

IN THE NATIONAL AND STATE HOUSE OF ASSEMBLY
ELECTION PETITION TRIBUNAL
HOLDEN AT SOKOTO
ON MONDAY THE 9TH DAY OF SEPTEMBER, 2019

BEFORE:

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

PETITION NO: EPT/SKT/HA/13/2019:

IN THE MATTER OF THE ELECTION TO THE OFFICE OF MEMBER
SOKOTO STATE HOUSE OF ASSEMBLY FOR SOKOTO NORTH II STATE
CONSTITUENCY HELD ON THE 9TH DAY OF MARCH, 2019.

BETWEEN:

1. HUSSAINI TUKUR FARU
2. ALL PROGRESSIVE CONGRESS (APC) - } PETITIONERS

AND

1. SARKI IBRAHIM ARZIKA
2. PEOPLES DEMOCRATIC PARTY (PDP)
3. INDEPENDENT NATIONAL ELECTORAL } RESPONDENTS
COMMISSION (INEC).

JUDGMENT

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

This judgment is in respect of an election conducted on the 9th of March 2019, by the Independent National Electoral Commission (3rd Respondent) for the

office of Member, House of Assembly for Sokoto North 11 Constituency of Sokoto State. At the said election, the 1st petitioner who was sponsored by the 2nd petitioner polled a total of 16,233 votes while the 1st respondent who was sponsored by the 2nd respondent polled a total of 17,567 votes.

Consequently, the 3rd respondent declared the 1st respondent as the winner of the said election and issued a certificate of return to the 1st respondent.

Dissatisfied with the said declaration of the 1st respondent as the winner of the said election by the 3rd respondent, the petitioners filed this election petition on the 27th day of March, 2019 seeking redress.

The petition is based on the following grounds:

- (a) That the 1st respondent was not duly elected by majority of lawful votes cast at the said election;
- (b) That the election of the 1st respondent is invalid by reason of non – compliance with the provisions of the Electoral Act, 2010 (as amended) and the provisions of INEC Guidelines for the conduct of the 2019 General Elections.

The petitioners then proceeded to pray this Honourable Tribunal in the said petition for the grant of the following reliefs:

- (a) That the election conducted by the 3rd respondent for the office of member of Sokoto State House of Assembly for Sokoto North II State Constituency of Sokoto State was inconclusive;
- (b) That the declaration of the 1st respondent as the winner of the said election conducted by the 3rd respondent for the office of member of Sokoto State House of Assembly for Sokoto North II State Constituency of Sokoto State on the 9th day of March, 2019 is premature and undue;
- (c) An order directing for the conduct of a supplementary election or a re-run election in the 6 polling units of Sarkin Musulmi B ward and in the 2 polling units of Magajin Garin A ward as well as in 1 polling unit of Magajin Garin B ward of Sokoto North II State Constituency of Sokoto State where elections were cancelled and thereafter, the results of the said election be taken into account by the 3rd respondent before a final declaration of the winner of the said election in the said constituency is made by the 3rd respondent;

- (d) That the certificate of return hitherto issued by the 3rd respondent to the 1st respondent be withdrawn forthwith pending the conduct of the said supplementary election or a re-run election in the 6 polling units spread across the 3 wards of Sokoto North II State Constituency of Sokoto State; and
- (e) The cost of prosecuting this petition.

The petition was served on all the respondents and they filed their respective replies to the said petition and issues having been joined between the parties, the petition proceeded to trial.

At the trial, the petitioners called 2 witnesses including the 1st petitioner himself and tendered some documents which were admitted in evidence as Exhibits PA1 – PD. On their part, the 1st and 2nd respondents called 2 witnesses including the 1st respondent himself while the 3rd respondent did not call any witness.

At the close of evidence, the learned counsels for the 1st and 2nd respondents and the petitioners filed their written addresses while the learned counsel for the 3rd respondent did not file any written address.

On the 27th of August, 2019, the learned counsels for the petitioners, 1st and 2nd respondents adopted their written addresses and the counsel for the 3rd respondent informed the Tribunal that they were adopting the submissions in the final written addresses of the 1st and 2nd respondents.

In proof of their case, the Petitioners called three witnesses including the 1st Petitioner. The Petitioners' first witness was one Ibrahim Abdullahi (PW 1) an INEC staff who appeared on a *subpoena duces tecum* to produce some INEC documents which were admitted in evidence as follows:

1. Voter's Register for Dan Hili Hubbare 004 Polling unit was admitted as Exhibit PA1
2. Voter's Register for Gidan Mahe Hubbare 007 Polling unit was admitted as Exhibit PA2
3. Voter's Register for Shiyar Sarkin Yaki 008 Polling unit-Exhibit PA3
4. Voter's Register for Ofishin Hakimi A 006 Polling unit-Exhibit PA4

5. Voter's Register for Garka Mamman Dan Auta 009 Polling unit-Exhibit PA5
6. Voter's Register for Dan Farijo B 009 Polling unit-Exhibit PA6
7. Form EC8B(I) for Sarkin Musulmi A ward-Exhibit PB1
8. Form EC8B(I) for Sarkin Musulmi B ward-Exhibit PB2
9. Form EC8B(I) for Magajin Gari A ward-Exhibit PB3
10. Form EC8B(I) for Magajin Gari B ward-Exhibit PB4
11. Form EC8B(I) for Sarkin Adar Gandu ward-Exhibit PB5
12. Form EC8B(I) for Sarkin Adar Gidan Lawai ward-Exhibit PB6
13. Form EC8E(I) for Sokoto North II State Constituency-Exhibit PB7
14. Form EC40G(I) for Sokoto North State Constituency-Exhibit PB8
15. INEC Manual Guidelines for 2019 General Elections-Exhibit PC
16. Payment Receipt for certification by INEC-Exhibit PD

The next witness was the 1st Petitioner himself. He adopted his deposition and testified concerning the exhibits tendered by the PW 1.

He identified Exhibits PA1 to PA6 as the Register of voters in respect of the six cancelled polling units. He said that in Exhibit PA1 the number of registered voters is not stated. He also identified Exhibits PB2, PB3 and PB4. He said that in Exhibit PB2 no result was entered for any political party in respect of the Polling units listed as follows: Dan Hili Hubare 004 polling unit, Gidan Mahe Hubbare 007 and Shiyar Sarkin Yaki Polling unit. That in Exhibit PB3 there are also columns where scores were not entered for Ofishin Hakimi A 006 polling unit and Garka Mamman Dan Auta Polling unit. That in Exhibit PB4 there was no score recorded for Dan-Farijo B 009 polling unit and that Exhibit PB8 is a list of the six cancelled polling units. He said that Exhibit PB7 is the declaration of result sheet.

In his deposition, the 1st Petitioner stated that there are six wards that make up Sokoto North II State Constituency and these are:- Sarkin Musulmi A ward, Sarkin Musulmi B ward, Magajin Gari A ward, Magajin Gari B ward, Sarkin Adar Gandu ward and Sarkin Adar Gidan Igwai ward.

That at the said election, some political parties sponsored candidates and the scores of the respective candidates as announced by the 3rd respondent at the said election and as contained in Form EC. 8E(1) issued by the 3rd Respondent are as follows:

S/N	NAME OF CANDIDATES	Political Parties	Total Scores
1	MUSA BELLO MUHAMMAD	ABP	14
2	DAUDA ZAIYANU TANKO	AD	05
3	SANUSI MUHAMMAD USMAN	ADC	07
4	AUWALU BELLO	AGA	14
5	HUSSAINI TUKUR FARU	APC	16233
6	AMINU ABDULRAHAMAN	APDA	33
7	LAWALI DAN SOKOTO	DA	00
8	ALIYU IBRAHIM	DPP	14
9	NURA MUSA	GPN	40
10	NAFIU MOHAMMED	JMPP	08
11	AWASU ALIYU	LP	05
12	SAIDU IBRAHIM	MPN	01
13	HANABI BELLO	NCP	02
14	NURA BELLO	NPC	00
15	LEMA YAHAYA	PCP	35
16	SARKI IBRAHIM ARZIKA	PDP	17567
17	MUHARI ISAH	PPA	20
18	SHAMBIYA DAUDA	PPN	03
19	MURTAL LAMIDO	SDP	18
20	MUHAMMAD ABDULLAHI NAYASA	SNC	00
21	HASSAN NAZIYA	SNP	11
22	ABDULRAHAMAN DALHATU AMINU	UPN	03
23	SANUSI MALAMI	ZLP	06

The 1st Petitioner maintained that the 1st respondent was not duly elected by majority of the lawful votes cast at the said election based on the following grounds:

- (a) In Sarkin Musulmi B ward, the elections conducted by the 3rd respondent at 3 polling units were canceled. The said polling units are:-
- (i) Dan Hili Hubbare 004 polling unit with 688 as the number of registered voters for the polling unit.

