IN THE NATIONAL AND STATE HOUSES OF ASSEMBLY
ELECTION PETITION TRIBUNAL
HOLDEN AT SOKOTO
ON FRIDAY, THE 20TH 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 (MRS.) (MEMBER II)

PETITION NO: EPT/SKT/HA/29/19

BETWEEN:

1. TANIMU DAN GALADIMA.
2. PEOPLES DEMOCRATIC PARTY } **PETITIONERS**

AND

1. ABUBAKAR ALTINE
2. ALL PROGRESSIVES CONGRESS
3. INDEPENDENT NATIONAL ELECTORAL COMMISSION } **RESPONDENTS**

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

The Petitioners vide a Petition dated the 29th day of March 2019 and filed on 30th day of March 2019 are challenging the election of the 1st Respondent on the platform of the 2nd Respondent to the office of member, House of Assembly for Gada West Constituency of Sokoto State held on the 9th day of March 2019.
The grounds for presenting the Petition are as follows:

1. The first respondent was not duly elected by majority of lawful votes cast at the election. The election was invalid by reason of corrupt practices and non-compliance with the provisions of the Electoral Act in that there was massive over-voting in some wards and polling units.

While the reliefs sought are as follows;

(a) An order nullifying the election and return of the 1st respondent as duly elected member of the Sokoto State House of Assembly representing Gada West constituency.
(b) A DECLARATION that the 1st petitioner of the 2nd petitioner ought to have been declared the winner of the election into the Sokoto State House of Assembly.(sic)
(c) An order of declaration and returning the 1st petitioner of the 2nd petitioner (sic) as duly elected member of the Sokoto State House of Assembly FOR GADA West constituency.
(d) Other orders as this Honorable Court may deem fit to make in the circumstances.

Upon service of the Petition on the Respondents, the 1st and 2nd Respondents filed their Reply to the Petition on the 11th day of April 2019 while the 3rd Respondent filed hers on the 24th day of April 2019. It is noteworthy that the 3rd Respondent also filed a notice of preliminary objection separately on the 24th day of April 2019 which the Tribunal urged should be argued along with the substantive petition in line with extant laws. The Petitioners filed a reply to the 1st and 2nd Reply on the 18th day of April 2019 and filed a counter affidavit to the notice of preliminary objection of the 3rd Respondent on the 16th day of April 2019.

At the close of the pre-hearing session, the Tribunal formulated two (2) issues which were distilled from the issues formulated by the parties themselves with slight adjustments as follows;

1. *Whether the election of the 1st Respondent as member of the Sokoto state House of Assembly representing Gada-West 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 the Petitioners have led sufficient and credible evidence before this Honourable Tribunal to prove that the 1st and 2nd Respondents were not duly elected or returned by majority of lawful votes cast at the election for the office of Member House of Assembly for Gada West Constituency held on the 9th day of March 2019.*

Trial began in this case on the 17th day of June 2019. The Petitioners eventually called nine (9) witnesses in proof of their case despite listing eleven (11) witnesses. A summary of the case presented by the Petitioner at the hearing is as follows:

PW1, Saidu Isah adopted his written statement on oath. A summary of the said written statement on oath is to the effect that he was the agent of the petitioner at the Sokoto State House of Assembly election held on the 9th day of March, 2019 in Tulfar Baba Dan Fili polling unit 018, Kadadi ward of Gada Local Government Area of Sokoto State. According to him, voting commenced at about 10 O'clock in the morning but card readers were not used for accreditation of voters and thumb-printing of the voters register and supply their phone numbers (sic). That after voting was concluded, counting of the ballot papers was disrupted, some of the ballot papers were destroyed and the ballot box taken away. He was later informed that the ballot box was taken to the ward polling centre where votes were allocated and recorded in FORM EC8A.

Under Cross-examination, he informed the Tribunal that he was at Tulfar Baba on the day of the election. He did not go anywhere else that day. He does not know how to read and write in English. His deposition was written for him by one woman wearing glasses. She wrote his said statement and explained it to him and he signed it. He is aware that INEC was established by law to conduct free, fair and credible elections in Nigeria. INEC was expected to conduct a free and fair election but it was not conducted accordingly.

P.W 2, Abdusalam Aliyu also adopted his written statement on oath the content of which is to the effect that he was the agent of the petitioner at the election held on the 9th day of March, 2019 in Ingaboro village of Kadadi, Ingaboro polling unit 007A, Kadadi ward of Gada Local Government Area of Sokoto State. Voting commenced at about 10 O'clock in the morning but some voters were not accredited by using the card reader and did thump print the voter's register and supply their phone numbers to the extent that in FORM EC8A for polling unit 007, the total number of used ballot papers were more than the number of voters accredited. Further that there were no security personnel attached to the polling unit. He protested the irregularities but was ignored by the presiding officer.

Under Cross-examination, he informed the Tribunal that he was in his house at Ingaboro village. He later went to the polling unit after leaving his house. Voting commenced at 10:00 am and closed at 3:00 pm. The number of registered voters in his polling unit was 373. He does not know the number of accredited voters. APC scored 86 votes. They said that PDP scored 65. He did not agree with the results hence his refusal to sign. The invalid votes were 150. He did not know the number of used ballot papers but was sure the number of used ballot papers is more than the accredited voters. He is aware that INEC was established to conduct free, fair and credible election. INEC officials arrived at the polling unit after nine am and commenced working at 10:00 am.

P.W.3 Abdulrasheed Ibrahim also adopted his written statement on oath. A summary of the said witness statement on oath is to the effect that he was the agent of the petitioner on the 9th day of March, 2019 at Bunyagadi primary school polling unit 021A, kyadawa/Holai ward of Gada Local Government Area of Sokoto State. According to him, voting commenced at about 8 O'clock in the morning but card reader was not used and the voters registered and supplied their phone-numbers (sic). That the refusal of the INEC officials to adhere to the guidelines particularly as it relates to accreditation led to over voting as shown in FORM EC8A No. 000517 for the polling unit. That he protested the irregularities but was ignored by the presiding officer and physically attacked by APC supporters.

Under Cross-examination, he informed the Tribunal that on the date of the election he voted at Bunyadi Primary School polling unit. He was accredited manually before he voted. His complaint before the Tribunal is that after the commencement of the election, the smart card reader stopped and the APC member said that they will continue without the card reader. They objected to it so the election was conducted without card reader. Also while at the polling unit, the 1st Respondent came with some thugs to start beating them he thus ran away. He denied lying as this is contained in his statement. He maintained that there was over voting at the polling unit. The excess votes were 335, he arrived his polling unit between 7:00 am to 8:00 am and left between 10:00 am and 11:00 am. There were no INEC officials at that polling unit. He voted at that polling unit. No voter was accredited with smart card reader before he was chased away.

P.W. 4 Aminu Salihu also adopted his witness statement on oath which content is to the effect that he was the agent of the petitioner on the 9th day of March, 2019 at Jetalawa polling unit 004, kyadawa/Holai ward of Gada local Government Area of Sokoto State. The said election commenced at about 10 O'clock in the morning. There was however chaos due to disagreement with the mode and manner of conducting the polls. That about 1 O'clock in the afternoon, he and the petitioner's co-agents were chased away from the polling unit by supporters of the All Progressive Congress thus there was no agent of the petitioner in the polling unit from the hour of 1 O'clock till the close of voting.

