

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

BEFORE:

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

PETITION NO: EPT/SKT/HR/10/2019:

ELECTION TO THE OFFICE OF MEMBER, HOUSE OF REPRESENTATIVES
FOR ILLELA/GWADABAWA CONSTITUENCY HELD ON 23RD DAY OF
FEBRUARY 2019

BETWEEN:

1. PEOPLES DEMOCRATIC PARTY (PDP) } PETITIONERS
2. HALIRU GARBA GIDAN HAMMA }

AND

1. ALL PROGRESSIVES CONGRESS (APC) } RESPONDENTS
2. BALARABE SALAME ABDULLAHI }
3. INDEFENDENT NATIONAL ELECTORAL }
COMMISSION }

JUDGEMENT

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

This is a Judgment in respect of an election Petition filed on the 17th of March, 2019 challenging the election and return of the 2nd respondent on the

platform of the 1st Respondent to the seat of Member House of Representatives representing Illela/Gwadabawa Federal Constituency of Sokoto State held on the 23rd February, 2019.

At the said election, the 2nd Petitioner who was sponsored by the 1st Petitioner, scored a total number of 34, 981 votes, while the 2nd Respondent scored 47, 781. Consequently the 3rd Respondent declared the 2nd respondent as the winner of the said election and issued a Certificate of Return to him.

Dissatisfied with this declaration by the 3rd Respondent, the petitioners filed this instant petition before this election Tribunal on the 17th day of March, 2019 but amended with leave of Tribunal on the 16th Day of May 2019 to challenge the said declaration.

The grounds of this Petition are as follows:-

- A. The 2nd Respondent was not duly elected by majority of lawful votes cast at the election held on the 23/02/2019 in the Illela/Gwadabawa Federal Constituency for the House of Representatives.
- B. The election was invalid by reason of corrupt practices.
- C. There was no accreditation of voters in all the Polling units as Card Readers were never used.
- D. The number of votes cast exceeded the number of Registered voters particularly in the following polling units:-
 - (a) That at Yargada code 007 of Gidan Kaya ward of Gwadabawa Local Government Area of Sokoto State, one Yusuf haruna Yargada was the polling agent of the Petitioners. That the election commenced at about 10:00 O'clock in the morning that initially when election commenced the Card Reader was put to use but was abandoned about 1 O'clock in the afternoon. That after the abandonment of use of Card Reader for verification and accreditation of voters, permanent voters card were introduced by persons and were allowed to vote without proper accreditation and/or verification. That the agent of the petitioners protested against this anomaly and the Presiding officer upheld the objections which led to a free for all fight. The All Peoples Congress (A.P.C.) supporters took advantage of the absence of the presiding officer to vote without accreditation and or verification. That there was over voting as Reflected in the Independent National Electoral Commission declared result of the Polling units as the number of voters declared exceeded the number of registered voters. That this was what happened in almost all the polling units in the ward.

- (b) At Zarna Tsolawa ward, the Card Reader malfunctioned to verify the accredited voters before they were issued ballot papers to vote in most of the polling units. That Aminu Garba, the ward supervisory Agent for the petitioners in Zarna Tsolawa ward, and the PDP agent of Gidan Alhassan polling units were Abducted by two persons in Army uniforms and taken to Ambarura a place about eleven kilometers from their ward at about 11 O'clock in the morning and were only released about six hours later that by the time they were released, voting had been concluded. That particularly at Zabagin Tantari unit 011 of Zarna Tsolawa ward Illela Local Government Area of Sokoto State, votes were inflated by indiscriminate thumb printing without proper accreditation and or verification that this was what happened in almost all the polling units in the ward.
- (c) At Chimola Kudu code 003 Gwadabawa Local Government Area of Sokoto State, the election commenced at about 09: 30 O'clock in the morning. The Card Reader malfunctioned after only five persons were verified and accredited, and the other voters were allowed to vote without proper accreditation and or verification by Card Reader or thumb printing of the voters Register and supply of phone numbers by the voters. The agent of the petitioners protested this anomaly and insisted that the correct thing be done but was ignored by both the presiding officer and the policemen on duty. That particularly at Chimola Kudu code 003 Gwadabawa Local Government Area of Sokoto state votes were inflated by indiscriminate thumb printing without proper accreditation and or verification.
- (d) At Ambarura Makaranta code 024 Gidan Hankan ward Illela Local Government Area, voters were not properly accredited or verified with Card Readers as the persons who could not be verified with Card Readers were allowed to vote. The agents of the petitioners protested this anomaly and insisted that the correct thing be done but was ignored by both the presiding officer and the Policeman on duty. Particularly at Ambarura Makaranta code 024 of Gidan Hankan ward of Illela Local Government. Votes were inflated by indiscriminate thumb printing without proper accreditation and or verification.
- (e) At Hargawa code 006 Illela Local Government, the Card Reader malfunctioned after only five persons were verified and accredited and other voters were allowed to vote without proper accreditation and or verification by Card Reader or thumb printing of voters Register and supply of phone numbers by the voters. The agent of the petitioners protested this anomaly and insisted that the correct thing be done but was ignored by both the presiding officer and the policeman on duty particularly at Hargawa code

006 Illela Local Government votes were inflated by indiscriminate thumb printing without proper accreditation and or verification.