- (ii) Gidan Mahe Hubbare 007 polling unit with 464 as the number of registered voters for the polling unit.
 - (iii) Shiyar Sarkin Yaki 008 polling unit with 465 as the number of registered voters for the polling unit.
- (b) In Magajin Gari A ward, the election conducted at 2 polling units were cancelled by the 3rd respondent. The said polling units are:-
 - (i) Ofishin Hakimi A 006 polling unit with 697 as the number of registered voters for the polling unit.
 - (ii) Garka Mallam Dan Auta 009 polling unit with 1,041 as the number of registered voters for the polling unit.
- (c) In Magajin Gari B ward, the election conducted at Dan Farijo B 009 polling unit with 1,078 registered voters was also cancelled by the 3rd Respondent.
- (d) The 3rd respondent credited the 1st petitioner with a total of 16,233 votes at the said election while the 1st respondent was credited with a total of 17,567 votes thereby making the 1st respondent to purportedly lead the 1st petitioner with a total of 1,334 votes at the said election.
- (e) The total number of registered voters in the 6 polling units where elections were cancelled by the 3rd Respondent is 4,433 which figure is more than the margin of lead between the 1st respondent and the 1st petitioner at the said election.
- (f) That pursuant to paragraph 43(b) of the INEC Guidelines for 2019 General Election, the Returning Officer for the said State Constituency election ought to have declined to make a return in the circumstance but to have declared the election inconclusive and the 3rd respondent ought to have proceeded to order for a supplementary election to be conducted in all the said 6 polling units where elections were cancelled before a final declaration of the winner of the election is made.
- (g) In the Gubernatorial election for Sokoto State which was held on the same date and time with the election for membership of Sokoto State House of Assembly, the election conducted at the said 6 polling units in Sarkin Musulmi B ward, Magajin Gari A ward and Magajin B ward of Sokoto North Local Government Area of Sokoto State were equally cancelled by the 3rd respondent and the 3rd respondent ordered for a supplementary election to be conducted in all the said 6 polling units and the supplementary elections were conducted thereat by the 3rd respondent on the 23rd day of March, 2019.

The 1st petitioner therefore alleged that the election of the 1st respondent is invalid by reason of non-compliance with the provisions of the Electoral Act, 2010 (as amended) and the INEC Guidelines for the conduct of the 2019 General Elections.

Furthermore, he alleged that the 3rd respondent failed or neglected to apply the Margin of Lead Principle in the process of declaration of the result of the said election and thereby unlawfully returned the 1st respondent as the duly elected candidate at the said election.

That unless and until a supplementary election or a re-run election is conducted at the 6 polling units where elections were cancelled and the result of the said election are added to the votes of each of the candidates that contested the said election, no valid declaration of the result of the said election can be made by the 3rd respondent. That the declaration of the 1st respondent by the 3rd respondent as the winner of the said election is premature and undue.

He therefore requested the Tribunal to declare as follows: -

- (a) That the election conducted by the 3rd respondent for the office of member of Sokoto State House of Assembly for Sokoto North II State Constituency of Sokoto State was inconclusive;
- (b) That the declaration of the 1st respondent as the winner of the said election conducted by the 3rd respondent for the office of member of Sokoto State House of Assembly for Sokoto North II State Constituency of Sokoto State on the 9th day of March, 2019 is premature and undue;
- (c) An order directing for the conduct of a supplementary election or a re-run election in the 6 polling units of Sarkin Musulmi B ward and in the 2 polling units of Magajin Gari A ward as well as in 1 polling unit of Magajin Garin B ward of Sokoto North II State Constituency of Sokoto State where elections were cancelled and thereafter, the results of the said election be taken into account by the 3rd respondent before a final declaration of the winner of the said election in the said State Constituency is made by the 3rd respondent;
- (d) That the certificate of return hitherto issued by the 3rd respondent to the 1st respondent be withdrawn forthwith pending the conduct of the said supplementary election or a re-run election in the 6 polling units

spread across the 3 wards of Sokoto North II State Constituency of Sokoto State; and

(e) That they be awarded the cost of prosecuting this petition.

Under cross-examination by learned counsel for the 1st and 2nd Respondents, the 1st Petitioner stated that he is aware of the INEC Act and the INEC Guidelines on voting. That there is a mandatory use of smart card reader under the Guidelines. That Election materials must be deployed before election. He said that he knows the consequences of voter's resistance to the deployment of materials to voting units. That the election in his polling unit was held simultaneously with the other polling units. That he had his agents who are still alive separate from that of his party. That what he told the Tribunal is the information he received from his agents. He said that the cancellation of votes was in accordance with the INEC guidelines. That the results declared by INEC after the cancellation was not valid.

After the petitioner, one Murtala Hassan, who acted as the Collation Agent for the Petitioners during the conduct of the election testified as the PW 2. He adopted his deposition which is essentially the same as that of the 1st Petitioner.

Under Cross-examination by the learned counsel for the 1st and 2nd Respondents, the PW 2 stated that he registered and voted at Sule Mai Nama Polling Unit 015 of Sarkin Adar Gandu Ward/RA. He said that he was not a party agent at the Polling units where elections were cancelled. That he did not know why elections were cancelled in the six polling units and that he has no evidence that INEC ordered supplementary election in gubernatorial elections for the six Polling units cancelled as he stated in paragraph 9(g) of his deposition.

On the 16th of July, 2019, the 1st and 2nd Respondents opened their defence and called two witnesses including the 1st Respondent. Their first witness was one Mohammed Tukur Riskuwa (RW 1), the PDP Collation Officer/Agent for Sokoto North 11 State Constituency in the said election. He stated that his duties included receiving reports from the polling units and ward collation centres, supervising the collation of results at ward levels, and representing the 1st and 2nd Respondents at the State constituency Collation Centre.

The RW 1 said that on the election day, after casting his vote, he went on tour of the following polling units to assess the situation of things: Dan Hili Hubbare 004 Polling Unit; Gidan Mahe Hubbare 007 Polling Unit; Shiyar Sarkin Yaki 008 Polling Unit; Ofishin Hakimi A006 Polling Unit; and Dan Farijo B 009

Polling Unit and witnessed the circumstances that led to the cancellation of the results in the six polling units.

According to him, the cancellation of results in the aforementioned polling units was for the following reasons:

- a) Obstruction and resistance to deployment and or distribution and use of Smart Card Reader (SCR);
- b) Thugs were deployed at the aforementioned polling units who chased party agents of Peoples Democratic Party (PDP); and
- c) Voters also resisted the use of Smart Card Reader and engaged in multiple voting and ballot box stuffing, hence the cancellation of the results in those polling units;

The RW 1 said that the results of the cancelled polling units were not recorded because by the extent INEC guidelines, zero votes ought and would be recorded and the process concluded. He maintained that no voter was disenfranchised and the election was conducted substantially in accordance with the provisions of the Electoral Act and the INEC Guidelines. That the 1st Respondent was returned as the winner of the election having scored majority of lawful votes cast at the election. That the elections in the remaining polling units that were not cancelled were in compliance with the electoral laws and the refusal of INEC to conduct a re-run in the cancelled polling units was also in accordance with the electoral laws.

The witness said that Murtala Hassan who testified as PW 2 did not start with them at the collation exercise at the Sokoto North 11 State Constituency Collation Centre neither did he conclude the exercise with them but left midway due to ill health.

Under cross-examination by learned counsel for the Petitioners, the RW 1 stated that the House of Assembly election was conducted on the same day with the gubernatorial elections but he did not know whether the cancellation of the results affected the gubernatorial elections. He said that it is not true that whatever affects the House of Assembly elections would equally affect the Governorship election.

He said that the PDP candidate scored 17,565 votes and the APC candidate scored 16,233 votes and the difference in the scores is 1,332. He said that no supplementary elections were held before the results were released.

In his evidence, the 1st Respondent stated that the elections in the six Polling Units that were cancelled by 3rd Respondent were characterized by chaos and disrespect for the INEC Regulations and Guidelines for the conduct of Elections, He maintained that the elections were conducted in substantial compliance with the Electoral Act, 2010 and the INEC guidelines.

