RB1 - RB21 are tendered through R.W2 – Ya’yeh Kamba).

That at the trial, RW1, an INEC ICT expert who tendered the card reader report explained in his evidence that the total figure in the card reader report for each polling unit represents the total number of persons accredited, inclusive of those that the verification of their thumbs-print failed. That these are voters who had their PVCs recognized by the card reader but their biometrics could not be verified. He said that the evidence on record which remains unchallenged was that of the 206 Polling Units that make Yabo/Shagari Polling Units, the Card Reader was only used in 203 Polling Units, thus leaving out three (3) Polling Units where elections were held without the use of Card Reader as mandatorily required under paragraph 8 (b) of INEC Regulations and Guidelines for the Conduct of Elections, 2019 which provides thus:

***“No person shall be allowed to vote at any Polling Unit/ Voting Point settlement/ Voting Point other than the one at which his/her name appears in the Register of Voters and he/she presents his/her permanent Voter’s Card to be verified by the Smart Card Reader (SCR) or as otherwise determined by the Commission.”***

He said that after tendering Exhibits RA1, RA2 and RA3 and while still in the witness box, Aliyu Badamasi, R.W1 answered under cross-examination by Petitioners’ counsel that Yabo/Shagari Federal Constituency has 206 Polling Units but based on the report of CTC of Card Reader Machine (Exhibit RA3), that the Card Reader was used in only 203 out of 206 Polling Units. The three (3) Polling Units where they were unused are: Sullubawa (P.U code 004) in Kambama; Marake Model Primary School, (P.U code 008) Shagari Ward and Karoga Primary School (P.U code 013) in Sanyinnawal Ward.

Counsel submitted that while the Card Report shows that Card Reader was not used in the three Polling Units, ironically, INEC Forms EC8A and B in respect of the affected Polling units show that result from the Polling Units were reckoned with in declaring the 1<sup>st</sup> Respondent as the winner of the National Assembly Election for Yabo/Federal Constituency held on 23<sup>rd</sup> February, 2019. He said that the seriousness of this breach of compliance is accentuated by the provision in the INEC Regulations and Guidelines for Conduct of General Elections, 2019 which was introduced in order to make polling process more transparent and credible. He

said that the card reader is used in verifying and authenticating the biometrics of the voters thereby checkmating all forms of impersonation by voters.

He submitted that the deliberate failure of the 3<sup>rd</sup> Respondent to use SCR in the affected three (3) Polling Units constitutes substantial non-compliance with the electoral laws.

Again, counsel submitted that at the proceedings of 14<sup>th</sup> June, 2019, the PW36, the Collation Agent of the Petitioners at the Yabo Local Government on the day of the election stated under cross-examination by learned counsel for the 2<sup>nd</sup> Respondent that there was no accreditation in all the polling units. That there was rigging and corrupt practices in all the ten wards. That he got the reports from his polling unit agents and Form EC8C. That in Form EC8C in Exhibit P3 in serial No. 10 Bakale Ward, the total number of registered voters is 4, 414 while the total votes cast is 5, 077. In No. 8 Kilagori Ward the total number of registered voters is 4, 302 while the total votes cast is 4, 844. In serial No. 5 Ruggar Iya Ward there was under casting. In serial no. 1 Fakka ward there was wrong calculation of the votes cast. In serial No.2 Bingaje Ward the same wrong calculation. No. 4 Torankawa Ward is also wrong calculation. In Yabo A. Serial No. 6 there was over calculation of votes. That in Form EC8B for Yabo Local Government Area, Form EC8C was drafted from Form EC8B.

He said that upon a careful perusal of Exhibit P3, more particularly the two (2) copies of INEC Forms EC8C for Yabo and Shagari Local Government Areas this Tribunal will agree with the evidence of PW 36 and 37 PW that the entire results relied upon by the 3<sup>rd</sup> Respondents to declare the 1<sup>st</sup> Respondent as winner of the election of 23<sup>rd</sup> February, 2019 in the Yabo/Shagari Federal Constituency of Sokoto state are fraught with malpractices in the form of massive mutilations and cancellations with a view to concealing the obvious over voting and irreconcilable contradictions in the collated results of the various polling units, wards and ultimately Local Government Areas in Yabo/Shagari Federal Constituency.

Similarly he said that the Electoral Officers of the 3<sup>rd</sup> Respondent in Yabo and Shagari Local Government, (RW2 and RW3) in their testimony when they were shown and confronted with the two (2) mutilated copies of INEC Forms EC8C for Yabo and Shagari Local Government Areas admitted that there were a lot of cancellations and mutilations of figures in the INEC Form EC8C from Yabo and Shagari Local Government Areas which were not counter-signed or endorsed.

He said that under cross-examination, RW2 testified thus about the mutilated results in Form EC8A, “...*Inflation of figures is a malpractice but cancellation will only be a malpractice if the result is not signed. I see Exhibit P3, form EC8C for Shagari Local Government Area listed at serial No. 226 in Exhibit P2. I see some cancellations in the column for the total valid votes and total votes cast. On total valid votes, all were cancelled without countersigning same for the column*”

**on total votes cast. The INEC Procedure for election involves accreditation with card reader machine and voter's register."**

Again, that when RW3 was cross-examined by the 1<sup>st</sup> Respondent's Counsel, he said that the election was free and fair and that he went round all the polling units in Yabo Local Government on the day of the election and did not receive any report of electoral malpractices. That he however contradicted himself under cross-examination by Petitioners' counsel when he testified thus:

**"I visited all the polling units in Yabo Local Government Area. I now say that I did not visit all the polling units. The only way I got to know what I stated in my deposition is what my staff told me. I am aware that results were announced after collation of results for Yabo Local Government Area. I see Exhibit P3 particularly form EC8C for Yabo Local Government level. I can see cancellations and mutilations. I can see twenty-one cancellations under the column for total votes cast, total valid votes and number of registered voters. In column for Fakka ward the alleged cancellation is actually a correction but it was not countersigned. I was not there to know whether it was to correct or falsify. A proper election cannot be conducted without the use of a card reader and the voter's register. Yabo Local Government Area has ten wards and the register of voters was used to accredit. I see Exhibit PB1 to PB3 particularly the voter's register for polling unit 004 for Baic Massallaci, the register was not ticked in the appropriate column. Although they accredited with the voters' register. I know the proper column to tick for each election. The appropriate column for this election is the column for the National Assembly but it was not ticked. I see the voter's register for Shiyar Ajiya MPS007 the appropriate column for National Assembly was also not ticked. I see voter's register for Yabo B ward for Baice Garka Hakimi 003, the column for House of Representatives election for accreditation by voter's register is the vertical column. I see that it was ticked here."**  
**(Underlined for our emphasis).**

He said that from the pleadings and the evidence led, particularly the testimonies of the Petitioners' witnesses regarding failure of the Card Reader Machines and lack of accreditation with Voter's Register, the petitioners have established through other documentary evidence such as the Card Reader Reports, failure to tick the relevant boxes in the voters register, over-voting in Form EC8A, EC8B and EC8C (results from the polling units, wards and Local Government Collation Centres), that there were serious incidence of over-voting during the election as can be deduced from all the relevant forms tendered Exhibit P3 and P5A1 – P5A110. He maintained that this also raises doubt about whether results entered in the Form EC8As are those generated from casting of ballots in that particular polling unit. He said this is what *Sections 57 and 58 of the Electoral Act, 2010 (as amended)* expressly prohibits when it provides:

***57- No voter shall record his vote otherwise than by personally attending at the polling unit and recording his vote in the manner prescribed by the Commission.***

***58. "No person shall be permitted to vote at any polling unit other than the one to which he is allotted."***

He submitted that the only proof that a voter is registered in a particular polling unit in the 2019 general election is where his name with his picture is contained in the Voters' Register of the Polling Unit and he passes through the Card Reader Verification in the Polling Unit he claims to have registered. That as a matter of law, voter's right to vote can only to be exercised in the manner prescribed by the electoral laws.

He said that another instance of non-compliance was the decision of the 3<sup>rd</sup> Respondent in conducting elections for the Yabo/Shagari Federal Constituency without the Voter's Register in 87 Polling Units across 19 Ward/Registration Areas on the day of the election. He said this was clearly demonstrated on the 12<sup>th</sup> July, 2019 when the CTC of Voters Registers used in conducting the National Assembly Election for Yabo/Shagari Federal Constituency on 23<sup>rd</sup> February, 2019 were tendered in evidence as Exhibits RB 1- RB 20. In order to assist the court, the Petitioners also separately tendered the Schedule of voters Registers used in the conduct of Yabo/Shagari Federal Constituency admitted as Exhibit RB (through Ya'u Yayeh Kamba (R.W. 2) under cross-examination.

He said that the copies of the various Voters' Registers and the Schedule were used in cross-examining the two Electoral Officers in charge of Yabo and Shagari Local Government Areas who testified as RW2 and RW2 (sic). He said under further cross-examination by Petitioners' counsel, RW2 answered thus:

***“I see Exhibit RB20 particularly the parcel containing voter’s register from Shiyar Galadima code 003. There is no evidence of accreditation in this register in respect of the House of Representatives election. I also see from Exhibit RB20 the parcel in respect of Shiyar Magaji Mamman 001, the voters register was not used for the accreditation in the election. I see Exhibit RB15 particularly the parcel for polling units 006, 007 and 008 in respect of Jaredi ward. In respect of 006 and 007, I was in the card reader but not the voter’s register. In respect of 007 there was no accreditation with the voter’s register. Also in unit 008 there was no accreditation”.***

He said using Exhibit RB; the Petitioners' counsel demonstrated before the Tribunal that the Voters' Register was not used in the accreditation of voters in 37 and 50 Polling Units in Yabo and Shagari Local Government Areas respectively. He submitted that evidence elicited during cross-examination of an opposing party can be relied upon in proof of the facts in dispute and relied on the decisions in: *Adeosun Vs. Gov. of Ekiti State & Ors (2012) LPELR – 7843 (SC) page 23, paras A – B; Akomolafe & Anor Vs. Guadian Pres Ltd & Ors (2010) LPELR – 366 (SC) page 15, Paras C – E.*

On the requirement of accreditation under our Electoral laws, he referred to *paragraph 10 (a) and (b) of the Regulations and Guidelines for the Conduct of Elections, 2019* which states thus:

***“In accordance with Section 49 (2) of the Electoral Act, a person intending to vote shall be verified to be the same person on the register of voters by use of the Smart Card reader in the manner prescribed in these Regulations and Guidelines.***

***Any Poll Official who violates the provision of Clause 10 (a) shall be deemed guilty of an offence and shall be liable to prosecution.”***

He emphasised that the operative word “shall” mandates the use of the Smart Card Reader and the accreditation cannot be conducted in any other way. Furthermore he

referred to *paragraph 10 (d) of the Regulations and Guidelines for the Conduct of Elections* which also provides thus:

*“The accreditation process shall comprise reading of the permanent voter’s card and authentication of the voter’s fingerprint using the Smart Card Reader, checking of the registers of the voters and inking of the cuticle of the specified finger of the voter”.* (Underlined by counsel for emphasis)

He also referred to *paragraph 10(f) of the Guidelines* for more on the process of accreditation. He maintained that the foregoing provisions underscore the importance of Voters Register in our electoral process. That with regard to the mandatory requirement of ticking the appropriate box in the Voters Register by voters; it is the horizontal boxes on the right margin beside the voter’s details on the Register, showing the category of election, if the person's name is on the Register of Voters. That in this petition, the relevant category of election is clearly written on right hand side below the box marked “P/NA”

He submitted that this procedure of proper accreditation was not complied with in all the 87 Polling Units listed in the Schedule of Polling Units with Zero accreditation in Exhibit RB. He said that consequently, all the votes realized from the polling units are bound to be cancelled and nullified. That the above analysis establishes a clear case of substantial non-compliance in the conduct of Yabo/Shagari Federal Constituency election.

