IN THE NATIONAL AND STATE HOUSES

OF ASSEMBLY ELECTION TRIBUNAL
HOLDEN AT SOKOTO
ON FRIDAY, THE 6TH DAY OF SEPTEMBER 2019
BEFORE THEIR LORDSHIPS:

HON. JUSTICE P.A. AKHIHIERO ----------CHAIRMAN
HON. JUSTICE A.N YAKUBU----------MEMBER I
HIS WORSHIP S.T. BELLO----------MEMBER II

PETITION NO: EPT/SKT/HA/25/19

IN THE MATTER OF THE GENERAL ELECTION TO THE OFFICE OF MEMBER, STATE HOUSE OF ASSEMBLY REPRESENTING SOKOTO SOUTH I CONSTITUENCY OF SOKOTO STATE HELD ON THE 9TH DAY OF MARCH 2019.

BETWEEN:

HON. IBRAHIM MUH'D GIGADO……. PETITIONER

AND

1. **MUSTAPHA ABDULLAHI**
2. **ALL PROGRESSIVES CONGRESS**
3. **INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC)**

RESPONDENTS

JUDGEMENT
DELIVERED BY HIS WORSHIP S.T. BELLO (MRS)

The Petitioner vide a Petition dated and filed on the 30th day of March 2019 is challenging the election of the 1st Respondent on the platform of the 2nd Respondent to the office of member, House of Assembly for Sokoto South 1 Constituency of Sokoto State held on the 9th day of March 2019.

The grounds for presenting the Petition are as follows:

i. The 1st Respondent was not duly elected and/ or duly returned by majority of lawful votes cast at the election held on the 9th day of March, 2019 to the seat or office of member of the House of Assembly for the Sokoto South 1 Constituency of Sokoto State.

ii. The election and the return of the 1st Respondent was invalid by reason of corrupt practices or non-compliance with the provisions of the Electoral Act, 2010 (as amended) and the 3rd Respondent's Regulations and guidelines for Election Officials 2019.

While the reliefs sought from the Tribunal are as follows:

1. A declaration that all the mutilated, unreadable or cancelled forms EC8A, in Tundunwada A ward i.e Gidan Isa, Malando 1, unit 003, Gidan Tukur Dallatu ii, Unit 010, Gidan Na Illo, Unit 001, Gawon Dan Nunu 1, Unit 015, GarkaMainasara ii, Unit 022, Gidan Tukur Dallatu Unit 009, and Adult Education unit 007, be declared invalid, null and void.

2. The 1st Respondent be returned as the winner of the election of 9th March, 2019 held in Sokoto South 1 Constituency of Sokoto State to the seat or office of member of the State House of Assembly for the Sokoto South 1 Constituency, Sokoto State be declared invalid on ground of non-compliance with the provisions of the Electoral Act, 2010 (as amended) and the 3rd Respondent's Regulations and Guidelines for Election Officials 2019.

i. The 1st Respondent was not duly returned or elected by majority of lawful votes cast at the election of 9th March, 2019 to the seat or office of member of the State House of Assembly for the Sokoto South 1 Constituency Sokoto State and consequently the said return is invalid, void and contrary to the provisions of the Electoral Act, 2010 (as amended) and the 3rd Respondent's Regulations and Guidelines for Election Officials 2019.

ii. Petitioner having polled majority of lawful votes cast at the said election of 9th March, 2019 to the seat or office of member of the State House of Assembly for the Sokoto South 1 Constituency Sokoto State

and having satisfied all constitutional requirements for such election be declared the winner and returned elected.

iii. **AN ORDER setting** aside the certificate of return (if any) issued by the 3rd Respondent to the 1st Respondent and in its stead, the 3rd Respondent be ordered to issue a certificate of return to the Petitioner as winner of the Sokoto South 1 Constituency election held on the 9th day of March, 2019.

iv. **AND FOR SUCH FURTHER OR OTHER ORDERS** as this Honourable Tribunal may deem fit to make in the circumstances of this case.

Upon service of the Petition on the Respondents, the 1st and 2nd Respondents filed their Joint Reply to the Petition on the 14th day of April 2019 while the 3rd Respondent filed her response on the 23rd day of April 2019. It is noteworthy that the 3rd Respondent incorporated a Preliminary objection in their Reply which the Tribunal directed should be argued along with the substantive Petition. The Petitioner thereafter filed a Reply to the 1st and 2nd Respondents Reply on the 15th day of May 2019 and filed a Reply to the Preliminary objection of the 3rd Respondent on the 17th May 2019.

At the close of pleadings, the parties filed their issues for determination. Some of the issues were quite germane. Upon a careful examination of the issues formulated by the parties, the following focal issues were formulated by the Tribunal for the parties for determination in this Petition:

1. Whether the return of the 1st Respondent as member representing Sokoto South 1 Constituency, Sokoto State in the Election of the 9th day of March, 2019 ought not to be set aside on grounds of corrupt practices and substantial non-compliance with the provisions of the Electoral Act 2010 (as amended).
2. Whether from the totality of the evidence adduced by the Petitioner, the Petitioner is not entitled to the reliefs sought.

At the trial, the Petitioner eventually called four (4) witnesses with the Petitioner himself being the fifth person to testify in proof of the Petition. None of the Respondents called any witness in rebuttal though they cross examined the Petitioner's witnesses.

A summary of the evidence presented by the Petitioner in proof of the Petition is as follows:

The Petitioner, Hon. Ibrahim Muh'D Gidado adopted his written deposition. The content of the said deposition is to the effect that the election to the seat of member of the State House of Assembly for the Sokoto South 1 Constituency Sokoto State was conducted by the 3rd Respondent on the 9th day of March, 2019 and the 3rd Respondent returned the 1st Respondent as the winner of the election via a declaration made on 11th March, 2019. He, the Petitioner was the candidate of the Peoples Democratic Party.

According to the Petitioner, there were a lot of irregularities and discrepancies on the various INEC result sheets (*i.e.* Form EC8A, EC8A (l) VP, EC8C (I) and EC8D (I) amongst others) relating to the recorded scores for the various Polling Units, Wards, and Local Governments comprising Sokoto South 1 Constituency of Sokoto State and glaring inaccuracies, non-compliances and outright breaches or contraventions of extant electoral laws and regulations.

According to him, Sokoto South 1 Constituency of Sokoto State has one Local Government Area (LGA) known as Sokoto South Local Government Area with the following wards or Registration Areas (RAs):(a) Gagi 'A' Ward/RA;(b)Gagi 'B' Ward/RA;(c)Gagi 'C' Ward/RA;(d)Tudun Wada 'A' Ward/RA;(e)Tudun Wada 'B' Ward/RA. Also according to him, in many instances, several alterations/ mutilations were carried out by the 3rd Respondents' officials at the collation centers on Forms EC 8A at the behest of the 1st and 2nd Respondents which changed some of the results earlier announced at the polling units to favour the 1st and 2nd Respondents while in some other instances there were outright cancelation/obliteration of election results. Furthermore, in Sokoto South Local Government Area the following irregularities are manifest:

(i) At Gidan Dallatu Unit 009 in Tundun Wada Ward/RA, Gidannaillo Unit 001 in Tundun Wada Ward/RA, Gorke Mainnasara Unit 022 in Tundun Wada Ward/RA, Magajin Rafi M.P.S1 019 in Tundun Wada Ward/RA, Gawon Dan Nunu unit 015 in Tundun Wada Ward/RA, G/Isa Malando unit 003 in Tundun Wada Ward/RA, – the results were mutilated to the

extent that it is difficult to ascertain the exact scores of the candidates due to alteration of the results sheets. The mutilation and alteration of result sheets made it difficult to ascertain the total number of used ballot papers thereby making it unreadable and impossible to determine who actually polled majority of the highest votes cast. The votes cast in favour of other parties were mischievously altered without any justification in order to favour the 1st and 2nd Respondents.

(ii) At Nakasari Babbar Garka unit 008 of Gagi A ward, the valid votes cast in favour of the petitioner were illegally rejected despite the protest from the agents of the petitioner in that unit, thereby reducing the strength of the petitioner's votes.

(iii) There were so manydistortions, anomalies, alterations/mutilations and or manipulations, in the Forms EC8A in respect of areas or units purportedly won by the 1st and 2nd Respondents, particularly for Tundun Wada A Ward/RA and Gagi A ward of Sokoto South Local Government Area which should lead to the cancellation and or nullification of votes purportedly recorded or entered in favour of the 1st and 2nd Respondents by the 3rd Respondent.

(iv) At Magajin Rafi M.P.S. 1 polling unit 019, in Tundu Wada 'A' ward, which is a unit with three voting point i.e Rafi MPS 1A unit 019, Magajin Rafi B (VP) unit 019 and Magajin Rafi C unit 019, there were mutilations of result sheets, the entirety of the election in those units were a sham and ought to be rejected and the votes nullified.

He stated further that after the election, results sheets forms were given to 3 of his agents at the 3 voting points. That two of the result sheets i.e EC8A (I) VP, given to his Agents were traced with ink. That there were massive irregularities and over-voting particularly in the following polling units in Sokoto South Local Government Area:

a) Garkar Magaji Unit 002 of Tundun Wada Ward/RA; the number of rejected ballots is 23 plus valid votes of 602 = 625, while the accredited voters is 624. There is over -voting of one (1) vote.
b) G/Tukur Dallatu Unit 010 in Tundun Wada Ward/RA;the result sheet form EC8 A, is not readable, it was seriously mutilated, erased, altered or cancelled.
c) IsahNamalando unit 004 in Tundun Wada Ward/RA;the No. of rejected votes is 7 plus the No of spoiled ballot papers are 2, plus valid votes 337 = 346, accredited voters are 344. The over-voting is 2.
d) Ibrahim Dasuki Unit 005 in Tundun Wada Ward/RA;the No of rejected votes is 26 plus 8 spoiled ballot papers, plus 223 valid votes is = 257, the accredited voters is 255. The over-voting is 2.

e) Nagarta College unit 026 in Tundun Wada;the No. of rejected votes is 9 plus the total No of valid votes cast is 221 is equal to 230. The No of accredited voters is 229. The over-voting is 1.
f) Garka Dahru Ingaski unit 014 in Tundun Wada;the No of rejected votes is 19 plus 1 spoiled ballot paper, plus 401 valid votes = 421, accredited voters is 420. The Over voting is 1.
g) Garka BawaYauri unit 002 in Tundun Wada Ward/RA;The No of rejected ballot is 71 plus 1 spoiled ballot paper, plus 289 valid votes = 361, accredited voters is 360. There is 1 over voting.
h) Garka kaJa'o unit 009 in GAGI A Ward/RA; No of rejected votes is 6 plus one spoiled ballot paper, plus 233 valid votes is = 240, accredited voters is 239. There is 1 over voting.
i) GarkaJa'o unit 009 in GAGI A Ward/RA; The rejected votes is 21 plus 2 spoiled ballot papers, 666 valid votes cast which is equaled to 689, accredited voters is 687. There are 2 over-voting.
j) Garkar Jawo 009 in GAGI A Ward/ RA; there are 8 rejected ballot papers, plus 1 spoiled ballot paper plus 169 valid votes which is equal to 178, accredited voters are 177. There is 1 over-voting.
k) Gagi Tamaje 010 in GAGI Ward/RA. The No of rejected votes is 14, plus 5 spoiled ballot paper, plus 528 valid votes is equal to 547, accredited voters are 542. There is 5 over-voting and that the number of votes exceeded the number of accredited voters and highly irregular and unreliable in all regards.

In Magajin Kafi M.P.S 1A polling unit 019 in Tundun Wada Ward/RA which has 3 voting points also recorded cases of irregularities and over voting in that the summation of the total number of votes recorded in 3 Form EC 8A (1) VP respectively, the 3 voting points were 760 which is above the accredited number of 753.

According to the Petitioner, if the votes classified as over-voting are nullified and same is deducted from the total votes cast for both the Petitioner and the 1st Respondent the Petitioner will be left with the highest votes cast of **16,099** while the 1st Respondent will be left with **15,492** of the total votes cast. He thereafter urged the Tribunal to enter judgement in his favour in the interest of justice in terms of the reliefs in his Petition.

He testified further that he mentioned some documents in his petition. He has a schedule containing the list of documents which he can identify. The Schedule of Documents was admitted through him as Exhibit P. According to him, he mentioned some documents in paragraphs 21 to 25 of his deposition as listed in Exhibit P. He identified the documents shown to him as the documents he mentioned in the aforesaid paragraphs of his deposition. The documents were thereafter admitted in evidence as follows:

1. INEC official Receipt of Payment for Certified true copies of the documents was admitted as Exhibit P1.
2. Bundle of Document in respect of Tudunwada A ward as listed in the schedule of Documents admitted as Exhibit P was admitted as Exhibit P.2
3. Bundle of Documents in respect of Tudunwada B ward was admitted as Exhibit P3.
4. Bundle of Documents in respect of Gagi A ward was admitted as Exhibit P4
5. The Result Sheet Form EC8E(I) is admitted as Exhibit P5.