Under further cross- examination by learned counsel to the Petitioners, the 1st Respondent informed the Tribunal that he is not aware that on 23/3/19 there were any supplementary elections in the six polling units for the Governorship.

At the close of evidence, the learned counsel for the Petitioners and the 1st and 2nd Respondents filed their Written Addresses. As earlier stated, the learned counsel for the 3rd Respondent did not lead any evidence neither did he file any written address. However, he informed the Tribunal that he was adopting the address of the 1st and 2nd Respondents.

In his Final Written Address, the learned counsel for the 1st and 2nd Respondents, Anayo Ilo Esq. identified the three Issues for Determination as formulated at the Pre-Hearing Session. Thereafter, he argued Issue 3 first, and later argued Issues 1 and 2 together.

ISSUE 3:

Whether the Petitioners have led sufficient and credible evidence before this Honourable Tribunal to establish a case of wrongful allocation of lawful votes cast, wrong collation or alteration of the final result of the election complained of to the effect that the 1st Respondent was not duly elected or returned by majority of lawful votes cast at the election for the office of Member Sokoto State House of Assembly held on the 9th day of March, 2019.

Arguing this issue, learned counsel submitted that by virtue of Sections 145 to 168 of the Evidence Act, 2011, there is a presumption of regularity in favour of declared election results. He maintained that there is in law a rebuttable presumption that the result of any election declared by the Independent National Electoral Commission (INEC) is correct, authentic and genuine. See: ***NWOBODO V. ONOH (1984) 1 SCNLR 1, 32.***

Learned counsel submitted that the onus is on the person who denies its correctness and authenticity to rebut the presumption with cogent and verifiable

evidence. He referred to the case of: *Omoboriowo v. Ajasin (1984)1 SCNLR 108,122* where the Supreme Court held thus:

“Now as I stated in Nwobodo v. Onoh (supra), there is in law a rebuttable presumption that the result of any election declared by the Returning Officer is correct and authentic by virtue of Sections 115, 148(c) and 149(1) of the Evidence Act and the burden is on the person who denies the correctness and authenticity of the return to rebut the presumption.”

He posited that it is trite and settled law that whenever a petitioner's challenge or denial of the authenticity of an election result is based on criminal allegation against the official body responsible for the declaration of the results, the rebuttal must be proved beyond reasonable doubt. He referred to the case of: *ABIBO v. TAMUNO (1999) 4 NWLR (Pt.599) 334 @339, paras. H-A*, where it was held thus:

“There is a rebuttable presumption that the result of any election by the electoral commission is correct and authentic and the onus is on the person who denies its correctness and authenticity to rebut the presumption. Where such denial is based on allegation of crime against the electoral commission's officials responsible for the declaration of the results, the rebuttal must be proved beyond reasonable doubt.”

Learned counsel also relied on the following decisions: *Nwole v. Iwuagwu [2005] 16 NWLR (Pt.952) 534 @571; Hashidu v. Goje (2003) 15 NWLR (Pt.843) 352 @386, paras. H-B; Onyema v. Kema [1999] 4 NWLR [Pt.598] 198; Buhari v. INEC (2008) 19 NWLR (Pt.1120] 246 @354; Buhari v. Obasanjo (2005) 13 NWLR (Pt.941) 1; Jalingo v. Nyame (1992] 3NWLR(Pt.231) 538.*

He submitted that by the tenor of Issue 3, which seeks to argue *a case of wrongful allocation of lawful votes cast, wrong collation or alteration of the final result of the election*, a criminal allegation is being made out against officials of the 3rd Respondent, and it must be proved beyond reasonable doubt. He submitted that the Petitioners have not been able to prove their case in this Petition beyond

reasonable doubt. That the evidence led by the Petitioners' witnesses in proof of their case are at best hearsay evidence and all the documents tendered before this Honourable Tribunal are documentary hearsay evidence.

Counsel posited that election results issued by INEC can only be tendered by agents of the political party that were present at the polling stations at the time the documents were made and prepared. He said that where election results were tendered or evidence given on them by any other person who was not at the polling station where the documents were made and prepared, it is documentary hearsay having no probative value. He relied on the cases of: *HASHIDU v. GOJE (2003) 15 NWLR (Pt.843) 352@ 393, paras. B-F*; and *BUHARI v. OBASANJO (2005) 13 NWLR (Pt.941) 1, @315, paras. B-D*.

Learned counsel submitted that the depositions of the 1st Petitioner and PW2 are based on information they derived from their party agents, who were not called to give evidence as to the reason(s) why elections in the six (6) Polling Units were cancelled. That they are inadmissible hearsay evidence, which this Tribunal cannot accord any probative evidential value and he urged the Tribunal to so hold. He referred to the Court of Appeal decision per *Ogbuinya, JCA in ALAPA & ANOR v. INEC & ANOR (2015) LPELR-41787 (CA), Pp. 30 -31, paras. E*, where they restated the law on hearsay evidence.

He submitted that although all the documents tendered in this case are all admissible in law, the deposition of the 1st Petitioner and the PW2 lack any judicial utility in proof of the case of the Petitioners.

ARGUMENTS ON ISSUES 1 AND 2

Issue 1: *Whether the election of the 1st Respondent as member of the Sokoto State House of Assembly for Sokoto North II State Constituency held on 9th day of March, 2019 was not conclusive having regard to the margin of lead between the 1st Respondent and the 1st Petitioner as well as the total number of registered voters in polling units within the State Constituency where elections were not concluded by the 3rd Respondent or were cancelled by the 3rd Respondent; AND*

Issue 2: *Whether it was right for the 3rd Respondent to have declared the 1st Respondent the winner of the said election when the 3rd*

Respondent had not conducted any supplementary elections in the polling unit where election did not hold or were cancelled by the 3rd Respondent.

Arguing Issues 1 and 2 together, learned counsel submitted that the election of the 1st Respondent as member of the Sokoto State House of Assembly for Sokoto North II State Constituency held on 9th day of March, 2019 was conclusive having regard to the margin of lead between the 1st Respondent and the 1st Petitioner, as well as the total number of registered voters in the six cancelled polling units. He also submitted that the 3rd Respondent acted within the confines of law when it declared the 1st Respondent the winner of the election and therefore returned as Member House of Assembly for the Sokoto North II State Constituency election held on 9th day of March, 2019, without recourse to any supplementary election, having canceled Six (6) Polling Units in the Constituency.

He referred to the provisions of the INEC Regulations and Guidelines for the Conduct of Elections admitted in evidence as ***EXHIBIT PC***, particularly ***Clause 45(b) of the INEC Regulations and Guidelines*** which provides thus;

”(b) Where the margin of lead between the two leading candidates is not in excess of the total number of registered voters of the Polling Unit(s) where election was cancelled or not held in line with Sections 26 and 53 of the Electoral Act, the Returning Officer shall decline to make a return until polls have taken place in the affected Polling Unit(s) and the results incorporated into the new Form EC 8C(1) and subsequently recorded into Form EC 8E(1)for Declaration and Return.”

On ***Managing the Margin of Lead Principle*** he referred to ***Clause 47*** of ***Exhibit PC*** which provides as follows:

“47 The following responses and procedures shall be used in managing the issues identified in this Clause during elections and collation of results, particularly in determining where supplementary elections may hold in line with the Margin of Lead Principle as Schedule 1:

- (a) *Where the Commission is unable to deploy to Polling Units as a result of logistical challenges, a date for supplementary election shall be announced;*
- (b) *Where there is willful obstruction or resistance to deployment/distribution of election materials, enter zero votes for the affected polling units and proceed;*
- (c) *Where there is voters resistance to the use of the SCR, enter zero votes for the affected Polling Units and proceed;*
- (d) *Where the use of the SCR is discontinued midway into the elections due to sustained malfunction and no replacement is available before 2pm, a date for supplementary election shall be announced;*
- (e) *Where the Commission determines that violent disruptions occurred at a substantial number of Polling Units before announcement of result, a fresh date for election in the affected Polling Units shall be announced by the Commission;*
- (f) *Where a violent disruption occurs after announcement of results and ballot papers and result sheets are destroyed, regenerate the affected results from duplicate copies, fill new replacement result sheets with the approval of the Resident Electoral Commissioner and proceed with collation of result;*
- (g) *Where result sheets are snatched or destroyed before they arrive at collation centres, regenerate the affected results from duplicate copies, fill new replacement result sheets with the approval of the Resident Electoral Commissioner and proceed with collation of result;*
- (h) *Where balloting materials are still available or remaining after disruption at any stage of the election, proceed with available materials and conclude that stage of the election. However,*

where materials are inadequate, a new date will be announced by the Commission to conclude the stage;

- (i) *Where there are issues with results of a Voting Point (VP) such as over voting, treat the votes from the affected VP as rejected votes and proceed with the valid votes from other VPs of the Polling Unit."(underling and bolding that of counsel, for emphasis)*

Learned counsel submitted that the law has by *Clause 47 of the INEC Regulations and Guidelines, 2019* provided for practical and real life situations or events and their consequential results and effects (referred to by the Regulation as *Adverse factors,""Required Response"*and the *Expected Outcome"*to the conduct and outcome of elections.