- (f) In the Danfili Agajira polling unit in Asara Kudu Registration Area, there was a deviation of 8 votes. There were 174 Ballot papers used but only 168 votes were recorded. The 8 extra votes in favour of the Petitioner were not recorded.
 - (g) In Magaji Shiyar Tsohuwar Galadima polling unit there were also a deviation of 8 votes. The number of Ballot papers used was not recorded. The total votes cast 377 but only 369 votes were recorded.
 - (h) In Shiyar Rafi S/Wadata in Kamalo Registration Area in Illela Local Government Area, 325 Ballot papers were used. The total votes allegedly cast was 281.
Total scores stood at 281. The 44 other Ballot papers were in favour of the Petitioner but were carefully excluded.
 - (i) In Gidan Ajayi Polling station in Gidan Ajayi Tozai Registration Area in Illela Local Government Area, 158 persons were accredited to vote. 137 were persons were allowed to vote while 21 persons who desired to vote for the petitioners were not allowed to vote after accreditation.
 - (j) In Tolai Mamman Hakimi Polling station in the Tozai Registration Area 805 Ballot Papers were used in a unit where there were only 368 registered voters.
 - (k) In Dan Boka Gidan Tudu in the Araba registration area of Illela Local Government, there were manipulation of votes. There were 246 accredited voters. 298 Ballot papers were used when 246 persons were accredited to vote. The total valid votes were recorded as 248. The total Recorded votes were 198.
 - (l) In Shiyar Bawa Makaranta in the Illela Registration Area vote cast was 601. The total scores recorded was 591.
 - (m) In Tsohuwar Magaji Shiyar Galadima polling unit in Gwadabawa Registration Area, there was manipulation of votes. 377 persons were allegedly accredited to vote. Number of unused Ballot papers stood at 377 spoiled Ballot papers were 123. The total number of used ballot papers stood at 378.
 - (n) In Danelli Agajiba in Asaba Kudu Registration Area of Gwadabawa Local Government Area, 176 persons were accredited to vote. Only 168 votes were recorded after 174 people validly voted.
- E. The 2nd Respondent was falsely allegedly to have scored 47,781 votes.
F. The 2nd Petitioner was alleged to have scored 34,981 votes.
G. The votes of the 2nd Petitioners were reduced to create victory for the 2nd Respondent.

H. The petitioners will rely on all forms used in the election particularly forms EC8A for Illela/Gwadabawa Federal Constituency House of Representatives election held on the 23rd February, 2019. These Grounds are contained at pages 2-5 of the petition.

It is based on these grounds that the petitioners have prayed this Tribunal for the following Declarations:-

1. That Balarabe Salame Abdullahi was not duly elected/Returned and that his election was void.
2. Haliru Gidan Hamma was duly elected by majority of the votes cast and ought to be returned.
3. A Declaration that Independent National Electoral Commission should issue a certificate of Return to the 2nd Petitioner.

The Declarations sought are contained in paragraph A-C at page 5 of the petition.

On their part the Respondents denied the petition and file their separate Replies.

The 1st Respondents Reply to the Petition was filed on the 31st day of March, 2019. While the 2nd Respondent filed his Reply together with a Notice of Preliminary objection. The Reply was filed on the 1st day of April, 2019 while the notice of Preliminary objection was filed on the 25th day of April, 2019. The 3rd Respondent Reply and notice of preliminary objection were filed on the 9th day of April, 2019.

Upon the denial of the petition by the Respondents and to prove their petition as required by law the petitioners called 5 witnesses, including the 2nd petitioners himself. Petitioners also tendered exhibits PP, PP1 to PP11 and exhibit PPA.

The PW1 is one Yusuf Haruna Yargada. He lives in Yargada village in Gwadabawa Local Government of Sokoto State. He made a deposition on Oath in respect of this petition which he adopted as his evidence. The content of this deposition is mainly to the effect that he was a polling agent to the petitioners in the House of Representatives election at Yargada code 007 of Gidan Kaya ward of Gwadabawa Local Government. That the election commenced with Card Reader put to use, and later abandoned in the afternoon after the use of Card Reader for verification, and accreditation, was abandoned. The used of permanent voters card were introduced by persons who were allowed to vote without proper accreditation, and verification. That he protested against these anomalies and the presiding

officer upheld the objection which led to a free for all fight. Following this, the All Progressives Congress (APC) members took advantage of the absence of the presiding officer to vote without accreditation and or verification. That there was over voting as reflected in the Independent National Electoral Commission declared result of the polling unit as the number of votes declared exceeded the number of registered voters. That this was what happened in almost all the polling units in his ward.

Under cross-examination by Nuhu Adamu Esq. Counsel to the 1st respondent, witness said he made his deposition in Hausa Language and was translated to him in English Language by one Khalid Mohammed.

He left the Hausa version at home that he also signed his statement. When further cross-examined by Solomon Alimasunya Esq. learned counsel to the 2nd Respondent, witness stated that he voted during the election on that date. That voting which started at 10:00 am continued into the night but without Card Reader. After the election, he refused to sign the result sheet because there was over voting in that polling unit. That the presiding officer was present all through to the end of the election. That there was restriction of movement on that date and so he can only speak of what happened in his polling unit. Also when cross-examined by M.K Abdulkadir Esq. counsel to the 3rd Respondent, witness stated that the registered voters in his polling units are about 700 voters. That he cannot remember the number of accredited voters.

The PW2 is one Yahuza Garba. He lives at Ambarwa Village in Illela Local Government Area of Sokoto State. He was also the polling agent of the petitioners in the House of Representatives election at Ambarura Makaranta code 024, Gidan Hankan ward of Illela Local Government Area of Sokoto State. He made a deposition on Oath which he adopted as his evidence at the hearing of the Petition. In this deposition he stated that voters were not properly accredited or verified with Card Readers as persons who could not be verified by Card Readers were allowed to vote. His protest about this anomaly was ignored by the Presiding officer, and the policeman on duty.

He stated that at Ambarura Makaranta code 024 of Gidan Hanka ward, votes were inflated by indiscriminate thump printing without proper accreditation or verification.

Under cross-examination by Mr. Nuhu Adamu counsel to the 1st Respondent witness stated that he made his statement in English Language, but later admitted that he made same in Hausa Language. When further cross-

examined by Mr. Solomon Alimasunya counsel to the 2nd Respondent, witness stated that on the date of the election, he was the agent of PDP at Ambarura 024 polling unit. He did not vote on that date and he did not go anywhere because of restriction of movements. He was given result sheet to sign, but he refused to sign because he did not agree with it. He agreed that there were security agents including civil Defence at the polling unit. When further cross-examined by M.K Abdulkadir Esq. counsel to the 3rd Respondent, witness stated that he told someone to write his deposition for him. He stated that the number of registered voters in his polling units are 535. That no voter was accredited. He further stated that there are 28 polling units in Gidan Hanka ward.