Under cross-examination, he informed the Tribunal that he was at his polling unit in Tudunwada B ward polling unit 028. That there was restriction of movement that day so he went back to his house at Gagi after voting. He does not know the number of polling units in his constituency. There are five wards in his constituency. They are Gagi A, Gagi B ward, Gagi C ward, Tuduwada A ward and Tudunwada B ward. There is no Tudunwada A1 ward. There is no Tudunwada B1 ward. No ward known as Tudunwada C1. Also there is no Gagi A1, B1, or C1 ward. He had agents in all the polling units and knows some of the agents personally.

He testified further that the five wards he mentioned are not the only wards in Sokoto South Local Government Area which has eleven wards. APC won the election in his constituency. He was shown Exhibit P3, his reaction was that the problem there is over voting. In paragraph 21 of his deposition he mentioned alterations and mutilations carried out by the officials of the 3rd Respondent. He however does not know the number of officials of the 3rd Respondent. He did not agree that there may be up to twenty officials of the 3rd Respondent at the collation centre. His own agent was at the collation centre. The said agent informed him of the incident which he stated in paragraph 20 of his deposition. In fact, everything stated in paragraph 22 of his deposition is based on the INEC documents given to his agents.

The PW1,Ibrahim Abubakar Maidawaki also adopted his deposition, a summary of the said deposition is to the effect that he acted as an agent of the PDP at the Tudunwada Poling Unit, at the election held on the 9th March, 2019 to the seat or office of member of the House of Assembly for the Sokoto South 1 Constituency of Sokoto State. The saidTunduwada Polling Unit was split into 3 units; A, B and C

for administrative convenience by the 3rd Respondent. He was agent of PDP in unit A.

According to him, after the election, duplicate copies of result sheets were given to the Agents and he got his for his party. That his duplicate copy was not clear enough and upon his complaint to the presiding officer in the person of Gwautsa Francis, he traced it with his blue biro. That he was surprised when after the election, the 3rd respondent presented another dirty copy of EC8A that was not known to him containing several alterations/and mutilations, which changed the figures and results earlier announced at the polling units to favour the 1st and 2nd Respondents. Under cross-examination, he informed the Tribunal that he has nothing to add to his deposition. He did not have an identification card with him in court. He maintained that he was given one result sheet as an agent not two.

PW2, Shameen Lawan Bashir also adopted his written deposition which was to the effect that he acted as an agent of the PDP at the Tudunwada Poling Unit, at the election held on the 9th March, 2019 to the seat or office of member of the House of Assembly for the Sokoto South 1 Constituency of Sokoto State. His deposition thereafter was the exact copy of that of the PW1.Under cross-examination, he informed the Tribunal that he has stated all he knows about the election in his deposition and that any addition which is contrary to that is not his. He reiterated that he was the PDP agent in the Tudunwada Area 019. He was however not the only PDP agent in that voting point. They were two PDP agents in that voting point. The second PDP agent was one Murtala Mohammed. The two of them were given one copy of Form EC8A.

The PW3 Nafi'u Aminu Sahabi also adopted his written deposition which was also an exact replica of the content of the PW1 and 2's depositions. Under cross examination he informed the Tribunal that he served at Tudunwada polling unit. Further that he has stated all he knows about this election in his deposition. According to him, he served as an agent. At the point where he served as agent of the PDP there were other agents of other Parties there. In his unit, there were two PDP agents. One Ahmed Aminu was the other agent with him but they were issued only one result sheet after the election.

PW4 Saidu Aliyu Maidama was subpoenaed to produce some voters' registers. He also adopted his written deposition which content is to the effect that he is a Staff of the 3rd Respondent; and the Electoral Officer who covered the election in Sokoto South Local Government Area and by virtue of his position he is conversant with the facts of this petition. He also stated therein that he has the permission and consent of his employer to depose to the Witness' Statement.

According to him, he was involved in the conduct of election into the State House of Assembly Sokoto South 1 which was conducted on 9th of March, 2019, and the result was declared on the 11th day of March, 2019. That the result of each Polling Units that made up the 5 wards, of Sokoto South 1 Constituency was entered inform EC8A of the various Polling Units. They relied on the Card readers and Voters' register in the conduct of the said elections. Schedule of Documents was admitted as Exhibit P6 while the voter's registers were admitted in evidence as follows:

1. Voter's register for GarkarMagaji Polling unit 002 of Tudunwada ward-Exhibit P6A
2. Voter's Register for Isa Namalando Polling unit Code 004 of Tudunwada ward /RA-Exhibit P6B
3. Voter's Register for Ibrahim Dasuki Polling unit Code 005 of Tudunwada ward/RA-Exhibit P6C
4. Voter's Register for NagartaColloege, Polling unit Code 026 of Tudunwada, polling unit/RA-Exhibit P6D
5. Voter's Register for GarkaDahiru, ingaski polling unit Code 014 of Tudunwada ward-Exhibit P6E
6. Voter's Register for GarkaBawaYauri Polling unit 002 of Tudunwada ward/RA-Exhibit P6F
7. Voter's Register for GarkarJawo Polling unit Code 009 of Gagi ''A'' ward RA-Exhibit P6G
8. Voter's Register for GagiTamaje Polling unit 010 of Gagi ward/RA Sokoto South Local Government Area-Exhibit P6H

He testified further by admitting Paragraph 4 of his deposition. He was shown Exhibit P6A which he mentioned in paragraph 6 of his deposition, he explained that the result of each Polling units that made up the 5 wards of Sokoto South 1

Constituency were entered in form EC8A of the various polling units. The Forms EC8A are Exhibits P2, P3 and P4 respectively.

Under cross examination, he informed the Tribunal that Sokoto South Local Government Area has two constituencies. Sokoto South I Constituency has 5 wards and Sokoto South II has 6 wards. There is Tudunwada ward that is Tudunwada ward A and Tudunwada ward B. They have different Codes. There is no Polling unit known as Tudunwada C. There is no Polling Station known as Tudunwada B. There is no polling Station known as Magajin Rafi Polling Station.

According to him, he works directly under the State Resident Electoral Commissioner and the State Administrative Secretary. The Resident Electoral Commissioner can communicate to him directly or through the Secretary. The directive for him to attend this Tribunal came from the Legal Department of the Commission but was not in writing. He denied coming to testify without the proper authority of the Commission.

He testified further that after the election, they took all the result sheets to the State INEC Headquarters. Since then he has not been in contact with the forms. He witnessed the card reader and other electoral materials being used effectively. He knows all the forms used in the election. He knows why and when the various forms were used in the election. He however did not make any entries into the Form EC8A at the Polling unit thus cannot answer questions about those forms since he did not make the entries at the Polling units. He denied breaching his oath of neutrality. He also denied receiving any complaint from any Political party that the results were mutilated or altered. According to him, they relied on the card readers and voter's register in the conduct of the election and maintained that the results emanating from the elections have no problem.

That was the case for the Petitioner.

At the close of the Petitioner's case, all the Respondents opted out of calling any witness in rebuttal thus the case was adjourned for adoption of final address. The 1st and 2nd Respondents adopted their written address dated the 12th day of July 2019 but filed on the 28th day of Aug 2019. Petitioner adopted his written address dated the 19th day of July 2019 and filed on the 22nd day of July 2019, he also adopted his Reply on points of law to the final address of the 1st and 2nd Respondents. The 3rd

Respondent on his part withdrew the final address dated the 2nd day of August 2019 and filed on the 4th day of Aug 2019 and informed the Tribunal that he will be adopting the final address filed by the 1st and 2nd Respondents.

Nuhu Adamu Esq, learned counsel to the 1st and 2nd Respondents submitted in his final address that this petition is incompetent to the extent that the Honourable Tribunal has no jurisdiction to try it; on the ground that the conditions for assuming jurisdiction enunciated by the Apex Court in Madukolu v. Nkemdelem (1962) 2 SCNLR 341 have not been fully complied with. According to the learned counsel, the original petition was filed on 30th March, 2019 without stating the name of the exact constituency where the election was held. It was after receiving the replies of the first and second respondents, where his fatal omission was pointed out that the petitioner sought and obtained order of amendment by the Tribunal, overruling the objection of the 1st and 2nd Respondents. He also referred the Tribunal to the case of Zakari v. Nigerian Army (2015) NWLR 77.

He referred the Tribunal to paragraph 14 of the 1st Schedule to the Electoral Act which prohibits amendment of petition or reply after the time limited for presenting the petition or reply, in respect of issues listed under paragraph 4 (1) of the First Schedule and submitted that it is crystal clear that the amendment sought and obtained by the petitioner concerned paragraph 4 (1) (c) which the Honourable Tribunal has no jurisdiction to grant. The order granting the amendment is therefore null and void. He thus urged the Tribunal to set it aside.

He submitted further that if this request is acceded to, it means now that the petition before the tribunal is the petition dated 30th March, 2019 and filed the same date. In that case, the petition becomes incompetent for failing to state the holding of the election as required by paragraph 4 (1) (c) of the 1st Schedule to the Electoral Act, 2010 (as amended). He referred to paragraph 8 at page 7 of the petition, where the petitioner purportedly stated the holding of the election of the 30 House of Assembly Constituencies in Sokoto State. In the meantime, there is no **Sokoto South Constituency**. What they have is Sokoto South 1 and 2.

According to the learned counsel, the amendment granted to the petitioner is a nullity as it is categorically prohibited by paragraph 14 (1) of the 1st Schedule to the Electoral Act, as argued above. Also, according to the learned counsel, it is easy to

argue that this submission or argument came rather too late, tardy or is inelegant but all these are of no consequence when the issue concerns jurisdiction. Jurisdictional issues can be raised at any stage of the proceedings even at the Supreme Court.

He however took the position that the Court had no discretion to postpone it to be heard after any other application except perhaps one that was strictly for contempt of Court in facie curia as this will amount to subversion of the application or challenge to the jurisdiction of the Court as made in Attorney General of Lagos State V. Dosunmu (1989) 3 NWLR (pt. lll) 552 at 566 where the apex court made it clear that the issue of jurisdiction is not only intrinsic, but it is extrinsic to adjudication. He therefore urged the Tribunal to determine this case on the basis of the original petition and ignore the amended petition by withdrawing the life given it by the order granting the motion for amendment. In legal parlance, he urged the Tribunal to set aside the order and dismiss the petition in limine.

However just in case he is overruled, learned counsel submitted that in an election petition, the burden is on the petitioner to prove his case and the standard of proof required is, proof on the balance of probability or preponderance of evidence. The only exception is where there is allegation of some criminal act or electoral malpractice. See Onoh V. Nwobodo (1984) All NLR 1, Garuba v. Kadiri (2009) 4188 (CA) and Buhari v. INEC (2008) 4 NWLR (pt 1078) 546.

Learned counsel posed a question whether the petitioner discharged the burden imposed on him by the law to be entitled to the reliefs he is seeking in this petition, having regard to the evidence adduced and the issues formulated by the Hon. Tribunal and urged the Tribunal to answer this question in the negative. He thereafter analysed the evidence placed before the Honourable Tribunal by the petitioner wherein his grouses as can be found in paragraphs 15 -22 of the Petition mainly concerned, over voting, non-stamping of the result sheets, mutilation of result sheets and irregularities.

Learned counsel submitted further that to prove over voting three things are condition sine qua non, namely,

a. the register of voters of the polling unit must be tendered,
b. the result sheet must be tendered and

c. relating each document to the specific area of the case, see the case of IKPEZUA V, OTTI (2016) LPELR 40055 (SC)

According to the learned counsel, none of the above requirements was satisfied by the petitioner. Though voters registers were tendered by PW 4, but in his statement on oath none of these was linked to any specific complaints of the petitioner and worst of all nothing was said about the registers, either individually or even in general terms. They were simply dumped on the tribunal. Also the statement of result sheets tendered do not tally with pleadings and written statements on oath of the petitioner and his witnesses, in addition to not being linked to any specific area of the petitioner's complaints, another case of dumping. This is a classic case of exhibits without evidence to explain their purport.

He thus urged the Tribunal to ignore the misleading submission of the petitioner's counsel that the petitioner has proved over voting in respect of exhibit A 3 during cross-examination. As what really took place was to give a lie to the claim of the petitioner that some of the result sheets were illegible, he was shown one sheet out of the many in the bundle of documents and asked to read and instead of reading what he said related to over voting not legibility. Learned counsel failed to see how that will translate to proving over voting with just one unidentified result sheet. The counsel as late as in his final address conceded that what was admitted in all the exhibits were bundles of documents. There was no time during these proceedings when the documents were unbundled in the open court and this cannot be done in the address of counsel and, even the Tribunal judges are barred from doing so.

In the case of the allegation of alteration or mutilation of the results; all these are different species or varieties of falsification of result and to prove this, two sets of results must be pleaded and tendered -one showing the genuine result and the other showing the false one-see ABARI V. ADUDA (2011) LPELE 19750 (CA); see also Abdulmalik v. Tijuana (2012) LPELR 19731 (CA) where it was held that: A petitioner who based his case on fraudulent cancellation or alteration, must establish two ingredients-a. That there was cancellation, alteration or mutilation and b. That the cancellations, alteration or mutilations were dishonestly done with a view to falsifying the result of the election. The Petitioner not only failed to do this, he also refused to tender the copies given to his agents which makes it a case

of withholding evidence. He thus urged the Tribunal to invoke the provisions of S166 of the Evidence Act against him.