He said that the Petitioners apart from making a heavy weather of the consequence of cancellation of elections in six Polling Units in Paragraph 12(a) -- (g) of the Petition, which was mechanically replicated again in the witness' depositions, they fundamentally failed, to plead in their Petition nor lead evidence during hearing, for the reason(s) for the cancellation of elections in those six [6] Polling Units to enable this Tribunal decide the propriety or otherwise of the cancellation by the Independent National Electoral Commission (INEC).

He said that the 1st and 2nd Respondents' reasons for the cancellation pleaded at paragraph 6 of the Reply and in paragraph 9 (a) - (c) of the adopted Witness Statement on Oath of RW1 was not specifically denied nor controverted in evidence. That it is trite law that when evidence is not challenged or contradicted, such evidence will be accepted as proof of a fact it seeks to establish. See case of *Nwede v. The State (1985) 3 NWLR (Pt.13) 444*. He submitted that admitted facts need no further proof. He also referred to the case of: *LA WAN v. YAMA (2004) 9 NWLR (Pt.877) 117 @ 143* where the court held that:

"Where a party fails to call evidence in support of his case or in rebuttal of the case of the opposite party, the trial court is entitled to resolve the matter against that party unless there be some other legal reasons to the contrary."

He submitted that taking a cue from Clause 47(a) - (i) and **Schedule 1** at page 33 of the INEC Regulations and Guidelines, 2019, the law mandates the Independent National Electoral Commission [INEC) in cases where there is obstruction, or resistance to deployment and/or distribution of electoral materials and voters' resistance to use of Smart Card Reader (SCR) (*as is the case in the six polling units under contention in this petition*) to **"enter zero votes and proceed."** He said that at the occurrence of events in Clause 47(b) and (c) of INEC Guidelines (Exhibit PC), the electoral body shall enter zero votes in the affected Polling Unit(s) and shall conclude the election process, without recourse to or taking into consideration, the number of registered voters in the affected Polling Units *vis-a-vis* the margin of lead between the leading contestants.

He submitted that that is exactly what played out in respect of the six (6) cancelled Polling Units of Sokoto North II Constituency during the 9th March, 2019 State Houses of Assembly Election. He maintained that the electorates in the six (6) Polling Units cannot be heard to complain of disenfranchisement having been given an adequate opportunity to freely vote and they willfully refused it through their willful resistance and obstruction to deployment of materials and resistance to the use of Smart Card Reader Machines, thuggery and violence. He said that the 3rd Respondent exercised their discretion, rightly, in not conducting a supplementary election in the six (6) Polling Units because the clear wordings of Clause 47 of the INEC Regulations, 2019 has this provision which states:

"... particularly in determining where supplementary elections may hold in line with the Margin of Lead Principle'as in Schedule 1:"

He therefore urged the Honourable Tribunal to determine Issues 1 and 2 in the NEGATIVE and AFFIRMATIVE respectively, in accordance with all extant electoral laws, particularly the INEC Regulations and Guidelines for the Conduct of Election, 2019. He said that the 1st Petitioner and PW2 under cross-examination both equally urged this Tribunal to apply the provisions of the INEC Regulations and Guidelines in the determination of this Petition.

In conclusion, learned counsel submitted that the case of the Petitioners is a classical example of paucity and inconsistency of evidence and divergence between evidence and pleadings. He said that factually and legally, the reliefs claimed cannot by the quality of evidence led be granted. He urged the tribunal to

dismiss this petition. That the law is trite that it is not the duty of a court or a tribunal vested with jurisdiction or established by law to adjudicate on complaint arising from election petition to change the will and wish of the people as demonstrated through the ballot box and substitute same by the fantasy of the Petitioner(s). That the will of the people is sacrosanct and it is the very essence and bedrock of democracy.

In his final written address which he adopted as his final arguments, the learned counsel for the Petitioners *Chief J.E.Ochidi* identified the three issues for determination and argued Issues 1 and 2 together.

ARGUMENTS ON ISSUES 1 AND 2

Learned counsel submitted that Issues 1 and 2 are interwoven and are distilled from the two grounds upon which this petition is based as appearing in paragraphs 11 and 13 of the petition.

He said that in this petition, the only complaint of the petitioners is that whereas the margin of lead between the 1st petitioner and the 1st respondent is 1,334 votes while the result of the election conducted in 6 polling units in the state constituency with about 4,433 registered voters were cancelled by the 3rd respondent, yet the 3rd respondent refused or neglected to conduct a supplementary election in the said 6 polling units before the said 3rd respondent proceeded to declare the 1st petitioner as the winner of the said election.

He referred to paragraphs 12 (a) – (c) of the petition where the 6 polling units whose results were cancelled by the 3rd respondent were listed by the petitioners as follows:

- (a) Dan Hubbare 004 polling unit in Sarkin Musulmi B ward.
- (b) Gidan Mahe Hubbare 007 polling unit in Sarkin Musulmi B ward.
- (c) Shiyar Sarkin Yaki 008 polling unit in Sarkin Musulmi B ward which is also known as Shiyar Marafa Waliyo 008 polling unit in Sarkin Musulmi B ward.
- (d) Ofisin Hakimi A 006 polling unit in Magajin Gari A ward.
- (e) Garka Mallam Dan Auta 009 polling unit in Magajin Gari A ward and
- (f) Dan Farijo B 009 polling unit in Magajin Gari B ward.

He said that in paragraphs 10 – 12 of the petition, the petitioners gave full particulars of the said 6 polling units where the result of the election conducted in the state constituency were cancelled by the 3rd respondent.

He said that in their reply to the petition, the 1st and 2nd respondents while admitting the fact that the result of the election conducted in the said 6 polling units were cancelled, averred in paragraph 6 thereof as follows:-

“The 1st and 2nd respondent states (sic) in further answer to paragraph 10 – 12 of the petition as follows: -

- a. The cancellation of the result of the above mentioned polling units was as a result of obstruction and resistance to deployment and or distribution and use of Smart Card Reader (SCR);***
- b. Thugs were deployed at the aforementioned polling units who chased party agents of Peoples Democratic Party (PDP);***
- c. Voters also resisted the use of Smart Card Reader and engaged in multiple voting and ballot box stuffing, hence the cancellation of the results in those polling units;***
- d. The result of the polling unit was not recorded because by the extent INEC guidelines, zero votes ought and would be recorded and process concluded.”***

He posited that in addition to the aforementioned facts pleaded by the 1st and 2nd respondents in their joint reply to the petition, the RW1 who testified on behalf of the 1st and 2nd respondents admitted under cross-examination that indeed, the result of the election conducted in 6 polling units in the State Constituency were cancelled by the 3rd respondent. He said that the RW1 also specifically mentioned the names of the said polling units in paragraph 8 of his deposition which he adopted before this Honourable Tribunal as his evidence in chief.

He therefore submitted that the 1st and 2nd respondents are not denying the fact that the results of the election conducted in the said 6 polling units in the State Constituency were cancelled by the 3rd respondent.

He said that on their part, the 3rd respondent while also not denying the fact that the result of the election conducted in the said 6 polling units were cancelled by the 3rd respondent averred in paragraph 4 of their reply to the petition as follows: -

“The respondent further answers (sic) to paragraph 12(a), (b), (c), (d) (e), (f) and (g) of the petition and states as follows:

- (a) There was willful obstruction and resistance to use the deployment (sic) and distribution of election materials;***
- (b) Those voters resist to the use of Smart Card Reader at those polling units cancelled;***
- (c) That the consequential effect of the acts in paragraph 4(a) and 4(b) is that there was over voting in those polling units leading to cancellation.”***

He therefore submitted that the 3rd respondent also admitted that the result of the election conducted in the said 6 polling units were indeed cancelled by the 3rd respondent. He said that the only contention of the respondents in this petition is that the cancellation of the results in the 6 polling units does not warrant the 3rd respondent to conduct a supplementary election in the affected 6 polling units before declaring the winner of the said election in the State Constituency.