Kagara Suleiman is the PW3. He lives in Kagara in Gwadabawa Local Government. He adopted his statement on Oath filed in the Tribunal as his evidence. He was the polling agent of the petitioners in the House of Representatives election at Chimola Kudu code 003 Gwadabawa Local Government. He stated that only five persons were verified and accredited due to Card Reader malfunction. Consequently the voters were allowed to vote without proper accreditation and or verification by the Card Reader or thumb printing of voters Register and supply of phone numbers by the voters. The rest of the deposition is similar to that of PW1, and PW2.

Under cross-examination by Mr. Solomon Alimasunya witness stated that Kagara and Chimola are together. He stated that he made his statement and someone recorded it for him. He stated further that he was at his polling unit throughout the election, and did not go anywhere and therefore may not know what transpired in other polling units. Also when cross-examined by Mr. Abdulkadir M.K, counsel to the 3rd Respondent witness stated that there are 624 registered voters in his polling unit.

PW4 is one Babayaro Junaidu. He lives at Hargawa Village in Illela Local Government Area of Sokoto State. He was a polling agent of the petitioners in the House of Representatives Election at Hargawa code 006 Illela Local Government Area of Sokoto State.

He also made a Deposition on Oath which he adopted during the hearing as his evidence. This deposition is similar in content with those of the PW1-PW3.

Under cross-examination by learned counsel to the 2nd Respondent Mr. Solomon Alimasunya, witness stated that on the date of the election, he was at the Hargawa polling unit as a party agent. He was at the polling unit from

the beginning of voting to the end. He did not go to any another polling unit. He did not sign the result sheet after the election.

The 2nd petitioners testified for himself. He made a deposition on Oath which he adopted at the hearing of the petition as his evidence. He stated that he is a member of the 1st petitioner that sponsored him to contest the election into the House of Representatives for the Illela Gwadabawa Federal Constituency wherein the 2nd Respondent was returned winner. In the deposition the 2nd Petitioner gave a catalogue of electoral infringement which includes over voting, inflation of votes, casting of votes without proper accreditation of verification. These depositions are contained in paragraph 10(a)-10(N) of the 2nd Petitioners statement on Oath.

He was shown exhibits PP1-PP11 which he identified and attempted to relate them with some paragraphs in his deposition.

Under cross-examination by Mr. M.A. Sambo counsel to the 1st Respondent, witness stated that there are 340 polling units in Illela/Gwadabawa Federal Constituency and that he is complaining of about eleven polling units. That the difference in the votes scored between him and the 2nd Respondent is 12, 800. He does not know the total number of his votes added to the 2nd Respondent.

He stated further that on the election day, he was at his polling unit at Shiyar Hakimi Gidan Hamma.

His polling unit is not part of his complaint. He admitted that other information outside his polling unit was supplied to him by his agents.

Further cross-examination by counsel to the 2nd Respondent Mr. Solomon Alimasunya, witness stated that he voted at his polling unit 009 Shiyar Garbe. Due to restriction of movement, he went home and did not visit any other polling unit on the election day.

He said in some polling units, his agent were driven away and his votes given to the APC. He admitted that what he deposed to in his statement about what transpired at the polling units was what his agent told him. He also stated under cross-examination by M.K. Abdulkadir, counsel to 3rd Respondent that he does not have any contrary result which is different from that of INEC.

At the end of the Petitioner's case, the Respondents opened their defence.

One Aminu Sahabi Gwadabawa testified for the 1st Respondent. He claimed to have made a deposition on Oath in this Tribunal on the 31st March, 2019. He adopted this deposition as his evidence.

Under cross-examination by G.O. Uwadiae learned counsel to the petitioners, witness stated that he was the returning agents for the APC. That they had polling agents in all the polling units who are all alive.

At the end of the case for the 1st Respondent, the 2nd Respondent opened his defence. He testified for himself. He said he made a deposition in this Tribunal on the 1st April, 2019 which he adopted as his evidence.

In his said deposition, he denied all the electoral infringements listed in paragraphs 10(a)-10(N) of the 2nd petitioner's deposition.

Under cross-examination by G.O. Uwadiae counsel to the petitioners, witness stated that the Respondents had polling agents in all the polling units. He admitted that what he stated in his deposition was what his agents told him.

At the end of the case for the 2nd Respondent, the 3rd Respondent's counsel Mr. M.K. Abdulkadir told the Tribunal that the 3rd Respondent had elected not to call any witness.

At the Pre-hearing session the Tribunal ordered for the filing of issues for determination for the Petitioners, a sole issue was identified by their counsel Mr. G.O. Uwadiae to wit:

“Whether the Petition has merit.”

For the 2nd Respondents two issues were identified by their counsel Mr. Solomon Alimasunya to wit:

1. Whether the petitioner has proved that the election to the seat of Member of the House of Representatives for Illela/Gwadabawa Federal Constituency was invalid by reason of corrupt practices.
2. Whether the Preliminary objection file by the 2nd Respondent raised issues to warrant the dismissal of the entire petition.

For the 3rd Respondent two issues were also identified namely:-

- (1) Whether there exist a competent petition to vest this Honourable Tribunal with the Jurisdiction to entertain same

(2) Whether the 3rd Respondent had conducted the February 23rd, 2019 National Assembly Election in Illela/Gwadabawa Federal Constituency in substantial compliance with the provisions of the constitution of the Federal Republic of Nigeria 1990 (as amended), the Electoral Act 2010 (as amended), and the INEC Guidelines for 2019 General Election.

Upon a careful perusal of all the issues filed, the tribunal distilled the following issues for determination in this petition:-

- (1) Whether the Petitioners have led sufficient and credible evidence to prove that the 2nd Respondent was not duly elected or returned by majority of lawful votes cast at the election held on the 23rd day of February, 2019 for the office of member of House of Representatives for Illela/Gwadabawa Federal constituency of Sokoto State.
- (2) Whether the Petitioners have led sufficient and credible evidence to prove that the election of the 2nd Respondent was invalid by reason of corrupt practices and
- (3) Whether the Petitioners have led sufficient and credible evidence to prove that the 2nd Petitioner was duly elected or returned by majority of lawful votes cast at the election held on the 23rd day of February 2019, for the office of member of House of Representatives for Illela/Gwadabawa Federal Constituency of Sokoto State.