He noted that the petitioner tendered the declaration of final result, form EC8 E (i) and some forms EC8 A, from the bar. Then the 1st petitioner took the stage as his own witness and admitted not being at the polling units where those incidents occurred; thus making his evidence on these points mere hearsay. Most importantly he did not link the exhibits shown to him to any of his specific complaints in the petition. So apart from giving hearsay evidence, the petitioner woefully failed to link any of the exhibits admitted specifically to any specific areas of his complaints. Learned counsel submitted that the Tribunal cannot do this for him - See Ejiogwu v Onyeaguoch (2005) LPELR 7651 (CA), where the Court held that: a party relying on documents in proof of his case must specifically relate each of such documents to that part of his case in respect of which the document is being tendered. Such a duty must not be left to the court in the recess of its chambers. A party is under a duty to tie his documents to evidence or fact in open court not through counsel's address. It is not part of the duty of the court to embark upon cloistered justice by making inquiry into the case outside the court. See OYEDELE V. ODUMOSU (2016) LPELR 41441 (CA) and section 10 of the Evidence Act.

Counsel submitted further that in spite of the many allegations of over voting, none of the witnesses of the petitioner gave evidence to that effect. He therefore submitted that all pleadings about these issues should be discountenanced as there was no evidence from the petitioners to support them- See AFOLABI V. AREMU (2011) LPELR 8894 (CA), FCDA V. NAIBI (1990) ALL NLR 475 and JOLAYEMI V. ALAOYE (2004) 9 MJSC 93 where Kalgo JSC stated that pleading is not regarded as evidence by itself and if not supported by evidence it is deemed abandoned.

According to the learned counsel, another damning fact is that, the petitioner in his adopted statement, under paragraph 16, complained of wrong doings in some named polling units at Tudunwada ward, in the meantime, there is no Tudunwada ward in the constituency in question and no exhibit tendered bears that name. Now, for the Tribunal to investigate with a view to finding out which of the existing wards the petitioner was trying to refer to, will be tantamount to cloistered or cosseted justice, which the Apex Court has, in many decided cases frowned at.

Therefore, the statement of the Petitioner goes to no issue to the extent it makes references to polling units in Tudunwada ward which does not exist.

The rest of the petitioners' witnesses did not fare any better. For instance, none of the witnesses who claimed to be polling agents was able to give convincing evidence about what happened at their polling units. Indeed, it is doubtful whether the witnesses were agents at any polling units at all. PWs 1,2 and 3 claimed to be agents for the PDP atTudunwada polling Unit which they claimed was divided into three units: A, B and C where they served respectively but there is no such thing as Tudunwada polling unit in the constituency, so its alleged division into three is a logical impossibility, indeed it is non sequitur. The evidence of the nonexistence of this polling unit came from PW 5, the Electoral Officer of the constituency. This explains why there was no pleading to that effect or document tendered in respect of a polling unit by that name. Not to talk of polling unit, there is not even a ward in that constituency by that name.

According to the learned counsel, there are only five wards in that constituency, namely; Gagi 'A', Gagi 'B', Gagi 'C', Tudunwada 'A' and Tudunwada 'B', as correctly stated under paragraph E (4) of the amended petition. PW 4 has tendered documents described as register of voters of some wards. However, these are in conflict with the schedule of documents he proposed to tender.

A very important feature or thread that runs through this case is that, the pleadings, exhibits and written depositions are at variance with each other. Learned counsel submitted that evidence that is in conflict with the pleading goes to no issue, likewise an exhibit that is neither pleaded nor supported by evidence. Neither the Petitioner nor Petitioner stated in their statement on oath what was wrong with the registers, it was only in the counsel's address that the Tribunal was informed they were not marked by the presiding officers. Similarly counsel to the Petitioner tried to explain away the wide gap between Tundunwada ward and Tundunwada A and B ward which ought to have come from the witnesses. Counsel submitted that it is elementary principle of law that counsel's address cannot be a substitute for evidence.

In conclusion, learned counsel submitted that the law is well settled that in an election petition, it is the duty of the petitioner to prove his case. The standard of

proof is on the balance of probability or preponderance of evidence, because it has been classified as civil, in Fayemi v. Oni (supra). However, where criminal allegations are made, the standard becomes proof beyond reasonable doubt, as the case of Onoh v Onwobodo (supra) has decided.

He submitted further that virtually all the documents tendered by the Petitioner were dumped on the Tribunal as none was tied to the specific complaints of the petitioners. Besides, all the witnesses that appeared before the Tribunal, for the petitioner, have been discredited by cross examination, such that none is worthy of any credibility, in that none testified on the pleaded facts. The result is that, the Petitioners has not adduced credible or sufficient evidence to warrant this Honourable Tribunal interfering with the return of the 1st Respondent or granting any of the reliefs they sought in their petition.

In the final analysis, he urged the Tribunal to hold that the 1st Respondent won the election of 9th March, 2019 with majority of the lawful votes cast at the election and that the election was done in substantial compliance with the Electoral Act and Guidelines for the 2019 elections and dismiss the petition accordingly, with cost.

As earlier stated the learned counsel to the 3rd Respondent withdrew the final address filed on behalf of the 3rd and Respondent and same was struck out by the Tribunal. Learned counsel thereafter adopted the arguments canvassed by the 1st and 2nd Respondents in their final address filed on the 28th day of August 2019 as the final address of the 3rd Respondent and urged the Tribunal to dismiss the Petition in its entirety.

In response, Paul Kasim Esq, the learned counsel to the Petitioner adopted the petitioner final address and the Reply on Points of law to the final address of the 1st and 2nd Respondents. In response to the resurrected objection which he said has hitherto been buried by this Honourable Tribunal but which the 1st and 2nd respondents will not allow to rest, that is, the issue of amendment relating to the inclusion of "1" to Sokoto south 1 constituency which was thoroughly resolved by this Honourable Tribunal at the Pre hearing stage of the proceeding, learned counsel submitted that where a court has given a decision on an issue before it, it ceases to have power to re-open the matter all over again in the same proceeding and so the court becomes FUNCTUS OFFICIO. See the case of **DIGYADI &ORS VS INEC (2010) LPELR -951 SC**. According to the learned counsel, this issue had been

successfully determined by this Honourable Tribunal at the pre-hearing stage hence it should be allowed to rest or there will not be an end to litigation.

Also according to the learned counsel, the Respondent in his final written address misinformed this Honourable Tribunal when he contended in page 12 of his address that the petitioner tendered the declaration of final result Form EC8E(1) and some forms from the Bar which is not correct. The record of the Honourable Tribunal will best explain the procedure adopted.

The 1st and 2nd Respondents also contended that there is no ward bearing Tudunwada ward because the letters "A" and "B" attached to Tudunwada were missing. However, he has failed to show to this Tribunal how he was misled because he has clearly responded in his defence to same. Contrary to his submission that no exhibit bears Tudunwada, all exhibits before the tribunal bears Tudunwada A and B, they are all listed in the schedule of documents adopted before the Tribunal. The 1st and 2nd respondents have admitted at page 14 of its final address that Tudunwada A and Tudunwada B are correctly stated under paragraph E4 of the Amended Petition, one then wonders why he chose to belabour the Honourable Tribunal with this issue of which he was not misled. He thus urged the Tribunal to discountenance the 1st and 2nd Respondents' argument in the interest of justice and hear this case on its merit.

With respect to the first issue posited by the Tribunal, learned counsel submitted that the conduct of an election must comply with the provisions of the Electoral Act with regards to the provisions of section 138 (1)(b) of the Electoral Act, 2010 (as amended)the implication of which is that the election and return of candidate at an election can be nullified where a petitioner successfully establishes that the conduct of the election was marred by corrupt practices and non-compliance with the provisions of the relevant laws regulating the election. The relevant laws here are the Electoral Act, the 1999 Constitution of the Federal Republic of Nigeria (as amended) and other laws and regulations on the conduct of the election made by INEC pursuant to section 153 of the Electoral Act, 2010 (as amended). They include the Approved Guidelines and Regulations for the Conduct of the General Elections and Independent National Electoral Commission Manual for Election Officials 2019.

He cited the case of **Agballah Vs. Chime (2009) 1 NWLR (Pt.1122) 373 at 459 Paras C-D,** where the Court of Appeal restated the law on the mandatory need for INEC Officials to comply with Electoral rules and regulations when it held thus :

"The 2006 Electoral Act vested in the Independent National Electoral Commission power to make regulations, guidelines and manuals for the purpose of giving effect to the provisions of the Act and its administration. The procedure in an election petition is largely governed by law made especially to regulate the proceedings. Thus it is imperative that an election petition, the procedure laid down in an Electoral Act and the guidelines in manual for election officials must be strictly complied with. See Buhari Vs. Yusuf (2003) 14 NWLR (Pt. 841) pg. 446; Abubakar Vs. INEC (2004) 1 NWLR (Pt. 854) Pg 207; Samamo Vs. Anka (2000) 1 NWLR (Pt. 640) Pg. 283"

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

The learned counsel submitted further that the Petitioner has essentially challenged the return of the 1st Respondent on grounds contained in paragraph 14 of the petition of non-compliance with Electoral Act. The non-compliance in this case is so substantial that this Honourable Tribunal will nullify or cancel elections in all polling units and wards where they were established. In this regard, he referred the Tribunal to paragraph 19 and 16 of the Petition which contains the details of over-voting in 11 Polling Units from 3 Wards in Sokoto South Local Governments of Sokoto State and other forms of irregularities in form of mutilation, alteration and cancellation in over 9 Polling Units from 3 Wards in Sokoto south Local Governments of Sokoto State.

The law is that where a petitioner alleges non-compliance in the form of over-voting, it is the duty of the petitioner to prove that over voting and in proving same tender the voters register, Polling Unit results (EC8A), and ballot boxes, where possible and all other relevant electoral materials that will aid the Tribunal in arriving at its findings. This position of law was re-echoed by the Supreme Court in the recent case of **Gundiri V. Nyako (2014) 2 NWLR (Pt. 1391) 211 at 245.** See also **Iniama Vs. Akpabio (2008) 17 NWLR (Pt. 1116) 255 at 335.**

On what is **"over-voting",** our courts as far back as (1992) in the case of **Terab Vs. Lawan (1992) 3 NWLR (Pt.231) 569 at 587** held that, the electoral malpractice of over-voting occur where the votes scored by parties exceed the number of accredited voters. See also **Malumfashi Vs. Yaba (1999) 4 NWLR (Pt.598) 230 at 237 and**

Awuse Vs. Odili (2005) 16 NWLR (Pt. 952) 416 at 490 – 491. Similarly, **section 53(2) of the Electoral Act, 2010 (as amended)** provides thus:

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

Again, **paragraph 28** of **page 10** of the Approved Guidelines and Regulations for the conduct of 2019 General Elections states as follows about over-voting:

"Where, the total number of votes cast at a polling unit exceeds the number of registered voters in the polling unit, the result of the election for that Polling Unit shall be declared null and void. Similarly, where the total number of votes cast at a polling unit exceeds the total number of accredited voters, the outcome of the election shall be declared null and void".

According to the learned counsel, the questions that come to mind are what is accreditation under the Law? And how can a petitioner who alleges over voting prove it? Learned counsel examined the provisions of Section 49(2) of the Electoral Act, **Section 73** of the Electoral Act,**INEC issued and published MANUALS FOR ELECTION OFFICIALS 2019 . Page 26**the holding of the Court of Appeal in the case of **Hon . Ode Frank Igbe& Anor v Dr. Joseph Adoga Ona &Ors (2012) LPELR – 8588 (CA)**holding held thus: *"...**The Presiding Officer shall, on being satisfied that the name of the person is on the register of voters, issue him a ballot paper, and indicate on the register that the person had voted. In other words, this section (section 49 of the electoral act, 2010 as amended) vests every presiding officer the power and duty to ensure and be satisfied with the identity of every person who presents himself to him as registered voter intending to vote before issuing him with a ballot paper**".*

Learned counsel thereafter submitted that from the above statutory provisions and authority cited, accreditation of a voter under the Electoral Act 2010 as amended is when the name of a voter is on the register of voter, the presiding officer is satisfied with the identity of the voter, issued him a ballot paper and the presiding officer tick the appropriate box showing the category of the election he participated in. It is where the above processes are complied with that it can be said that a voter is accredited and urged the Honourable Tribunal to so hold.

Learned counsel noted that the PW4, an officer of the 3rd respondent the maker of Voters registers tendered and used for the election in the affected polling units under review, same were admitted and marked Exhibit P6A-H. The voters' registers clearly show that there was non-compliance with the provisions of the Electoral Act and the 3rd Respondent's guidelines for the elections.