That based on the incidences of non-compliance, particularly the evidence of colossal failure or negligence on the part of 3<sup>rd</sup> Respondent Officials to use the Voters’ Register in their accreditation process in the 87 Polling Units, the votes scored by APC and PDP in the following Polling Units will not be reckoned with and are bound to be cancelled:

SHAGARI LGA

S/N	POLLING UNIT	APC	PDP
	JAREDI WARD		
1.	Rugagar Gaman (006) (Listed at Serial No.103 on Exh. P2)	50	32
2.	Rugagar Tudu (008) (Listed at Serial No.101 on Exh.	156	98

	P2)		
3.	Sire (007) (Listed at Serial No.102 on Exh. P2)	122	89
	SUB TOTAL	328	219
	HORO WARD		
4.	Horo Dambaro (004) (Listed at Serial No.115 on Exh. P2)	125	54
5.	Kaurare (009) (Listed at Serial No.108 on Exh. P2)	88	53
6.	Gidan Agigi (010) (Listed at Serial No.110 on Exh. P2)	117	56
	SUB TOTAL	330	163
	DANDIN MAHE WARD		
7.	Shiyar Magaji Mamman (001) (Listed at Serial No.14 on Exh.P2)	325	276
8.	Shiyar Magaji Bawa (002) (Listed at Serial No.16 on Exh.P2)	232	192
9.	Shiyar Galadima (003) (Listed at Serial No.18 on Exh.P2)	169	189
10.	Helmawo/Rumbuki (004) (Listed at Serial No.21 on Exh.P2)	88	64
11.	Kwacciyo/Lakati (008) (Listed at Serial No.27 on Exh.P2)	89	30
12.	Zango Kaurare (011) (Listed at Serial No.30 on Exh.P2)	99	25
13.	Gwanai (014) (Listed at Serial No.33 on Exh.P2)	48	67
14.	Gwammanan/R/Yamma (015) (Listed at Serial No.34 on Exh.P2)	87	144



15.	Illela/Era (018) (Listed at Serial No.37 on Exh.P2)	143	136
	SUB TOTAL	1,280	1,123
	<b>KAMBAMA WARD</b>		
16.	Sullubawa (004) NO ELECTION	NIL	NIL
	SUB TOTAL		
	<b>GAMGAM WARD</b>		
17.	Bangahurdu (008) (Listed at Serial No.89 on Exh.P2)	120	115
18.	Aske Dodo (007) (Listed at Serial No.80 on Exh.P2)	66	52
19.	Gamgam/Badi (002) (Listed at Serial No.82 on Exh.P2)	136	113
20.	Yandun Daji (005) (Listed at Serial No.88 on Exh.P2)	63	45
21.	Tunga Barki (006) (Listed at Serial No.86 on Exh.P2)	70	19
	SUB TOTAL	455	344
	<b>LAMARA WARD</b>		
22.	Dalijan/Dundeji (004) (Listed at Serial No.67 on Exh.P2)	84	74
23.	Jandutsi (013) (Listed at Serial No.75 on Exh.P2)	79	52
24.	Bakya (014) (Listed at Serial No.77 on Exh.P2)	55	48
25.	Gabru S/Makera (013) (Listed at Serial No.78 on Exh.P2)		
	SUB TOTAL	218	174
	<b>SHAGARI WARD</b>		
26.	Kaura S/Hakimi (005) (Listed at Serial No. 9 on Exh.P2)	168	75
27.	Wanke Massallaci (006) (Listed at Serial No.8 on Exh.P2)	224	146

28.	WANKE Makera (007) (Listed at Serial No.6 on Exh.P2)	172	103
29.	Gadara S/Hakimi (009) (Listed at Serial No.10 on Exh.P2)	105	67
30.	Tunga Bawa (011) (Listed at Serial No.11 on Exh.P2)	91	69
31.	Sage Fili (013) (Listed at Serial No.2 on Exh.P2)	108	94
32.	JSS Shagari (014) (Listed at Serial No.4 on Exh.P2)	373	201
	TOTAL	1,241	755
	SANYINNWAL WARD		
33.	Bulanyaki Marina (012) (Listed at Serial No.117 on Exh.P2)	145	103
34.	Runjin Kaka (006) (Listed at Serial No.125 on Exh.P2)	331	246
35.	Kaurare/Yargusau (009) (Listed at Serial No.132 on Exh.P2)	187	127
	SUB TOTAL	663	476
	KAJIJI WARD		
36.	Gidan Dangara (009) (Listed at Serial No.57 on Exh.P2)	101	78
37.	Kajiji JSS (014) (Listed at Serial No.10 on Exh.P2)	159	133
	SUBTOTAL	260	211
	TOTAL	4,775	3,465

#### YABO LGA

S/N	POLLING UNIT	APC	PDP
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FAKKA WARD			
1.	Shiyar Sabon Gari (002) (Listed at Serial No.170 on Exh.P2)	234	131
2.	Koya/Olobawa/G/Hammadu(007)(Listed at Serial No.178 Exh.P2)	141	75
SUB TOTAL		375	206
BINGAJE WARD			
3.	Bengaje/Tagule (001) (Listed at Serial No.161 on Exh.P2)	255	199
4.	Dono/Jakiri (003)	314	304
5.	Dono/Jakiri (003)		
6.	Labas/Chanchana (005) (Listed at Serial No.165 on Exh.P2)	103	89
7.	Sabara Kofa Maigari (006) (Listed at Serial No.166 on Exh.P2)	136	84
SUB TOTAL		808	676
BINJI WARD			
8.	Shiyar Yabo (001) (Listed at Serial No.206 on Exh.P2)	263	150
9.	Birnin Buldi/ShiyarHakimi (003)(Listed at Serial No.209 onExh.P2)	138	134
10.	Bul-Buli (004)	132	91
SUB TOTAL		533	375
TORANKAWA WARD			
11.	Shiyar Galadinma Toranka (002) (Listed at Serial No.214 on Exh.P2)	365	161

12.	Shiyar Galadinma Taranka (002) (Listed at Serial No.213 on Exh.P2)	262	115
	SUB TOTAL	627	276
	RUGGA – IYA WARD		
13.	Mazuru Gidan Galma (007) (Listed at Serial No.187 on Exh.P2)	156	59
	SUB TOTAL	156	59
	YABO ‘A’ WARD		
14.	S/fawa/Garka Liman (001)	295	95
15.	Shiyar Fegi Rafi G/S/Fawa (001)	90	18
16.	Shiyar Ubandawaki G/Liman (002)	254	111
17.	Shiyar Ubandawaki G/Liman (002)	90	40
18.	Shiyar Ubandawaki Garki Liman (002)		
19.	Shiyar Ubandawaki Garki Liman (002)		
20.	Shiyar Magaji G/Sarki Muza (003)	216	112
21.	Shiyar Magaji G/Sarki Muza (003)	198	107
22.	Addam Shgiyar Sarkin Dutsi (004)	146	145
23.	Babban Runji P/S (007)		
24.	Babban Runji (007)		
25.	Babban Rumji P/S (007)	289	176
26.	Mazaren Yamma Garka Hakimi (008)	131	44
27.	Addan Shiya Hakimi (009)		
28.	Addan Shiyar Hakimi (009)	123	108

29.	Shiyar S/Rafi JNI (010)		
30.s	Shiyar S/Rafi JNI (010)		
31.	Shiyar Fegi Rafijini P/S (010)	257	233
32.	Shiyar Fegi Rafijini G/Liman (010)		
	SUB TOTAL	2,089	1,189
	YABO 'B' WARD		
33.	Shiyar Ajiya Garka S/Kabi (001) (Listed at Serial No.144 on Exh.P2)	162	64
34.	Shiyar Wambai P/S (002) (Listed at Serial No.146 on Exh.P2)	228	105
35.	Shiyar Wambai P/S (002) (Listed at Serial No.147 on Exh.P2)	169	80
36.	Baice Garka Hakimi (003) (Listed at Serial No.149 on Exh.P2)	139	123
37.	Baice Garka Hakimi (003) (Listed at Serial No.150 on Exh.P2)	204	145
38.	Shiyar Ajiya (007) (Listed at Serial No.141 on Exh.P2)	283	108
39.	Baice Massallaci Gabas (004) (Listed at Serial No.136 on Exh.P2)	177	97
40.	Baware G/Hakimi (005) (Listed at Serial No.137 on Exh.P2)	270	78
41.	Shiyar Ajiya MPS (007)	234	87
42.	Shiyar Ajiya (007) (Listed at Serial No.138 on Exh.P2)	101	09
	SUB TOTAL	1,967	896

KILGORI WARD			
43.	Zage Kuringa (006)		
44.	Zage Kuringa (006) (Listed at Serial No.199 on Exh.P2)	122	103
	SUB TOTAL	122	103
BIRNIN RUWA			
45.	Rungumi Dogaye (001) (Listed at Serial No.205 on Exh.P2)	153	67
46.	Gidan Basa/Rinaye/Makera (003)(Listed at Serial No.203 on Exh.P2)	87	65
47.	Birisawa Dalijan (005) (Listed at Serial No.202 on Exh.P2)	45	35
	SUB TOTAL	285	167
BAKALE WARD			
48.	Bakale/Yauta/Dora 1 (002) (Listed at Serial No.156 on Exh.P2)	93	76
49.	Tudun Jidda (004) (Listed at Serial No.154 on Exh.P2)	164	91
50.	Danchibode (007) (Listed at Serial No.157 on Exh.P2)	84	73
	SUB TOTAL	341	240
	TOTAL	7,303	4,287

GRAND TOTAL: APC= 12, 078

PDP= 7, 652

He said that from the tabular analysis, the grand total of votes affected and liable to be cancelled due to failure of the 3<sup>rd</sup> Respondent to use the Voters Register in the accreditation of voters using the various results as recorded in Forms EC8As for the affected Polling Units and the list of Polling Units with Zero Accreditations

by Voters Registers in Exhibit RB, 12, 078 votes of APC will be affected while 7, 652 votes of the PDP will also be affected.

That as regards this complaint of non-compliance, he referred the tribunal to Exhibit RB, particularly the “List of Polling Units with Zero Accreditation by Voters Register”. He said that looking at Exhibit RB, the affected 87 Polling Units have a total of 47, 707 Registered Voters. He therefore urged the Honourable Tribunal to cancel election in all the Polling Units in the table above where the Voters’ Registers were not used in the accreditation of voters.

Learned counsel submitted that the Petitioners have essentially challenged the return of the 1<sup>st</sup> Respondent on ground of non-compliance and corrupt practices. That the non-compliance in this case is so substantial that this Honourable Tribunal will nullify or cancel elections in all polling units and wards where they are established. In this regard, he referred the Tribunal to the tabular analysis/graph with details of corrupt practices and other forms of non-compliance in over 74 Polling Units in Yabo Local Government Area and 73 Polling Units in Shagari Local Government Area from 20 Wards of Yabo/Shagari Federal Constituency as contained in paragraphs 25, 26, 39 and 46 of the Petition.

He submitted that it is trite law that where a Petitioner alleges non-compliance in the form of over-voting, it behoves him to call agents from the affected Polling Units in addition to tendering the voters register, Polling Unit results (EC8A) and ballot boxes, where possible and all other relevant electoral materials that will aid the Tribunal in arriving at its findings. See the cases of: *Gundiri V. Nyako (2014) 2 NWLR (Pt. 1391) 211 at 245*; and *Iniaya vs. Akpabio (2008) 17 NWLR (Pt. 1116) 255 at 335*.

He submitted that the petitioners have done the needful by calling enough witnesses, who acted as agents at some of the polling units where non-compliance and over-voting occurred during the National Assembly election of Yabo/Shagari Federal Constituency Election held on the 23<sup>rd</sup> February, 2019. That at every point, when the Petitioners’ witnesses were led in chief during the trial, they were often referred to the Form EC8A of the number of accredited voters and the total votes cast as announced by INEC on the day of the elections. That conscious effort were made to demonstrate through both the Petitioners witnesses and the witnesses called by the Respondents during cross-examination to show that there were alarming incidence of corrupt practices and non-compliance with the electoral laws. That in a very demonstrative manner, all the Polling Units agents who were called as witnesses were all referred to their witnesses statements particularly the paragraphs where the total votes cast and the number of accredited voters were mentioned and in all the instances, the witnesses answered to confirm that there were over-voting when the total number of accredited voters in a unit is deducted from the total votes cast.

He submitted that from the pleadings and the evidence led at the trial, particularly the testimonies of Petitioners' witnesses and RW1, RW2 and RW3 regarding lack of accreditation, over-voting and other incidences of irregularities, the petitioners have established through other documentary evidence such as the Card Reader Reports, failure to tick the appropriate boxes in the voter's register, over-voting and inflation of votes in Form EC8A, EC8B and EC8Cs (results from the polling units, wards and Local Government Area Collation Centres), that there were serious incidence of non-compliance, over-voting and inflation of votes in a total 147 the Polling Units of Yabo/Shagari Federal Constituency election conducted on 23<sup>rd</sup> February, 2019.

That where over-voting and electoral irregularities are proven to have substantially affected the outcome of the election, the Tribunal should waste no time in cancelling the votes from the affected polling units and booths. See *Umezulike vs. Ohisah (1999) 6 NWLR (Pt.607) 376 at 379*.