According to him, he latter saw the result of the election as declared by INEC and discovered that the following result was recorded in FORM EC8A No. 000502

No. of accredited voters	-	426
No. of rejected ballots	-	7
No. of ballot papers issued	-	646
No. of unused ballot papers	-	104
Total No. of valid votes	-	423
Total No. of used ballot papers	-	427

Under cross-examination, he admitted not knowing when the voting ended because he was not there. He did not know the number of accredited voters. He did not know the scores of the candidates. He did not know the number of spoilt ballot papers. He is aware that INEC was established to conduct a free, fair and credible election and INEC has been working in accordance with the law setting it up. INEC officials arrived at the polling unit by 8:00 am in line with the INEC guidelines for conduct of election.

P.W.5 Yusuf Muazu also adopted his witness statement on Oath to the effect that he was the agent of the petitioner at Gidan Zafi Dan Fili polling unit 019, Kadadi ward of Gada Local Government Area of Sokoto State. Voting commenced at about 9 O'clock in the morning. Card reader was used until the time for the 2 O'clock prayers. By the time he came back from break during prayers, ballot papers were fraudulently thumb-printed and stuffed in the ballot boxes thereby resulting in over-voting as reflected in FORM EC8A which shows the number of ballot papers used are more than the accredited voters.

Under cross-examination, he informed the Tribunal that he left the polling unit to go and pray and returned at 2:10 pm. When he came back he met them thumb printing ballot papers and putting them into the box. When he challenged them someone slapped him. He did not know the number of ballot papers that were put into the ballot box. He did not know the actual number of ballot papers that were added. He was aware that INEC is supposed to conduct a free and fair election. INEC staff did not do justice to them on the election day. He arrived at the polling unit at 9:00 am and the INEC staff arrived at 9:00 am. His house is very close to the polling unit so he was there when the INEC staff arrived.

P.W 6 Yakubu Garba adopted his witness statement on Oath which content is to the effect that he was the agent of the petitioner at Shiyar Sanda polling unit 008 of Kaddassaka ward of Gada Local Government Area of Sokoto State. Voting commenced at about 9 O'clock in the morning. Voting was ongoing when there was a fracas in the polling unit at about 11 O'clock which disrupted the voting. The ballot box was removed and taken away. That as a result of the disruption of voting there was no counting of votes at the polling unit. Despite this, the officials of INEC later released results in respect of the polling unit allocating scores to parties.

Under cross-examination, he informed the Tribunal that he did not know the scores allotted to the parties because the ballot boxes were snatched. Some people voted before the ballot box was snatched but they were not up to ten voters. He arrived at the Polling unit at 9am. The INEC officials also arrived at 9:00 in his presence. There was no security man at the polling unit. When the ballot box was snatched he could not chase the ballot snatchers because they were armed with sticks. He did his work well as an agent but they over powered him.

P.W.7 Garzali Sani adopted his written statement on oath. The content of same is to the effect that he was the agent of the petitioner at Shiyar Ajiya polling unit 001 in Kaddassaka ward of Gada Local Government Area of Sokoto State. Voting commenced at about 8:30 O'clock in the morning. After the card reader malfunction, the INEC officials resorted to manual accreditation without the voters thump printing the voters register and supply their phone numbers. That irregularity resulted in over-voting as shown in FORM EC8A.

Under cross-examination, he informed the Tribunal that his complaint is basically that on the day of election they allowed people to vote without any manual accreditation when the card reader failed that is his only complaint. He saw the voters Register. The tribunal can know if there was accreditation through the voter's register. He did not know the number of valid/invalid votes in this polling unit. On the election day, he voted by 8:30 am. He was the first person to vote. If the card reader has a problem and the person is not accredited manually the person cannot vote. He maintained that the over voting in his polling unit was over hundred.

P.W 8 Hassan Isah adopted his witness statement on oath. Its content is that he was the agent of the petitioner at Bunyagadi primary school polling unit 021A, kyadawa/Holai ward of Gada Local Government Area of Sokoto State. According to him, voting commenced at about 8 O'clock in the morning but card reader was not used to accredit voters. The refusal of the INEC officials to adhere to the guidelines particularly as it relates to accreditation led to over voting as shown in FORM EC8A No. 000517 for the polling unit. He protested the irregularities but was ignored by the presiding officer and physically attacked by APC supporters. He testified further that in paragraph 5 of his deposition, he stated that he was attacked by APC supporters.

Under cross-examination, he informed the Tribunal that he was not among the PDP thugs who invaded that polling unit on the day of the election. He did not know how to read and write in English. He signed his witness deposition. He did not know when the election closed because he was at the hospital. He left the polling unit at 10:00 am. From 10am he did not know what happened in the polling unit because he was in the hospital. The registered voters in his polling unit were 954 voters. He has the voters register in this Tribunal, it is in his car. There was no election conducted in that polling unit. His complaint in respect of this polling unit is to do justice.

According to him, the INEC officials arrived at the Polling unit at 8:00 am while he arrived there at 6:00 am. He did not vote. His wife and son did not vote. He was attacked by APC thugs. He knows the name of the person who led them but do not know the names of the thugs. He is aware that it is a criminal offence to attack a polling unit with thugs. He informed the security agents about the attack but did

not report at the police station. He came to the court and told them the facts, they wrote them down and he signed it. He came to the court on the day he made his statement.

P.W. 9, Aliyu Mohammed adopted his witness statement on oath which is to the effect that he is the agent of the petitioner at Iddarawa Dan Fili polling unit 003, Kadadi ward of Gada Local Government Area of Sokoto State. Voting commenced at about 10 O'clock in the morning. Ballot papers were given without accreditation and no thump print of voters register with supply of voter's telephone numbers. That in an attempt to cover up the irregularity, the INEC officials resorted to indiscriminate accreditation with card readers to the extent that the total number of used ballot papers exceeded the number of persons accredited as shown in FORM EC8A.

At this stage E.I. Ogiza Esq, learned counsel to the Petitioners applied to tender some documents from the bar which were admitted as follows Exhibits P, Form EC8A for Dankulawa Primary School polling unit is admitted in evidence as Exhibit P1, Form EC8A for Jangalawa Primary School polling unit-Exhibit P2, Form EC8A for Ingaboro Primary School polling unit-Exhibit P3, Form EC8A for Gidan Zafi Dan-Fili Primary School polling unit-Exhibit P4, Form EC8A for Iddarawa Dan-Fili primary School polling unit-Exhibit P5, Form EC8A for Tulfar Baba Dan-Fili Primary School polling unit-Exhibit P6, Form EC8A for Shiyar Sanda Primary School polling unit-Exhibit P7, Form EC8A for Shiyar Ajiya Primary School polling unit-Exhibit P8, Form EC8A for Tudun Bulus Primary School polling unit-Exhibit P9, Form EC8A for Shiyar Hakimi Primary School polling unit-Exhibit P10, Form EC8E(I) Final Declaration of Result-Exhibit P11.