Learned counsel submitted that as the 3rd respondent is the statutory body charged with the responsibility of conducting the said election, it is the said 3rd respondent who conducted the said election that is in a position to state the reason for the cancellation of the result of the election conducted in the said 6 polling units. He maintained that such facts are especially within the knowledge of the 3rd respondent and where such is the case, the burden of proving such facts lie squarely on the 3rd respondent. For this view, he relied on the provision of ***section 140 of the Evidence Act, 2011*** which provides as follows:

“When a fact is especially within the knowledge of any person, the burden of proving that fact is upon him.”

Counsel submitted that in this petition, even though the 3rd respondent has pleaded in paragraph 4 of its reply to the petition the reasons for the cancellation of the result of the election in the affected 6 polling units, yet, the said 3rd respondent neglected to lead any evidence before this tribunal in support of the said pleaded facts. He said that it is settled law that averments in pleadings that are not supported by evidence are deemed abandoned. He referred to the decision of ***Niki***

Tobi JSC (of blessed memory) in the case of: *DUROSARO V. AYORINDE (2005) 3 – 4 SC 14* where the learned jurist held thus: -

“--- Pleadings, by their nature and character, cannot speak. They speak through witnesses and as long as a party refuses or fails to call witnesses to articulate their content, they remain dormant process in the court’s file. As a matter of law, they are moribund and no court of law is competent to resuscitate or revive them.”

He also relied on the decision of the Supreme Court in *C.B.N. V. OKOJIE (2015) 14 NWLR (PT 1479) 231 AT 258* where the court held thus: -

“Pleadings are no evidence. The defendant must call evidence to support his averments. Where this is not done, the defendant is deemed to have abandoned his defence.”

He therefore submitted that the 3rd respondent on whom lies the burden of proving the reason or reasons for the cancellation of the result of the election conducted in the said 6 polling units abdicated its legal responsibility by not proffering any evidence before this tribunal in this wise to prove the reason or reasons necessitating the cancellation.

However, he submitted that if the Tribunal decides to gratuitously consider the said averments in paragraph 4 of the reply of the 3rd respondent to the petition, the implication of the averments is that despite the alleged “willful obstruction and resistance to the use of Smart Card Readers” in the said polling units, elections were still conducted by the 3rd respondent in the said 6 polling units and that votes which were cast at the said polling units were indeed counted at the end of poll but that in the process of counting of cast votes, over voting was discovered in the said 6 polling units by the officials of the 3rd respondent thereby necessitating the cancellation of election conducted at the said 6 polling units.

He therefore submitted that by the averments of the 3rd respondent in paragraph 4 of their reply, the reason for the cancellation of the result of the election conducted in the said 6 polling units is over voting and he urged this Tribunal to so hold.

He further submitted that apart from the facts pleaded in the reply of the 3rd respondent to the petition, the necessary information relating to the said 6

cancelled polling units have been tendered and admitted in evidence before this tribunal as EXHIBIT PB8 (i.e. INEC FORM EC.40G). He said that in the said Exhibit PB8 which include names of the 6 polling units under Sokoto North II State Constituency where the said elections were cancelled, the reason for the cancellation of the result of the said election in the said 6 polling units as stated clearly on the face of each of Exhibit PB8 is over voting and no more.

He submitted that in view of the clear contents of Exhibit PB8 which contains the reason for the cancellation of the result at each of the said polling units (i.e. over voting), no other reason can be ascribed for cancellation of the results of the said election at the said 6 polling units.

He referred to the 1st and 2nd respondents' counsel's submission that since reason for the cancellation of the election was due to obstruction or resistance to deployment and or distribution of electoral materials and voters' resistance to use of Smart Card Reader that in such circumstance the 3rd respondent was entitled to enter zero votes at such polling units and proceed without the necessity of ordering the conduct of the supplementary election based on paragraph 47(a) – (i) of INEC Guidelines for the Conduct of 2019 General Elections. In response, he submitted that paragraph 47 of the Guidelines applies only where resistance to deployment of electoral materials or use of Smart Card Reader actually prevented the conduct of an election at the cancelled polling units. He said that in such a situation, a supplementary election may not be ordered by the 3rd respondent. He pointed out that in the instant case, despite the hurdles allegedly encountered by the officials of the 3rd respondent in the conduct of the said election at each of the 6 polling units in issue, elections were actually conducted at the said 6 polling units and when the votes were counted it was discovered by the officials of the 3rd respondent that there was over voting in the six polling units.

He submitted that by the provisions of section 53 of the Electoral Act, 2010 (as amended), where an incidence of over voting occurred at any polling unit, the result of the said election shall be nullified or cancelled by the 3rd respondent and another election may be conducted thereat where the result of the cancelled polling unit may affect the overall result of the constituency concerned.

Learned counsel submitted that in the instant case, the result of the election in the 6 cancelled polling units has effect on the overall result in Sokoto North II State Constituency on the ground that by Exhibit PB7 (the declaration of result for Sokoto North II State Constituency), the margin of votes by which the 1st

respondent defeated the 1st petitioner at the said election is 1,322 votes while the total number of registered voters in the said 6 polling units where elections were cancelled in the State Constituency is 3,987 regard being had to the contents of EXHIBITS PA1, PA2, PA3, PA4, PA5 and PA6 (the register of voters for Dan Hili Hubbare 004, Gidan Mahe Hubbare 007, Shiyar Sarkin Yaki 008 otherwise known as Shiyar Marafa Walijo 008, Ofisin Hakimi A 006, Garka Mamman Dan Auta 009 and Dan Farijo B 009 Polling Units respectively).

He submitted that the Exhibits PA1 – PA6 (the register of voters for the 6 polling units in issue) were analyzed by both the 1st petitioner and RW1, therefore, it cannot be said that the said documents were merely dumped on this tribunal. Furthermore, he submitted that despite the margin of lead between the votes of the 1st petitioner and that of the 1st respondent vis-a-vis the total number of registered voters in the said 6 polling units where the result of the election was cancelled, there is no evidence before this tribunal that any supplementary election was conducted by the 3rd respondent in the said 6 polling units before the 1st respondent was declared the winner of the said election by the 3rd respondent.

Counsel submitted that the act of the 3rd respondent in this wise amounts to substantial non-compliance with the provisions of Section 53 of the Electoral Act, 2010 (as amended) as well as the provisions of INEC Guidelines for the Conduct of the 2019 General Elections (EXHIBIT PC, especially page 27 paragraph 6 thereof) which clearly states the margin of lead principle to the effect that no declaration shall be made at an election where the margin of lead is not in excess of the total number of registered voters at polling units where elections were not held or where elections were cancelled. See the case of: **CHIEF BOLA IGE V. DR V.O. OLUNLOYO (1984) 1 S.C. 285 AT 267.**

He submitted that in declaring the 1st respondent as the winner of the said election, the registered voters in the said 6 polling units were not taken into consideration and this is obvious from the examination of the contents of EXHIBITS PB2, PB3 and PB4 which shows that each of the 6 polling units in issue attracted zero votes.

Counsel therefore submitted that based on issues one and two formulated for determination, the election of the 1st respondent cannot be said to be conclusive regard being had to the margin of lead between the 1st respondent and the 1st petitioner as well as the total number of registered voters in the polling units within the constituency where elections were cancelled by the 3rd respondent on the 9th of

March, 2019. He therefore urged the Tribunal to resolve the said two issues in favour of the petitioners.

ARGUMENTS ON ISSUE THREE

Learned counsel pointed out that Issue three is whether the petitioners have led sufficient and credible evidence before this Honourable Tribunal to establish a case of wrongful allocation of lawful votes cast, wrong collation or alteration of the final result of the election complained of to the effect that the 1st respondent was not duly elected or returned by majority of lawful votes cast at the election for the office of Member Sokoto State House of Assembly held on the 9th day of March 2019.

He submitted that upon a careful appraisal of the complaint of the petitioners as contained in the petition, the petitioners did not make any allegation of allocation of unlawful votes cast at the said election nor did the petitioners make any allegation bothering on wrongful collation or alteration of the result of the said election. To this extent therefore, he submitted that issue three does not arise for determination in this petition and he urged the Tribunal to so hold.

In conclusion learned counsel submitted that there is merit in this petition because the 3rd respondent cannot validly declare the 1st respondent as the winner of the election unless and until a supplementary election is conducted in the said 6 polling units of the State Constituency in issue. He urged the Tribunal to grant all the reliefs being claimed by the petitioners in this petition.