According to the learned counsel, to prove over- voting which is a corrupt practice and non-compliance with the Electoral Act (2010) the Supreme Court in **Senator Adewolu Ladoja v Senator Abiola Adeyemi Ajimobi & Ors (unreported) delivered on the 15th February, 2016 relying on the decision of the Apex Court in Shinkafi& Anor v Yari&Ors (2016) LPELR-26050 (SC)**held thus:

> *"To prove over-voting, the law is trite that the Petitioner must do the following:*
>
> *1) Tender the Voters Register*
>
> *2) Tender the statement of Results in the appropriate Forms which shows the number of accredited voters and number of actual votes.*
>
> *3) Relate each of the documents to the specific area of his case in respect of which the documentswere tendered*
>
> *4) Show that the figure representing the over- voting if removed would result in victory.* ***See also Ikpeazu v Otti& Ors (2016) LPELR 40055(SC)."***

He thus submitted that the four cardinal requirements to prove over voting as illustrated by the Supreme Court in the above cases cited are all present in this Petition therefore the petitioner has successfully related the cardinal requirements as it relates to over voting in some of the polling units complained of in his evidence given on oath by tendering the voters registers through PW4 a subpoenaed witness, a staff of the 3rd Respondent, who is the maker of the document. It is trite law that it is the maker of a document that must be called to tender such document in evidence.

The Voters Registers were admitted and marked appropriately as already stated above, more so, in paragraph 12 of the petition, the petitioner pleaded the voters registers used in the election and in paragraph 14 of his statement on oath stated clearly that he shall rely on them to prove his petition. The Petitioner under oath, on

the 1st day of June, 2019 tendered the Results sheets Form EC8A in respect of the appropriate polling units where over voting occurred. The said documents were admitted as a bundle as already stated above. The said documents prima facie leaves no one in doubt of the number of accredited voters and number of valid votes cast at the election. The document speaks for itself.

He invited the Honourable Tribunal to take a critically look at Nagarta College PU 026 Tudunwada "B" S/N 002247. Exh P3 and compute the valid votes scored by the parties, by the authority of **Agbaje Vs. Fashola (2008) 6 NWLR (Pt.1082) 90 at 148** he opined that the Tribunal reserves the right and power to compute or collate results based on evidence before this Tribunal, the Tribunal will find that the total valid votes is 221 not 220 as recorded on the result sheet.

According to the learned counsel, it is clear that there was miscalculation of votes cast at Nagarta College PU 026 Tudunwada "B". Exh P3 show that arithmetic calculation of the total votes obtained by all the parties listed therein sum up to 221 (ACPN 01+ A 01 +PDP 92+APC120+ APDA 2+SNC01+ANDP 1+NNPP 1+UPN 1+ FJP 1) and not 220. He then submitted that there was clear miscalculation of votes cast in Nagarta College PU 026 Tudunwada "B" Ward and urged the court to so hold. He also urged the Tribunal to hold that in view of the proper calculation above the case of over voting is established in Nagarta College PU 026 Tudunwada "B" Ward.

With regards to relating documents to the specific area of his case in respect of which the documents were tendered, learned counsel submitted that the petitioner has satisfied this condition in his petition where he pleaded and related Exh P2, P3 and P4 to the exact polling units where over voting occurred. The Petitioner pleaded over voting in Paragraph 19, 20 and 21 of the Petition and also the petitioner demonstrated the over voting in paragraph 23, 24 and 25 of his witness' statement on oath, which he adopted as his oral evidence before this Honourable Tribunal in accordance with Section 41(3) of the Electoral Act 2010 as amended. The Petitioner also demonstrated and related Exhibit P2, P3 and P4 to the polling unit where the over voting and the mutilations took place in the petitioners' witness' Statement on oath.

Furthermore, during cross examination, the petitioner testified that Exh P3 clearly proves the allegation of over voting in each of the polling unit named therein. It is trite that once documentary evidence supports oral evidence, oral evidence becomes more credible as documentary evidence serves as a hinge from which to assess oral testimony. **See the case of Interdrill (Nig) Ltd & Anor V UBA PLC (2017) LPELR 41957(SC)**. Thus the oral evidence of the Petitioner alleging over voting becomes more credible having been supported by the documentary evidence tendered.

It was also his submission that the Petitioner by his statement on oath which he adopted as his oral evidence has successfully related the documents to the specific polling units in his oral examination before this Honourable Tribunal thus the 1st and 2nd Respondents have misconstrued the position of the law on the issue of relying on documentary evidence in proof of election petitions. He submitted further that the electoral Act has provided for how evidence is to be adduced at the hearing of election petition in *paragraph 41(3) of 1st schedule of the Electoral Act 2010 as amended which provides that "there shall be no oral examination of a witness during his evidence in chief except to adopt his written deposition and tender in evidence all disputed documents or other disputed documents or other exhibits referred to in the deposition"*.

By law, documentary evidence are hangers for oral testimony of witnesses but Electoral Act as in the Paragraph 41(3) of 1st schedule have abolished oral examination of a witness in chief except through adoption of his written statement on oath. The witness' Statement on Oath then becomes the evidence in Chief. He also cited the case of **ONYENWE & ANOR v. ANAEJION (2014) LPELR-22495(CA).** It therefore presupposes that the entire Petitioner's oral evidence in support of his claims is contained in his adopted written deposition. It is crystal clear that the Petitioner while adopting his written deposition as his oral evidence before this Honourable Tribunal has satisfied this very germane requirement. More so, the Petitioner during cross-examination affirmed that Exhibit P3 clearly proves that over voting occurred in the polling units stated therein. The Law is now trite that evidence elicited from a party or his witness under cross examination which goes to support the case of the party cross examining constitute evidence in support of the case of the party, See MTN Nigeria Communication LTD V Corporate Communication Investment Limited LER (2019) SC.674/2014.

To show that the figure representing the over –voting if removed would result in victory, the petitioner not only averred in paragraph 22 of the petition that if the votes classified as over voting are nullified and same is deducted from both the petitioner and the 1st Respondent, the Petitioner will be left with the highest vote cast of 16099 while the 1st Respondent will be left with 15492 of the total votes cast, hence it would result in victory for the petitioner. This was also demonstrated in paragraph 22 of the petition and paragraph 26 of the petitioner's witness statement on oath.

According to the learned counsel, the Petitioner has demonstrated and proved that the conduct of the Sokoto State House of Assembly election in Sokoto State in some polling units on the 9th of March, 2019 was marred with non-compliance with extant laws guiding the conduct of elections and over-voting. He said that he has carried out a verifiable analysis of the number of invalid votes by reason of over-voting, out of the total votes recorded at the election. That by his analysis, which is based on the pleadings and evidence before the tribunal, a total of 3967 votes were unlawfully allotted to the candidates in the Sokoto state House of Assembly election held on the 9thof March, 2019.

Again that from his analysis of the total invalid votes of 3967, the 1st Respondent was allotted 2469 invalid votes while the 1st Petitioner was allotted 1498 invalid votes. The Legal effect of these invalid votes is the nullification of all votes obtained by the parties in the affected 11 polling units. When the invalid votes are subtracted from the total votes cast, the 1st Petitioner would have secured the majority of lawful votes cast at the election as demonstrated in the petitioner witness statement on oath.

The above analysis/computation are easily verifiable and facts in support of same are also borne out of his pleadings and evidence led before this Honourable Tribunal. However, peradventure his computation is not completely right this Honourable Tribunal has the power and duty to compute same see **Agbaje Vs. Fashola (2008) 6 NWLR (Pt.1082) 90 at 148** where the Court of Appeal, **Per Mschelia, J.C.A** adumbrated thus: ***"It is trite that the Tribunal has a right and indeed a duty to compute or collate results where such results have been inflated and/or wrongly computed…"***

Learned counsel submitted further that where over-voting is proven to have substantially affected the outcome of the election, the Tribunal should waste no time in cancelling the votes from the affected polling units and booths. See **Umezulike Vs. Olisah (1999) 6 NWLR (Pt.607) 376 at 379.** It was thus his submission that the number of polling units affected by over-voting is very substantial such that this Honourable Tribunal cannot treat lightly. The implication is that, all votes scored or gathered in the affected polling units where over-voting has been established will be voided as invalid votes and when same are deducted from the total scores of the petitioner and 1st Respondent, the petitioner will be victorious. He urged the Tribunal to so hold. It was also his submission that the non-compliance being complained of here are very substantial and weighty enough to warrant the nullification of the results in the 11 polling units where over-voting occurred. See **Yusuf Vs. Obasanjo (2005) 18 NWLR (Pt.956) 96 at 181, Paras F-H.**

A perusal of the Evidence led by the Petitioners, particularly using **Exhibits P2 to P4 and Exhibit P6a to P6h** (Forms EC8As and Voters Registers in respect of the 8 Polling Units of Registration Area **Tudunwada 'A' ,Tudunwada 'B'** and**Gagi' B')** clearly demonstrated beyond doubt that election in a total of 19 Polling Units of 3 Wards in the said Sokoto South 1 Constituency of Sokoto South Local Governments were marred by corrupt practices and non-compliance. The Petitioners have led documentary and oral evidence in proof of their case as it relates to the allegation of corrupt practices and non-compliance in the conduct of the election. These allegations of non-compliance and corrupt practices are weighty and substantial that this Honourable Court would nullify elections in all the Polling units, wards and Local Governments where they occurred.

It was his submission that the Petitioner has made out a good case of non-compliance with the Electoral Act, 2010 (as amended). He urged the Honourable Tribunal to so hold. Based on the foregoing arguments, the evidence led and the over voting analyses and computation, he urged the Tribunal to hold that the return of the 1st Respondent as the winner of the election of 9th March, 2019 to the seat of member of the state house of Assembly for the Sokoto South 1 constituency, Sokoto state is void for corrupt practices and substantial non-compliance with the provisions of the **Electoral Act, 2010 (as amended).**

Furthermore in paragraphs 16, 17, 18 and 19 of the Petition, the Petitioner avers that there were mutilations and alterations of Results sheets Form EC8A in various polling units in Tundun Wada A Ward and Gagi A ward thereby making it difficult to determine the number of exact votes polled by the candidates due to the alterations of the results sheet. The Petitioner also averred in paragraph 21 and 22 of

his written depositions that there were mutilations / alterations and mischievous alterations and/ or alterations of votes in favour of other parties in order to favour the 1st and 2nd Respondents. PW1 in his written depositions equally averred that there were mutilations / alterations of the Results sheets Form EC8A in his polling unit where he represented the 1st petitioner. The petitioner tendered documents showing the mutilations / alterations of the Results sheets. These documents were tendered and marked as Exhibit P2 and P4. He referred the Tribunal to the case of **SAMARI ABDULMALIK &ANOR V YUSUF AHMED TIJANI & ORS. (2012) LPELR -19731 (CA)** where the court held thus:

> ***"it is trite that a petitioner who based his case on fraudulent cancellations, mutations or alterations must establish two ingredients i.e That there were cancellations, alterations or mutilations in the electoral documents, and that the cancellations, alterations or mutilations were dishonestly made with a view to falsifying the results of the election. The two ingredients must both be established together before the result of an election can be cancelled on those grounds.... in order to prove that these alterations and cancellations were made so as to falsify the results of the election, the Appellants would need to tender copies of the Forms EC8A given to his agents so that this could be compared with the original...." See also NWOBODO V ONAH (1984) 1 SC page 1 @ 118-119.***

Learned counsel thereafter submitted that the petitioner has been able to prove that there were cancellations and mutilations on the Results sheets Form EC8A in his written depositions which he has adopted as his oral evidence before this Honourable Tribunal. The petitioner has been further able to prove that the mutilations and cancellations were dishonestly done to favour the 1st and 2nd Respondents. The Petitioner averred to these facts in paragraph 16, 17, 18 and 19 of his Petition and paragraph 21 and 22 of his written depositions which he has adopted before this Honourable Tribunal.

Furthermore, Exhibits P2 and P4 - Forms EC8A- tendered by the petitioner shows the mutilations and cancellations in the appropriate polling units. He therefore submitted that the petitioner has been able to prove that there were mutilations and cancellations of the results sheets in polling units in Tundun Wada A ward and Gagi A ward. These mutilations were done dishonestly to falsify the results of the

election and are not in compliance with the provisions of the Electoral Act. He urged the Tribunal to so hold.

Furthermore, the 1st and 2nd Respondents argued that the allegations of mutilations /alterations of results sheets in the election are criminal in nature hence must be proved beyond reasonable doubt. He submitted that this argument does not hold water on the ground that election petition proceeding is sui generis, election petition is governed by its own rule therefore excludes the application of common law principle **SEE GAMBARI VS I.N.E.C. 2013 ALL FWLR (PT.671) PG 1519, P. 1538,PARA E-F.** In election petition what is material is not whether or not the nature of the non-compliance is criminal or civil but whether the acts substantially affects the election results. See the case of **CPC V INEC 7& ORS (2011) LPELR 8257 (SC).**

He urged the Tribunal to discountenance the argument of the 1st and 2nd Respondents on this point because it does not accord to the sui generic nature of election petition and declared all the polling units listed in paragraphs 16 to 18 of the petition and paragraphs 21 to 23 of petitioner's witness statement on oath. He once again referred to the provisions of **Sections 49(2)**and 73 of the Electoral Act and INEC issued and published MANUALS FOR ELECTION OFFICIALS 2019and the case of **Hon . Ode Frank Igbe& Anor v Dr. Joseph Adoga Ona&Ors (2012) LPELR – 8588 (CA)**

According to the learned counsel, all the voter's registers tendered which were admitted and marked Exhibit P6A- clearly show that there was non-compliance with the provisions of the Electoral Act and the 3rd Respondent's guidelines for the elections. For instance: In Garkar Magaji Unit 002, there were 602 valid votes while 276 voters were only ticked on the Register; in Isah Namalando II unit 004, there were 337 valid votes while no voter was ticked to have voted on the Register ; in Ibrahim Dasuki Unit 005, there were 257 votes while 251 voters were ticked on the Register for the election; In Nagarta College Unit 026, there were 221 voters while one (1) voter was ticked on the Register; In Garka DahruIngaski Unit 014, there were 401 valid votes while 353 voters on the register were ticked; In GarkaBawaYauri Unit 002, there were 361 valid votes while 360 were ticked on the register ;In GarkaJawo Unit 009, there were 666 valid votes while only 360 were ticked to vote ; in GagiTamaje Unit 010, there were 542 votes while only 172 voters were ticked on the register to vote.