The PW9 was however only shown Exhibit P5 which he identified as certified true copies of the result from his polling unit. Under cross-examination, he informed the Tribunal that he knows one Hassan Garba who was the PDP polling agent for Iddarawa Dan-Fili Primary School polling unit. They instructed him not to sign Exhibit P5. He had no idea when he signed Exhibit P5. He was not happy that he signed it because there are irregularities. His complaint of this polling unit is that when the card reader stopped working, they continued to give people ballot papers to vote.

He later conceded that if the result from his polling unit is cancelled, the APC candidate will still win the election. He had the register of voters for this polling unit but it is not with him in court. He is a registered voter and he voted. He was accredited before he voted. Some of his family members also voted. Those who were not accredited were allowed to vote while they tried to stop them. He was not aware that secret ballot system was adopted in the last election. He did not assist anybody to vote. He made his statement and somebody recorded it for him. One woman signed for him.

That was the case for the Petitioners.

Upon the close of the Petitioner's case, all the learned counsels to the Respondents opted out of calling witnesses in rebuttal thus the case was adjourned for adoption of final address. The learned counsel to the Petitioners adopted his final address filed on the 31st day of July 2019. He also adopted the counter affidavit and written address on preliminary objection filed on the 16th day of May 2019. The 1st and 2nd Respondents adopted their final address filed on the 3rd day of Aug 2019 and that of the 3rd Respondents filed on the 7th day of August 2019 and urged the Tribunal to dismiss the Petition. The case was thereafter adjourned for judgement.

G. Osarhiemen Uwadiae Esq, learned counsel to the Petitioners decided to argue both issues for determination together, he noted that the respondents decided not to call any witness despite the fact that their replies to the petition and statement of witnesses on oath were filed. According to the learned counsel, it is trite that election petition and replies are the body and soul of the case in a skeletal form and are built and solidified by evidence of witnesses. They are never regarded as evidence by themselves and if not supported by evidence they are deemed abandoned. In other words, averments in pleadings no matter their eloquent phraseology do not speak for the pleadings without supporting evidence unless the adversary admits them. See OMISORE V. AREGBESOLA (2015) 15NWLR (pt. 1482) 205 @280. MONKON V. ODILI (2010) ALL FWLR (pt. 536) 542 @ 565-566. The Supreme Court in the case of ARABAMBI V. ADVANCE BEVERAGES IND. LTD (2006) ALL FWLR (pt. 295) 581, held as follows:

> "*Pleading is not synonymous with evidence and so cannot be construed as such in the determination of the merit or otherwise of a case. A party who*

seeks judgment in his favour is required by law to produce adequate, credible evidence in support of his pleading and where there is none, then the averments in the pleadings are deemed abandoned."

Learned counsel submitted that the fact and decision of the respondents not to call evidence means their various replies to the petition have been abandoned. It also means that the written statements on oath by the various witnesses of the respondents were also abandoned. They should therefore be struck out.

He thereafter submitted that a clear answer to the issues formulated can only be determined using the following parameters:

i. It is only the evidence of the petitioner that will be looked into since the respondents abandoned their pleadings and abandoned their written evidence. In civil cases, the burden of proof lies on him that assert and the standard of proof is on balance of probability. See OKAFOR V. OKAFOR (2019) 13WRN 141 @ 149 & 160 . SORONNADI V. ANOR (2019) 18WRN p1 @ 8 & 19.

Learned counsel thereafter appraised the evidence of PW1-9 and submitted that one thing that is common to these witnesses is that they are all polling agents and they were there live at the scene. It is now settled that where a petitioner complains of non-compliance with the provisions of the Electoral Act. He has a duty to prove the non-compliance alleged based on polling unit by polling unit. This proof must be through the agents of the political party/parties that were physically on ground and in a true position to testify as to what transpired at the election. See the case of GUNDIRI V. GUNDIRI (2014) 2NWLR pt 13 91 p211 @ 245.

The significance of the polling units' agents cannot therefore be underestimated as he is the person that was physically on the ground and he is in the true position to testify as to what transpired. In the Gundiri's case (supra) the Supreme Court said:

"the significance of the polling units agents cannot therefore be underestimated in the case at hand if the appellants must have facts to the appellants could have had was that of the agents at the polling unit who were physical on ground and in the position to testify as to what transpired

at an election. The consequence of shutting them out for whatever reason is very detrimental to the appellant's case……."

In the case of BUHARI V. INEC (2008) 36 NSCQR pt 1 475 @ 693. The Supreme Court echoed same.

In conclusion, learned counsel surmised that the answers to the issues formulated are YES and YES. Learned counsel submitted further that the Election was not conducted in substantial compliance with the provisions of the Electoral Act and urged this court to grant the prayers/reliefs sought or stated in the petition, and declared the Petitioners as winners of the election.

Chief J.E. Ochidi, learned counsel to the 1st and 2nd Respondents also decided to argue both issues together. According to the learned counsel, a careful perusal of the allegation of the petitioners in challenge of the said election as particularized by the petitioners in paragraphs 4(i) – 7(i) of the amended petition of the petitioners shows that the only complaint of the petitioners therein is the allegation of over voting in 11 polling units mentioned in the petition. The said allegation in respect of the said 11 polling units can be seen on pages 1 – 5 of the petition.

In an attempt to prove the allegation in the said 11 polling units in Gada West State Constituency of Sokoto State, the petitioners called 9 witnesses before this Honourable Tribunal. The petitioners also tendered from the bar Exhibits P1 – P11 which are Form EC.8A in respect of Dunkulawa Primary School Polling Unit 019, Jatgalawa Primary School Polling Unit 004, Ingaboro Primary School Polling Unit 007, Gidan Zafi Dan-Fili Primary School Polling Unit 019, Iddarawa Dan-Fili Primary School Polling Unit 033, Tulfar Baba Dan-Fili Primary School Polling Unit 018, Shiyar Sanda Primary School Polling Unit 012, Shiyar Ajiya Primary School Polling Unit 001, Tudun Bulus Primary School Polling Unit 003 and Form EC.8E(1) respectively.

Surprisingly however, it was only PW9 that identified Exhibit P5 as the polling unit result of the election where he acted as petitioners' agent at Iddarawa Dan-Fili Primary School Polling Unit 033. It is therefore clear that all the other exhibits tendered in this case by the petitioners have been dumped on the tribunal as the other witnesses did not demonstrate or analyze any of the said exhibits before this Honorable Tribunal.

He submitted that in law, a petitioner who seeks to prove over voting at a polling unit has to take the several steps outlined by his lordship, Okoro JSC in *EMERHOR V. OKOWA (2010) ALL FWLR (PT 896) 1868 AT 1905* where the learned jurist held thus: -

> "*In a plethora of decisions of this court, we have made it abundantly clear that a petitioner seeking to prove over voting in an election must do the following:*
>
> 1. *Tender the voters register to show the total number of registered voters in each unit.*
> 2. *Tender the statement of result in the appropriate forms which would show the total number of votes cast.*
> 3. *Relate each of the documents to the specific area of his case in respect of which the documents are tendered.*
> 4. *Show that the figure representing the over voting if removed would result in victory for the petitioner and*
> 5. *In view of the introduction of card reader machines in elections, I will add that the petitioner should tender the card reader report if it did not fail to function."*

He said that in the instant petition, the petitioners who made the allegation of over voting as their only complaint bothering on non-compliance with the provisions of the Electoral Act in this petition did not follow the procedure in proving the said allegation as enunciated by the Supreme Court in the case of Okowa cited above.