Based on the foregoing arguments, the evidence led and the tabular analyses and computation, he urged the Tribunal to hold that the return of the 1<sup>st</sup> Respondent as the winner of the National Assembly election of Yabo/Shagari Federal Constituency Election held on the 23<sup>rd</sup> February, 2019 is void for corrupt practices and substantial non-compliance with the provisions of the Electoral Act, 2010 (as amended) and INEC Regulations and Guidelines for the Conduct of Elections, 2019.

### **ARGUMENT ON ISSUE THREE**

For the avoidance of doubt, this issue is: *Whether the Petitioners have placed sufficient materials before this Tribunal to entitle them to declare the 1<sup>st</sup> Petitioner as the rightfully elected Candidate for Yabo/Shagari Federal Constituency of Sokoto State in the election held on the 23<sup>rd</sup> February, 2019.*

Learned counsel submitted that it is trite law that whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts, must prove that those facts exist. See: *University Press ltd. V. I.K Martins (Nig.) ltd. (2000) F.W.L.R (PT.5) 722, (2000) 4 N.W.L.R (PT.654) 584; Odukwe V. Ogunbiyi (1998) 6 SC 72; and Mobil Producing Nigeria Unltd V. Effiong (2013) ALL FWLR (Pt.673) 1942 at 1963 Paras. E-F. See also Section 131 (1) of the Evidence Act, 2011.*

He posited that the nature of the Petitioners' burden with regards to proof and the required evidence is better appreciated in the light of the grounds of the petition,



the pleadings and the reliefs being claimed. That in *CPC v INEC (2011) 18 NWLR (Pt. 1279) 493 at 539 – 540* the Supreme Court held thus:

***“In a claim for declaration, the onus is on the Plaintiff to establish his claim upon the strength of his case and not upon the weakness of the case of the Defendant. The Plaintiff must therefore satisfy the Court that upon the pleadings and cogent and credible evidence adduced by him that he is entitled to the declaration in his favour.”***

He submitted that at the trial, the Petitioners amply demonstrated through oral and documentary evidence that they are entitled to the grant of the reliefs being sought in this petition. In this regard, he referred to the testimonies of all the forty four (44) witnesses that testified at the trial and the documentary evidence led before the Honourable Tribunal as already highlighted in this address.

He pointed out that all the documents tendered by the Petitioners through their witnesses and the 3<sup>rd</sup> Respondent’s witnesses are mostly duly certified true copies of INEC Forms EC8A, EC8B, EC8C, EC8D and EC8E; CTC of Voters Register from the 20 wards of the Yabo/Shagari Federal Constituency; CTC of Card Reader Report. That they were tendered either through their makers; persons who had custody of the document or voters who used them on the day of the election.

He submitted that at the trial, while the Petitioners’ witnesses were tendering these documents, none of the Respondents’ counsel successfully controverted the testimonies of the witnesses on any material aspect of the Petitioners’ case. That it is the law that uncontroverted evidence should be acted upon by the Court, once, that evidence is admissible and credible. See: *Amobi Vs. Nzegwu & Ors (2013) LPELR – 21863 (SC) page 54 para A*; and *American Cynamid Co. V. Vitality Pharmaceuticals Ltd (1991) LPELR-461 (SC) at 22 para A*.

He posited that in all the instances where 1<sup>st</sup> and 2<sup>nd</sup> Respondents’ Counsel cross-examined the Petitioners’ witnesses, they failed to discredit or controvert their testimonies. That in the case of: *Sanmi-Omosho VS. Obidairo (2014) LPELR – 23006 (CA) at 37, praas D – E, Iyizoba, JCA* held thus:

***“In order to controvert evidence adduced by a party, an opponent must present cogent, credible and consistent evidence to discredit the other party’s evidence. A party does not contradict evidence just by disagreeing with his opponent’s evidence”***

Again, he relied on the case of: *Governor of Zamfara State & 2 Ors Vs. Gyalange & Ors (2012) LPELR-9715 (SC), at 22 – 23, paras E – B* where the Supreme Court, per Mukhtar, JSC held thus:

***“The settled law is that evidence that is neither attacked nor successfully challenged is deemed to have been admitted and the Court can safely rely on the evidence in the just determination of a case. See Durosano VS. Ayorinde (2005) 8 NWLR (Pt.927) page 407, Omo vs. JSC Delta State (2000) 12 NWLR (Pt.682) page 444, and Elema VS. Akerwa (2000) 13 NWLR (Pt.683) page 92”***

Learned counsel submitted that at the trial, a total of forty one (41) witnesses were called by the Petitioners while the 3<sup>rd</sup> Respondent called three (3) witnesses; making a total of forty four (44) witnesses in all. He said that apart from RW1 who was the subpoenaed witness of 3<sup>rd</sup> Respondent, all the witnesses can be divided into four (4) groups namely: twenty (20) Polling unit agents, eighteen (18) Ward agents, two (2) Local Government Agents and one (1) Returning/Collation Officer of the Petitioners and two Electoral Officers of 3<sup>rd</sup> the Respondent at Yabo and Shagari Local Government Areas.

He submitted that the testimonies of the entire Petitioners’ witnesses, particularly, Shehu Dantuni Shagari (PW.11), the key witness and Yabo/Shagari Constituency Collation Agent of 1<sup>st</sup> Petitioner, covered all the Polling Units and Wards. That his testimony and that of other Petitioners’ witness were never challenged or controverted by any of the Respondents’ counsel during cross-examination.

While canvassing his arguments on this issue we observed that the learned counsel for the Petitioners made copious submissions which are replications of the arguments already canvassed in respect of Issues 1 and 2. Consequently we will focus only on the arguments which relate to the extant issue for determination.

Learned counsel referred to the case of: *Lagga v. Sarhuna (2008) 16 NWLR (Pt.1114) 427 at 460 F-G* where the Supreme Court, per Mohammed, JSC observed thus:

***“Now in evaluating any piece of evidence placed before it by parties, a Court of law is duty bound to consider the totality of evidence led by each of the parties. It shall then place it on an imaginary scale of Justice to see which of the two sides weighs more creditably than the other”.***

*The learned trial Judge did not make any reference in his Judgment to the documentary evidence tendered by the appellants which supported their stand in the matter but focused only on the Evidence he felt supported the Respondent's case. This does not accord the accepted standard of evaluation of evidence''.*

He said that it is stunning that in the face the evidence led and the number of exhibits tendered by the Petitioners at the trial, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents elected to rest their case on that of the Petitioners.

Learned counsel posited that it is the law that at the close of the Plaintiff's or Petitioner's case, a defendant or Respondent in a matter is entitled to rest his case on that of the Petitioners. That where this happens, it implies that the Respondent has elected not to call evidence, and the averments in his pleadings are deemed abandoned. In support of the view, counsel referred to the case of: *Newsbreed Organisation Ltd V. Erhomosele (2006) 5 NWLR (Pt. 974)499 at 545 paras C-H* when his Lordship Ogbuagu, JSC observed *inter alia*:

*“It is noted by me that although the appellant filed a statement of defence, it did not adduce evidence in support thereof. It is now settled, that pleadings do not constitute evidence and therefore, were such pleading is not supported by evidence-oral or documentary, it is deemed by the court as having been abandoned. There are too many decided authorities in this regard. But if I must cite one, see recently, Miss Ezeanah v. Alhaji Attah (2004) 2 SCNJ 200 at 235; (2004) 7 NWLR (Pt. 873) 468 where several other cases were cited or referred to.*

*I also note that at the close of the plaintiff's/respondent's case, the learned counsel for the appellant proceeded to address the court. In order words, he rested the appellant's case on the case/evidence of the respondent. Such a stance has been described or regarded as a legal strategy and not a mistake. See the case of Aguocha v. Aguocha (2005) 1 NWLR (Pt. 906) 165 at 184- per Salami, JCA, citing the case of Akanbi & Ors. v. Alao & Anor. (1989) 3 NWLR (Pt. 108) 118 which also reported in (1989) 5 SCNJ 1.*

*As a matter of fact, in the case of N.E.P.A v. Olagunju & Anor (2005) 3 NWLR (Pt. 913) 602 at 632 C.A, it was stated that the*

*implication where a defendant rests his case on that of the plaintiff, may mean:*

- (a) That the defendant, is stating that the plaintiff has not made out any case for the defendant to respond to; or*
- (b) That he admits the facts of the case as stated by the plaintiff, or*
- (c) That he has a complete defence in answer to the plaintiff's case."*

Similarly learned counsel referred to the case of: *Busari & Anor Vs. Adepoju & Ors (2015) LPELR 41704 (CA)*, where *Tsammani JCA* held *inter alia* as follows:

*"The Law is that where a Respondent rests his case on that of the Plaintiff or Petitioner, as the case may be, the respondent would in effect be contending that: (a) the Plaintiff or petitioner has not made out a case for the Respondent to answer; or (b) The Respondent admits the facts of the case as stated by the petitioner, or (c) The Respondent has a complete answer in law to the petitioner's case." The position of the Law therefore, when a defendant or Respondent calls no evidence was restated by me in the case of FAIRLINE PHARMACEUTICAL INDUSTRIES LTD & ANOR V TRUST ADJUSTER NIG. LTD (2012) LPELR-20860 (CA) in the following words. " it is the law that where a defendant does not adduce evidence, as in the instant case, the evidence before the court goes one way leaving the court with no other evidence or set of facts with which to do the measuring of the scale. This is because in a situation where a defendant leads no evidence in proof of the facts pleaded by him, such pleading is deemed abandoned and the defendant would be left with nothing with which to present against the Plaintiff. Thus, in a situation where a defendant abandons his pleadings and rests his case on the Plaintiff's evidence, he is deemed in law to have completely accepted both the pleadings and evidence or the case presented by the Plaintiff." See also the case Of KOTUN V. OLASEWERE (2010) 1 NWLR (PT 1175) P. 411; OSADIM V. TAIWO (2010) 6 NWLR (PT 1189) P. 155; ODUWOLE V. WEST (2010) 10 NWLR (PT 1203) P. 598 at*

**621 and ADMIN/EXEC ESTATE OF ABACHA V. EKE – SPIFF (2009) 7 NWLR (PT 1139) P.97.’’**

The learned silk posited that the practice of a defendant resting his case on that of the Plaintiff must be distinguished from a no-case submission. That in a no-case submission the defendant has the opportunity of presenting his defence where the application is overruled, however, where a party like the 1<sup>st</sup> and 2<sup>nd</sup> Respondents herein rest their case on that of the Petitioners, they will never have the opportunity of calling evidence or relying on their Replies in the Petition. He said that this point was made by the Supreme Court, per *Chukwuma-Eneh, JSC* in the case of: *Mezu V. C. & C.B. (Nig) Plc (2013)3 NWLR (Pt.1340) 188. See also Afomaja v. Commissioner of Education &Ors. (1995) 8 NWLR (Pt. 411) 69 at 81.*

Fortified by this settled position of law and the evidence led by the Petitioners at the trial learned counsel submitted as follows:

- i. the Petitioners have made out a case for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to answer;
- ii. by choosing to rest their case on the Petitioners’ case, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents by implication, admit all the facts of the petition as stated by the Petitioners and proved by the testimonies of Petitioners’ 41 witnesses and the documentary evidence before the tribunal; and
- iii. that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents have no answer either in law or on fact to the Petitioners’ case.

Learned counsel referred to the case of: *Buhari v. Obasanjo (2005) 13 NWLR (Pt.941)1; also reported as (2005) LPELR-SC 3/2005, pages 34-35, Paras. F-B*, where *Uwais, CJN* held thus:

***"Generally, in a civil case, the party that asserts in its pleadings the existence of a particular fact is required to prove such fact by adducing credible evidence. If the party fails to do so, its case will fail. On the other hand, if the party succeeds in adducing evidence to prove the pleaded fact, it is said to have discharged the burden of proof that rests on it. The burden is then said to have shifted to the party's adversary to prove that the fact established by the evidence adduced, could not on the preponderance of the evidence, result in the court giving judgment in favour of the party."***

He submitted that by the above settled position of law, where a defendant like the 1<sup>st</sup> and 2<sup>nd</sup> Respondents have failed to adduce evidence as in the instant petition, the evidence before the court will tilt one way, leaving the court or tribunal with no other evidence or set of facts with which to measure the scale of evidence. He said that this petition is an ideal case where this principle will apply. That the Petitioners have discharged the minimal evidential burden of leading not only pleaded and relevant facts but also legally admissible oral and documentary evidence in proof of their grounds of corrupt practices and substantial non-compliance. See: *Daggash V. Bulama (2000) 14 NWLR (Pt. 892) 144 at 228 Paras. E – F and Okonji v. Njokanna (1999) 14 NWLR (Pt. 638) 250.*

That with the exception of the 3<sup>rd</sup> Respondent who though called three witnesses but failed in rebutting the Petitioners' case, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents did not call any evidence at all in proof of the facts they pleaded in rebuttal of the Petitioners' case.