However, before going into the arguments on the 3 issues raised for determination, it is appropriate at this stage to dispose of the Preliminary objection raised by the Respondents to the hearing of their petition.

The 2nd Respondent Preliminary objection is contained in paragraph 10 page 4 of his Reply to the petition filed on the 1st day of April 2019. The 2nd respondent then later on filed a separate Notice of Preliminary objection on the 25/4/19.

The ground of the objection as stated in the notice are as follows:-

- (1) The petition is incompetent and incurably defective.
- (2) No cause of Action has been disclosed in the petition.
- (3) The Tribunal lacks the jurisdiction to entertain the petition.

The particulars given for the grounds of objection is that the whole grounds of the petition do not have any facts to support them. The failure to provide facts for the ground is a violation of paragraph 4(1)(D) of the 1st Schedule to the Electoral Act 2010(as amended) which is a mandatory provision.

The Preliminary objection was not argued but adjourned to be heard alongside the petition. Mr. Solomon Alimasunya learned counsel to the 2nd Respondent later argued the preliminary objection in his final Written Address filed on the 24/7/2019 which was adopted on the 30/8/19.

In the said written address, counsel argued that the grounds of petition appearing on page 2, paragraphs A,B, and C, have no facts to support them. He submits that it is clearly a violation of paragraph 4(1)(D) of the 1st Schedule to the electoral Act, 2010 as amended, and ought to be struck out. He cited in support the case of **OJUKWU VS. YARADU'A (2008) 4 NWLR (Pt. 1078)435 at 464 para D-D.**

He argued further that even though paragraphs D(a)-D(E) at pages 2-4 alleged over voting, yet the allegations were not backed up with facts and therefore vague,, generic and fact sourcing. In view of this, counsel took the view that no cause of action has been made out by the petitioners.

He relied on the case of **OJOKWU VS. YARADU'A(SUPRA).**

It was counsel submission that the petitioner did not state the holding of the election which is a mandatory requirement of the law that in filing a petition, the contents must comply with the provisions of paragraph 4(i) (a-d) of the 1st schedule to the electoral Act 2010 (as amended). That a careful look at the entire petition will reveal that the petitioners failed to state the mandatory holding of the election. He did not state his scores and that of the 2nd Respondent. According to counsel this amounts to a fatal blunder. He relied on **NNADIKE VS. ONUERIRI (unreported) APPEAL NO. CA/OW/EPT/1/15, also CAN VS. JANG(2009) 4NWLR(pt. 1132)475 at 511** para F-G. Because of the above, counsel urged as to dismiss the petition.

Mr. M.K. Abdulkadir argued the preliminary objection for the 3rd Respondent. He submitted that election petition are sui Generis and the statute and Rules Regulating their filing and hearing must be strictly complied with. He cited in support the case of **AMBODE VS. AGDAJE(2016)ALL FWLR(pt 814)120 at 142 H.** That where a petitioner fails to comply with the mandatory provision of the law his petition is liable to be struck out in limine. It was counsel's submission that the petition in the instant case suffers a fundamental defect, and therefore liable to be struck out. According to counsel, these defect are:-

- (i)Failure to comply with the provision of paragraph 4 of the 1st Schedule of the electoral Act 2010 as amended.

(ii) The petition does not contain cognizable grounds in support of the petition under S. 138(I)(a)-(D). of the electoral Act 2010 as amended.

That the two provisions are mandatory and failure to comply renders the Petition incompetent and liable to be struck out.

The petitioner on his part filed a Reply to the Preliminary objection raised by the 3rd Respondent. It was filed on the 30th August, 2019. He submitted that a cursory look at the amended petition filed on the 14th May 2019, will reveal that the petitioners complied with paragraph 4 of the 1st Schedule to the Electoral Act 2010 as amended. He argued that page 1 of the amended petition clearly shows the parties interested in the Petition, the scores of the candidate, and the facts that 2nd Respondent was returned as the winner of the election. He argued further that page 2 of the amended petition shows the four grounds in which the petition was premised which are all in full compliance with section 138(I) of the electoral Act, 2010 (as amended).

He contends that the authorities cited by the 3rd Respondent is good law but did not support the case of the 3rd Respondent.

He contended further that the grounds of the petition stated by the petitioner is cognizable under the electoral Act, 2010 (as amended). He submitted that a Petitioner is required to state in clear terms the facts given rise to a grounds upon which the petition is based as decided in the case of **IKPEAZU VS. OTTI(216)8NWLR(pt)15-13 at 38**. That the petitioner in this case has complied with the case law cited above. He submitted finally that the objection raised by the respondents are tendered to waste judicial time. He urged the tribunal to overrule the objection.

We have carefully considered the arguments on the Preliminary objection. The objection centers on the content of a petition particularly on paragraph 4(1)(d) of the 1st Schedule to the electoral Act, 2010 as (amended) and Section 138(I)(a)-(d) of the same Act. The said paragraph provides as follows:-

Paragraph 4 (1) “An election petition under this Act shall state clearly state the facts of the election petition and the ground or the grounds on which the petition is based and the relief sought by the petitioner.”

While section 138) (I) of the said Act provides:-

“An election may be questioned on any of the following grounds, that is to say:-

- (a) That a person whose election is questioned was at the time of the election, not qualified to contest the election.
- (b) That the election was invalid by reason of corrupt practices or non compliance with the provision of this act.
- (c) That the Respondent was not duly elected by majority of lawful votes cast at the election; or
- (d) That the petitioner or its candidate was validly nominated but was unlawfully excluded from the election.