Upon receiving the Petitioners' Final Address, the learned counsel for the 1st and 2nd Respondents filed a Reply on Points of Law which they also adopted as part of their arguments in defence of this petition. In the said Reply, while responding to Petitioners' argument at *page 5, paragraphs 4.11 – 4.14* of their Final Address, the learned counsel submitted that is trite law that the burden of proof in a suit lies on that person who would fail if no evidence at all were given on either side. On this he relied on *section 135, Evidence Act, 2011* and the cases of: *OBIANWUNA OGBUANYINYA & ORS vs. OBI OKUDO & ORS (1990) LPELR- 2294(SC)*; and *NWARU & ORS vs. OKOYE & ORS (2008) LPELR- 2116 (SC)*.

Learned counsel submitted that the Petitioners' argument in paragraph 4.16 of the Final Address, is a futile attempt to remedy their failure to introduce reasons

for cancellation in the six cancelled polling units which was neither pleaded nor any evidence led. He said that it is settled law that address of counsel cannot take the place of evidence and relied on the decisions in: *FAGGE v. AMADU (2015) LPELR – 25920(CA)*; *ALIYU v. INTERCONTINENTAL BANK PLC (2013) LPELR–20716*; *OSADARE v. LIQUIDATOR, NIGERIA PAPER MILLS LTD (2011) LPELR-9269 (CA)*.

In conclusion he submitted that a claimant who seeks declaratory reliefs must rely on the strength of his case and not on the weakness of the defence. See the case of: *GRACE v. OMOLOLA HOSPITAL & ANOR (2014) LPELR-22777 (CA)*.

He urged the Honourable Tribunal to dismiss this Petition in its entirety.

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

At the Pre-Hearing Session, the Issues for Determination in this Petition were formulated as follows:

ISSUE 1:

Whether the election of the 1st Respondent as member of the Sokoto State House of Assembly for Sokoto North H State Constituency held on 9th day of March, 2019 was not conclusive having regard to the margin of lead between the 1st Respondent and the 1st Petitioner as well as the total number of registered voters in polling units within the State Constituency where elections were not concluded by the 3rd Respondent or were cancelled by the 3rd Respondent.

ISSUE 2:

Whether it was right for the 3rd Respondent to have declared the 1st Respondent the winner of the said election when the 3rd Respondent had not conducted any supplementary elections in the polling unit where election did not hold or were cancelled by the 3rd Respondent.

ISSUE 3:

Whether the Petitioners have led sufficient and credible evidence before this Honourable Tribunal to establish a case of wrongful allocation of lawful votes cast, wrong collation or alteration of the final result of the election complained of to the effect that the 1st Respondent was not duly elected or returned by

majority of lawful votes cast at the election for the office of Member Sokoto State House of Assembly held on the 9th day of March, 2019.

In his final written address, the learned counsel for the Petitioners submitted that upon a careful appraisal of the complaint of the petitioners as contained in the petition, the petitioners did not make any allegations bothering on wrongful allocation of lawful votes cast, wrongful collation or alteration of the final result of the said election. He therefore submitted that issue three does not arise for determination in this petition.

As a matter of fact the said Issue 3 was introduced by the learned counsel for the 3rd Respondents when he filed his Issues for Determination during the Pre-Hearing Session. His First Issue for Determination was couched as follows:

“Whether from the totality of the credible evidence adduced before this Tribunal and admissible documents tendered, the Petitioners are able to establish a case of wrong allocation of lawful votes cast, wrong collation or alteration of the final result of the Election complained of, to the effect that the 1st Respondent was not duly elected by majority of the lawful votes cast at the said election.” (underlining for emphasis).

Thus from their Issue 1, the 3rd Respondent gave the impression that evidence would be adduced on the issue of ***wrong allocation of lawful votes cast, wrong collation or alteration of the final result of the Election***. The present Issue 3 was therefore formulated in anticipation of possible evidence relating to the issue of wrongful allocation of lawful votes cast, wrong collation or alteration of the final result of the election. Alas, as rightly observed by the learned counsel, no such evidence was adduced by any of the parties. The 3rd Respondent who introduced the issue did not even adduce any scintilla of evidence at the trial. Curiously, even at the address stage the 3rd Respondent did not file any written address to try to shed some light on what they meant by the Issue 1 which they filed at the Pre-Hearing Session.

In the light of the foregoing we whole heartedly agree with the learned counsel for the Petitioners that Issue 3 was formulated in error and it is accordingly struck out. This Petition will be determined on Issues 1 and 2 alone.

Before resolving the remaining issues for determination, we think it would be expedient at this stage to comment on the decision of the 3rd Respondent not to lead any evidence in defence of this petition.

From the record of proceedings, it is evident that the 3rd Respondent on their own volition decided to rest 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 because issues were seriously joined between the Petitioners and the 3rd Respondent in relation to the alleged cancellation of certain results by the 3rd Respondent. ***What is the legal effect of that decision in this trial?***

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).***

Again in the case of: ***AMBASSADOR YAHAYA KWANDE & ANOR V AIR MARSHAL MOUKTAR MOHAMMED (RTD) ORS (2014) LPELR 22575 (CA), GUMEL JCA*** on pages 3839 paragraphs F A stated as follows:-

“The 1st Respondent did not lead any oral evidence and did not adduce any documentary evidence in support of any of the averments in the joint Statement of defence. It is so trite and it can be held without much ado that the 1st Respondent is deemed to have abandoned his defence to the claim of the Appellants. There must be oral and/or documentary evidence to show that the pleaded are true, consequently, pleadings without evidence to support them are worthless and of no significance at all. The 8 paragraphs pleadings of the 3rd Respondent is on pages 92-93 of the record of appeal. He even filed a list of witnesses including himself on page 94 of the records and his written deposition on pages 95-96 of the record of appeal. Having failed to call evidence to support his pleadings and his witness deposition on oath, it is my holding that they are deemed abandoned and thus worthless. Same are hereby struck out.”

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 n 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 3rd Respondent to rest their case on the Petitioners’ case does not automatically translates 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.

However, having failed to call evidence to support their pleadings we hold that the pleadings and the frontloaded deposition are deemed abandoned. In the course of this judgment, we will revisit this same issue as the need arises.

We will now proceed to resolve Issues 1 and 2 together.

Essentially, the issues are interwoven. The resolution of Issue 1 will invariably lead to the resolution of Issue 2. We will commence with the issue of whether the election of the 1st Respondent could be said to have been conclusive in view of the margin of lead between the 1st Respondent and the 1st Petitioner vis-à-vis the total number of registered voters in the Polling Units within the State Constituency where elections were cancelled by the 3rd Respondent.

In *paragraph 12 of this Petition* the Petitioners averred that the 3rd Respondent cancelled the elections in the following six polling units: Dan Hili Hubbare 004 polling unit; Gidan Mahe Hubbare 007 polling unit; Shiyar Sarkin Yaki 008 polling unit; Ofishin Hakimi A 006 polling unit; Garka Mallam Dan Auta 009 polling unit; and Dan Farijo B 009 polling unit. At the trial, they adduced oral and documentary evidence to establish that fact.

In their pleadings, the Respondents initially appeared to have denied the fact that the results were cancelled in the six polling units. In *paragraph 5 of the 1st and 2nd Respondents Reply*, they denied *paragraph 12 of the Petition* and put the Petitioners to the strictest proof of same. However in *paragraph 6(a) of the said Reply*, they averred thus: ***“The cancellation of the result of the above mentioned polling units was as a result of obstruction and resistance to deployment and/or distribution and use of Smart Card Reader (SCR).”*** In essence, paragraph 6(a) is a tacit admission that the results were cancelled in the six polling units.

In addition to the aforementioned facts pleaded by the 1st and 2nd respondents in their joint reply to the petition, in their evidence, the RW1 who testified for the 1st and 2nd respondents admitted under cross-examination that the result of the election conducted in the six polling units in the State Constituency

were cancelled by the 3rd respondent. It is therefore evident that there is a *consensus ad idem* between the Petitioners and the 1st and 2nd Respondents that the result of the election conducted in the said 6 polling units in the State Constituency were indeed cancelled by the 3rd respondent.

The dispute is however on the reason for the cancellation. The 1st and 2nd Respondents have maintained that it was as a result of obstruction and resistance to deployment and/or distribution and use of Smart Card Reader (SCR).