He said that the implication is that 1<sup>st</sup> and 2<sup>nd</sup> Respondents' pleadings in defence are deemed abandoned and they can only rely on the statement of fact and evidence led by the Petitioners.

He said that it is equally trite law that witness statement and pleadings do not constitute evidence until a witness adopts his testimony or gives oral or documentary evidence in support of same. See: *NEPA vs. Olagunju (2005) 3 NWLR (Pt. 913) 602 at 631 para H.*

In view of the foregoing, he submitted that the grounds and allegations in the petition and the reliefs sought have been completely accepted by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents. See again: *Newsbreed Organisation Ltd V Erhomosele (supra) 499 at 545 Paras C-H.*

Based on the above authorities cited and submissions made, he urged the Tribunal to hold that having not led evidence in challenge of the Petitioners' claim, the 1<sup>st</sup> and 2<sup>nd</sup> Respondents by implication have accepted the case of the Petitioners as proved and therefore entitled to the reliefs being claimed.

### **PETITIONERS' RESPONSE TO 3<sup>RD</sup> RESPONDENT'S FINAL ADDRESS**

Responding to the 3<sup>rd</sup> Respondent's Final Address, learned counsel submitted that the petitioners have successfully rebutted the presumption of regularity relied upon by the 3<sup>rd</sup> Respondent by cogent, verifiable and unassailable evidence both oral and documentary that have been presented before this Honourable Tribunal to establish cases of non-substantial compliance with the provisions of Electoral Act, 2010 (as amended) and INEC Regulation and Guidelines 2019 and corrupt practices.

He submitted that although the law is settled that in proof of a petition such as this, the petitioners must succeed on the strength of their case and not on the weakness of the respondent's case, the law also allows a petitioner to rely on the evidence called by the respondents which supports his case to prove his claims. He said that this much was held by the court in the case of: *Onifade V Oyedemi (1999)5 NWLR (PR. 601)54 at 61* thus:

***“An election petition is a civil matter. The burden on the petitioner is as laid down in sections 135, 136 and 137 of the Evidence Act. The petitioner must succeed by credible satisfactory evidence of probability and on the strength of his own case and not on the weakness of the respondent's case. The exception is that where the evidence of the respondent supports the case of the petitioner, he can rely on those pieces of evidence which supports his case to establish his case”***

He submitted that the evidence of substantial non-compliance with the Electoral Act, 2010 (as amended) and INEC Regulations and Guidelines 2019 elicited from RW2 and RW3 under cross-examination which supports the petitioners' case is a rebuttal of the presumption of regularity relied upon by the 3<sup>rd</sup> Respondent and urged the Tribunal to so hold.

On the submission of the 3<sup>rd</sup> Respondent at paragraphs 4.5 and 4.6 that the evidence of all the petitioners' witnesses' amount to hearsay he submitted that the 41 witnesses called by the Petitioners testified on oath on what they know personally and therefore cannot amount to hearsay in law. He therefore urged the Tribunal to discountenance the submission of the 3<sup>rd</sup> respondent in this regard.

As regards the contention of 3<sup>rd</sup> Respondent at paragraphs 4.7 - 4.10 of their Final Address, he submitted that the requirements of the law to prove disenfranchisement, over voting cancellations/mutations and falsification of results were complied with because some of the witnesses testified on oath that they were disenfranchised along with other registered voters and voters register for the affected polling units were tendered in evidence and marked Exhibit RB1 – RB20. He maintained that the case of non-accreditation of eligible voters using the voters register amounted to substantial non-compliance with the relevant laws and therefore affected the outcome of the election. He said that by the analysis in Exhibit RB, over Forty Seven Thousand (47,000) votes were recorded by the 3<sup>rd</sup> Respondent without going through the process of accreditation as expected by law. He said that this substantial non-compliance with the relevant laws affected the credibility of the election and he urged us to so hold. He equally submitted that the

authority of: *Waziri & Anor Vs Geidam & Ors (Supra)* cited by the 3<sup>rd</sup> respondents does not apply herein.

In conclusion, he urged the Tribunal to resolve all the issues in favour of the Petitioners.

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 for determination. Before we resolve the issues for determination in this petition it would be expedient to determine an ancillary point that has resonated profoundly in this trial. It is the on the decision of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents not to call any witness in defence of this petition. ***What is the legal effect of that decision in this trial?***

From the record of proceedings, it is evident that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents on their own volition rested their case on that of the Petitioners. Put differently, even though they filed pleadings they called no witness to adduce evidence in proof of their pleadings. Unarguably, by that decision they took a gamble.

The learned counsel for the Petitioners has orchestrated that the implication is that 1<sup>st</sup> and 2<sup>nd</sup> Respondents' pleadings are deemed abandoned and they can only rely on the statement of fact and evidence led by the Petitioners.

In the case of: ***AEROBELL (NIG) LTD & ORS v. FIDELITY BANK (2018) LPELR-45338(CA)***, the Court of Appeal expounded that the correct principle of law with regards to uncontroverted evidence is that same can be regarded as admission by the other party and validly acted upon by the Court. See: ***INTERDRILL (NIG.) LTD & ANOR v. U.B.A. PLC (2017) LPELR-41907 (SC), Pp. 26-27, Paras. F. LAU v. P.D.P. & ORS (2017) LPELR-42800(SC); MUSA & ANOR v. IBRAHIM (2017) LPELR-43101 (CA); and U.B.A. PLC v. PATKAN VENTURES LTD (2017) LPELR-42392(CA)***.

However, the fact that a Defendant/Respondent in a trial refuses to call any witness or chooses to rest his case on the Petitioner does not automatically translate to the fact that judgment must be entered in favour of the Plaintiff/Claimant/Petitioner. In the case of: ***THE ADMIN. & EXEC. OF THE ESTATE OF ABACHA v. EKE-SPIFF & ORS. (2009) LPELR-3152(SC) (Pp. 59-60, paras. C-D) OGBUAGU, JSC*** held thus:



*“the Appellants rested their case on that of the Plaintiffs/Respondents. So, the evidence of the Respondents remained uncontroverted. It is now settled that the implication where a defendant rests his case on the plaintiffs case, it may mean that: (a) that the defendant is stating that the plaintiff, has not made out any case for the defendant to respond to; or (b) that he admits the facts of the case as stated by the plaintiff or (c) that he has a complete defence in answer to the plaintiffs case. See the cases of Akanbi v. Alao (1989) 3 NWLR (Pt. 108) 118; (1989) 5 SCNJ 1 and N.E.P.A. v. Olagunju & Anor. (2005) 3 NWLR (Pt. 913) 603 @ 632 C-A. In the case of Aguocha v. Aguocha (2005) 1 NWLR (Pt. 906) 165 @ 184 citing Akanbi v. Alao (supra), it is stated that a situation where a defendant failed/fails to lead evidence in defence, but rested his case on that of the plaintiff it is regarded as a legal strategy and not a mistake. If he succeeds, then it enhances his case, but if he fails, that is the end of his case. So it is in this instant case leading to this appeal. They failed woefully, in their strategy - i.e. not to testify or defend. Where a defendant offers no evidence in support of his pleadings, the evidence before the trial Court, obviously goes one way with no other set of facts or evidence weighing against it. There is nothing in such a situation, to put on the other side of the proverbial or imaginary scale of balance as against the evidence given by or on behalf of the plaintiff. The onus of proof in such a case, is naturally discharged on a minimal of proof.”*

See also: *OKPOKO COMMUNITY BANK LTD. & ANOR v. IGWE (2012) LPELR-19943(CA)*; and *MAKERA & v. GALADANCHI & ORS (2011) LPELR-8521 (CA)*.

In essence, the legal implication is that the decision of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents to rest their case on the Petitioners’ case does not automatically translate to the fact that judgment must be entered in favour of the Petitioners. The Petitioners are still under the bounding obligation to prove that they are entitled to the reliefs which they seek. Moreover, in election petitions in view of the fact that the reliefs sought are declaratory in nature, the fact that the Respondents have admitted the evidence adduced by the Petitioners does not relieve the Petitioner of the onus of proof on him.

It is settled law that a declaratory relief cannot be granted merely on default of defence or even on admission. See: *OGOLO V OGOLO (2006) 5 NWLR*

*(PT.972) 173 @ 184 PARA D-E; KWAJAJA V BON LTD (2004) LPELR-1727 (SC): and OCHEDI V UBN PLC (2012) LPELR-8596 (CA).*

In the case of: *UCHA & ANOR v. ELECHI & ORS (2012) LPELR-8429(CA)* OGUNWUMIJU, J.C.A. delivering the Leading Judgment of the Court of Appeal opined thus:

*“I agree with learned counsel for the 1st and 3rd - 1775 Respondents and it is unimaginable but firm view that it is now settled beyond peradventure that the onus of proof in an election petition is squarely on the petitioner. At the close of pleadings, the onus is fixed on the petitioner after taking into consideration all legal presumptions, see BUHARI V. OBASANJO Supra .Much ado has been made by the Appellants on the fact that the Tribunal discredited the evidence in chief of majority of the Respondents' witnesses. However, the weakness of the Respondents' case cannot ... to the benefit of the Appellant. Even if the Respondent did not call any evidence in rebuttal, the evidence of the Appellant must be so much that would prove the claims and justify the reliefs sought before the Court.”*

With the issue of the burden of proof in proper perspective, we will proceed to resolve the issues for determination in this petition. Issues 1 and 2 will be taken together while Issue 3 will be determined separately.

For the avoidance of doubt, the three Issues for Determination adopted at the Pre-Hearing Session in this petition are as follows:

- (1) Whether the return of the 1<sup>st</sup> Respondent as the winner of the election for Yabo/Shagari Federal Constituency of Sokoto State held on the 23<sup>rd</sup> February, 2019 is in strict compliance with the provision of the Electoral Act 2010 as amended;*
- (2) Whether the return of the 1<sup>st</sup> Respondent as the winner of the election for Yabo/Shagari Federal Constituency of Sokoto State held on 23<sup>rd</sup> of February, 2019 is void for corrupt practices and substantial non-compliance with the provisions of the Electoral Act, 2010 (as amended); and*
- (3) Whether the Petitioners have placed sufficient materials before this Tribunal to entitle them to declare the 1<sup>st</sup> Petitioner as the rightfully elected Candidate*

*for Yabo/Shagari Federal Constituency of Sokoto State in the election held on the 23<sup>rd</sup> February, 2019.*

## **ISSUES 1 & 2:**

It is now settled law that a party who alleges non-compliance with the provisions of the Electoral Act, in the conduct of an election, possesses the burden to prove it. Indeed, the law bestows on him the burden to establish that the act(s) of the non-compliance took place and that same substantially affected the result of the election. These the party must actualize with credible, cogent and compelling evidence. See: *Section 139(1) of the Electoral Act 2010 (as amended) and the cases of: (1) Buhari v. Obasanjo (2004) 13 NWLR (Pt. 941) p.1; (2) Ucha v. Elechi (2012) 13 NWLR (Pt. 1317) p.330; (3) C.P.C. v. I.N.E.C. (2011) 18 NWLR (Pt. 1279) p.493; (4) Okechukwu v. I.N.E.C. (2014) 17 NWLR (Pt. 1436) p.255; (5) Ngige v. I.N.E.C. (2015) 1 NWLR (Pt. 1440) p.281; (6) P.D.P. v. I.N.E.C. (2014) 17 NWLR (Pt. 1437) p.525; (7) Oke v. Mimiko (No. 2) (2014) 1 NWLR (Pt. 1398) p.332; (8) Omisore v. Aregbesola (supra) and (9) Gundiri v. Nyako (2014) 2 NWLR (Pt. 1391) p.211; and (10) Adams & Anor v. Onawo & Ors (2015) LPELR-41771(CA) pp. 31-32, Para. E.*

This Issue One is based on the Ground of the Petition which alleges that the election and return of 1<sup>st</sup> Respondent was invalid by reason of substantial non-compliance with the provisions of the Electoral Act, 2010 (as amended) and Regulations and Guidelines For the Conduct of 2019 General Elections and Manual For Election Officials and/or corrupt practices that substantially affected the result of the election.