The Respondent’s counsel have argued that the grounds of the petition in the instant petition are bereft of facts and not cognizable under section 138(1)(a)-(d). that the two provisions are mandatory. We have considered the grounds stated in the instant petition. They are listed under GROUND OF PETITION at page 2 of the petition as follows:-

- a) The 2nd Respondent was not duly elected by majority of lawful votes cast at the election held on the 23/2/19 in Illela/Gwadabawa Federal Constituency in to the House of Representatives.
- b) That the election was invalid by reason of corrupt practices.
- c) There was no accreditation of voters in all the polling units as Card Readers were not used.
- d) That the number of votes cast exceeded the number of Registered voters particularly in the following polling units:-
Paragraph... d(a)-(n) stated list of polling units where over voting took place.
- e) The 2nd Respondent was falsely alledged to have scored 47, 781 votes.
- f) The 2nd Petitioner was alledged to have scored 34, 981 votes.
- g) The votes of the 2nd Petitioner was reduced to create victory for the 2nd Respondent.

It is clear from the above, that paragraph a)-g) were all stated to be grounds. What is also clear from the above grounds is that grounds a)-b) have no supportive facts or particulars while paragraphs c, d, e, which are supposed to be facts or particulars of a ground were themselves made grounds of petition. It must be stated that the arrangement is clumsy and puts the tribunal on the unmerited duty of scouting for grounds or separating grounds from facts. We agree with the submission of learned counsel to the respondents that the grounds of the petition has no supportive facts. It is

trite law that a petitioner is required as a matter of necessity to state in clear terms the facts given rise to a ground or grounds upon which he based his petition. Anything short of that renders the grounds vague, ambiguous and incomprehensible. Where such a situation presents itself, the tribunal has no alternative than to strike out the ground of the petition. See **IKPEAZU VS. OTTI (2016)8 NWLR (pt 1513) at 38**. We further agree with counsel to the Respondent that the provision of paragraph 4 (I)(d) is mandatory and failure to comply makes the petition defective and may be struck out by the tribunal or Court. See **UZODINMA VS. UDENWA(2004)1 NWLR (pt 854) 303** also see **JEMIDE VS HARRIMAN (2004)1 FWLR(233) 1765, AT 1778** to the effect that paragraph 4 of the 1st Schedule to the electoral Act is mandatory and non compliance renders the petition null and void. That they are condition precedent to a valid presentation of a petition.

The Respondents have also argued that the ground of petition in the instant petition is not cognizable under section 138 of the electoral Act (as amended) and ought to be struck out.

Again we have carefully considered the grounds of the instant petition grounds c, d, e, f, g, do not come under any of the provisions of section 138(I)(a)(b)(c) and (d) of the electoral Act. The general position of the law is that a petitioner must copy the wording of the electoral Act in couching the grounds of his petition. Failure to copy the language used in the electoral act renders the ground incompetent see **OGBORU VS. IBORI (2004)7 NWLR (pt. 871)192, 223-224**. Also **KURFI VS. MOHAMMED (1993)2 NWLR (pt. 227)602 at 616**. **OBANSO VS. YUSUF (2004)9NWLR (pt. 877) 144 at 222**. However the general position of the law has an exception namely:-

A petitioner can copy word for word the language of the provision of section 138 of the Act as his grounds or may coin the grounds in his own language but must be within the parameters set out by the provision of section 138 (I) (B). We agree with Respondent's counsel that the general averment by the Petitioner is an attempt to expand the provision of the law, and clearly a case of failure to comply with the provision of the law and therefore not within the general intendment of the Act.

Election Petitions are sui generis, as such any error, no matter how slight in complying with the provision of the electoral Act is fatal to the petition. See **KAZEEM VS. KOLA (2012) 1 NWLR (pt. 1282)543 at 559**.

Consequently we are of the view that this petition ought to be struck out for having been filed in violation of paragraph 4(I)(d) of the 1st Schedule to the electoral Act, 2010 as amendment, and section 138(I) of the same Act.

The Preliminary objection is upheld and hereby succeeds, but in case we are in error in our view that the Preliminary objection succeeds, we shall now consider the petition on its merit.

Upon the formulation of issues for determination by the tribunal, counsel for all the parties filed written addresses where in the issues were argued. We shall now consider arguments on the issues.

In his address, learned counsel to the petitioners, Mr. G.O. Uwadiae told the tribunal that he intends to argue the three issues together. He submitted that the evidence of PW1 was not shaken by cross-examination as it was merely concerned with the language the witness make his statement which was clearly signed with a signature. He contends that the evidence of 2nd petitioner who identified, and attached the exhibits to the relevant paragraph of the petition was also not shaken by cross-examination. Counsel argued that the authorities cited by the Respondents that the documents were dumped on the tribunal do not apply in this case. He contends that the defence by the 1st and 2nd respondents that the petition is incompetent, and over voting not proved, centers on technicalities.

He urges the tribunal to do substantial justice and avoid technicalities. He submits that where one of the parties fail to join issue with the other parties as is in this case, the tribunal is obliged to accept the petition as proved and make the necessary declaration. He relies on the case of **OLUYEDE VS. ACCESS BANK PLC. (2015)17 NWLR (pt. 1489) 596**. He drew the tribunal attention to the fact that the petitioner's witnesses were party agents means the Respondent's witnesses were not eye witnesses to the breach of guideline during the election. According to counsel their evidence is hearsay evidence which is not admissible. He cited in support the case of **LADOJA VS. AJIMOBİ & ORS. (2016)10 NWLR (pt. 1519)** he urged the tribunal to accept the evidence of the petitioners as a true reflection of what transpired in the election. It was counsel's further submission that the illiterate jurat does not make a document null and avoid. He relied on the case of **WILSON VS. OSHIN (2009)9 NWLR 442**. In conclusion, counsel submitted that the petitioners have led sufficient and credible evidence to prove that the 2nd Respondent was not duly elected or returned by majority of lawful votes cast at the election. He urge the tribunal to resolve the issues

raised in the petition in favour of the petitioners and grant all the reliefs sought.