He further submitted that at no point in time in the course of prosecution of this petition did the petitioners tender any register of voters in respect of the 11 polling units in the State Constituency where the petitioners are alleging over voting. However, the petitioners have merely tendered the CTC of result sheets in respect of some of the polling units complained of without taking any further step to link

or demonstrate the said documents to the specific area of the complaint of the petitioners as stated in the petition.

Again, he submitted that where an allegation of over voting is made in an election petition, it is not enough for the petitioners to rely on the information provided in the polling unit result (Form EC.8A) to prove the said allegation of over voting as the petitioners have done in this petition. See the case of *ACN V. ADELOWU & ORS (2012) LPELR – 19718 (CA)*, where the Court of Appeal held as follows:

> "*The position of the law has recently been clearly re-stated in recent decisions of this court and division to show that allegations in forms or result sheets are not enough. The register of voters of the polling units that have been faulted by the appellant would clearly show the number of registered voters in the units and wards complained about as against those that actually voted, to prove over voting and disenfranchised voters".In the consolidated cases of CA/I/EPT/OG/LH/33/11,CA/I/EPT/OG/LH/34/11, CA/I/EPT/OG/LH/35/11 and CA/I/EPT/OG/LH/36/11 Peoples Democratic Party & Anor v. Independent National Electoral Commission (INEC) and 2 Ors delivered on 24th February, 2012 (unreported) my learned brother, Ikeyegh, JCA held in a similar situation thus: -"The voters register of the polling unit must also be put in evidence to establish that the voters allegedly disenfranchised are registered voters in the unit and evidence of their registration in the polling unit must be proved by the tendering in evidence of their voter's cards and evidence that they presented themselves to vote in their polling units at the election, but were denied the right to vote by non-accreditation or non ticking of their names in the voters' register of the unit; while allegation of over voting would be determined by checking the number of registered voters in the voter's register of the polling unit against the number of voters that voted in the unit to show that*

the latter was in excess of the former." In the present case, the voters register of the units and wards complained of were not tendered in evidence. The allegedly disenfranchised voters were not called to testify in proof of the allegations.

Accordingly, learned counsel submitted that the petitioners have woefully failed to prove the allegation of over voting in the 11 polling units in Gada West State Constituency complained of.

Learned counsel submitted further that the petitioners also made various unfounded allegations of corrupt practices and non – compliance with the provisions of the Electoral Act and INEC Guidelines in the conduct of the said election. However, whenever a petitioner contends in an election petition that the election was invalid by reason of corrupt practices or non-compliance with the provisions of the Electoral Act, 2010 (as amended), such a petitioner must prove before the tribunal that the corrupt practices or non-compliance complained of actually took place and also that same substantially affected the result of the said election. These two conditions must be satisfied by the petitioner cumulatively before such a petitioner can succeed on an allegation of this nature. See the case of *OGBORU V. ARTHUR (2016) ALL FWLR (PT 833) 1805 AT 1855* where Ogunbiyi JSC held thus: -

"*Where however the petitioner contends that an election or return in an election should be invalidated by reason of corrupt practices or non-compliance, the proof must be shown forth:*

1. *That the corrupt practice or non-compliance took place and*
2. *That the corrupt practice or non-compliance substantially affected the result of the election.*

The quantum of measurement and consideration is not to show that there was a proof of non-compliance, as it is almost impossible to have a perfect election anywhere in the world. The measurement however, is whether the degree of non-compliance is sufficient enough to vitiate the credibility of the election held."

See also the decision of the Supreme Court in *NYESOM V. PETERSIDE (2016) ALL FWLR (PT 842) 1573 AT 1635*.

He further submitted that in establishing the substantiality of the corrupt practice and or non-compliance, the petitioner must prove the effect of such acts polling unit by polling unit while the required standard of proof is not on a minimal proof but on the balance of probabilities. See the decision of the Supreme Court in *EMERHOR V. OKOWA (*supra) *at Page 1927* where Peter – Odili JSC held thus:

> *"On the importance of establishing the substantiality of the non-compliance, the appellants are further expected to prove the effect of the alleged non-compliance polling unit by polling unit and the standard of proof is on the balance of probabilities and not just on minimal proof. If the appellants are able to meet up with that required standard, then would the respondents be asked to lead evidence in rebuttal."*

See also the case of the *UCHA V. ELECHI (2012) ALL FWLR (PT 625) 237 AT 256* where Rhodes – Vivour JSC.

Counsel submitted that an allegation of corrupt practices in an election petition being an allegation that is criminal in nature, must be proved beyond reasonable doubt. See the case of *IKPEAZU V. OTTI (2016) ALL FWLR (PT 833) 1946 AT 1974* where Galadima JSC held thus: -

> "*Where in an election petition, the petitioner makes an allegation of a crime against a respondent and he makes the commission of the crime the basis of his petition. Section 135(1) of the Evidence Act, 2011 imposes*

strict burden on the said petitioner to prove the crime beyond reasonable doubt. If he fails to discharge the burden, his petition fails."

He said that in the instant case, the petitioners have not proved any act of corrupt practices or of non – compliance with the provisions of the Electoral Act 2010 (as amended) and INEC Guidelines in the conduct of the said election and a fortiori, the petitioners have not shown before this tribunal that the alleged acts of corrupt practices and non – compliance substantially affected the result of the said election. Accordingly, he urged this Honourable Tribunal to resolve issue one and issue two herein formulated for determination in favour of the 1st and 2nd respondents.

It was also his submission that in totality therefore, it can be seen that there is no iota of evidence before this tribunal to prove any of the allegations of the petitioners in challenge of the conduct of the said election and the declaration of the 1st respondent as the winner of the election by the 3rd respondent.

Learned counsel submitted with regards to the evidence presented before this tribunal in respect of this petition that the 1st and 2nd Respondents are correct in law to have decided not to call any rebuttal evidence in defence of this petition on the ground that in an election petition such as the instant case, the onus remain always on the petitioners to establish their case to the satisfaction of the election tribunal without placing any reliance on the weakness of the case of the respondents. See the decision of the Supreme Court in *UCHA V. ELECHI (2012) ALL FWLR (PT 625) 237 AT 262.* See also *BUHARI V. OBASANJO (2005) 2 NWLR (PT 910) 241*. Again, see the case of *NYESOM V. PETERSIDE (2016) ALL FWLR (PT 842) 1573 AT 1649 – 1670* where Kekere - Ekun JSC held as follows:-

"The law is that where a party seeks declaratory reliefs, the burden is on him to succeed on the strength of his own case and not on the weakness of the defense (if any).Such reliefs will not be granted even on admission by the respondents."