This ground 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.”*

As earlier stated, 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.”*

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 and non-compliance with the provisions of the Electoral Act and INEC Guidelines, the Petitioners called a total of 41 witnesses who testified of the events that transpired in some polling units on the Election Day.

In his written address, the learned counsel for the Petitioners highlighted some of the evidence adduced to substantiate the allegations of corrupt practices. We will scrutinise the allegations and make some preliminary findings on them as we proceed.

In proof of the above allegations of corrupt practices and non-compliance, the Petitioners also tendered various electoral materials, such as INEC Forms EC8 A, B, C, D and D (Exhibit P3), Voters Register used in all the Polling Units (Exhibit RB1 – RB20) and CTC of Card Reader Machine Report (Exhibit RA2) etc. and led oral testimony through their witnesses, in the manner appearing on pages 3 -27 of his Final Address.

The Petitioners fielded a host of witnesses who led oral and documentary evidence in respect of several the Polling Units and Wards as follows:

- **Lambogel/Bussa 002 Polling Unit, Bingaje Ward, Yabo Local Government:** Abubakar Maidawa (PW1) in respect of Lambogel/Bussa 002 Polling Unit, Bingaje Ward, Yabo Local Government. In paragraphs 9 – 14 of his witness statement on oath, PW1 testified about the existence of corrupt practices such as harassment, vote buying, serious over voting and mutilations/cancellations of votes in the polling unit;

- **Polling Unit (001) Shiyar Yamma, Sanyinnawal Ward, Shagari Local Government:** Sadiq Abubakar Tukkuwa (PW2) testified in respect of Polling Unit (001), Sanyinnawal Ward, Shagari Local Government about corrupt practices such as inflation of votes, harassment, vote-buying, serious over voting and mutilations/cancellations of votes in the polling unit where he voted;
- **Shiyar Shamaki polling Unit (Code 003) Fakka ward, Yabo Local Government:** Alhaji Sahabi Bala (PW3) testified in respect of Shiyar Shamaki polling Unit (Code 003) Fakka ward, Yabo Local Government, about the existence of corrupt practices such as inflation of votes, harassment, vote-buying, serious over voting and mutilations/cancellations of votes in the polling unit where he voted;
- **Shiyar Sarkin Burmi Fakka polling Unit (code 001) Fakka Ward, Yabo Local Government:** Sani Maidamma (PW4) testified with respect to Shiyar Sarkin Bunmi Fakka polling Unit (code 001) Fakka Ward, Yabo about the existence of corrupt practices such as harassment, vote-buying, serious over voting and mutilations/cancellations of votes in the polling unit where he voted;
- **Transformer Sabon Gari (Fakka Shiyar Abn Gali) Polling Unit (code 002) Fakka Ward, Yabo Local Government:** Nafi'u Bello (PW5) testified as the agent of the petitioners in Transformer Sabon Gari (Fakka Shiyar Abn Gali) Polling Unit (code 002) Fakka Ward, Yabo Local Government about the existence of corrupt practices such as harassment, vote-buying, serious over voting and mutilations/cancellations of votes in the polling unit where he voted;
- **MPS Sage Fili (013), Shagari Ward, Shagari Local Government:** Mustapha Maga Shagari (PW 6) testified in respect of MPS Sage Fili (013) about the existence of corrupt practices such as inflation of votes, harassment, vote-buying, serious over voting and mutilations/cancellations of votes in the polling unit where he voted;
- **Constituency Collation Centre:** Shehu Dantuni Shagari (PW7) testified that as the Chief collation officer of the Petitioners for the Yabo/Shagari Federal Constituency he received reports from the various agents at all levels, of corrupt practices in the polling units and wards listed in paragraphs 42 – 48 at pages 49-51 of the Petition. A host of INEC documents were tendered through this witness and admitted in evidence as follows: INEC official receipts of payment for Certified True Copies (CTC) of results sheets dated 22<sup>nd</sup> May, 2019 (admitted as Exhibit P1); The Petitioners' schedule of

documents containing comprehensive list of results of polling units (Forms EC8A), copies of INEC's Form EC8B, Form EC8C, Form EC8D, Form EC8E for Yabo/Shagari Federal Constituency, Sokoto State (admitted as Exhibit P2) and a the bundle of result sheets listed in Exhibit P2 (admitted as Exhibit P3). Under Cross-examination by the learned counsel for the 1<sup>st</sup> Respondent, the witness stated he voted at Shiyar Magaji Shagari polling unit 001. That he went there around 9:30 am and I voted around 11:00 am. That after voting, he did not go home but went to the collation centre and stayed there till the results started coming in. He said that all the information contained in his deposition was based on the reports submitted to him from the various polling units. That what he stated in Paragraph 30 of his deposition is based on the results which he received and he was satisfied with it. Under cross-examines by the learned counsel for the 2<sup>nd</sup> Respondent, he stated that as the returning officer for the petitioners for Yabo/Shagari Federal Constituency, his duties were to collect result on behalf of his candidate from various ward collation centres, Local Government collation centre and the constituency collation centres. That he received twenty results from various wards in the two Local Governments and that he alone did not receive all the results. The evidence of the P.W.7 is quite revealing in this petition because most of the crucial INEC documents were tendered through him. To properly evaluate this witness it is necessary to determine his status. According to him, he was *the Chief collation officer of the Petitioners for the Yabo/Shagari Federal Constituency he received reports from the various agents at all levels* .His designation is quite instructive. It is apparent that he was not the polling agent for the various polling units where the alleged electoral malpractices occurred. In paragraph 13 of his written deposition he stated thus:

***“That in the course of my duties I made some personal observations in Shagari local government and received information in respect of Yabo and Shagari house of representatives election in 77 polling units were election purportedly took place”***

Under cross examination he stated thus: ***“All the information contained in my deposition is based on the reports submitted to me from the various polling***

*units.” Later on, he stated thus: “What I stated in my Paragraph 30 of my deposition is based on the results which I received and I was satisfied with.”*

The learned counsel for the 1<sup>st</sup> Respondent has urged this Tribunal to reject the entire evidence of this witness on the ground that it is hearsay. According to him, where as in this case the witness statement is made up of information from the witnesses’ personal knowledge and information he got from other persons, the witness statement on oath is vitiated as it is based on hearsay evidence and since it is not the duty of the tribunal to separate the two species of evidence, the entire witness statement should be expunged. He relied on the case of *KAKIH v PDP (2014) 15NWLR (RT1430) 374 at 418-419 paragraph H-H* to support his position.

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

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

We have carefully examined the testimony of the PW 7 on the salient aspect of the malpractices committed in the various polling units. His evidence is mostly based on what their 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 of the witness. They amount to hearsay evidence. The evidence of the PW 7 is not improved by the content of paragraph 13 of his deposition when he stated: *“That in the course of my duties I made some personal observations in Shagari local government...”*



In effect the evidence of the PW 7 is from three sources of information namely: - direct personal knowledge gained from his observations at the polling units; reports from agents; and reports from electoral results which he received.

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

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

In the case of: **NWOBASI V. OGBAGA & ORS (2015) LPELR-40669(CA) Pp. 53-55, paras. F-C** the Court observed thus:

*"It is glaring that PW2 and PW3 were not eye witnesses of what happened in all polling units outside their own polling unit. So their testimonies of corrupt practices including the falsification of results, alteration and mutilation of results in those polling units where they were not present, based on what they were told by their polling agents amount to hearsay statements whose admission as evidence is prohibited by S. 38 of the Evidence Act 2011."*

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In view of the above, we hold that the entire evidence of the PW7 is hearsay evidence and accordingly rejected. Incidentally a host of exhibits were tendered through this same witness whose evidence has been found to be hearsay. What then is the fate of the documentary exhibits tendered through him? The very learned counsel for the 1<sup>st</sup> Respondent has equally urged us to expunge them from the records. He relied on the decision of the Supreme Court in the case of: *IZE-IYAMU O.ANDREW v INEC (2018) 9 NWLR (PT.1625) 507; (2017) 71 NSCQR (pt.2) p. 839 @899.*

In the case of: *ADENIGBA & ANOR V. OMOWORARE & ORS (2015) LPELR-40531(CA) Pp. 31-32, paras. B-D*, the Court of Appeal expounded thus:

*"The apex Court has held that the best evidence concerning what transpired at the polling units are the ones given by party agents and in this case their agents were not called to tender the exhibits which they purportedly signed, but were allowed to be tendered through PW 27. See Buhari v. Obasanjo (2005) 3 NWLR (pt.941) 1 at 176, where it was held that under Section 67(3) of the Electoral Act 2002, that the onus was on the petitioners to prove that polling agents were not allowed or permitted or given opportunity to certify the election materials as authorized by the Act and that such evidence must come from the agents. The Learned Judges of the tribunal were therefore right when they treated the evidence of PW 27 as hearsay. See Gundiri v. Nyako (2014) 2 NWLR (pt. 1391) 219 - 225, Buhari v.*

*Obasanjo (2005) 13 NWLR (pt. 941) 1 at 176; Oke v. Mimiko (supra) and F.R.N. v. Usman (2012) 8 NWLR (pt. 1301) 1 at 160.*

(Underlined by us for emphasis)

In the case of: *FOLORUNSHO & ANOR v. IGE & ORS (2015) LPELR-41680(CA)*, the Court of Appeal explicated thus:

*“In the case of: Flash Fixed Odds Ltd v. Akatugba (2001) 9 NWLR (pt. 717) 146 at 63, the Court of Appeal re-emphasized the principle that the proper person to tender a document is the maker who alone can be cross-examined on it, and that where a person who did not make it tenders it, the Court ought not to attach probative value to it since the witness cannot be cross-examined on it. See also Gregory Okonkwo v. The State (1998) 8 NWLR (pt. 561) 210 at 258.*

*This principle applies with equal force in this case. The trial Tribunal had no duty to accord probative value to the mass of documents, their status as certified public documents notwithstanding. There is no doubt that the Petitioners decision to tender the mass of documentary evidence at the trial was prompted by the urgency dictated by Section 285(6) of the 1999 Constitution (as amended). That however does not diminish the Petitioners/Appellants' burden and standard of the petition. They had a duty to prove their petition according to law. I agree with and respectively adopt the concurrent findings of the two counts below that the Petitioners/Appellants failed to prove their petition as required by law.”*

Again in the case of: *OMEGA BANK NIGERIA PLC v. O.B.C LTD (2005) LPELR-2636(SC) Niki Tobi JSC* opined thus:

*“As a matter of law, I regard Exhibit P6 as hearsay as it relates or affects PW1 who tendered it. It could not have been hearsay if it was tendered by either of the two makers or writers. I do not think I can reject Exhibit P6. The case law will not allow me to do so. This is because Exhibit P6 is relevant in the circumstances of the case. That notwithstanding the case law allows me not to attach any probative value to it and that is what I do now.”*

We are of the view that the rule against hearsay applies also to documents sought to be tendered in evidence when the maker of such document is not called as a witness. This is classified as documentary hearsay. The simple rationale behind this principle is that only the maker of a document can be examined or cross-examined on it. So when a witness who is not the maker of a document tenders it, the court cannot attach any probative value to it. See: *Belgore vs. Ahmed (2013) 8 NWLR (Pt.1355) 60 at 100.*

Following the foregoing authorities, we do not think we can expunge Exhibits P1, P2 and P3 which were tendered through the PW 7 who was not the maker of any of them. However we observed that the makers of the said documents were never called to testify before us so there was no opportunity given to the witnesses to analyse and explain the contents of the said exhibits. In the circumstances of the case we may not attach much probative value to the said exhibits.