ARGUMENT BY THE 1ST RESPONDENT'S COUNSEL

1st Respondent's counsel Mr. Nuhu Adamu also filed a written address, like the petitioner's counsel, 1st Respondent's counsel did not argue his address issue by issue. The issues were argued together. In his address, counsel referred the tribunal to the grounds of petition that is grounds A, B, C, and D and submitted that grounds 1 and 2 though cognizable under the electoral Act, 2010 (as amended), none of them is supported by any particulars in support. He submitted that this is a violation of the electoral Act 2010 (as amended), and the extant law. He cited in support the case of **WADA & ORS. VS. BELLO & ORS (2016) LPELR-41263**. Counsel further argued that the remaining two grounds that is 3 and 4 of the petition are not cognizable by the electoral Act by virtue of section 138(I)(a),(B),(c) and D of the electoral Act 2010 (as amended). He argued that paragraph 'C' of the grounds which complain of non used of Card reader which is to be a particular to a ground was made a ground of itself. He submits that the 1st two grounds that are without any averment in their support are incompetent and void. He cited in support **NWANKO VS. YAR'ADUA (2007) LRECN 673** at 697 paragraph A-B also paragraph 4(I)(D) of the 1st Schedule to the electoral Act. 2010 (as amended), **OGWU VS. ARARUME (2007)12 NWLR(pt. 1048)367**.

On whether the petitioners have proved their petition to entitle them to any relief by the tribunal, counsel submitted that in an election petition, the petitioner must succeed on the strength of his case and not on the weakness of the defence. He relied on the case of **NWOBODO VS. ONOH (2004)10 WRN 27 at 41**.

Counsel stated that the petitioners called 6 witnesses and tendered exhibits PA, PP1-PP11 which are certified true copies of forms EC8A II. He argued that forms EC8AII were not pleaded.

That what was pleaded in paragraph D and H in their list of document was form EC8A. That form EC8A II tendered is at variance with petitioners pleading. He submitted that a document which is at variance with pleadings cannot be tendered. He relied on the decided case of **OKEREKE VS. YAR'ADUA(2008)12 NWLR (1100) 95 at 140-141**. He submits further that exhibit P1-P11 were wrongfully admitted. He urges the tribunal to

expunge them. He relied on the case of **BUHARI VS. INEC & ORS. (2008) LPELR-814(S.C).**

Counsel submits further that where the petitioner alleges corrupt practice or non compliance with the electoral Act the standard of proof is prove beyond reasonable doubt and it remains on the petitioner.

He cited in support the case of **ABUBAKAR VS. YAR'ADUA(2008)19 NWLR (pt. 1120)1 at 32. Also BUHARI VS. INEC (2008)19 NWLR (pt. 1120)246 at 260.** Counsel stated that paragraph D (A-G) contains allegations of thuggery, malfunction of Card Readers, lack of proper accreditation centered around 14 polling units, and the petitioner failed to provide their polling unit codes. He contended that the exhibits tendered were dumped on the tribunal without tying them to specific paragraph of the petition.

He submits that the tribunal is not an investigation body and will only act when evidence are properly laid before it. He cited in support the case of **TERAB VS. LAWAN (1992)3 NWLR(pt.231)569** at P. 575 ratio 7, 8, 9. He urged that the petitioners have failed to show the figure representing over voting which is removed will result in victory for the petitioners. Learned counsel further submits that the petitioners must not only prove corrupt practice but must link same to the 2nd Respondent. He relied on the case of **OYEGUN VS. IGBANEDION(1992)2 NWLR(pt. 226)747.** It was also counsel's submission that the petitioners have a duty not only to prove corrupt practices or non compliance but also prove that the corrupt practice and non compliance has substantially affected the result of the election. He relied on the case of **OYEBODE VS. GABRIEL (2012)48 WRN 48 at 102-103.**

In conclusion, counsel urge the tribunal to dismiss the petition with substantial cost.

ARGUMENT BY 2ND RESPONDENT'S COUNSEL.

Counsel to the 2nd Respondent, Mr. Solomon Alimasunya filed a written address in the tribunal which he also adopted as his oral arguments. He told the tribunal that the issues are interwoven and like all his colleagues in this case, he intends to argue all the issues together. Learned counsel argued that the evidence of PW1, one Yusuf Haruna Yargada is contradictory. This is because where as the said witness in his deposition stated that voters took advantage of the absence of the presiding officer to vote without

accreditation the same witness told the tribunal that the presiding officer was present up to the end of the election at the polling unit. Also that even though PW1 gave evidence of over voting, such was not demonstrated with any document. He urges the tribunal to discountenance with the evidence of PW1. On the evidence of Pw2, counsel also urge us to disregard his evidence. This is because PW2 testified that there was inflation of votes by indiscriminate thumb printing without accreditation, but he did not state how he know this, when all the electoral forms were not shown to him to confirm his allegation. On the evidence of PW3 and PW4, counsel contends that their statements on Oath are the same, word for word. He submitted that it is not possible to have two identical statements on what happened in their various polling units in two different Local Governments. He urge the tribunal to hold that the they are not the makers of the statements. Counsel argued further that the list of document pleaded at page 22 of the petition are at variance with the INEC document tendered from the bar which were not pleaded. The effect according to counsel is that they go to no issue. On the issue of non election with majority of lawful votes, counsel argued that the petitioner ought to plead and prove the votes cast at the various polling units, the votes illegally credited to the 2nd Respondents, the votes which ought to have been documented from that of the 2nd respondent in order to see if it will affect the result of the election. Learned counsel drew our attention to the reliefs sought and submitted that they are not grantable. This is as a result of his evidence under cross-examination that he wants the results all cancelled. Counsel submits that the petitioner cannot wish that the results be cancelled and yet benefit from it by the issuance of a certificate of Return to him. Counsel also referred us to the evidence of the 2nd Respondent which was not shaken during cross-examination.

In conclusion counsel urged us to dismiss the petition. However on the adjourned date for the adoption of written addresses, Mr. M.A. Sambo appearing for the 1st Respondent adopted the written address filed by them on the 1st August, 2019.