According to the learned counsel, failure to tick the appropriate box of the voters in the voter's registers is non-compliance with the provisions of the Electoral Act. The failure of the presiding Officer to tick the appropriate box is an irregularity that affected the election result. He once again submitted that the Petitioner has discharged all burdens on him to prove his case. The petitioner has been able to show from every evidence adduced that there were corrupt practices or non compliance with the provisions of the Electoral Act and that such non – compliance substantially affected the outcome of the election to the seat of the member of the Sokoto State house of Assembly representing Sokoto South 1 constituency. Hence the return of the 1st Respondent as the member representing Sokoto South 1 constituency in the Sokoto State House of Assembly ought to be set aside.

With regards to the second issue, learned counsel submitted that in determining whether a party has led credible evidence to entitle a party to judgement in his favour, the court or tribunal should look at the state of pleadings and the issues joined by parties, evidence led, and the testimonies of witnesses and the relief(s) sought. It was his submission that from the evidence before the Tribunal, the petitioner has led enough credible and admissible evidence that will entitle him to all the reliefs sought. According to the learned counsel, the crux of the Petitioner's case before this Honourable Tribunal essentially revolves around non-compliance in form of over voting and electoral irregularity in form of mutilations, alterations and cancellation of result sheets in the conduct of the State House of Assembly election held on the 9th March, 2019.

According to the learned counsel, the Petitioner in proof of his case tendered relevant documentary evidence, numbering over (34) with different series and called four (4) witnesses in conjunction with the petitioner himself to establish his case. Relevant public documents were also certified and tendered in the course of the trial. Amongst the public documents were Forms EC8As, and Voter Registers. The petitioner from all evidence adduced before this Honourable Tribunal has been able to establish his case.

The petitioner in paragraphs 19, 20, 21 and 22 of the Petition and paragraphs 23, 24, 25 and 26 of his witness statement on oath which he adopted as his oral evidence before this Honourable Tribunal, showed that there was over voting in Tundun Wada "A" and "B" Ward and Gagi A ward. The Petitioner tendered documents showing the specific polling units where over voting occurred. The documents were admitted and marked **Exhibit P2, P3 and P4** in evidence. More so, during cross

examination, the Petitioner stated that **Exhibit P3** clearly showed that over voting occurred in the polling units contained therein.

According to the learned counsel, it is the duty of the party who oppose the fact contained in any evidence tendered before the Court to either debunk same by cross examination, or tender a contrary evidence, to contradict same. Where he failed to so do the Court will rely on the evidence. The court/tribunal will have no option but to believe the petitioner's case in that regard on a minimal proof. See **OKONKWO v. KANO AGRICULTURAL SUPPLY CO. LTD. & ANO (2012) LPELR-9466 (CA)** where the Court held thus:

"The law is well settled that where one of the parties calls no evidence on an issue before the court, the evidence called by his adversary ought normally to be accepted as the truth unless it is of such a nature and quality that no reasonable tribunal will accept it. In other words, the onus of proof in a case or an issue in which one of the parties calls no evidence at all is discharged on a minimal of proof. On this stand, reliance was placed on the cases of: (1) Duru v. Nwosu (1989) 4 NWLR (pt.113) p.24 at p.55, paras. G - H; (2) Buraimoh v. Bamgbose (1980) 3 NWLR (pt.109) p.352; (3) Olujinle v. Bello Adeagbo (1988) 2 NWLR (Pt.75) p. 238 and (4) Nwabuoku v. Ottih (1961) ANLR p.507." Per OMOLEYE J.C.A (Pp 19-20,Paras G-

Learned counsel noted that the 1st, 2nd and 3rd Respondents did not call any witness thereby abandoning their pleadings. The tribunal is urged to rely on documentary evidence and the oral testimony in support of same as true. The Petitioner has also shown that if the figures representing the over voting in the areas outlined are deducted by the honourable Tribunal, the petitioner will poll the majority of the lawful votes cast in the election. The Petitioner averred to this fact in paragraph 22 of the petition and paragraph 26 of his written depositions which he adopted before this Honourable Tribunal.

The Petitioner has also adduced evidence to prove that there were mutilations and alterations of the Results sheets which were dishonestly made to falsify the results of the election. The Petitioner averred to these facts in paragraph 16, 17, and 18 of his Petition and paragraph 21, 22 and 23 of his written depositions which he has adopted before this Honourable Tribunal. Furthermore, Exhibits P2 and P4 - Forms EC8A- tendered by the petitioner shows the mutilations and cancellations in the appropriate polling units.

Furthermore, the Petitioner has been able to prove that there was non–compliance with section 49 (2) and section 73 of the Electoral Act 2010 as amended by the 3rd Respondent's officials in the election which substantially affected the election result. The failure to tick the appropriate box indicating that the voter has voted cannot be waived being a breach of a statutory law. There must be strict compliance with the provisions of the Electoral law. See Ojong v Duke (2003) 14 NWLR (841) 581.

He also submitted that in determining whether or not an election was conducted substantially in accordance with the Constitution and the Electoral Act 2010 (as amended), the Court will look at the circumstance of the case, including the state of the pleadings, especially the credibility of the petitioner's case, the nature and substance of the complaint of the petitioner, the attitude of functionaries charged with the conduct of the election and whether the omissions complained of, if proved actually affected the conduct of the election. See **Ogu Vs. Ekweremadu (2006) 1 NWLR (Pt.961) 255 at 276 – 277 and Okoroji Vs. Ngwu (1992) 9 NWLR (Pt.263) 113**. He therefore urged the Tribunal to hold that based on the pleadings and evidence led, the Petitioners have made out a case that is worthy of the reliefs been sought.

In conclusion, learned counsel submitted that from the totality of evidence before the Tribunal, particularly as it relates to the Petitioners' grounds of non-compliance with the Electoral Act and the Constitution, it is clear that the Petitioner has been able to prove that there was substantial non-compliance which materially and substantially affected the outcome of the said election. He therefore urged the Tribunal to grant the Petitioner's reliefs and resolve the issues in his favour and to also hold that the return of the 1st Respondent as winner of the said election is null and void on the grounds of corrupt practices and substantial non–compliance with the Electoral Act 2010 (as amended) and the 3rd Respondent's guidelines for the 2019 election. Consequently, this Honourable Tribunal is urged to declare the Petitioner the winner of the election to the seat of member of the Sokoto House of Assembly representing Sokoto South 1 Constituency.

Learned counsel to the Petitioner also filed a Reply on Points of Law to the final address of the 1st and 2nd Respondents which he also adopted as part of his final address. Apart from reiterating his position in the final address earlier filed on behalf of the Petitioner, the learned Counsel argued that 1st and 2nd Respondents at

page 4 of their final address submitted that the Tribunal cannot grant any application at the close of Pre-hearing Session, this is not true. The Tribunal has wide discretion under the law to grant several kinds of Applications relating to minor issues that does not touch the substance of the case, like the addition of the word "1" to Sokoto, which was granted by the Tribunal. Even assuming for the purpose of argument that it was brought outside the Pre-hearing Session, which was not so in this case the Tribunal will still have granted the Application taking into consideration the nature of the amendment.

According to the learned counsel , It appeared that the learned Counsel to the 1st and 2nd Respondent has placed so much premium on the omission of the word "1", as if his entire case depended on that minor omission, which he labelled as jurisdictional issue, he sympathised with him and submitted that this objection will not avail him as it is no longer in the Character of the Courts and Tribunal to shut out litigants on mere technicality, especially like this present one bothering on a minor omission of "1". See **APC V. MBAWIKE & ORS (2017) LPELR-41434 (CA).**

The learned counsel to the Petitioner thereafter summarized the points as follows;

1. The issue of Jurisdiction was resolved at pre-hearing session. The motion for amendment granted clearly laid the issue of jurisdiction to rest.

2. There is no doubt that the law allows the honourable Tribunal to grant all types of minor corrections/amendment which did not affect the substance of the Petition at the Pre-hearing Session. See **MUSTAPHA V. GAMAWA & ORS (2011) LPELR-9226 (CA).**
3. There is plethora of authorities in support of the power of the Tribunal to grant minor amendments at Pre-hearing Session or even at the latter stage of the Proceeding, it is at the discretion of the Tribunal.

4. Even assuming for the purpose of argument that it was brought outside the Pre-hearing Session, which was not so in this case, the Tribunal will still have granted the Application. Taking into consideration the harmless nature of the amendment.
5. The Respondents were not misled by the said omission of "1" which they are now challenging. They filed their reply and the hearing was concluded and until the address stage nothing was heard on the said objection.
6. The duty of a judge is to see that everything is done to facilitate the hearing of any action pending before him and whenever it is possible to cure and correct all honest or unintentional blunder or mistake in a case.
7. The Tribunal is not precluded by any provision of the Electoral Act 2010, from granting such leave to correct any type of typographical errors which does not affect the substance of the Petition.
8. The question is where was the Counsel to the 1st and 2nd Respondent when the Petitioner was moving his motion for amendment? He was in the matter throughout the proceeding, perhaps he thought he was laying a booby trap for both the Tribunal and the Petitioner, by which he thought wrongly that the entire proceeding will be a nullity.
9. The argument that the Petition be nullified for non-compliance with the rules and laws guiding this honourable Tribunal is belated, having not been canvassed at the right time. See **Section 53 (2-5) of the Electoral Act 2010 (as amended).**
10. The 1st and 2nd Respondent was expected to join issues by filing a Counter affidavit to the Petitioner's application before it was granted, having now been properly granted by the Tribunal in the interest of justice.
11. The Counsel ought to have presented a defence on merit instead of chasing shadows, in jurisdictional garb.

12. When a Court of law has decided an issue in the Course of its proceeding it is deemed settled in law. The same Court or Tribunal is not permitted by law to visit or reverse it; this is what is referred to as FUCTUS OFFICIO in legal parlance.

13. The Counsel to the 1st and 2nd Respondent argued that there are exceptions but he could not fix his objection within any of the enumerated grounds which constituted the said exceptions having failed woefully in this regard.

14. The leave to correct the typing mistake of the Counsel cannot be equated with any of the previous ruling of this Honourable Tribunal made in the case of **MACCIDO V WAMAKKO** which was cited by the learned Counsel to the 1st and 2nd Respondents out of context.

15. The Supreme Court has warned several times that since no two cases can be the same in all respect stricto sensu, each case should be taken on its peculiar facts and circumstances.

16. The Supreme Court in **TSOKWA OIL V BANK OF THE NORTH (2002) 11 NWLR, PT 177, PG 163**, authorized that the presence of a preliminary objection in a suit does not stop the other party from taking steps to remedy defects in his process.

17. We have argued issue of over voting extensively in our main address on this issue at pages 14-19 paragraph 4.37.

18. The Counsel admitted at least that a copy of form EC8A was given to the witness to speak to during cross examination. At least the witness answered relevant questions that were put to him in respect of the document.

19. The errors, erasures and mutilations in the documents are similar one does not need to go on a voyage of discovery to decipher the complaints of the Petitioner as contained in the Petition.

20. The witness' Statement of the Petitioner who testified elaborately on his Petition touched all the documents tendered.
21. There is no law that stops a Court or Tribunal from checking its record in determining the justice of a case. The justice of a case will not be cloistered because the Court or Tribunal looked through its record to confirm the state of pleadings and evidence tendered before it to determine the veracity of any submission.
22. The Counsel to the 1st and 2nd Respondent was never misled as to which Tunduwada is relevant to this petition; whether A or B.
23. At least even if the Counsel did not know of any Tudunwada, we humbly refer to our pleadings particularly the reliefs, where Tudunwada A and B, appeared clearly and the relevant documents tendered before the Court.
24. The Counsel to the 1st and 2nd Respondent has stated the correct Appellation to Tudunwada as A and B at page 19, paragraph 1 of the final Address.
25. The idea of a lacuna is a misconception at its highest Order. It is not borne out of pleadings and the evidence adduced in support of this Petition both oral and documentary.

He once again urged the Tribunal to grant the reliefs of the Petitioner as prayed.

However, learned counsel to the 1st and 2nd Respondents raised objection to the validity of the Reply on Points of law to the final address of the 1st and 2nd Respondents adopted by the Petitioners and urged that same should be discountenanced on the ground that it is a re-argument, embellishment and expansion of the Petitioner's earlier final address which the Petitioner is not entitled to do. He referred the Tribunal to the cases of Eco Bank Nig Plc and Anchorage Leisures Ltd (2016) LPELR-40220 and the case of Ezenuwa V Onyema (2011) 3 NWLR PT 1263 PG 25 in support of this submission.