- **Kaura/Shiyar/Hakimi (005) Shagari Ward, Shagari Local Government:** Sani Aliyu Kaura (PW8) testified about the existence of corrupt practices such as inflation of votes, harassment, vote-buying, serious over voting, deliberate misuse of card reader machine and mutilations/cancellations of votes in the polling unit where he voted.
- **Wanke MPS (007), Shagari Ward, Shagari Local Government:** Garzali Aliyu (PW9) testified about the existence of corrupt practices such as inflation of votes, harassment, vote-buying, serious over voting, deliberate misuse of card reader machine and mutilations/cancellations of votes in the polling unit where he voted.
- **Kaura primary School (010) polling unit, in Shagari Ward of Shagari Local Government:** Dantani Danlarai (PW10) testified that he was a polling unit agent of the Petitioners at Kaura primary School (010) polling unit, in Shagari Ward of Shagari Local Government, where he also voted. He testified about the existence of corrupt practices such as inflation of votes, harassment, vote-buying, rigging, serious over voting, deliberate misuse of card reader machine and mutilations/cancellations of votes in the polling unit where he voted;
- **Primary School (Gidan Ruwa) (Shiyar Fada Udurega) (Code 005) Polling Unit in Fakka Ward, yabo Local Government:** Namiru Abubakar (PW11) testified that he was agent at Primary School (Gidan Ruwa) (Shiyar Fada Udurega) (Code 005) Polling Unit in Fakka Ward, Yabo Local Government where he also voted. He testified about the existence of corrupt practices such as harassment, vote-buying, rigging, serious over voting, deliberate misuse of card reader machine and mutilations/cancellations of votes in the polling unit where he voted;
- **Yar Madalisa (Shiyar Ajiya Gudurega) (006) Fakka Ward, Yabo Local Government:** Zaharadeen Hussaini (P.W. 12) in his witness statement on oath with the initials “YDD” he testified as a registered voter who voted and also participated in the elections of 23<sup>rd</sup> February, 2019 as the polling unit

agent of the petitioners' at Yar Madalisa (Shiyar Ajiya Gudurewa) (006) Fakka Ward, Yabo Local Government. In paragraphs 7 – 14 of his witness statement on oath, he testified about the existence of corrupt practices such as inflation of votes, harassment, vote-buying, serious over voting, deliberate misuse of card reader machine and mutilations/cancellations of votes in the polling unit where he voted;

- **Layi (Rugger kaya) Polling Unit Code 004:** Bashiru Gandu (PW13) in his witness statement he testified as agent at Layi (Rugger Kaya) Polling Unit (Code 004) in Fakka Ward, Yabo Local Government where he also voted. He adopted his written statement on oath with the initials “YMD” and testified about the existence of corrupt practices such as harassment, vote-buying, rigging, serious over voting, deliberate misuse of card reader machine and mutilations/cancellations of votes in the polling unit where he voted;
- **Torankawa Shiyar Lelaba Polling Unit 001, Torankawa Ward, Yabo Local Government:** Aliyu Muhammed (PW14) testified as Petitioners' agent at Torankawa Shiyar Lelaba Polling Unit 001, Torankawa Ward, Yabo Local Government where he also voted. In his witness statement on oath with the initials “YBA” he testified about the existence of corrupt practices such as harassment, vote-buying, rigging, serious over voting, deliberate misuse of card reader machine and mutilations/cancellations of votes in the polling unit where he voted;
- **Primary Sch. Nizamyia Dispensary (Shiyar Galadima Torankawa) Polling Unit 002, Torankawa Ward, Yabo Local Government:** Abubakar Sahabi (PW15) testified as agent at Primary School, Nizamyia Dispensary (Shiyar Galadima Torankawa) Polling Unit 002, Torankawa Ward, Yabo Local Government where he also voted. In his adopted written statement on oath with the initials “YBC” he testified about the existence of corrupt practices such as harassment, vote-buying, rigging, serious over voting, deliberate misuse of card reader machine and mutilations/cancellations of votes in the polling unit where he voted;
- **Baware Polling Unit (Code 005) Yabo B Ward, Yabo Local Government:** Hassan Umar (PW16) in his witness statement on oath with the initials “RIM” testified as a registered voter who voted and also participated in the elections of 23<sup>rd</sup> February, 2019 as the polling unit agent of the petitioners' at Baware Polling Unit (Code 005) Yabo B Ward, Yabo Local Government. In paragraphs 7 – 13 of his witness statement on oath, he testified about the existence of corrupt practices such as harassment, vote-buying, serious over voting, deliberate misuse of card reader machine and mutilations/cancellations of votes in the polling unit where he voted;

- **Kaura polling unit (code 006) Yabo B Ward in Yabo Local Government:** Mubarak Sabo (PW17) in his witness statement on oath with the initials “RIZ” he testified as a registered voter who voted and also participated in the elections of 23<sup>rd</sup> February, 2019 as the polling unit agent of the petitioners’ at Kaura polling unit (code 006) Yabo B Ward in Yabo Local Government. In paragraphs 7 – 13 of his witness statement on oath, PW17 testified about the existence of corrupt practices such as harassment, vote-buying, serious over voting, deliberate misuse of card reader machine and mutilations/cancellations of votes in the polling unit where he voted;
- **Baich/Masallaci Gabas Polling Unit (Code 004) in Yabo B Ward of Yabo Local Government:** Sufiyani Sani (PW18) in his witness statement on oath with the initials “VRM” testified as a registered voter who voted and also participated in the elections of 23<sup>rd</sup> February, 2019 as the polling unit agent of the petitioners’ at Baich/Masallaci Gabas Polling Unit (Code 004) in Yabo B Ward of Yabo Local Government. In paragraphs 7 – 13 of his witness statement on oath, he testified about the existence of corrupt practices such as harassment, vote-buying, serious over voting, deliberate misuse of card reader machine and mutilations/cancellations of votes in the polling unit where he voted;
- **Dagwarga Dikko (006) polling Unit in Torankawa Ward of Yabo Local Government Umar Bafashi:** (PW19) in his witness statement on oath with the initials “YBE” testified as a registered voter who voted and also participated in the elections of 23<sup>rd</sup> February, 2019 as the polling unit agent of the petitioners’ at Dagwarga Dikko (006) polling Unit in Torankawa Ward of Yabo Local Government Umar Bafashi. In paragraphs 7 – 14 of his witness statement on oath, he testified about the existence of corrupt practices such as harassment, vote-buying, serious over voting, deliberate misuse of card reader machine and mutilations/cancellations of votes in the polling unit where he voted;
- **Jaredi Ward in Shagari Local Government:** Ammar Mohammed (PW20) in his witness deposition with the initials “SHA” he testified that he was the Ward Supervisory Agent of the 2<sup>nd</sup> Petitioner in Jaredi Ward in Shagari Local Government. He testified about massive voters disenfranchisement, harassment of voters and malfunctioning of card readers at Majikira MPS 002; Ruggar Gamau 006; Sire 007; Ruggar Tudu 008 and Ludi 010 all of Jaredi Ward;
- **Lambara Ward (06), Shagari Local Government:** Luqman Mohammed (PW21) in his witness statement with the initial “SHE” testified that he voted at Duwoji/Dalijan/Dundeji (code 004). He stated in paragraphs 5 and 6 of his

Witness Statement on Oath that there was massive disenfranchisement and harassment of members of the 2<sup>nd</sup> Respondent in the following polling units:

- vii. Duwoji/Dalijan/Dundeji (004)
  - viii. Guloru Shiyar Makera (015)
  - ix. MPS Badiyawa (006),
  - x. MPS Gidan Maskayau (010),
  - xi. Jandutse Shiyar Hakimi (013),
  - xii. Guloru Shiyar Makera (015) all in Lambara Ward.
- **Shagari Ward (006), Shagari Local Government:** Mubarak Ahmad (PW22) in his witness statement on oath with the initials “SHF” stated that he was the supervisory agent for Shagari Ward Code (006) in Shagari Local Government Area and that he voted at G.S.S Shagari Polling Unit code (003). His said that there was mass voters disenfranchisement, voters harassment by members of All Progressive Congress (APC) and malfunctioning of the card Readers in the following polling units:
    - xiv. Shiyar magaji (001),
    - xv. Wanke MPS (007),
    - xvi. GSS Shagari (003)
    - xvii. Kaura/Shiya/Hakimi (005)
    - xviii. Wanke (006)
    - xix. Wanke MPS (007)
    - xx. Marake MPS (008),
    - xxi. Gadara Shiyar Hakimi (009),
    - xxii. Kaura Primary School (010),
    - xxiii. Tungar Bawa Shiyar Hakimi (011),
    - xxiv. MPS Janzomo (012),
    - xxv. MPS Sage Fili (013) and
    - xxvi. Shagari GSS (014) all in Shagari ward;
  - **Gangam Ward (005), Shagari Local Government:** Alhaji Usman Shagari (PW23) testified as the Ward Supervisory Agent of 2<sup>nd</sup> Petitioner at Gangam (005) Ward of Shagari Local Government. In his deposition with the initial “SHD” he testified of massive disenfranchisement of voters and malfunctioning of the card readers at the following polling units:
    - ix. Gangam Badi (002),
    - x. Ruggar Buda MPS (003),
    - xi. TakalMaawa (004),

- xii.** Tungar Barki (006)
- xiii.** Aske Dodo (007),
- xiv.** Banga Hurdu (008),
- xv.** Yandun Daji (009) and
- xvi.** Lokoka (010) all in Gangam Ward.

He alleged that similar occurrences of corrupt practices marred the election of 23<sup>rd</sup> February, 2019 in the following polling units:

- vii. Horo PS Polling Unit (Code 003) in Horo Birni Ward, Shagari Local Government
- viii. Shiyar Wambai Polling Unit (Code 003) in Yabo B Ward, Yabo Local Government.
- ix. Kajiji Shiyar Ajiya Polling Unit (Code 003) in kajiji Ward, Shagari Local Government
- x. Shiyar Della Bakale (Bakale/Doral) Polling Unit (Code 010) in Bakale Ward, Yabo Local Government
- xi. Sire Polling Unit (Code 007) in Jaredi Ward, Shagari Local Government
- xii. Kanwuri Polling Unit (002) in Sanyinnawal Ward, Shagari Local Government, where PW 24, 28, 30, 39, 40 and 41 testified, respectively, as polling unit agents of the Petitioners in those polling units where there were massive incidences of corrupt practices like vote buying which ultimately inured in favour of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents.

He also led evidence to show that the polling units in the following wards listed hereinafter were affected by corrupt practices:

- xi.** Horo Birni Ward, Shagari Local Government (PW25)
- xii.** Torankawa Ward, Yabo Local Government (PW26)
- xiii.** Ruggar Iya Ward, Yabo Local Government (PW27)
- xiv.** Bingaje Ward, Yabo Local Government (PW 29)
- xv.** Sanyinawal Ward (08), Shagari Local Government (PW31)
- xvi.** Birinin Ruwa Ward, Yabo Local Government (PW32)
- xvii.** Fakka Ward, Yabo Local Government (PW33)
- xviii.** Binji Ward, Yabo Local Government (PW34)
- xix.** Bakale Ward, Yabo Local Government (PW35)
- xx.** Kilgori Ward, Yabo Local Government (PW38)



- **Kilgori Ward:** PW 38 (Isah Aliyu) testified as Ward Supervisory agent of the Petitioners. He stated that agents of the 2<sup>nd</sup> Respondents were engaged in paying for votes at the election of 23<sup>rd</sup> February 2019 in Kilgori Ward of Yabo Local Government.

It was observed that the Petitioners called a total number of 41 witnesses cut across the various wards and local governments that make up the Yabo/Shagari Federal Constituency in Sokoto in proof of their petition. The witnesses called by the petitioners in this case can be classified into 4 groups as follows: (a) Polling unit agents; (b) Ward collation agents; (c) Local government collation agents; and (d) constituency collation agent. The polling agents are PWs 1,2,3,4,5,6,8,9,10,11,12,13,14,15,16,17,18,19,24,30,39,40 and 41. The ward collation agents are PWs 21, 22, 23, 25,26,27,28, 29, 31, 32, 33, 34, 35 and 38. They called PW 26 and PW 37 as local government collation agents from Yabo and Shagari local government areas. Then they called PW 7 who was the constituency collation agent for the petitioners.