However learned counsel to the Petitioner, Mr. G.O. Uwadiae, drew our attention to the final address filed by the 1st Respondent and argued that the identity of the counsel who filed the address in not known. That the names of counsel provided at the bottom of the address was not ticked to show the identity of counsel who settle the written address and filed same. He urge us to discountenance the written address.

In Reply, Mr. M.A. Sambo, counsel to the 1st Respondent urge us to disregard the objection. That same is based on mere technicality. That his seal appears at the bottom of the address at the last page of the said address and bears his name. That it was a sufficient requirement.

We have considered the objection raised by petitioners counsel and the reply given by M.A. Sambo. We have also looked at the written final address filed by Mr. M.A. Sambo and the copy given to the learned counsel for the petitioner. It is true that the petitioner's copy of the final address was not endorsed or ticked to show the identity of the counsel who endorsed it. However, upon a careful observation of the copy of the said final address in the court's official file, we observed that the names of M.A. Sambo, counsel to the 1st Respondent, appearing in between two names was ticked to indicate that he was the counsel that endorsed the said process.

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

Consequently the objection is therefore overruled.

We have considered the totality of the evidence before us and the submissions of counsels to the parties. The question to ask is whether the petitioner has proved his case to be entitled to the reliefs sought. The petitioner has the burden of proving his own petition. If he does not do this the petition will be dismissal see **BUHARI VS. INEC (2008)19 NWLR(pt. 1120)246 at 350**. It is only when the petitioner has discharges this burden before the Respondent can become obliged to call evidence in rebuttal. The petitioner must succeed on the strength of his own case and not on the weakness of the Respondent's case. See **APC VS. INEC (2011)18 NWLR (pt. 1278) 493 at 538**.

So how has the petitioner fared in discharging the burden of proof. The 2nd Petitioner testified for himself and called 4 other witnesses. He adopted his

witness statement on Oath filed together with the petition. In paragraph 10(a)-(n) of his deposition, he listed all the malpractice and non compliance that took place during the election in 14 polling units.

The malpractices include over voting, non accreditation, non use of Card Reader, Abduction and Thuggery, inflation of votes, manipulation of votes and disenfranchisement of 21 persons.

Under cross-examination by M.A. Sambo counsel to the 1st respondent, 2nd Petitioner admitted that on the election day, he was at his polling unit. he further admitted that information outside his polling units were supplied to him by his agents. Still under cross-examination by Solomon Alimasunya the 2nd Petitioner also admitted that he did not visit any polling unit on the election day. That what he deposed to in his statement about what transpired at the polling unit was what his agents told him. From the foregoing, it is clear that the content of 2nd Petitioners statement on Oath is hearsay which is not admissible in law, and attracts no weight. See **HASHIDU VS. GOJE (2003)15 NWLR (pt. 843) 852.**

The PW1, 2, 3, and 4 in their statement on Oath stated at the last part of their deposition that the malpractice that happened in their respective polling units was what happened in almost all the polling units in their respective wards. Yet Under cross-examination, each of them admitted that they did not go outside their polling units on the election day. The question is if they did not go outside their polling units it means the information they gave about other polling unit is hearsay. This is an information they gave on Oath which is not true.

This means that the witness may have a penchant of telling lies, and their evidence must be treated with great caution. In fact we find their evidence unreliable.

The 2nd Petitioner stated that there are 340 polling units and he is complaining of 11 polling units. The evidence offered is in respect of 5 polling units leaving six polling units.

Apart from oral evidence, the petitioners also tried to prove their petition with documentary evidence. In this regard, they tendered exhibits PP, PP1-PP11, and PPA. They are mainly polling unit results, that is Forms EC8A, and EC8E. however learned counsel to the 1st Respondent Mr. Nuhu Adamu has urged us to strike out Exhibits PP1-PP11 on grounds that they were wrongly admitted. He submitted that the document admitted were not

pleaded. That what the petitioners pleaded at paragraph (d)(h) and in their list of document are forms EC8A and not EC8AII. That the documents are at variance with the petitioners pleading. We have looked at the exhibits tendered and the relevant portion of the petition. Paragraph D(h) thereof pleaded in general terms and then mention in particular Form EC8A. In the list of document, forms EC8A, EC8E, EC8C, and EC8E were listed. Forms EC8AII was not listed. Any thing that is not expressly mention in the list of things is excluded. We agree with Mr. Nuhu Adamu that form EC8A II admitted is at variance with the pleadings was wrongly admitted and can be expunged from the proceedings. See **BUHARI VS. INEC & ORS. (2008) LPELR 814 S.C.**

Accordingly the entire exhibits PP1-PP10 are hereby expunged from the proceedings.

It is also trite law that documents tendered must be identified and linked by evidence of witnesses to specific area of a claim. It must also be analysed. See **UCHA VS. ELECHI (2012)13 NWLR (pt. 1317) 330 at 360.** In the case at hand since exhibits PP1-PP10 have been expunged, there was no document to be linked by oral evidence. Even if there was any other document, that is form EC8E Exhibit PPII, such document was not shown to any witness for identification and linking. Indeed the 2nd petitioner has no admissible oral evidence to link any document, his evidence having been declared hearsay in this Judgment.

We shall now proceed to consider all the allegation in the issues identified in so doing so will consider them in the manner they were argued by all counsels in the matter. They had all told the tribunal that the issues are interwoven, and so will be argued together.

1. Majority of lawful votes.

The petitioner had alledged in this issue that the 2nd Respondent was not duly elected by majority of lawful votes cast at the election.

It is trite law that in an election petition, the decision as to who had a majority of lawful votes is based largely on documentary evidence, mainly election result forms. This is because the document when tendered and admitted in courts are like words uttered and do speak for themselves. They are more reliable and authentic than words as they bear eloquent testimony of what transpired. See **NGIGE VS. OBI (2006)14 NWLR 8 (pt 999) 233.**

In the case at hand all the electoral forms tendered have been expunged. It is as if they were not tendered abinitio.