See as well the case of *IYAGBA V. SEKIBO (2009) ALL FWLR (PT 466) 1951 AT 1969 – 1970 and CPC v. INEC (2012) ALL FWLR (PT 617) 605 AT 648.*

It was therefore submitted that having regard to the declaratory nature of the reliefs being claimed by the petitioners in this petition and for the fact that the petitioners have failed to lead any credible evidence in proof of the allegations contained in the petition, it becomes unnecessary for the 1st and 2nd respondents to lead any rebuttal evidence in this petition. He urged the Honourable Tribunal to so hold.

In conclusion, learned counsel urged the Tribunal to hold that the petitioners have failed to prove any of the allegations contained in the petition to vitiate the election of the 1st respondent as member representing Gada West State Constituency of Sokoto state. Accordingly, he urged the tribunal to dismiss this petition with substantial cost awarded against the petitioners in favour of the 1st and 2nd respondents.

B.K. Adams Esq, learned counsel to the 3rd Respondents formulated two issues for determination in arguing the Preliminary Objection filed by him challenging the jurisdiction of the Tribunal to hear and determine the petition relying on the provision of paragraphs 4(1)(2)(3)(4) and (5) of First Schedule to the Electoral Act, 2010 (as amended) to wit:

i. *Whether the petition as presented has not divested this Tribunal of the jurisdiction to entertain same.*

ii. *Whether an election petition can be amended outside the 21 days provided by law for filing the petition.*

Learned counsel submitted with respect to the 1st issue that the general principle is that the Court/Tribunal is vested with jurisdiction to entertain a matter when:

a. The Court/Tribunal is properly constituted with respect to the number and qualification of its membership.
b. The subject matter of the action is within its jurisdiction.
c. The action is initiated by due process of law; and
d. Any condition precedent to the exercise of its jurisdiction has been fulfilled.

He referred the Tribunal to the Court of Appeal decision in the case of REV. PHILIP MICAH DOPAH & 3 ORS VS. REGISTERED TRUSTEES OF THE UNITED METHODIST CHURCH OF NIGERIA (UMCN) (2019) 4 NWLR (Pt.1663) 520 at 534, paras. C-D and submitted that the conditions afore stated must jointly exist as the non-existence of one will rob the court of jurisdiction. That in the present case only the first and second conditions are fulfilled as will be demonstrated in the following arguments.

With respect to the failure of the petitioners to specify parties interested in the petition. Learned counsel submitted that by the provisions of Rule 4(1) (a), an Election Petition under this Act shall specify the parties interested in the election petition. However, the petitioners in the instant case failed to specify the parties interested herein. The specification needs to be under a subhead as other subheads in the petition. He submitted further that the failure is fatal to the petition, being a violation of the mandatory provisions of the Electoral Act, 2010 (as amended) relating to the content of an election petition, bearing in mind the use of the word "shall" in the opening sentence to the Rule. By reason of this non compliance with the provisions of Electoral Act, the petition is rendered incompetent and the Tribunal is urged to strike out same.
On failure to state clearly the facts of the petition, learned counsel submitted that this is a further breach of the provisions of the Electoral Act paragraph 4(1)(a) of the First Schedule to the Electoral Act, the Petitioners failed to state clearly and under distinct heads, the facts of the petition. A look at the petition reveals a sub-head titled "GROUNDS OF THE PETITION". Failure to state clearly the facts is a violation of the provisions of the Electoral Act, no facts of the election are therein distinctly contained. According to the learned counsel, Paragraph 4(1)(d)of the First Schedule to the Electoral Act makes it mandatory on the Petitioners to specifically plead facts of the petition under a separate head. Failure to comply renders the petition defective and liable to be struck out.

On the joinder of the grounds on which the petition is based, learned counsel noted that the purported grounds under the sub-head cannot pass for the requirement of the law as to the statement of the grounds as they are unclear and muddled up. By the provision of Section 138(1)(b) of the Electoral Act, 2010 (as amended) an election may be questioned on the ground:-

> *"That the election was invalid by reason of corrupt practices or non compliance with the provision of this Act".*

He posited that in the case of GOYOL VS. INEC (No.2) (2010) 11 NWLR (Pt.1311) 218 at 229, para. H. it was held that:

> "*Joinder of grounds of both corrupt practices and non compliance in filing a petition in Section 138(b) of the 2010 Electoral Act, (as amended) is a fundamental breach of that Section which renders the grounds incompetent. This is because the use of "or" connotes an alternative or an option and bears a disjunctive meaning and therefore a separating factor of preceding provisions from the one coming under, and this give sense of complete and independent identity.*

This is exactly what happened in the instant case, the Petitioners have joined the grounds of the petition as follows:

> *"The election was invalid by reasons of corrupt practices and non compliance with the provisions of the Electoral Act in that there was massive over voting in some Wards and Polling Units".*

It is worth pointing out that the Petitioners did not set grounds of the petition distinctively. What may be regarded as grounds are interwoven. A situation such as this makes it impossible for any paragraph to be sieved and saved. Consequently the alleged grounds are liable to be struck out as the Tribunal will not do for the Petitioners, the job the Petitioners failed to do and so cry more than the bereaved. This is a fundamental breach which renders the grounds defective and incompetent. Again the Tribunal is called upon to strike out this petition on that score.

On failure to state the title of the election correctly, learned counsel submitted in addition that the petition is brought before the: ELECTION PETITION TRIBUNAL HOLDEN AT SOKOTO. It is respectfully submitted that this Tribunal does not exist as the Tribunal created to hear and determine Election Petitions arising from the 2019 General Elections respecting Legislative Houses in Nigeria is the " NATIONAL AND STATE HOUSES OF ASSEMBLY ELECTION TRIBUNALS", not "ELECTION PETITION TRIBUNAL".

He referred the Tribunal to the provisions of Section 285(1) of the Constitution of the Federal Republic of Nigeria 1999 and submitted that the word "shall" denotes mandatory and absolute provision that must be followed without option by the Court/Tribunal. In the circumstance this Tribunal cannot waive the mandatory provision of Section 285(1) of the Constitution as it is absolutely binding on it. Learned counsel submitted further that the provision of Section 285(1) of the Constitution is Supreme and absolute and its provision is binding on this Honourable Tribunal. It would amount to travesty of justice to try to infuse life to the dead Petition No: EPT/SKT/HA/29/19 before this Tribunal in utter disregard of

the Constitutional provision. The only option for the Tribunal is to dismiss the petition.