In paragraph 1 of their pleadings in this petition, the 3rd Respondent admitted the fact that the 3rd Respondent (Independent National Electoral Commission) is the statutory body charged with the responsibility of conducting elections to elective offices at the Federal and State levels including the office of member of Sokoto State House of Assembly for Sokoto North II State Constituency State.

Furthermore the Petitioners strongly joined issues with the 3rd Respondent on this salient issue of cancellation of votes in the six Polling Units. Though the general rule is that the burden of proof of the petition is on the petitioners, however the evidential burden of proof may shift from one party to another as the trial progresses according to the balance of evidence given at a particular stage.

Section 136(1) of the Evidence Act, 2011 provides as follows:

“136. (1) The burden of proof as to any particular fact lies on that person who wishes the court to believe in its existence unless it is provided by any law that the proof of that fact shall lie on any particular person, but the burden may in the course of a case be shifted from one side to the other.”

The principle was explained by *Ogunwumiju, JCA* in the case of *ADIGHIJE v. NWAOGU (2010) 12 NWLR (PT.1209) 419 at 463* thus:

“Section 137 of the Evidence Act, 2004 provides for the burden of proof in civil cases. The burden of first proving the existence or non-existence of a fact lies on the party against whom the judgment of the Court would be given if no evidence were produced on either side regard being had to any presumption that may arise in the pleadings. If such party adduces evidence which might reasonably satisfy a Court that the fact sought to be proved is established, the burden lies on the party against whom judgment will be given if no more evidence were adduced, and so on successively until all the issues in the pleadings have been dealt with... By Section 137, the burden of proof is not static. It fluctuates between the parties. Sub-section 1, places the first burden on the party against whom the Court will give judgment if no evidence is adduced on either side. In other words, the onus probandi is on the party who will fail if no evidence is given in the case. Thereafter, the second burden goes to the adverse party by virtue of Sub-section

2 . And so the burden change takes place almost like the colour of a chameleon until all the issues in the pleadings have been dealt with."

Furthermore, the rule is that the evidential burden will naturally shift to the party who is positioned to have peculiar knowledge of the fact to be proved. This point is validated by the provisions of *section 136(2) of the Evidence Act* which further stipulates as follows:

"S.136 (2) In considering the amount of evidence necessary to shift the burden of proof regard shall be had by the court to the opportunity of knowledge with respect to the fact to be proved which may be possessed by the parties respectively."

In this trial, the Petitioners have discharged the initial burden of proving that the 3rd Respondent cancelled the elections in the six Polling Units in question. Thereafter the burden of rebutting that fact or explaining the reasons for the cancellation shifted to the 3rd Respondent who incidentally is the statutory body charged with the responsibility of conducting the said election and is therefore in the best position to state the reason for the cancellation of the result of the election conducted in the said 6 polling units.

We agree with the learned counsel for the Petitioners that the facts relating to the cancellation are facts which are peculiarly within the knowledge of the 3rd respondent and as such in this case, the burden of proving such facts lie squarely on the 3rd respondent. See the provision of *section 140 of the Evidence Act, 2011* which provides as follows:

"When a fact is especially within the knowledge of any person, the burden of proving that fact is upon him."

In the case of: ***CHIEF IKENNA EGBUNA v. MR. ALEXANDER AGHA (2015) LPELR-25881(CA)***, the Court of Appeal explained the principle when they stated thus:

"The appellant admitted in paragraph 15 of his counter affidavit that O.J. NWOKEOCHA was once in his law firm but has since left to set up his own practice. The appellant failed to state the date NWOKEOCHA left his law firm. That fact is within the exclusive knowledge of the appellant. By virtue of Section 140 of the Evidence Act, when a fact is within the exclusive knowledge of a person, the burden is on that person to prove that fact. In law the burden is on the appellant to prove that when NWOKEOCHA was representing the

respondent at the Magistrate Court, he was no longer in his law firm. He failed to discharge that burden.”

Although the burden of proof of the reason for the cancellation is not on the Petitioners, at the trial the Petitioners tendered the Voters Registers in respect of the six Polling Units and they were admitted as Exhibits PA1 to PA6. They also tendered INEC FORM EC.40G (admitted as Exhibit PB 8) which is the INEC Form containing the necessary information relating to the said 6 cancelled polling units. It is pertinent to state that the said Exhibits PA1 to PA6 and PB 8 were all analysed by both the 1st Petitioner and RW1 and were not dumped on this tribunal

Upon a careful observation of the said Exhibits PA1 to PA6 and PB8 we observed that the names of the six cancelled polling units are stated therein. In Exhibit PB8, the number of registered voters and accredited voters are stated and the reason for the cancellation of the result of the said election in the said 6 polling units are stated clearly on the face of each page of Exhibit PB8. The reason stated on the form is ***over voting***. Each of the forms is even accompanied with a report signed by the presiding officer of each of the affected polling units. The reason for the cancellation also contained in the attached report is the same ***over voting***. This is the only official document tendered at the trial to shed some light on why the results of the six polling units were cancelled by the 3rd Respondent.

It is quite unfortunate that in a matter of this nature where the burden was heavily on the 3rd Respondent to explain the circumstances surrounding the cancellations they decided to keep mute. To say the least that decision appears questionable. However, the Petitioners rose up to the challenge and tendered Exhibit PB8 which revealed the reasons for the cancellation.

It is worthy to note that apart from the mere ***ipse dixit*** of the 1st and 2nd respondents that the reason for the cancellation of the election conducted at the said 6 polling units was due to obstruction or resistance to deployment and or distribution of electoral materials and voters’ resistance to use of Smart Card Reader, they did not adduce any documentary evidence to back up their assertions. Rather in his address the learned counsel for the 1st and 2nd Respondents submitted that the Petitioners failed, to plead in their Petition nor led evidence on the reason(s) for the cancellation of elections in those six [6] Polling Units.

This submission is not correct. The Petitioners pleaded that the elections were cancelled in the six polling units. They went ahead to lead evidence in proof

of the cancellation and tendered Exhibit PB8 which showed very clearly the reasons for the cancellation. The 1st and 2nd Respondents admitted that the results were cancelled but their only complaint is that it was cancelled for other reasons. Unfortunately, the 3rd Respondent who was saddled with the evidential burden to explain the circumstances surrounding the cancellation made no attempt to discharge.

On the preponderance of evidence before us, we will rely on Exhibit PB8 to hold that the cancellation of the result at each of the six polling units was as a result of over voting. There is no other documentary evidence to refute this finding.

It is settled law that in election petition matters proof is mainly through documentary evidence. See the case of: *Samuel Onu Aja V. Abba Odin & 9ors (2011) 41WRN at 39 at p.73 (ratio II)* where the court stated thus:

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

Now on the issue of over voting, *section 53 of the Electoral Act, 2010 (as amended)* provides as follows:

“53. (1) No voter shall vote for more than one candidate or record more than one vote in favour of any candidate at any one election.

(2) 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 null and 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.

(3) Where an election is nullified in accordance with subsection (2) of this section, there shall be no return for the election until another poll has taken place in the affected area.

(4) Notwithstanding the provisions of subsections (2) and (3) of this

section the Commission may, if satisfied that the result of the election will not substantially be affected by voting in the area where the election is cancelled, direct that a return of the election be made.”

(Underlined for emphasis)

In this Petition, the Petitioners are contending that the election conducted by the 3rd respondent for the office of member of Sokoto State House of Assembly for Sokoto North II State Constituency of Sokoto State was inconclusive. That the declaration of the 1st respondent as the winner of the said election was premature, that a supplementary election or a re-run election should be conducted in the six polling units where elections were cancelled and thereafter, the results of the said re-run election be taken into account by the 3rd respondent before a final declaration of the winner of the said election in the said State Constituency is made by the 3rd respondent. The issue to be determined therefore is whether they are entitled to these reliefs?

By the provisions of ***section 53(2) of the Electoral Act, 2010 (as amended)***, 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 null and 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.

Now, we have made a finding that the results of the six polling units were cancelled because of over voting. That is in line with the first part of section 53(2). The fulfilment of the second part of conducting a re-run election is contingent on the fact that the results from those six polling units affected the overall result in the Constituency. The question is whether the cancellation of the results can be said to have affected the overall result in the Constituency. This brings us to ***the principle of margin of lead*** which was seriously canvassed in this petition.

The ***margin of lead principle*** is enshrined in the ***INEC Regulations and Guidelines for the Conduct of Elections, 2019*** which was tendered in this trial and admitted as Exhibit PC. It is pertinent to observe that it was quite unnecessary to tender the said Guidelines as an exhibit. For the avoidance of doubt, Exhibit PC is a subsidiary legislation made by INEC pursuant to the law making powers vested in the Commission by the provisions of ***section 160 of the 1999 Constitution of the Federal Republic of Nigeria as amended*** and ***section 153 of the Electoral Act, 2010 as amended***.