It is also trite that in a ground complaining that a Respondent was not elected by a majority of lawful vote, a petitioner must plead and prove the votes cast at the various polling units, the votes illegally credited to the 1st Respondent the votes which ought to have been deducted from that of the 1st Respondent in order to see if it will affect the result of the election.’’

See **AWOLOWO VS. SHAGARI (1976) 6-9 S.C. 51.**

In the instant case, the Petitioners failed to plead and prove the votes cast at the various polling units and those illegally credited to the 1st and 2nd Respondents.

OVER VOTING

This allegation is contained in almost all paragraphs D(a)-d(n) of the petition in about 14 polling units. To prove this allegation, the petitioner must tender in evidence the statement of result in the appropriate form which will show:-

- a. The number of registered voters.
- b. The number of accredited voters.
- c. The number of actual voters.

See **KALGO VS. KALAO (1999)6NWLR (pt. 608) 638.** In the instant case apart from form EC8E, no electoral form was tendered. This allegation has not therefore been proved.

NON ACCREDITATION OF VOTERS:-

This allegation is also contained paragraph d(a) to d(n) of the petition in about 14 polling units. The allegation of non accreditation is proved by the tendering of a voters Register where it can be ascertained whether or not it was marked or ticked. See **EMERHOR VS. OKOWA (2017) ALL PWLR (pt. 896)1868 at 1916-1917.** In the instant case, no voter’s Register was tendered and analysed. This allegation also remained unproved.

INFLATION OR MANIPULATION OF VOTES

This allegation is contained in paragraph d(a)-d(n) it also known as falsification of votes. To prove this it is imperative that the petitioner must have two sets of results. One considered genuine, or authentic and the other

considered false. The two would then be compared to determine their falsity.

See **NWOBODO VS. ONOH (1984)1 SCNLR, SABIYA VS. TUKUR (1983)11 S.C 109**. No such results were tendered in this tribunal to prove the allegation. It therefore remains not proved. The allegation of inflation or falsification of results also amounts to a criminal offence. It must be proved beyond reasonable doubt and it must be shown that the Respondent committed the act personally or aided abetted, counseled or procured the commission of the offence.

See **EZE VS. OKOLOAGU (2013)3 NWLR (pt 1180)183 at 233**. In the case at hand it has not been shown that the 2nd Respondent personally committed or authorized the allegation of falsification of results. Again, the petitioners failed to prove these facts. So the allegation remains unproved for the above reasons.

THUGGRY AND VIOLENCE:-

It was alleged in paragraph d(b) of the petition that two persons in army uniforms Abducted one Aminu Garba a supervisory agent for the petitioner, and a PDP agent and taken to Ambarura a place about 11 kilometers away from their wards. This is a criminal offence and must be proved beyond reasonable doubt by the petitioner. The petitioner must also prove that action of the two men in army uniform was authorize, counseled or procured by the 2nd Respondent. See **EZE VS. OKOLOAGU (SUPRA)** .These were not proved.

DISENFRANCHISEMENT:

It was also alleged in paragraph d (i) of the petition that 21 people were accredited but were not allowed to vote. This amounts to disenfranchisement. The only evidence of this came from the 2nd petitioner in his paragraph d(i). this event took place in Gidan Ajayi Tozai polling unit. but the 2nd petitioner under cross examination told the tribunal that he voted at his polling unit 009 Shiyar Garba and did not visit any other polling unit. this event did not happened in his polling unit. Indeed he told the tribunal that his deposition was based on what his agents told him. This hearsay evidence does not prove disenfranchisement. The evidence of PW1, 2, 3, and 4 is silent on this allegation. Besides, to prove disenfranchisement, the petitioner must call as witness the disenfranchised voters from each of the polling units complained of to testify. See **NIGE VS INEC (2015)1**

NWLR (pt. 1440) 281. This was not done in the instant case. The only witness that gave evidence in this allegation is the 2nd petitioner who was not disenfranchised but whose evidence is hearsay.

NON ACCREDITATION WITH SMART CARD READER

This allegation featured prominently in almost all the paragraphs of d(n). it is trite law that the non use of Card Reader does not invalidate an election. See **NYLSOM VS. PETTER SIDE (2016)7NWLR (pt. 1526)179 at 256-257.**

MULTIPLE THUMB PRINTING

This allegation is also found in paragraphs d(a)-d(n). this allegation amounts to a criminal offence must be proved beyond reasonable doubt by the 2nd petitioner.

He must prove that the Respondents committed the offence personally, or authorized, counseled, or abetted the offence. See **EZE VS. OKOLOAGU (supra)**. This allegation also remain unproved as it was shown.

In view of this foregoing we are of the view that the petitioners have not led sufficient evidence to prove that the 2nd Respondent was not elected by a majority of lawful votes cast at the election held on the 23rd February, 2019 for the office of member, House of Representative for the Illela/Gwadabawa Federal Constituency. We are equally of the view that the petitioners have not led credible evidence to show that the election of the 2nd Respondent was invalid by reason of corrupt practices and non compliance with the provision of the electoral Act 2010 (as amended) and INEC Guidelines and Regulations for the conduct of the 2019 General Elections.

The Petitioners counsel had argued that the Respondents evidence is based on hearsay and weak. Even if that is the position, a petitioner does not win his case on the weakness of the Respondent's case but rather on the strength of his own case

On the whole, having resolved all the issues in favour of the Respondents, we are of the view that the petition lacks merit and is dismissed with N20, 000:00 (twenty thousand Naira) costs in favour of each of the Respondents.

HON. JUSTICE P.A. AKHIHIERO
CHAIRMAN

HON. JUSTICE A.N. YAKUBU
1ST MEMBER

HIS WORSHIP S.T BELLO
2ND MEMBER

COUNSEL:

1. G.E. UWADIAE ESQ.....PETITIONERS
2. NUHU ADAMU ESQ.....1ST RESPONDENT
3. SOLOMON ALIMASUNYA ESQ.....2ND RESPONDENT
4. M.K.ABDULKADIR ESQ.....3RD RESPONDENT