Having gone through the whole Petitioner's reply on point of law to the final address of the 1st and 2nd Respondents, same is obviously a re-argument of the

Petition rather than point of law strict senso as can be seen. In view of the above, we are inclined to agree with the learned counsel to the 1st and 2nd Respondents that same should be discountenanced and we hereby so hold.

As earlier noted, the 3rd Respondent on their part incorporated a preliminary objection to the competence of the Petition in their Reply to Petition filed on the 23rd day of April 2019 urging same to be struck out on the grounds stated therein which the Tribunal urged should be argued along with the substantive Petition. However on the day final addressees were adopted in this Petition, the learned counsel to the 3rd Respondent did not canvass argument in support of same or adopt his address in support of the Preliminary objection thus same is deemed abandoned and hereby struck out.

It is noteworthy that at the close of the pre-hearing session, the Tribunal formulated two (2) issues for determination which were distilled from the issues formulated by the parties themselves with a slight adjustment as follows;

1. *Whether the return of the 1st Respondent as member representing Sokoto South 1 Constituency, Sokoto State in the Election of the 9th day of March, 2019 ought not to be set aside on grounds of corrupt practices and substantial non-compliance with the provisions of the Electoral Act 2010 (as amended).*
2. *Whether from the totality of the evidence adduced by the Petitioner, the Petitioner is not entitled to the reliefs sought.*

However before resolving the said issues, it is pertinent to resolve some preliminaries issues raised by the Respondents.

The first preliminary issue was raised by the learned counsel to the Respondents in their final address is to the effect that this petition is incompetent to the extent that the Honourable Tribunal has no jurisdiction to grant the amendment to the petition sought and obtained by the Petitioner in this case, therefore the said amendment granted is null and void. He thus urged the Tribunal to set it aside on the ground that the amendment granted to the petitioner is a nullity as it is categorically prohibited by paragraph 14 (1) of the 1st Schedule to the Electoral Act.

He submitted further that if this request is acceded to, it means now that the petition before the tribunal is the petition dated 30th March, 2019 and filed the same date. In that case, the petition becomes incompetent for failing to state the holding of the election as required by paragraph 4 (1) (c) of the 1st Schedule to the Electoral Act, 2010 (as amended). He referred to paragraph 8 at page 7 of the petition, where the petitioner purportedly stated the holding of the election of the 30 House of Assembly Constituencies in Sokoto State, meanwhile there is no **Sokoto South Constituency**. Only Sokoto South 1 and 2 exist.

Learned counsel to the 1st and 2nd Respondent also submitted that the Court had no discretion to postpone it to be heard after any other application except perhaps one that was strictly for contempt of Court in facie curia as this will amount to subversion of the application or challenge to the jurisdiction of the Court. He therefore urged the Tribunal to determine this case on the basis of the original petition.

Learned counsel to the Petitioner in response to the resurrected objection that has been hitherto buried by this Honourable Tribunal but which the 1st and 2nd respondents will not allow to rest submitted that the issue of the amendment related to the inclusion of "1" to Sokoto south 1 constituency which was thoroughly resolved by this Honourable Tribunal at the Pre hearing stage of the proceeding, learned counsel submitted that where a court has given a decision on an issue before it , it ceases to have power to re-open the matter all over again in the same proceeding and so the court becomes FUNCTUS OFFICIO thus this issue had been successfully determine by this Honourable Tribunal at the pre hearing stage hence it should be allowed to rest or there will not be an end to litigation.
We have carefully gone through both the original Petition and the amended Petition filed by the Petitioner before this Tribunal, particularly the purported paragraph 8 at page 7 the learned counsel to the 1st and 2nd Respondent referred to. It is noteworthy that nothing of such was discovered as paragraph 8 of the Petitioner in both Petitions could be found on page 2 of the Petition. A further search of the petition failed to yield the 30 House of Assembly referred to by the learned counsel to the 1st and 2nd Respondents. It is thus safe to presume that the learned counsel to the 1st and 2nd Respondents in that regard was labouring under a misconception.

With regards to the submission of the learned counsel to the 1st and 2nd Respondents that the objection to jurisdiction of the Tribunal ought not to have been adjourned till the end of the substantive case, it will appear that the said learned counsel did not advert his mind to the provisions of paragraph 12 (5) of the First Schedule to the Electoral Act 2010 (as amended) which provides thus;

12 (5)- A respondent who has an objection to the hearing of the petition shall file his reply and state the objection therein and the objection shall be heard along with the substantive petition.

Even more fundamental, the provisions of ***section 285 of the 1999 Constitution were amended by section 2 of the Constitution of the Federal Republic of Nigeria, 1999 (Fourth Alteration, No.21) Act, 2017*** stipulates as follows:

"Section 285 of the Principal Act is further altered by-

(b) Substituting for subsection (8), a new subsection "(8)"-

'(8) Where a preliminary objection or any other interlocutory issue touching on the jurisdiction of the tribunal or court in any pre-election matter or on the competence of the petition itself is raised by a party, the tribunal or court shall suspend its ruling and deliver it at the stage of final judgment."

Based on the above statutory provision, we hereby hold that the Tribunal did not err by adjourning the objection raised by the Respondent to be heard alongside the substantive petition.

With the regard to the prayer asking the Tribunal to set aside the order of amendment granted by this Tribunal, it is noteworthy that the said order of amendment granted by this Tribunal was granted without objection from the Respondents contrary to the position of the learned counsel to the 1st and 2nd Respondents in his written address that he was overruled. We are bound by the courts records of the 20th day of May 2019.

We have carefully considered the arguments canvassed by both parties and noted that by virtue of the provisions of paragraph 14 (2) of the Electoral Act 2010 (as amended) no substantial amendments to the petition or reply can be made at the expiration of the time prescribed for filing. The question of whether the amendment

sought was substantial was considered during the pre-hearing session and the Tribunal found that the amendment sought will not alter the petition substantially based on which the amendment sought was granted thus the error being complained about by the Respondents has already been rectified vide an amendment granted by this Honourable Tribunal on the 20th day of May 2019.

It is noteworthy that the Respondents were ably represented on that day and did not raise any objection to the grant of the said application to amend the process. Based on the above, we hereby hold that this issue has been laid to rest vide an order of the Tribunal granting the Application for amendment and deeming the already filed amended petition as having been properly filed and served the appropriate filing fees having been made.

This brings us to the issues formulated for determination in this case as already reproduced above. The learned counsel to the 1st and 2nd Respondent appears to have argued both issues jointly and submitted that the petitioner has not discharged the burden imposed on him by the law to be entitled to the reliefs he is seeking in this petition, having regard to the evidence adduced and the issues formulated by the Hon. Tribunal.

According to the learned counsel to the 1st and 2nd Respondents, the grouse of the Petitioner is mainly concerned with over voting, non-stamping of the result sheets, mutilation of result sheets and irregularities. He also noted that the petitioner tendered the declaration of final result, form EC8 E (i) and some forms EC8 A, from the bar before the petitioner took the stage as his own witness and admitted not being at the polling units where those incidents occurred thus making his evidence on these points mere hearsay.

Most importantly the petitioner did not link the exhibits shown to him to any of his specific complaints in the petition. So apart from giving hearsay evidence, the petitioner woefully failed to link any of the exhibits admitted to any specific areas of his complaints. Perhaps expecting the Tribunal to do so for him unfortunately this is not allowed as a party relying on documents in proof of his case must specifically relate each of such documents to that part of his case in respect of which the document is being tendered. Such a duty must not be left to the court in the recess of its chambers as this will amount to cloistered justice.

In response the learned counsel to the Petitioner noted that the Respondent in his final written address misinformed this Honourable Tribunal when he contended in page 12 of his address that the petitioner tendered the declaration of final result Form EC8E (1) and some forms from the Bar which is not correct. The record of the Honourable Tribunal will best explain the procedure adopted.

We have carefully examined the records of proceedings with particular reference to the proceedings of the 11th day of June 2019 which shows that the documents were indeed tendered through the Petitioner and not his counsel from the bar. In any case, tendering certified true copies of documents from the bar is certainly acceptable, see the provisions of paragraph 41 (2) of the First Schedule of the Electoral Act 2010 (as amended).

The learned counsel to the Petitioner also submitted that during cross examination, the petitioner testified that Exhibit P3 clearly proves the allegation of over voting in each of the polling unit named therein. It is trite that once documentary evidence supports oral evidence, oral evidence becomes more credible as documentary evidence serves as a hinge from which to assess oral testimony. Thus, the oral evidence of the Petitioner alleging over voting becomes more credible having been supported by the documentary evidence tendered.

It was also his submission that the Petitioner by his statement on oath which he adopted as his oral evidence has successfully related the documents to the specific polling units in his oral examination before this Honourable Tribunal thus the 1st and 2nd Respondents have misconstrued the position of the law on the issue of relying on documentary evidence in proof of election petitions moreso since paragraph 41(3) of 1st schedule of the Electoral Act 2010 as amended which provides that there shall be no oral examination of a witness during his evidence in chief except to adopt his written deposition and tender in evidence all disputed documents or other disputed documents or other exhibits referred to in the deposition thus the witness' Statement on Oath then becomes the evidence in Chief.

We have carefully considered the arguments canvassed by all the parties on this issue, the position of the law is that where a document has been produced in evidence through a witness who has referred to it in his statement on oath, that will pose no problem because the oath itself where properly drafted would have

provided the necessary backdrop for the document and must have related that particular documentary piece of evidence to the specific pleaded fact or issue it is tendered to prove. Cross examination may also provide ample opportunity for relating such piece of evidence to the pleadings, see the case of Ucha v Elechi (2012) All FWLR PT 625 @ 237.

It is now settled law that a party seeking to adduce a piece of evidence at the trial must demonstrate in open court the particular content of his claim or defence for which that particular document is tendered because it is not part of the duty of the court to do cloistered justice by making inquiries outside the court not even by examination of documents which has not been examined in the open court, see the case of CPC V INEC (2013) All FWLR PT 665 @ 364.

In the instant case, the documents exhibits P1 to P5 were tendered through the Petitioner after the said Petitioner informed the Tribunal that he mentioned same in his depositions. That was all the Petitioner said in relation to those documents during the examination in chief. It was during cross-examination that he was shown exhibit P3 and he said the problem there is over voting. Thus, the only exhibit that was specifically shown to the Petitioner was exhibit P3 which happens to be the bundle of documents in respect of Tudunwada B ward.

The learned counsel to the Petitioner contended that the Petitioner has by his statement on oath which he adopted as his oral evidence successfully related the documents to the specific polling units in his oral examination before this Tribunal. In the meantime, the petitioner averred in some paragraphs in his petition as follows;

11.*Your Petitioner shall rely on the various INEC result sheets (i.e. Form EC8A, EC8A (l) VP, EC8E (I) to show not only the recorded scores for the various Polling Units, Wards, and Local Governments comprising Sokoto South 1 Constituency of Sokoto State but shall at the hearing show the inaccuracies, acts of non-compliances and outright breaches or contraventions of extant electoral laws and regulations that attended the scores recorded therein in favour of the 1st and 2nd Respondents.*

12.Your Petitioner hereby pleads and shall rely on all ballot papers, ballot boxes, Forms EC8A , EC8B (I) and EC8E (I), schedule of distribution of ballot papers,

ballot boxes, voters' register and other materials, used on or during the 9th March 2019 general election to the office of member of the Sokoto State House of Assembly representing Sokoto South 1 Constituency of Sokoto State.

13.Your Petitioner shall also rely on Reports by Forensic experts, information and telecommunication experts and some other experts, reports of physical and electronic inspection of election materials, Reports and or charts of physical inspection of electoral materials obtained in the course of this Petition for the purpose of maintaining the Petition and testimony of election Observers and Monitors, both local and international. Further, the Petitioner shall rely on video and photographic evidence. The 3rd Respondent is hereby put on Notice to produce the original Copy of Form EC8A (I) VP, of magajin Rafi MPS 1A, Unit O19 A, B and C as same shall be relied upon at the hearing.

15.Your Petitioner states that in many instances, several alterations/and mutilations were carried out by the 3rd Respondents' officials at the collation centres on the Form EC 8A at the behest of the 1st and 2nd Respondents which changed some of the results earlier announced at the polling units to favour the 1st and 2nd Respondents

17.Your Petitioner further states that there were so many distortions, anomalies, alterations and or manipulations in the Forms EC8A, in respect of areas or units purportedly won by the 1st and 2nd Respondents, particularly for Tundun Wada A Ward/RA of Sokoto South Local Government Area and ought to lead to the cancellation and or nullification of votes purportedly recorded or entered in their favour by the 3rd Respondent.