Being a subsidiary legislation, the parties are not under any obligation to tender the Guidelines because by virtue of *section 122(2) (a) of the Evidence Act, 2011*, the Courts are enjoined to take judicial notice of: ***“all laws or enactments and any subsidiary legislation made under them having the force of law now or previously in force in any part of Nigeria.”*** So the provisions of the Guidelines can be cited in court without tendering it just as other laws and rules are cited without tendering them. The authorities on the point are legion but see the following decisions: *OKECHUKWU & ANOR v. ONYEGBU & ORS (2008) LPELR-4711(CA)*; *EZEADUKWA V. MADUKA (1997) 8 NWLR (part 16) 655 at 669 paragraphs G - H; 671 paragraphs D - E*; *ADUDA V. OKAFOR (2004) 12 WRN 102 at 125*; *AJADI v. AJIBOLA (2004) 16 NWLR (part 898) 91 at 170 paragraphs. E-F.*

On the margin of lead principle, *Paragraph 45(b) of the INEC Regulations* stipulates thus:

“(b) Where the margin of lead between the two leading candidates is not in excess of the total number of registered voters of the Polling Units where election was cancelled or not held in line with sections 26 and 53 of the Electoral Act, the Returning Officer shall decline to make a return until polls have taken place in the affected Polling Units and the results incorporated into the new Form EC 8C(1) and subsequently recorded into Form EC 8E(1) for Declaration and Return.”

From the evidence adduced at the trial, the margin of lead between the 1st Respondent and the 1st Petitioner is 1,334 votes. In the Petition the total number of registered voters in the six Polling Units that were cancelled was stated to be 4,433. The 1st Petitioner and the PW 2 in their depositions which they adopted at the trial also stated that the total number of registered voters in the six Polling Units was 4,433.

However when one Mohammed Tukur Riskuwa (RW 1) testified as a witness for the 1st and 2nd Respondents, the learned counsel for the Petitioners cross examined him meticulously on each of the voters’ register of the six polling units with particular reference to the number of registered voters in each of them. His answers under cross examination are quite revealing. He stated as follows:

“The PDP candidate scored 17,565 and the APC candidate scored 16,233. The difference in the scores is 1,332. I see Exhibit PA3 it is the register of voters for polling unit 008 Sarkin Yaki. The number of

registered voters in this Polling unit is 465. I see Exhibit PA1; the total number of Registered voters is 1,075 for Danhili Hubbare polling Unit. I see Exhibit PA2 for Gidan Mahe Hubbare 007, the registered voters is 180. I see Exhibit PA 5 for Mamman Dan Auta 009 Polling unit, the registered voters is 1040. I see Exhibit PA4 for Ofishin Hakimi 006 polling unit, the registered voters is 697. I see Exhibit PA6 for Shiyar Dan Farijo B 009 polling unit, the total number is 530 but I observed that at the front page of Exhibit PA6 the figure listed in the summary is 1078 registered voters. I see Exhibit PC page 27 paragraph B in the six polling units where the elections were cancelled no supplementary elections were held before the results were released.

From the analysis of the voters' register as revealed in the evidence of the RW 1, the sum total of all the registered voters in the six polling units comes to 3,986. This is less than the figure of 4,433 as alleged by the Petitioners. However, this reduced figure is still higher than the margin of lead which is 1,334 votes.

Thus, it is evident that the cancellation of results in the six Polling Units substantially affected the overall result in the Constituency. A re-run election conducted in the six Polling Units can attract over 3,000 votes which will lead to an increase of votes that may affect the outcome of the entire election.

In such a situation, by virtue of the combined provisions of ***section 53 of the Electoral Act, 2010*** and ***Paragraph 45(b) of the Guidelines***, the 3rd Respondent was under a statutory obligation to decline to make a return, and to conduct re-run elections in the affected Polling Units. After the re-runs, they would incorporate the results of the re-run elections into the appropriate form before the declaration of the final results. The failure on the part of the 3rd respondent to apply these statutory measures amounted to a substantial non-compliance with the provisions of the Electoral Act and the INEC Guidelines .See: ***BIYU & ANOR v. IBRAHIM & ORS (2005) LPELR-7450(CA)***; and ***APC & ANOR V. PDP & ORS (2015) LPELR-41768(CA) (P. 15, paras. C-E)***

In the face of the evidence and our findings, we are of the view that the election conducted by the 3rd respondent for the office of member of Sokoto State House of Assembly for Sokoto North II State Constituency of Sokoto State was inconclusive and the declaration of the 1st respondent as the winner of the said election was quite premature. Thus, a supplementary election should be conducted

in the six polling units where elections were cancelled before a final declaration of the result can be made by the 3rd respondent.

Before we conclude this judgment we must not fail to condemn the nonchalant attitude of the 3rd Respondent in these proceedings. Apart from the fact that the 1st and 2nd Respondents are the parties directly affected by the outcome of the petition, on the face of the Petition, the issues were more seriously joined between the Petitioners and the 3rd Respondent. As a matter of fact, all the reliefs sought by the Petitioners in this petition are essentially against the 3rd Respondent.

In the face of weighty allegations against them, they remained mute without any explanation whatsoever. They did not lead any evidence. Even at the address stage they failed to file any address but chose to rely on the address of the 1st and 2nd Respondents. We wonder what they meant by that when they did not lead any evidence to discharge the burden of proof which was on them to prove facts within their peculiar knowledge. The decision of resting or relying on the address of the 1st and 2nd Respondents was like building a castle in the air.

It is settled law that the address of counsel cannot be a substitute for evidence. In the case of: *Vassilev vs. Paas Industry Ltd. (2000) AFWLR (Pt.19) 418*, the Court of Appeal restated the position thus:

“Cases are not determined on the address of counsel but on credible evidence adduced at the trial. No amount of brilliance in a final address can make up for the lack of evidence to prove and establish or to disprove a point in issue. See also: Sanyaolu vs. INEC (1997) 7 NWLR (Pt.612) 600 at 611.”

In the immortal words of *Lord Denning Master of the Rolls* in the classical case of: *MACFOY VS UAC LTD 1962 AC 153*:

“...You cannot put something on nothing and expect it to stay there. It will collapse.”

That is how the defence of the 3rd Respondent collapsed in this case due to gross ineptitude on their part. This is quite unexpected of a statutory body saddled with such salient and weighty constitutional responsibilities.

On the whole the two Issues for Determination are resolved in favour of the Petitioners. Having resolved all the Issues in this Petition in favour of the Petitioners, the Petition succeeds and the reliefs are granted as follows:

- (a) The election conducted by the 3rd respondent for the office of member of Sokoto State House of Assembly for Sokoto North II State Constituency of Sokoto State is declared inconclusive;*
- (b) The declaration of the 1st respondent as the winner of the said election conducted by the 3rd respondent for the office of member of Sokoto State*

House of Assembly for Sokoto North II State Constituency of Sokoto State on the 9th day of March, 2019 was premature and undue;

- (c) The 3rd Respondent is hereby directed to conduct a supplementary election or a re-run election in the 3 polling units of Sarkin Musulmi B ward and in the 2 polling units of Magajin Garin A ward as well as in 1 polling unit of Magajin Garin B ward of Sokoto North II State Constituency of Sokoto State where elections were cancelled and thereafter, the results of the said re-run election be taken into account by the 3rd respondent before a final declaration of the winner of the said election in the said constituency is made by the 3rd respondent;*
- (d) That the certificate of return hitherto issued by the 3rd respondent to the 1st respondent be withdrawn forthwith pending the conduct of the said supplementary election or a re-run election in the 6 polling units spread across the 3 wards of Sokoto North II State Constituency of Sokoto State; and*
- (e) The costs of N20, 000.00 (twenty thousand naira) is awarded against each of the 1st, 2nd and 3rd Respondents in favour of the Petitioners.*

HON. JUSTICE P.A. AKHIERO
CHAIRMAN

HON. JUSTICE A.N. YAKUBU
1ST MEMBER

HIS WORSHIP S.T BELLO
2ND MEMBER

COUNSEL:

1. CHIEF J.E.OCHIDIPETITIONERS
2. ANAYO ILO ESQ.....1ST & 2ND RESPONDENTS
3. AMINU ALHASSAN ESQ.....3RD RESPONDENT