On failure to state the address of the petitioners and occupier of the address at the foot of the petition, learned counsel submitted that Paragraph 4(4) of the First Schedule to the Electoral Act, 2010 (as amended) obligates the Petitioner to state his address and occupier of the address at the foot of the petition. In the instant case there is nowhere at the foot of the petition where the address of the Petitioners and occupier of the address is mentioned. He thus submitted that the non compliance with the provision of Paragraph 4(4) of the First Schedule to the Electoral Act, 2010 (as amended) is a fundamental omission. In the case of ALHAJI IBRAHIM LABAN-KOWA VS. ALHAJI MOHAMMED D. ALKALI & 53 ORS (2007) 3 EPR 81 at 98. The Court of Appeal while interpreting the provision of Paragraph 5(4) of Schedule 5 of Decree 5 of (1999) which is in pari materia with Paragraph 4(4) of the First Schedule to the Electoral Act, 2010 (as amended) per R.O. ROWLAND J.C.A held as follows:

> *"I am not in doubt that the Petitioner as borne by the record failed to indicate at the foot of the petition's address for service. The failure amount to non compliance with Paragraph 5(4) of Schedule 5 of Decree 5 of (1999). It must be said that the non compliance is fatal to this appeal……. As I have said above this Appeal is devoid of merit and should be dismissed and I hereby dismissed it".*

With respect to the second issue posited in arguing the preliminary objection, learned counsel submitted that the general principle of law is that amendment of pleadings in ordinary civil suit is allowed at any stage, in order to settle the dispute between the parties. See the case of ODON VS. BARIGHA-AMANGE (No.1)(2010) 12 NWLR (Pt.1207) 1 at 10. However, there is a time limit to the period within which a Petitioner may apply to amend his Petition. This was the view expressed by the Court of Appeal in the case of EMEKA VS. EMORDI & ORS (2004) 16 NWLR (Pt.900) 433 at 450, para. H. where *DONGBAN-MENSEM JCA* said:

> *"In an election petition where time is of essence of the proceedings once the time prescribed for the doing of an act has elapsed, the defect became fatally incurable".*

The provisions of paragraph 14(2) of the First Schedule to the Electoral Act 2010, (as amended) regulates the period within which to seek leave to amend an Election Petition. He thus submitted that a Petitioner in an Election Petition is precluded from amending his petition once the 21 days limited for filing the petition has

expired. He referred to the case of OKE & ANOR VS. MIMIKO & ORS (2013) LPELR 20645, Pp. 20-21, paras C-C. Where per *Muhammad JSC* held:

> *"By the provisions of paragraph 14(2)(a) and (b) of the First Schedule to the Electoral Act 2010, (as amended), no amendment whatsoever shall be entertain by the tribunal after the expiration of the period within which to present an election petition".*

In the instant case the Petition was filed on 30th day of March, 2019. The amendment was made on 16th May, 2019. The amendment is clearly filed 47 days outside the days the Election Petition ought to have been filed.

He submitted further that allowing the Petitioners' amendment meant allowing the presentation of an Election Petition outside the time the law provided for its presentation. He referred the Tribunal to the case of ODU VS. DUKE (2005) 10 NWLR (Pt.932) 105 at 142-143. Paras. G-B. and the case of MUSTAPHA VS. GAMAWA & ORS (2011) LPELR-9226, Pp. 35-36, paras B-D. where his lordship, per *Jauro JCA* held:

> *".....the attempt to amend the petition at the late stage is statute barred hence futile, it is like an attempt to cure leprosy with cough syrup. The tribunal was therefore right in refusing to grant the two applications for amendments".*

Thus the amendment of the petition embarked upon by the Petitioner before this Tribunal is substantial in the sense that it is related and aimed at introducing the statutory requirement of Section 285(1) of the 1999 Constitution of the Federal Republic of Nigeria (as amended). He also submitted that the attempt to do so is like an attempt to cure leprosy with cough syrup which is an impossibility being statute barred by Section 14(2)(a) and (b) of the Electoral Act 2010, (as amended) and therefore futile. He respectfully urged the Tribunal to so hold. He therefore urged the Tribunal to dismiss the petition.

However if the preliminary objection fails, learned counsel to the 3rd Respondent's submissions with respect to the two issues formulated by the Tribunal was the same word for word with that of the 1st and 2nd Respondents except the areas where the words 1st and 2nd Respondents were replaced with 3rd Respondent. He thereafter urged the Tribunal to dismiss the Petition.

We have carefully considered all the pleadings filed by the parties, the evidence and exhibits tendered at the trial and the final addresses adopted by the parties.

It has been held in a plethora of decided cases that issues bordering on jurisdiction are threshold issues which ought to be determined first and could be raised for the first time before an appellate Court. It could also be raised by any party; the trial

Court inclusive, see the case of UCHEGBU & ORS V. THE SHELL PETROLEUM DEV. CO. NIG. LTD(2009) LPELR-8891(CA).

We shall therefore resolve the issues raised in the preliminary objection filed by the learned counsel to the 3rd Respondent which the Tribunal urged should be argued alongside the substantive Petition in line with extant laws. The said notice of preliminary objection was filed on the 24th day of April 2019 challenging the jurisdiction of the Tribunal to hear and determine the petition relying on the provisions of paragraphs 4(1)(2)(3)(4) and (5) of First Schedule to the Electoral Act, 2010 (as amended).

The grounds upon which the Objection is raised are as follows:

The petition contravenes the provisions of paragraph 4(1) (2) (3) (4) and (5) of the 1st Schedule to the Electoral Act, 2010 (as amended) in that:

i. The petition failed to specify the persons interested in the petition.
ii. The petition failed to state clearly and distinctly, the facts and grounds of the petition.
iii. The petition failed to specify the right of the Petitioner to present the election petition.
iv. The Petition did not state the holding of the election.
v. The petition is brought before a non existing Tribunal.
vi. The address of the Petitioner and occupier of the address is not stated at the foot of the petition.
vii. The Petitioner has filed a fresh petition outside the 21 days allowed by law for amendments.

Learned counsel to the 3rd Respondent formulated two issues in arguing this preliminary objection to wit;

i. Whether the petition as presented has not divested this Tribunal of the jurisdiction to entertain same.

ii. Whether an election petition can be amended outside the 21 days provided by law for filing the petition.

The learned counsel to the 3rd Respondent's submission with respect to both issues has already been captured above.

The learned counsel to the Petitioners in response to the preliminary objection filed a counter affidavit and written address on the 16th day of May 2019 and submitted with respect to the first issue posited that the petition as presented has not divested the Tribunal of jurisdiction to entertain same on the ground that the petitioners have fully complied with all the requirements of the Electoral Act 2010 as amended by;

a. The petition has clearly specified the parties interested in the petition by virtue of paragraphs 1 and 2 of the Petition.
b. The grounds of the petition are clearly stated at paragraphs 3,4,5,7,8,9, of the Petition.
c. The Petition is before the appropriate body. See the stamp of the Tribunal in endorsing the Petition.
d. The Petition was settled by the lawyers to the Petitioners who stated the address for service.

Learned counsel to the Petitioners therefore submitted that the preliminary objection is incompetent for want of national identification number and urged the Tribunal to refuse the objection.

We have carefully considered the argument of both parties with regards to the preliminary objection. The learned counsel to the Petitioners urged the Tribunal to dismiss the preliminary objection for want of national identification number. This is indeed novel. We are at a loss about the correlation of national identification number with this preliminary objection. It is thus presumed that the said learned counsel was laboring under a misconception or typographical error. We shall therefore resolve the issues posited by the 3rd Respondent's counsel seriatim.

With respect to the 1st issue, according to the learned counsel to the 3rd Respondent, failure of the Petitioners to state the parties interested and the facts of the petition under distinct subheads is fatal to the petition, being a violation of the mandatory provisions of the Electoral Act, 2010 with particular reference to paragraphs 4 (1) (a & d) of the First Schedule to the Electoral Act.