18.Your Petitioner avers further that in Magajin Rafi M.P.S. 1 polling unit 019, in Tunduwada 'A' ward, which is a unit with three voting point there were massive thumb - printing of ballot papers. in magajin Rafi MPS 1A unit 019, Magajin Rafi B (VP) unit 019 and MagajinRafi C unit 019 by which acts of mass thumb printing, the 1st and 2nd Respondent were purported to have scored 229, 173 and 133 votes respectively and Your Petitioner shall contend at the trial that the entirety of the election in those units was a sham and ought to be rejected and the votes nullified. That in Magajin Rafi M.P.S. 1 polling unit 019 , in Tundu Wada 'A' ward, is a unit with three voting point i.e Rafi MPS 1A unit 019, Magajin Rafi B (VP) unit 019 and Magajin Rafi C unit 019 there were mutilations of result sheets, the entirety of the election in those units were a sham and ought to be rejected and the votes nullified. That after the election, results sheets form were given to my 3 agents at the 3 voting points. That two of the result sheets i.e EC8A (I) VP, given to my Agents were traced with ink.

20. Your Petitioner states further that, the number of votes exceeded the number of accredited voters and highly irregular and Your Petitioner shall pray that the votes recorded in respect of these units, be nullified. ***The Forms EC8 A, in respect of these units are hereby pleaded and notice is hereby given to the 3rd Respondent to produce them at the trial.***

(21) The petitioner avers that in MagajinKafi M.P.S 1A polling unit 019 in Tundun Wada Ward/RA which has 3 voting points also recorded cases of irregularities and over voting in that the summation of the total number of votes recorded in 3 Form EC 8A (1) VP respectively, the 3 voting points were 760 which is above the accredited number of 753. The Three Form EC 8A (1) VP is hereby pleaded and notice is hereby given to the 3rd Respondents to produce the original copy of the said Form at the trial.

It is noteworthy that the above paragraphs are the sum total of the specific areas of the Petition where documents were pleaded apart from other paragraphs where alteration, mutilation, falsification etc were alluded to. The Petitioner specifically stated in paragraph 11 of the petition that he will show at the hearing the inaccuracies, acts of non-compliances and outright breaches or contraventions of extant electoral laws and regulations that attended the scores recorded therein in favour of the 1st and 2nd Respondents which he obviously failed to do during the trial of this petition.

The question now is, can the petitioner be said to have demonstrated the documents tendered through him as required by the Electoral Act 2010 (as amended)? We must of necessity answer this question in the negative as it is not enough for a witness to merely identify documents, he must link same up specifically to the areas of his pleadings and demonstrate same to the satisfaction of the Tribunal.

The court held in the case of ACN V NYAKO (2013) All FWLR PT 686 @ 424 "it is trite law and well settled that documents tendered in court must demonstrate their purport and worth through a witness. It is pertinent to note that the documents in contention were neither tied to nor related to the Appellants case through any of the witness hence the reason why the Tribunal did not give them any evidential value on the ground that the documents were merely dumped on the tribunal…….. the nature of the documents tendered needed to be explained and related to the reason why they are produced and linked to the specific areas or issues is detrimental to the applicants case"

In the instant case, the Petitioner merely informed the Tribunal that he mentioned the documents in his petition. He also said Exhibit P3 shows over voting without demonstrating how he arrived at the over voting mentioned, the worth of each document to the proof of his petition and linking each document tendered up with specific paragraphs of his petition. The Petitioner also failed to inform the Tribunal

the import of the documents tendered. In fact, the scenario in this case is a classic case of dumping.
The court held in the case of Oyegun v Igbinedion (1992) 2 NWLR PT 226 @761 that *"the duty of the court is to decide between the parties on the basis of what has been demonstrated, tested, canvassed and argued in court. It is not the duty of the court to do cloistered justice by making an enquiry into the case outside the court even if such enquiry is limited to the examination of documents which were in evidence. See also the case of Onmeje v Otokpa (1999) 4 NWLR PT 600 @ 528.*

In the instant case, in as much as the Petitioner did not demonstrate exhibits P1 – P5 by linking it to specific areas of his petition and telling the court their import and worth, we hereby hold that exhibits P1 – P5 has been dumped in this Tribunal thus of no evidential value since the Tribunal is precluded from going into it to fish for evidence not demonstrated in the open court.

The learned counsels to the Respondent submitted further that in spite of the many allegations of over voting, none of the witnesses of the petitioner gave evidence to that effect. He therefore submitted that all pleadings about these issues should be discountenanced as there was no evidence from the petitioners to support them.

Learned counsel to the petitioner in reaction to this noted that the PW4, an officer of the 3rd respondent the maker of Voters registers tendered and used for the election in the affected polling units under review and same were admitted and marked Exhibit P6A-H. The said voters' registers clearly show that there was non-compliance with the provisions of the Electoral Act and the 3rd Respondent's guidelines for the elections. He submitted further that to prove over- voting which is a corrupt practice and non-compliance with the Electoral Act (2010), Petitioner must tender the Voters Register, tender the statement of Results in the appropriate Forms which shows the number of accredited voters and number of actual votes, relate each of the document to the specific area of his case in respect of which the document were tendered and show that the figure representing the over- voting if removed would results in victory.

According to the learned counsel for the Petitioner, the four cardinal requirements to prove over voting are all present in this Petition therefore the petitioner has successfully related the cardinal requirements as it relates to over voting in some of the polling units complained of in his evidence given on oath by tendering the voters' registers through the PW4. The petitioner pleaded the voters registers used

in the election and in paragraph 14 of his statement on oath stated clearly that he shall rely on them to prove his petition. The Petitioner also tendered the Results sheets Form EC8A in respect of the appropriate polling units where over voting occurred. The said documents prima facie leaves no one in doubt of the number of accredited voters and number of valid votes cast at the election. The document speaks for itself, rep ipsa loquitur.

In considering this point, it is noteworthy that the PW4 testified before this Tribunal on the 1st day of July 2019 and tendered the voters' registers which were admitted and marked exhibits P6A- P6H. It is also worthy of note that these voters registers were tendered after the Petitioner and the three (3) other witnesses had already given evidence thus none of them were able to identify or link the voters' register to specific areas of the Petition or the issues joined in this case.

It is further worthy of note that the P.W. 4 is a subpoenaed witness from the office of the 3rd Respondent. The totality of his evidence on being shown exhibit P6A was to the effect that he stated in his deposition that the result of each Polling units that made up the 5 wards of Sokoto South 1 Constituency was entered in form EC8A of the various polling units i.e Exhibits P2, P3 and P4 respectively. He then informed the Tribunal that he did not make any entries into Form EC8A at the Polling units thus cannot answer questions about those forms.

The learned counsel to the Petitioner then invited the Honourable Tribunal to take a critical look at Nagarta College PU 026 Tudunwada "B" S/N 002247. Exh P3 and compute the valid votes scored by the parties by the authority of **Agbaje Vs. Fashola (2008) 6 NWLR (Pt.1082) 90 at 148,** where it was held that the Tribunal reserves the right and power to compute or collate results based on evidence before the Tribunal. He thus submitted that this Tribunal will find that the total valid votes is 221 not 220 as recorded on the result sheet.

In the meantime, contrary to the position of the learned counsel to the petitioner, the court held in the case of Atikpekpe V Joe (1999) 2 LREN 302 @ 324 that *"the mere tendering of Forms EC8As in batches does not satisfy the standard of proof required, the invitation to do and their acceptance to do so is tantamount to invitation….. and not substantial justice. The role of the judge is adjudicatory and not investigatory. By its agreement to go into exhibit P1-P7 to fish out evidence, the*

tribunal abandoned its role of unbiased umpire and descended into the arena on the side of the 1st Respondent for reasons not apparent on the records …….. the tendering of Form EC8A without adducing evidence on their content is fatal to the 1st Respondents case at the trial. It is not the duty of the court to examine documents outside the courts"

The question now is, does the evidence of the PW4 meet the standard required in demonstration of documents? We must once again answer this question in the negative. Based on the above holding of the superior court, we hereby decline the invitation of the learned counsel to the Petitioner to examine documents not demonstrated in the open court and compute figures not brought to its attention in the open court. What this means in essence is that the evidence of the PW4 falls short of the standard required in demonstration of documents to the satisfaction of the Tribunal thus his evidence is worthless to establish over voting vide the voters' registers tendered by him.

The learned counsel to the Petitioner submitted further that if the figure representing the over –voting is removed it would result in victory for the petitioner. According to him, the petitioner did not only aver in paragraph 22 of the petition that if the votes classified as over voting are nullified and same is deducted from both the petitioner and the 1st Respondent, the Petitioner will be left with the highest votes cast of 16099 while the 1st Respondent will be left with 15492 of the total votes cast. He also referred to paragraph 26 of the petitioner witness' statement on oath in support of this.

In the meantime, what the Petitioner stated in paragraph 22 of his petition is as follows;

22) *Your Petitioner shall further contend that if the votes classified as over-voting are nullified and same is deducted from the total vote cast for both the Petitioner and the 1st Respondent your Petitioner will be left with the highest vote cast of 16099 while the 1st Respondent will be left with 15492 of the vote cast.*

This was also repeated word for word in paragraph 26 of his witness statement on oath. Unfortunately, the petitioner did not state how he arrived at this figure either in his petition, his witness statement on oath or his viva voce evidence in court. A cursory look at paragraphs 23 of the petition shows a total number of 16 votes

classified as over voting. In the meantime, in paragraph 10 of the Petitioner's witness statement on oath, he stated that 17, 997 votes were recorded for the PDP while 18, 376 were recorded for the APC. The Tribunal was never informed how the Petitioner arrived at the figure quoted in the paragraph 22 of the petition and 26 of his witness' statement on oath as heavily canvassed by the learned counsel to the Petitioner in his written address. These salient facts and figures were not demonstrated in the open court during trial.

The learned counsel to the petitioner attempted to cure this loophole in his written address, in paragraph 4.27 thereto where he submitted that the Petitioner has demonstrated and proved that the conduct of the Sokoto State House of Assembly election in Sokoto State in some polling unit on the 9th of March, 2019 was marred with non-compliance with extant laws guiding the conduct of elections and over-voting. That he has carried out a verifiable analysis of the number of invalid votes by reason of over-voting, out of the total votes recorded at the election and from his analysis, a total of 3967 votes were unlawfully allotted to the candidates in the Sokoto state House of Assemble election held on the 9th March, 2019. That the 1st Respondent was allotted 2469 invalid votes while the 1st Petitioner was allotted 1498 invalid votes. The Legal effect of these invalid votes according to the learned counsel is the nullification of all votes obtained by the parties in the affected 11 polling units. That when the invalid votes are subtracted from the total votes cast, the 1st Petitioner would have secured the majority of lawful votes cast at the election as demonstrated in the petitioner witness' statement on oath.

We have taken a cursory look at the petition and the witness statement on oath of the petitioner, there is no place where the figures quoted above were mentioned. It was also not mentioned during the trial. It has been held in a myriad of cases that a counsel's address no matter how brilliant cannot take the place of legal prove, see the case of MOHAMMED v. GBUGBU & ORS (2018) LPELR-44494(CA)

The learned counsel to the petitioner submitted further that where over-voting is shown to have substantially affected the outcome of the election, the Tribunal should waste no time in cancelling the votes from the affected polling units and booths. He thus submitted that the number of polling units affected by over-voting is very substantial such that this Honourable Tribunal cannot treat lightly. He said that the implication is that, all votes scored or gathered in the affected polling units

where over-voting has been established will be voided as invalid votes and when same are deducted from the total scores of the petitioner and the 1st Respondent, the petitioner will be victorious. He urged the Tribunal to so hold.

Once again, this submission of the learned counsel to the Petitioner was not borne out of pleadings or evidence moreso in the light of our decision above that the petitioner did not demonstrate the documents tendered to prove over voting. Based on all the above, we hereby hold that the petitioner herein failed to establish over voting in the complained polling units which substantially affected the election results to warrant the nullification and cancellation of results in the alleged polling units.

The learned counsel to the Respondents submitted further that the petitioner in his adopted statement, under paragraph 16, complained of wrong doings in some named polling units at Tudunwada ward that in the meantime, there is no Tudunwada ward in the constituency in question and no exhibit, tendered bears that name. Now, for the Tribunal to investigate with a view to finding out which of the existing wards the petitioner was trying to refer to, will be tantamount to cloistered or cosseted justice, which the apex Court has, in many decided cases frowned at. Therefore, the statement of the Petitioner goes to no issue to the extent it makes references to polling units in Tudunwada ward which does not exist.

The learned counsel to the Petitioner in response to this contended that the Respondents failed to show to this Tribunal how they were misled because they clearly responded to this in their defence to same. That contrary to the submission that no exhibit bears Tudunwada, all exhibits before the tribunal bears Tudunwada A and B and they are all listed in the schedule of documents adopted before the Tribunal.

A cursory look at the Amended Petition once again reveals that Tundun Wada A and B were mentioned in paragraphs 18 (d) and (e) of the petitioner's witness statement on oath and paragraph E (4)(d) and (e). Besides, the Respondent failed to show the Tribunal how they were misled as to the polling booths referred to therein thus the submission of the Respondents in this regard is of no moment.

The learned counsel to the Respondents submitted further that none of the witnesses who claimed to be polling agents was able to give convincing evidence about what happened at their polling units. That it is doubtful whether the witnesses were agents at any polling units at all.