While attacking the evidence of the Petitioners witnesses, the learned counsels for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents observed that a common trend in the written deposition of the petitioners' witnesses is that where they are polling unit agents, their depositions are almost verbatim repetitions in all the polling units complained about. That the only noticeable difference is the change in the name or initials of the witnesses and the names of the polling units. For the ward agents the pattern is the same thing except for the names of the witnesses and the wards. The same scenario played out among the local government agents where they merely changed the names of the local governments and the wards complained about. To buttress the point, learned counsel for the 1<sup>st</sup> Respondent reproduced samples of the testimonies of some Polling unit agents using PW 11's written statement at pages 19-20 as example:

***“8. That at pri. Sch (Gidan Ruwa) (Shiyar Fada Udurega (Codde 005) Fakka Ward, Yabo Local Government I noticed that card readers were grossly mal-functional and no effort was made to rectify them.***

***9. That female voters were denied voting at the late hours of the day by reason of card reader failure at pri. Sch (Gidan Ruwa) (Shiyar Fada Udurega (Codde 005) Fakka Ward, Yabo Local Government.***

***10. There was massive voters' disenfranchisement and voters were harassed by members of All Progressives Congress at pri. Sch (Gidan***

***Ruwa) (Shiyar Fada Udurega (Codde 005) Fakka Ward, Yabo Local Government.***

***11. That the election at pri. Sch (Gidan Ruwa) (Shiyar Fada Udurega (Codde 005) Fakka Ward, Yabo Local Government was tainted with corrupt practices and non-compliance with the Electoral Act.***

***12. That there was serious over voting and vote buying at pri. Sch (Gidan Ruwa) (Shiyar Fada Udurega (Codde 005) Fakka Ward, Yabo Local Government.***

***13 That there was serious mutilations and cancelation of votes of the petitioners by officers of the 3<sup>rd</sup> Respondent on the Form EC8 A at pri. Sch (Gidan Ruwa) (Shiyar Fada Udurega (Codde 005) Fakka Ward, Yabo Local Government on the day of election.***

***14. That I protested the harassment, disenfranchisement, failure of card reader, rigging and over voting but the 3<sup>rd</sup> Respondent officer and other security personnel present did not attend to my protest.***

He pointed out that the written deposition of PW9 Gazali Aliyu of Shagari town MPS (007) of Shagari ward in Shagari local government area which appears at page 262 of the petition is the same with that of PW 11 even though they are from two different local governments. The same applies to all the 23 polling unit agents called by the petitioners.

In the same vein, the written deposition of the 15 ward collation agents called from Yabo and Shagari local governments are identical. He referred to the depositions of PW20, PW21, PW22, PW23, and PW31 as examples.

In respect of the written depositions of the local government agents who testified as PW36 and PW37 at pages 178 and 221 of the petition, he pointed out the same duplication of facts.

He therefore submitted that for witnesses who were at different polling units, wards and local governments on the day of the election to give evidence of similar events at their different polling units is indicative that their evidence was a mere

fabrication and incapable of believe. He urged the Tribunal not to accord their evidence with any probative value and relied on the case of: ***MADUABUM V NWOSU (2010) 13 NWLR (PT1212) 623 at 656-657 paragraph A-F.***

We have carefully scrutinized the depositions of the witnesses as highlighted by the learned counsel and we have confirmed the fact that the depositions are quite identical to one another. It appears a common template was used to prepare the depositions of each set of polling agents. Although we are operating the frontloading system, counsel must take pains to interview each witness separately to obtain facts within his peculiar knowledge while preparing individual depositions. This wholesale approach of using a common template amounts to mere fabrication of evidence. In the case of ***MADUABUM V NWOSU (2010) 13 NWLR (PT1212) 623 at 656-657 paragraph A-F*** aptly relied upon by learned counsel, the Court opined thus:

***“Even if a lawyer prepares the statements of witnesses on oath, that lawyer is presumed to be aware of Section 26 of the Evidence Act and ought to include in the statement on oath, only what the witness tells him and not what he imagines the witness should have seen or heard. It is difficult to understand how a proforma written statement on oath could have been prepared by counsel to cover the appellant's 14 witnesses as if all of the witnesses were at the same place and at the same time. One point to note is that, in this case, a situation where 14 different persons who were in different places spread across the three local government Areas and 14 different towns coincidentally all saw, heard and did the same thing on 21st and 22nd April 2007. This to my view is not possible and I totally agree in this respect, with the tribunal, when it said that, 'the similarities of the said deposition of those witnesses are too obvious to be coincidental and were therefore unbelievable and of no probative value.’”***

In the instant case we are of the view that the similarities of the said depositions of the witnesses are too obvious to be coincidental and were therefore unbelievable and of no probative value.

We uphold the submission of the learned counsel for the Respondents' counsel that where the witnesses called by the petitioners are contaminated with the vice of uniformity in evidence, the petitioners have failed to place before the

tribunal any credible and reliable evidence and the respondents will be relieved of the burden of calling of witnesses in defense. See: *FUNTUA v TIJANI (2011) 7 NWLR (PT1245) 130 at 146 paragraph E-F.*

Upon a careful review of the evidence adduced in this trial, it is apparent that the Petitioners have failed to prove the allegations of corrupt practices and non-compliance with the Electoral Act and the INEC Guidelines. Under cross examination the witnesses could not substantiate the allegations. In proof of the allegations of corrupt practices, the Petitioners tendered various electoral materials, such as INEC **Forms EC8 A, B, C, D and D (Exhibit P3)**, Voters Register used in all the Polling Units (**Exhibit RB1 – RB20**) and CTC of Card Reader Machine Report (**Exhibit RA2**) etc and led oral testimony through its witnesses.

As already observed, the salient documentary exhibits, bundled as Exhibit P3 were tendered by the PW 7 whose evidence is hearsay. Furthermore, the makers of the said Exhibit P3 did not testify before us to demonstrate and explain the documents. The Card Reader Machine Report (**Exhibit RA2**) was tendered through an INEC witness who evidently was not the maker of the report. He was not able to analyse or explain the content of the report since he was not the author of same. The evidence elicited from him under cross examination by the Petitioners' counsel still amounts to hearsay. On the authorities cited by learned counsel for the Respondents, the said Exhibit RA2 was simply dumped before the Tribunal without any evidential value.

The other host of witnesses could not show any evidence of over voting or inflation of figures when shown the result sheets from their polling units. They could not show how many voters were disenfranchised or that there was mutilation and alteration and cancellation of votes of the petitioners as they alleged. In most cases, they confirmed that there was accreditation in all the polling units either by manual or card reader machines.

It is quite clear that on the state of the pleadings and evidence led in this trial that the petitioners anchored this petition on allegations of corrupt practices such as multiple voting, mutilation, cancellation and falsification of results, intimidation and harassment of voters and other electoral offences. It is settled law that such allegations of corrupt practices are criminal offences. To establish them, the

petitioners must surmount two hurdles. The first hurdle is to prove them beyond reasonable doubt.

After scaling the first hurdle, the second hurdle is that of establishing the following salient factors:

- (a) That the 1<sup>st</sup> respondent personally committed the corrupt act or aided, abetted, etc. the alleged commission of the alleged corrupt practice or offence;
- (b) That where the alleged act was committed through an agent, the said agent must have been authorized by the 1<sup>st</sup> respondent;
- (c) That the corrupt practice or offence affected the outcome of the election and how it affected it; and
- (d) The petitioner must go further to prove that but for the corrupt practice he would have won the election.

See: *Section 138(1) of the Evidence Act ; Section 122(2) of the Electoral Act ; Oyegun v. Igbinedion (1992) 2 NWLR (Pt. 226) 747 at 759-760; Opia v. Ibru (1992) 3 NWLR (Pt. 231) 658 at 708 to 709; Ebebe v. Ezenduka (1998) 7 NWLR (Pt. 556) 74; Haruna v. Modibbo (2004) 16 NWLR (Pt. 900) 487 at 561.*

Going through the entire gamut of the petitioners' evidence, we are of the view that they have abysmally failed to prove the allegations of corrupt practices beyond reasonable doubt. Furthermore, it is evident that there is no scintilla of evidence to establish any of the salient conditions enumerated in paragraphs (a) to (d) above.

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 for the conduct of the 2019 general elections. The areas of non-compliance include accreditation without the card reader machines in some polling units.

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

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

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

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

Also in the case of: *EMMANUEL V. UMANA & ORS (2016) LPELR-40037(SC) P. 97, paras. A-C, Kekere Ekun JSC* opined thus:

*"This Court has held in several recent decisions that the function of the Card Reader machine is solely to authenticate the owner of a voter's card and to prevent multi-voting by a voter. For the time being, it has not replaced the manual accreditation provided for in Section 49 of the Electoral Act, 2010 (as amended). See: Shinkafi v. Yari (unreported) SC.907/2015 delivered on 8/1/2016; Okereke v. Umahi (unreported) SC.1004/2015 delivered on 5/2/2015 at pages 31-34; Nyesom v. Peterside & Ors. (unreported) SC.1002/2016 delivered on 12/2/2016."*

In *IKPEAZU V. OTTI & ORS (2016) LPELR-40055(SC) Pp. 64-65, paras. D-A, RHODES-VIVOUR, JSC* categorically stated that:

*“...The card reader may be the only authentic document if and only if the National Assembly amends the Electoral Act to provide for card readers. It is only then that card readers would be relevant for nullifying elections."*

See also the cases of: *EMMANUEL v. UMANA & ORS (2016) LPELR-4003* and *OKEREKE v. UMAHI & ORS (2016) LPELR-40035(SC)* which are on the same point.

However in the instant case the Petitioners have vehemently urged this Tribunal to nullify the results of some polling units because even the manual accreditation with the Voters Register was not done. They relied heavily on the evidence of RW 1, 2 and 3 who testified on behalf of the 3<sup>rd</sup> Respondent. At the

trial, the certified true copies of some Voters Registers used in conducting the said election were tendered in evidence as Exhibits RB 1- RB 20.

In order to assist the court, the Petitioners also separately tendered the Schedule of voters Registers used in the conduct of the election in Yabo/Shagari Federal Constituency which was admitted as Exhibit RB through one Ya'u Yayeh Kamba (R.W. 2) under cross-examination.

Thereafter, copies of the various Voters' Registers and the Schedule were used in cross-examining the two Electoral Officers in charge of Yabo and Shagari Local Government Areas who testified as RW2 and RW2.

Under further cross-examination by the Petitioners' counsel, RW2 answered thus:

***“I see Exhibit RB20 particularly the parcel containing voter’s register from Shiyar Galadima code 003. There is no evidence of accreditation in this register in respect of the House of Representatives election. I also see from Exhibit RB20 the parcel in respect of Shiyar Magaji Mamman 001, the voters register was not used for the accreditation in the election. I see Exhibit RB15 particularly the parcel for polling units 006, 007 and 008 in respect of Jaredi ward. In respect of 006 and 007 was in the card reader but not the voter’s register. In respect of 007 there was no accreditation with the voter’s register. Also in unit 008 there was no accreditation”.***

Also, using Exhibit RB, the Petitioners' counsel tried to show that the Voters' Register was not used in the accreditation of voters in 37 and 50 Polling Units in Yabo and Shagari Local Government Areas respectively.

The learned counsel referred us to the the Supreme Court decision in the case of: *Adeosun Vs. Gov. of Ekiti State & Ors (2012) LPELR – 7843 (SC) page 23, paras A – B*, where the Court held that:

***“It is settled law that evidence elicited from the cross-examination of a defence witness which is in line with the facts pleaded by the Plaintiff forms part of the evidence produced by the Plaintiff in support of facts pleaded in the Statement***

*of Claim and can be relied upon in proof of the facts in dispute between the parties”.*

He referred us to the requirement of accreditation under paragraph 10 (a) and (b) of the Regulations and Guidelines for the Conduct of Elections, 2019 and submitted that the procedure of proper accreditation was not complied with in all the 87 Polling Units listed in the Schedule of Polling Units with Zero accreditation in Exhibit RB. He therefore urged us to cancel all the votes realized from the polling units.

The critical issue to determine at this stage is whether the evidence of the RW 1, 2 and 3 has established a case of non-accreditation. In the first place we must re-emphasise that the evidence of the RWI amounts to hearsay. A close scrutiny of the evidence will reveal this fact.

While testifying under cross examination by the learned counsel for the 1<sup>st</sup> Respondent, the RW 1 stated thus: ***“I am a Deputy Director (System Support). On 23/2/19 I was at INEC Headquarters in Abuja. I did not play any role in the conduct of the election in Sokoto State on 23/2/19.”***(Underlined by us). The witness himself said that he did not play any role in the election. Yet he was subpoenaed to tender the card reader report on the election. How can he be questioned on an election where he did not play any role? Where are the INEC officials who used the card reader machine on that day? Why were they not called to give evidence on non- accreditation. These are the gaping gaps in the proof of non-accreditation.

This point was emphasised in the case of: ***IBRAHIM V OGUNLEYE (2010) LPELR-4556***, where the Court of Appeal *per ADUMEIN, J.C.A at pp. 16-21, paras. E-A* held thus:

***“In all the provisions of the Electoral Act, 2006 and the Manual for Elections Officials ....., it is nowhere stated the rights and responsibilities of a Ward Supervisor nor does a Ward Supervisor fall into the class of persons allowed full access to the Polling Stations, except where he is a voter at a Polling Station. His evidence therefore as it relates to the events at the Polling Units is inadmissible. It is the responsibility of the 17 Party Agents at the 17 Polling Units in the Ward to have given evidence as to the thumb printing of ballot papers by PDP thugs, non-counting of votes, non-announcement of results, and non-collation of same at the***



**Ward level and Local Government Collation Centre. His evidence is hearsay and inadmissible."**

Again in the case of: *IGWEBUIKE Vs EZEONWUKA (2015) LPELR-40675*, on the failure to call witnesses who were on ground during the election, *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)**

Consequently we cannot rely on the *viva voce* evidence of the RW 1 who was in faraway Abuja on the day of the election. Neither can we rely on the Card Reader Report tendered through him. As already held, the report was dumped on the Tribunal.