In the meantime, a careful examination of the paragraphs referred to failed to yield any mandatory requirement of subheads. For ease of reference, Paragraph (4) (1) of the First Schedule to the Electoral Act reads:

1. *An election petition under this Act shall-*
    a. *Specify the parties interested in the election petition*
    b. *Specify the rights of the petitioner to present the election petition*
    c. *State the holding of the election , the scores of the candidates and the person returned as the winner of the election and*
    d. *State clearly the facts of the election petition and the ground or grounds on which the petition is based and the relief sought by the Petitioner.*

2. *The election petition shall be divided into paragraphs each of which shall be confined to a distinct issue or major fact of the election petition and every paragraph shall be numbered consecutively.*
3. *The election petition shall further-*
   (b) signed by the petitioner or all petitioners or by solicitor if any named at the foot of the election petition.

4. At the foot of the election petition there shall also be stated an address of the petitioner for service at which address documents intended for the petitioners may be left and its occupier.

There is nothing in the above section which can be construed as requiring subheads. All the law demand was distinct paragraphs. In the instant case, the parties interested are easily discernible, the grounds and facts of the petition were stated in consecutive paragraphs as required by law, the rights of the petitioners were stated clearly in paragraph 1 of the Petition, the holding of the election was stated in paragraph 2 of the petition. At the foot of the petition, the name of the counsel who settled the process was clearly stated alongside his address for service as counsel to the petitioners. He also included his email address and telephone number.
The question now is, can the petition be said to be in violation of the provisions of paragraph 4 (1) of the First Schedule to the Electoral Act 2010 (as amended) as presently constituted for failure to state each requirement under subheads? We must of necessity answer this question in the negative as the law in reference did not stipulate any requirement for subheads.

Learned counsel to the 3rd Respondent submitted further that the purported grounds under the sub-head cannot pass for the requirement of the law as to the statement of the grounds as they are unclear, muddled up and interwoven. According to the learned counsel, a situation such as this makes it impossible for any paragraph to be sieved and saved. Consequently the alleged grounds are liable to be struck out as the Tribunal will not do for the Petitioners, the job the Petitioners failed to do and so cry more than the bereaved. He submitted further that this is a fundamental breach which renders the grounds defective and incompetent. Again the Tribunal is called upon to strike out this petition on that score.

We considered the argument canvassed by both parties on this issue and noted that the 2nd leg of the preliminary objection is to the effect that the petition failed to state clearly and distinctly, the facts and grounds of the petition. However while

the learned counsel was arguing in the written address in support of the preliminary objection, learned counsel submitted that the grounds for the petition is unclear, muddled up and interwoven thus liable to be struck out.

In the meantime, the ground of the petition as stated by the Petitioners is hereby reproduced below for ease of reference;

> *"The first Respondent was not duly elected by majority of lawful votes cast at the election. The election was invalid by reasons of corrupt practices and non compliance with the provisions of the Electoral Act in that there was massive over voting in some Wards and Polling Units".*

It is noteworthy that Paragraph 138 of the Electoral Act 2010 as amended provides;

1. *"An election may be questioned on any of the following grounds , that is to say:*
   a. *That a person whose election is questioned was at the time of the election not qualified to contest the election;*
   b. *That the election was invalid by reason of corrupt practices or non-compliance with the provisions of this Act*
   c. *That the respondent was not duly elected by majority of the lawful votes cast at the election or*
   d. *That the petitioner or its candidate was validly nominated but was unlawfully excluded from the election.*

The learned counsel for the 3rd Respondent is of the opinion that joining the grounds together while the law employed the use of the word "Or' which connotes disjunctiveness is fatal to the petition. In the meantime, It is worthy of note that the error committed by the Petitioners was in using the word "And" instead of "Or" in couching his grounds for the petition and lumping the grounds together in a single ground.

In the meantime, paragraph 53 of the First Schedule of the Electoral Act clearly provides;

> *53 (1) Noncompliance with any of the provisions of this Schedule or with a rule of practice for the time being operative except otherwise stated or implied shall not render any proceeding void unless the Tribunal or Court so directs but the proceeding may be set aside wholly or in part as irregular or amended or otherwise dealt with in such manner and on such terms as the Tribunal or Court may deem fit and just.*

The court held in the case of Nwobodo v. Onoh (1984) 1 SCNLR 1; M.C. v. N.E.P.A (1992) 6 NWLR (pt. 246) 132 at 142." Per Peter-Odili, J.C.A. (P. 58, paras. B-D) that

> *"Election petitions are by their nature peculiar from other proceedings. They are very important from the point of view of public policy. It is the duty of courts therefore to hear them without allowing technicalities to unduly fetter their jurisdiction. The vogue these days is to hear election petitions on their merit where such petitions can be saved".*

The court also held in the case of Ojukwu V Yar'Adua (2009) 12 NWLR PT 1154 PG 50 @ 121 that

> *"the petitioner is allowed to use his language to convey the exact meaning and purport of the subsection of paragraph 138".*

In the instant case, the ground of the petition as couched is clearly cognizable under the law. Thus the ends of justice will certainly be defeated if the petition is struck out or dismissed for failure to use the word or which can be construed as a mere technicality. Justice demands that the case be heard on its merits and we hereby so hold

Learned counsel also submitted that the petition is brought before the: ELECTION PETITION TRIBUNAL HOLDEN AT SOKOTO which does not exist as the Tribunal created to hear and determine Election Petitions arising from the 2019 General Elections respecting Legislative Houses in Nigeria is the "NATIONAL AND STATE HOUSES OF ASSEMBLY ELECTION TRIBUNALS" and not "ELECTION PETITION TRIBUNAL". He referred the Tribunal to Section 285(1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and noted that the provision of Section 285(1) of the Constitution used the word "shall" which denotes mandatory and absolute provision that must be followed without option by the Court/Tribunal. In the circumstance, this Tribunal cannot waive the mandatory provision of Section 285(1) of the Constitution as it is absolutely binding on it. The provision of Section 285 (1) of the Constitution is Supreme and absolute and its provision is binding on this Honourable Tribunal. It would amount to travesty of justice to try to infuse life to the dead Petition No: EPT/SKT/HA/29/19 before this Tribunal in utter disregard of the Constitutional provision. The only option for the Tribunal is to dismiss the petition.

In the meantime, it is noteworthy that this error had already been corrected by a valid order of the Tribunal on the 21st day of May 2019 which said order has not been set aside. It is also worthy of note that the learned counsel to the 3rd

Respondent's objection to the application to amend the petition was overruled before the grant of the said order. Thus this issue having been laid to rest by a valid order of the Tribunal cannot be resuscitated by the learned counsel to the 3rd Respondent without an application to set it aside. Based on the foregoing, we hereby hold that the 3rd Respondent's counsel is estopped from raising this issue without an application to set aside the order of the Tribunal.

In view of all the above, the first issue posited by the learned counsel to the 3rd Respondent is hereby resolved in favour of the petitioners thus the 1st , 2nd ,3rd ,4th,5th and 6th legs of the Preliminary objection are dismissed.

With respect to the 2nd issue posited by the learned counsel to the 3rd respondent which relates to the 7th leg of the preliminary objection, it is now settled law that applications for amendment of election petitions cannot be granted outside the statutory period prescribed for presenting a petition see **YUSUFU VS. OBASANJO (2003) 16 NWLR (pt.847)554.** However, by virtue of the provisions of paragraph 14 (2)(iii), where the amendments sought are not substantial but merely to correct typographical errors or inadvertence of counsel the amendment can be effected even after the expiration of the said period.