In the meantime, it is worthy of note that the PW1 and 3 informed the Tribunal that they were the petitioner's polling unit agents at Tundunwada while the PW2 testified that he was the Petitioner's agent at Tudunwada Area 019 under cross examination. A cursory look at the witness statement on oath of the PW1 and PW2 which they adopted as their evidence in court showed that their depositions were the same word for word. It was only that of the PW3 that was slightly different.

The attitude of the court is that evidence on oath will not be worthy of belief where witnesses called by the petitioner who were at different places at the same time claimed to have heard, seen and done exactly the same thing without any discrepancy in their respective evidence. This verbatim repetition is an indication that the witnesses were tutored and could not have been telling the truth. In such a situation, the court is duty bound to disregard the evidence of such witnesses as unreliable not only on the subject matter proved to be false but also reject their entire testimony in the case for want of credibility, see the case of Daggash V Bulama (2004) 14 NWLR PT 892 @ 144.

The court observed thus in the case of *Maduabum v Nwosu (2010) 13 NWLR PT 1212 @ 623 "to start with an examination of the written statement on oath of RW1A-RW14A who were witnesses called by the appellant, these witnesses claimed to have heard, seen and done exactly the same thing without any discrepancies in their respective evidence. This was indicative that their evidence have been tutored and they could not have been telling the truth……. The similarities of the said witnesses are too obvious to be coincidental and therefore unbelievable and of no probative value"*

In the instant case, we find it quite unbelievable that the PW1, PW2 and PW3 who acted as agents of the petitioner in different wards all noticed the same thing in the document handed over to them and they all complained to the same presiding officer Gwautsa Franscis. The question to ask now is whether this Gwautsa Francis was the presiding officer for three polling units at the same time. The obvious conclusion to draw from this is that they were tutored.

Based on all the above, we hereby hold that the written statements on oath of the PW1,PW2 and PW3 which are exact replicas are unbelievable.

On the other hand, the learned counsel to the Petitioner argued the issues formulated by the Tribunal for the parties separately.

With respect to the 1st issue posited, learned counsel submitted that the conduct of an election must comply with the provisions of the Electoral Act with regards to the provisions of section 138 (1)(b) of the Electoral Act, 2010 (as amended) **t**he implication of which is that the election and return of candidate at an election can be nullified where a petitioner successfully establishes that the conduct of the election was marred by corrupt practices and non-compliance with the provisions of the relevant laws regulating the election. The learned counsel submitted further that the Petitioner has essentially challenged the return of the 1st Respondent on grounds contained in paragraph 14 of the petition of non-compliance with Electoral Act. That the non-compliance in this case is so substantial that this Honourable Tribunal should nullify or cancel the elections in all polling units and wards where they were established on the grounds of over-voting in 11 Polling Units from 3 Wards in Sokoto South Local Government of Sokoto State. Counsel submitted further that it is where the law is complied with that a voter can be said to have been accredited and urged the Honourable Tribunal to so hold.

In the meantime, to establish non-compliance with the provisions of the Electoral Act in the conduct of an election, the courts have consistently held that where a petitioner complains of non-compliance with the provisions of the Electoral Act 2010 as amended, he has a duty to prove it polling unit by polling unit, ward by ward. He must also establish that the non-compliance was substantial and that it affected the result of the election. It is only then that the Respondents are to lead evidence in rebuttal, see the case of PEOPLES DEMOCRATIC PARTY (PDP) v. INDEPENDENT NATIONAL ELECTORAL COMMISSION & ORS(2014) LPELR-23808(SC)

In the instant case, the evidence of the PW1 – PW3 has already been held as unreliable. The Petitioner in his evidence in court honestly informed the Tribunal that he did not visit any other polling unit apart from the one where he voted. According to him, he went back home after voting. However, the petitioner deposed to incidents that happened at many polling units different from the one where he voted without informing the Tribunal of the source of his information. The petitioner also alleged under cross examination that a nameless agent of his party informed him of the content of his paragraph 20 (xxviii). He also informed the Tribunal that the content of his paragraph 22 is based on the INEC documents given to his agents who were once again not identified or called to testify in court.

The court held in the case of Attahir & Anor V Mustapha & Ors (2008) LPELR-3818(CA) that *"allegations to be contained in a witness statement on oath must be*

allegations of fact of what the witness has direct personal knowledge of. This is because where allegations of facts contained in a witness statement consist of information which he received from other people and also from conclusions which he reached from documents shows that the witness statement is laced with hearsay evidence therefore vitiated especially if the purpose of relating the hearsay evidence to the tribunal was to establish the truth thereof for the endorsement of their probative value as the Tribunal cannot sieve it or seek to rely on any part of the statement because that will be tantamount to sieving tainted hearsay evidence which is not permissible in law. See also the case of Kakih v PDP (2014) 15 NWLR PT 1430 @ 418.

In the instant case, the Petitioner's written statement on oath which he adopted as his evidence in court was full of allegations without mentioning the source of his information after admitting that he did not visit any other polling unit apart from the one where he voted. Thus based on the above position of the superior courts, we hereby hold that the Petitioner's evidence amounts to hearsay evidence which is inadmissible in law. See the case of POPOOLA v. STATE (2018) LPELR-43853(SC)

Having held that the evidence of the petitioner is hearsay evidence and those of the PW1-PW3 as not credible, the only evidence left before the Tribunal is that of the PW4. The question now is whether the evidence of the PW4 can establish non-compliance with the provisions of the Electoral with regards to over voting? The question must once again be answered in the negative as the said witness was not from any of the polling units complained of. In fact, the said PW4 specifically informed the Tribunal that he did not make any entries in any of the documents tendered and thus cannot answer questions about them.

From the above, it is clear that the petitioner in the instant case did not establish over voting substantial enough to enable the Tribunal tamper with the results published by the 3rd Respondent which has a presumption of regularity, see the case of SHULUWA & ANOR v. AYE & ORS (2015) LPELR-40476(CA)

The learned counsel to the Petitioner also contended that the Evidence led by the Petitioners, particularly Exhibits P2 to P4 and Exhibit P6a to P6h (Forms EC8A's and Voters Registers in respect of the 8 Polling Units of Registration Area Tudunwada 'A' , Tudunwada 'B' and Gagi' B') clearly demonstrated beyond doubt that election in a total of 19 Polling Units of 3 Wards in the said Sokoto South 1 Constituency of Sokoto South Local Governments were marred by corrupt practices and non-compliance.

In the meantime, we have already held in the earlier part of this judgement that the petitioner did not demonstrate any of the documents tendered in aid of his petition to the satisfaction of the Tribunal thus the exhibits mentioned above cannot be perused by the Tribunal outside the courtroom.

The learned counsel to the Petitioner submitted further that in paragraphs 16, 17, 18 and 19 of the petition, the Petitioner avers that there were mutilations and alterations of Results sheets Form EC8A in various polling units in Tundun Wada A Ward and Gagi A ward thereby making it difficult to determine the number of exact votes polled by the candidates due to the alterations of the results sheet. The Petitioner also averred in paragraph 21 and 22 of his written depositions that there were mutilations / alterations and mischievous alterations and/ or alterations of votes in favour of other parties in order to favour the 1st and 2nd Respondents. PW1 in his written depositions equally averred that there were mutilations / alterations of the Results sheets Form EC8A in his polling unit where he represented the 1st petitioner. The petitioner tendered documents showing the mutilations / alterations of the Results sheets. These documents were tendered and marked as Exhibit P2 and P4.

The court held in the case of ABDULMALIK ANOR. v. TIJANI ORS.(2012) LPELR-19731(CA) *"It is trite that a Petitioner who based his case on fraudulent cancellations, mutilations or alterations must establish two ingredients, i.e. (a) That there were cancellations, alterations or mutilations in the electoral documents, and (b) That the cancellations, alterations or mutilation were dishonestly made with a view to falsifying the result of the election. The two ingredients must both be established together before the result of an election can be cancelled on those grounds. This Court in Terab vs. Lawan (1992) 3 NWLR Part 231 Page 569 at 594 Paragraphs C-D, held as follows:- "While it is true that some of these forms show that alterations and cancellations were made on them, it has not been made clear at what stage the alterations and cancellations were made. In order to prove that these alterations and cancellations were made so as to falsify the results of the election, the Appellant would need to tender copies of the Forms ECSA given to his agents at the polling stations so that this could be compared with the originals tendered. Falsification of results at the election in December 1991 is a criminal offence which requires proof beyond reasonable doubt. See Nwobodo vs. Onoh (1984) 1 S.C. Page 1 at 118-119. Also in Mark vs. Abubakar (2009) 2 NWLR Part 1124 Page 79 at 183- 184 Paragraphs G-A*

What can be gleaned from the above decisions is that to establish mutilation, cancellations and alterations, the petitioner must prove the existence of the cancellations, alterations or mutilations in the electoral documents, and go further to establish that the cancellations, alterations or mutilations were dishonestly made

with a view to falsifying the results of the election and finally the petitioner must tender copies of the Forms EC8A given to his agents at the polling stations so that this could be compared with the originals tendered.

In the instant case, we have already held that the petitioner did not demonstrate the documents tendered or link same to specific areas of his allegation. Throughout the trial, no single alteration, mutilation or cancellation was shown to the Tribunal in the open court. We have also held above that the Tribunal cannot embark on cloistered justice by investigating documents not demonstrated in the open court.
Apart from the above, the evidence of the PW1-PW3 have been held incredible while that of the petitioner was held to be hearsay evidence, leaving only the evidence of the PW4 which did not link the documents tendered through him specifically to any part of the case presented by the Petitioner. The said PW4 also honestly informed the Tribunal that he did not make any entries in the forms thus cannot answer questions relating to them. The PW4 went further to inform the Tribunal that he did not receive reports of any mutilation, alteration or cancellation from any of the polling units thus his evidence can certainly not be used to establish these allegations by the petitioner.
To further worsen the case of the petitioner, the PW4 informed the Tribunal that the results emanating from the elections have no problems. It is noteworthy that the PW4 was called as a witness by the Petitioner which means the Petitioner's own witness is of the view that there was no problem with the election results yet the Petitioner wants this Tribunal to rely on his testimony to nullify the results.
Based on all the above, we hereby hold that the petitioner herein has not established substantial non-compliance with the provisions of the electoral act to warrant reversal of the result declared by INEC. Thus, the first issue posited by the Tribunal is hereby resolved in favour of the Respondents.

With regards to the second issue, learned counsel submitted that in determining whether a party has led credible evidence to entitle a party to judgement in his favour the court or tribunal should look at the state of pleadings and the issues joined by parties, evidence led, and the testimonies of witnesses and the relief(s) sought. It was his submission that from the evidence before the Tribunal, the petitioner has led enough credible and admissible evidence that will entitle him to all the reliefs sought.
According to the learned counsel, the crux of the Petitioner's case before this Honourable Tribunal essentially revolves around non-compliance in form of over voting and electoral irregularity in form of mutilations, alterations and cancellation

of result sheets in the conduct of the State House of Assembly election held on the 9th March, 2019.

Learned counsel submitted further that it is the duty of the party who oppose the fact contained in any evidence tendered before the Court to either debunk same by cross examination, or tender a contrary evidence, to contradict same. Where he failed to so do the Court will rely on the evidence. The court/tribunal will have no option but to believe the petitioner's case in that regard on a minimal proof. Learned counsel noted that the 1st 2nd and 3rd respondent did not call any witness thereby abandoning their pleadings.

However, in the case of: *ALIUCHA & ANOR V. ELECHI & ORS (2012) LPELR-7823(SC)* the Supreme Court held thus:

"...the law is indeed well settled that in such claims for declaratory reliefs which are infact the backbone in all election petitions, the onus remains on the petitioners to prove and establish their claims on their own evidence without relying on the weakness of the case of the Respondents. In other words the petitioners must satisfy the Election Petition Tribunal upon enough credible and cogent evidence which ought to reasonably be believed and which, if found established, entitles the petitioners to the declaration sought. See also the case of Nwokidu v. Okanu (2010) 3 NWLR (Pt.1181) 362.

In any case, the fact of non-calling of any witness by a party will not affect his case in any way where the said party by cross examination has extracted favourable evidence corroborative of the allegations in his pleading. Evidence obtained in cross examination on matters that are pleaded on which issues were joined is admissible, see the case of: FCDA V Naibi (1990) 3 NWLR PT 138 @ 270. Furthermore, declaratory reliefs cannot be granted on the admission of the Respondents, see the case of OCHEDI V. UBN PLC.(2012) LPELR-8596(CA).

The question now is, can the petitioner be said to have established his entitlements to the reliefs sought? We must of necessity answer this question in the negative once again since the petitioner did not place credible evidence before the Tribunal or demonstrate documents tendered to link them to specific areas of his case. We adopt our earlier holdings on this issue.

Based on the above, we hold that the petitioner has not been able to establish his entitlement to any of the reliefs sought. Thus the second issue is also resolved in favour of the Respondents.

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

HON. JUSTICE P.A. AKHIHIERO
CHAIRMAN

HON. JUSTICE A.N. YAKUBU
1ST MEMBER

HIS WORSHIP S.T BELLO
2ND MEMBER

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3. **V.N. FORGHE ESQ……...3RD RESPONDENT**