Also the evidence of RW 2 and RW 3 are plagued with the same vice. The RW 2 and RW 3 are the Local Government INEC Electoral Officers for Shagari Local Government Area and Yabo Local Government Areas respectively. They were questioned about the accreditation through the Voters Registers in polling units within their Local Governments. These witnesses did not make any entries in the registers in question. In fact they were not shown to have been present in those polling units during the election so whatever they said about the alleged

accreditation or non-accreditation amounts to hearsay. The evidence should have come from INEC officials or polling agents who were present in those polling units.

This point was reinforced by the Supreme Court in the recent case of: *ANDREW V. INEC (2018) 9 NWLR (PT1625) 507 at pp. 557-558, Paras. H-A* where they held thus;

***“Where a public document is tendered just to show the existence of such document only, though not tendered by the maker, it would not ordinarily be termed hearsay. But where a witness who did not participate in the making of the document ventures to give evidence on the contents of the document and tries to persuade the court on the truth of its content, as was done in the instant case, it becomes hearsay and shorn of the exception granted by section 52 of the Evidence Act, 2011. (Pp. 557-558, paras H-A)”***

In the event, we hold that the RW 1, 2 and 3 have not established a case of non-compliance arising from non-accreditation of voters. Their purported explanations on the contents of the voter’s registers amount to hearsay evidence which cannot be relied upon. Furthermore, the tendering of the voters register did not add any value to their evidence.

In any case, 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 LREC 313*.

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

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

Consequently, a petitioner who alleges non-compliance with the Electoral Act must call credible witnesses to prove that there was *substantial non-compliance with the Electoral Act*: see the cases of: *EMMANUEL v. UMMANAH*

*(No. 1) (2016) 12 NWLR (Pt.1526) 179 @ 256-257 paras G-C; NYEMSON v. PETERSIDE (2016) 7 NWLR (Pt.1512) 425.*

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

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

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

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

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

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

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

*"The results declared by INEC are prima facie correct and the onus is on the petitioner to prove the contrary. Where a petitioner complains of non-compliance with provisions of the Electoral Act, he has a duty to prove it polling unit by polling unit, ward by ward and the standard required is proof on the balance of probabilities and not on minimal proof. He must show figures that the adverse party was credited with as a result of the non-compliance, Forms EC8A, election materials not stamped/signed by Presiding Officers. He must establish that non-compliance was substantial, that it affected the election result. It is only then that the Respondents are to lead evidence in rebuttal..."*

In the instant case, the Petitioners were unable to prove the allegations of non-compliance in each of the affected polling unit on the balance of probabilities. They could not show definite figures that the 1<sup>st</sup> and 2<sup>nd</sup> Respondents were credited with as a result of the alleged non-compliance. More importantly, they failed to establish that the alleged non-compliances were substantial and how they affected the election result.

In view of the foregoing, we are of the view that the petitioners have not led sufficient and credible evidence to prove that the return of the 1<sup>st</sup> Respondent as the winner of the election for Yabo/Shagari Federal Constituency of Sokoto State held on the 23<sup>rd</sup> February, 2019 was not in strict compliance with the provision of the Electoral Act 2010 as amended. Neither was it void for corrupt practices and substantial non-compliance with the provisions of the Electoral Act, 2010 (as amended).

### **ISSUE 3:**

*Whether the Petitioners have placed sufficient materials before this Tribunal to entitle them to declare the 1<sup>st</sup> Petitioner as the rightfully elected Candidate for Yabo/Shagari Federal Constituency of Sokoto State in the election held on the 23<sup>rd</sup> of February, 2019.*

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; AIKI V. IDOWU (2006) 9 NWLR (PT. 984) 47; and IKPONMWOSA v. EGHAREVBA & ORS (2009) LPELR-4685(CA).*

Furthermore, to prove his case 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.*

Thus in the determination of this issue, we will focus much on documentary exhibits. In the instant case, the Petitioners tendered a bundle of INEC documents such as INEC Forms EC8 A, B, C, D and D (Exhibit P3), Voters Registers used in the affected Polling Units (Exhibit RB1 – RB20) and CTC of Card Reader Machine Report (Exhibit RA2) .

In the course of this judgment we have variously evaluated the said Exhibit P3 and we have concluded that in view of the circumstances under which it was tendered, it amounts to documentary hearsay with little or no evidential value. Furthermore, we made some adverse findings which diminished the value of Exhibits RA2 and RB1 – RB20. As a matter of fact we have held that the host of documentary exhibits were dumped on the Tribunal without sufficient explanations to link them to the relevant aspects of the case. Consequently, the Petitioners documentary evidence appears rather frail, fragile and imminently frangible.

A complaint that a duly returned candidate in an election did not score the majority of lawful votes cast at the election is a direct challenge to the result declared by the 3<sup>rd</sup> respondent. It presupposes that the petitioner has in his possession another set of results from which it can be ascertained that he indeed scored the majority of lawful votes cast at the election and should have been declared the duly elected candidate. See **AUDU V INEC (NO.2) (2012) 12 NWLR (PT. 1315) 461 @473-474** where the court of appeal held,

*“On falsification of results even though the petitioner/appellant challenged the result declared, he failed to place the correct result before the tribunal. It is settled law that a petitioner challenging an election result on the ground of falsity is required to plead inter alia two sets of results. One in respect of the false result and the other relating to the result the petitioner considers to be genuine or correct. It is the two sets of results that would be compared to determine the falsity or otherwise of the result. See OJO V ESOHE (1999) 5 NWLR (PART 603) PAGE 444 AT 452; AGBAJE V. FASHOLA (SUPRA). For a petitioner to assert that the figures in the result of an election were falsified is not sufficient to sustain an allegation of falsification of election result. See also ADUN V. OSUNDDE (2003) 16 NWLR (PART 847) PAGE 643 AT 649; BUHARI V. OBASANJO (SUPRA); YUSUF V. OBASANJO (2005) 18 NWLR (PART 956) PAGE 96;*

**MOGHALU V. NGIGE (2005) 4 NWLR (PART 914) 1 AT 36  
PARAGRAPH A-B.”**

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

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

See also the case of: *HERO V. SHERIFF (2016) ALL FWLR (PT 861) 1309 AT 1363 – 1364.*

It is therefore an invitation on the tribunal to compare and contrast competing figures. For a petitioner to succeed under this heading he must plead and prove the scores by which he believes him and not the respondent should have been declared the winner of the election.

To achieve this purpose he must plead and prove the votes cast at the various polling units, the votes that were unlawfully credited to the respondent who won the election and the votes that ought to be deducted from the votes of the respondent which would enable him emerge the winner of the election. See: *NADABO V DABAI (2011) 7 NWLR (PT. 1245) 155 @177.*

In the present petition, the petitioners pleaded in paragraphs 57, 58 and 59 of the petition as follows:

***57. That based on the analysis of irregularities carried out by the Respondents as shown above, the total number of invalid votes from the total votes declared for APC will be around 23,214 invalid votes and about 14,454 invalid votes to PDP.***

***58. Your petitioners aver that when the invalid votes are deducted from the votes scored by the 1<sup>st</sup> Petitioner and 2<sup>nd</sup> Respondent respectively, that is (APC=31,193-23,214) and (PDP=24,932-14,454), the actual valid votes scored by the Petitioners will be 10,478 votes while 1<sup>st</sup> and 2<sup>nd</sup> Respondents will have 7,979 votes.***

*59. Your Petitioners further state that if the tribunal makes a finding based on the above analyses, and/or after a recount of the ballot papers in the ballot boxes from 74 polling units with 114 voting points in Yabo Local government and in 73 polling units with 148 voting points in Shagari Local Government as the winner of the Yabo/Shagari Federal Constituency election, it will be revealed that the 1<sup>st</sup> Petitioner won the majority of lawful votes cast and satisfied the Constitutional requirement of winning 25% of votes cast in 2/3 of the 20 wards that make up the Yabo/Shagari Federal Constituency of Sokoto State.*

The Petitioners actually produced a table in paragraphs 56 & 57 of the Petition which they reproduced in paragraph 5.79 at page 46 of their written address. In the table they tried to show how they obtained the majority of lawful votes in the said election.

However, as the learned counsel for the 1<sup>st</sup> Respondent rightly pointed out, the duty of a petitioner who wants the tribunal to hold that the respondent did not win the majority of lawful votes cast at the election does not stop at pleading. He has to lead evidence to prove the content of his petition.

We observed that the petitioners did not lead sufficient evidence to show how they arrived at the alleged majority votes which they ascribed to the Petitioners. None of the Petitioners' witnesses gave any evidence to show how they allegedly won the election. As a matter of fact most of their witnesses were unable to give the scores of the Petitioners even in their respective Polling Units.

The attention of the tribunal was never drawn to the scores of the candidates in either the depositions of the witnesses or in the petition. The only results tendered

in the petition are the scores of the candidates as stated by the 3<sup>rd</sup> respondent in Exhibit P3, form EC8E (11) for the constituency. To prove their allegation that the Petitioners scored the majority of lawful votes they relied heavily on the configuration of figures contained in their Table which they captured in their pleadings and in the Written Address of their very learned counsel.

In the case of: **SENATOR JULIUS ALIUCHA & ANOR v. CHIEF MARTIN NWANSCHO ELECHI & ORS (2012) LPELR-7823(SC)** the Supreme Court expounded on such an approach when they opined thus:

***“The chart contained in the appellant's final address was a brilliant idea, but it was not tested under cross-examination, and it does not show that the figures were arrived at as a result of careful examination and comparison of exhibits P.95 -P.111, documents that were dumped on the trial court. I must point out that a brilliant address is no substitute for evidence. Counsel submission no matter how brilliant and alluring cannot take the place of legal proof. See: Ishola v. Ajoboye 1998 1 NWLR Pt.532 P.74 Chukujekwu v. Olarere 1992 2 NWLR Pt.221 P. 86...The chart relied on by learned counsel for the appellants are of little or no evidential value.”***

We are of the view that although the Table prepared by learned counsel for the Petitioners appears quite ingenious, it cannot take the place of legal proof in the instant case. The contents of the table were not linked to any of the INEC documents in this case. None of the witnesses testified about the tabled which appeared to project their own result. Furthermore, the figures in the table were not analysed or explained in open court to give the parties the opportunity to examine or cross examine witnesses on them. The petitioners want the Tribunal to analyse



the contents of the table in the privacy of our chambers while writing the judgment. That will amount to doing cloistered justice which is not permissible.

The allegation that the petitioners won the election by majority of lawful votes was merely pleaded by the petitioners. It was not backed up with credible oral and documentary evidence. Of course, the parlous state of their documentary evidence did not help matters. In the event the tabled which they pleaded and reproduced in their Final Written Address has no evidential value.

Once a party fails to lead evidence in support of his pleadings, such Claims are deemed abandoned. See the following cases on the point:

***AWOJUGBAGBE LIGHT INDUSTRY V. CHINUKWE [1995] 5 NWLR (PT. 390) 379; OLAREWAJU V. BAMIGBOYE (1987) 3 NWLR (PT. 60) 353; OLUBODUN & ORS. V. LAWAL (2008) 6 SCNJ 269; ANYA V. IMO CONCORD HOTEL LTD. ORS. (2002) 12 SCNJ 14.***

In ***KAYDEE VENTURES LTD. V. MINISTER., F.C.T. (2010) 7 NWLR (PT. 1192) 171***, the Supreme Court stated the law thus:

***"Now, the trite position of the law of pleading is that where an averment has not been supported by Evidence, that averment is deemed abandoned and must be struck out by the Court."***

**In view of the foregoing, we are of the view that** the Petitioners have not placed sufficient materials before this Tribunal to entitle us to declare the 1<sup>st</sup> Petitioner as the rightfully elected Candidate for Yabo/Shagari Federal Constituency of Sokoto State in the election held on the 23<sup>rd</sup> February, 2019. We therefore resolve Issue 3 in favour of the Respondents.

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

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HON. JUSTICE P.A. AKHIHIRO  
CHAIRMAN

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

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

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