In the case of APC v. MBAWIKE & ORS (2017) LPELR-41434(CA) the court held thus

> *"It is true that in Election Petition cases, the rules on amendment is much more regulated, in keeping with the sui generic nature of election matters…….As it were, the law bars amendment of the petition in the above areas (Paragraph 4(1) of the 1st Schedule) and amendment leading to substantial alteration of the grounds or prayers in the petition, or leading to substantial alteration of or addition to the statement of fact relied on to support the ground(s) for or sustain the prayer in the petition. The above, stringent as it is, certainly, does not appear to suggest a blanket bar to amendment of the process, where such amendment relates to obvious errors (typographical, clerical or blunder of Counsel) which do not go to the root of the petition or are substantial enough to alter the case presented by the Petitioner; and where the error can be corrected, without over-reaching the other party; or giving advantage to petitioner; or visiting prejudice or injustice on the opponent." Per MBABA, J.C.A.(Pp. 31-33, Paras. C-E)*

In the instant case, the amendment sought was just to correct the typographical error in stating the heading of the Tribunal which did not in any way affect the substance of the Petition and same was granted and the amended petition filed deemed properly filed the requisite fees having been paid thus the amended petition dates back to the beginning of the petition. In view of the above, we hereby hold that the amendment sought was properly granted. Based on the above, the 2nd issue is also resolved in favour of the Petitioners thus the 7th leg of the preliminary objection is hereby dismissed.

Accordingly, we hold that the entire preliminary objection lacks merit, and same is hereby overruled.

We shall now determine the petition on its merit. As earlier noted, the Tribunal formulated 2 issues for determination distilled from the issues for determination filed by the parties as follows;

1. *Whether the election of the 1st Respondent as member of the Sokoto state House of Assembly representing Gada-West 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 the Petitioners have led sufficient and credible evidence before this Honourable Tribunal to prove that the 1st and 2nd Respondents were not duly elected or returned by majority of lawful votes cast at the election for the office of Member House of Assembly for Gada West Constituency held on the 9th day of March 2019.*

However before determining these issues, it is necessary to resolve some ancillary issues raised by the parties.

The first ancillary issue was raised by the learned counsel to the Petitioners, he submitted that in as much as the Respondents did not call any witness despite the fact that their replies to the petition and statement of witnesses on oath were filed, this means their various replies to the petition have been abandoned. It also means that the written statements on oath by the various witnesses of the respondents were also abandoned, they should therefore be struck out.

Learned counsel to the Respondents in response submitted that the Respondents were correct in law to have decided not to call any evidence in rebuttal/defence of this petition on the ground that in an election petition such as the instant case, the onus remain always on the petitioners to establish their case to the satisfaction of

the election tribunal without placing any reliance on the weakness of the case of the respondents.

According to the learned counsels to the Respondents, having regard to the declaratory nature of the reliefs being claimed by the petitioners in this petition and in view of the fact that the petitioners have failed to lead any credible evidence in proof of the allegations contained in the petition, it was unnecessary for the respondents to lead any evidence in rebuttal in this petition.

We have carefully considered all the arguments canvassed by all the parties. It is now settled law that the mere fact that the Respondents did not call any witness does not amount to abandonment of pleadings especially where a respondent cross examined the witness called by the petitioner and was able to show that the position of the petitioner is untenable thereby supporting his defence. He is in law taken to have called evidence in support of his pleadings which cannot then be said to have been abandoned. See OMISORE V AREGBESOLA (2015) 15 NWLR (Pt 1482) 205 at 324 para A_C. In the case of AKOMOLAFE V GUARDIAN PRESS LTD (2010) 3 NWLR (pt. 1181) 338. The supreme court echoed a similar view in the following words:

> *"Evidence elicited from a party or his witness under cross examination, which goes to support the case of the party cross examining, constitutes evidence in support of the case or defence of the party. If at the end of the day, the party cross examining decides not to call any witness, he can rely on the evidence elicited from cross examination in establishing his case or defence. In that case it cannot be said that the party called no defence. However, it can be said that the party called no witness in support of his case or defence, not evidence, as the evidence elicited under cross-examination, which are in support of his case or defence constitute his evidence in the case."*

In any case, the claims of the petitioners are declaratory in nature. That being the case, they are in law duty bound to prove their case. It is only when they have done so that the respondents will be expected to enter their defence. If they fail to do so, they cannot rely on the failure of the respondents to secure a cheap and easy judgment this is so because declaratory reliefs cannot be granted on the admission

of the Respondent. See the case of: *NYESOM V. PETERSIDE (2016) ALL FWLR (PT 842) 1573 AT 1649 – 1670* where Kekere - Ekun JSC held as follows:-

> *"The law is that where a party seeks declaratory reliefs, the burden is on him to succeed on the strength of his own case and not on the weakness of the defense (if any). Such reliefs will not be granted even on admission by the respondents."*

In the instant case, the Respondents cross examined the witnesses of the Petitioners extensively thus they cannot be said to have abandoned their pleadings or not challenged the case of the Petitioners.

We shall now resolve the issues posited by the Tribunal seriatim.

It is noteworthy that the learned counsel to the Petitioners argued both issues together. The said learned counsel after appraising the evidence of PW1-PW9 submitted that all the witnesses called by the Petitioners were all polling agents who were eye witnesses at the polling units and as such are in the true position to testify as to what transpired. Based on this, learned counsel surmised that the answers to both issues are YES and YES. Learned counsel submitted further that the Election was not conducted in substantial compliance with the provisions of the Electoral Act and urged the Tribunal to grant the prayers/reliefs sought or stated in the petition, and declared the Petitioners as winners of the election.

Learned counsels to the Respondents also decided to argue both issues together. According to the learned counsels, a careful perusal of the allegation of the petitioners in challenge of the said election as particularized by the petitioners in paragraphs 4(i) – 7(i) of the amended petition of the petitioners shows that the only complaint of the petitioners therein is the allegation of over voting in 11 polling units mentioned in the petition. The said allegation in respect of the said 11 polling units can be seen on pages 1 – 5 of the petition.

In an attempt to prove the allegation in the said 11 polling units in Gada West State Constituency of Sokoto State, the petitioners called 9 witnesses before this Honourable Tribunal. The petitioners also tendered from the bar Exhibits P1 – P11 which are Form EC.8A in respect of Dunkulawa Primary School Polling Unit 019, Jatgalawa Primary School Polling Unit 004, Ingaboro Primary School Polling Unit

007, Gidan Zafi Dan-Fili Primary School Polling Unit 019, Iddarawa Dan-Fili Primary School Polling Unit 033, Tulfar Baba Dan-Fili Primary School Polling Unit 018, Shiyar Sanda Primary School Polling Unit 012, Shiyar Ajiya Primary School Polling Unit 001, Tudun Bulus Primary School Polling Unit 003 and Form EC.8E(1) respectively. Surprisingly however, it was only PW9 that identified Exhibit P5 as the polling unit result of the election where he acted as petitioners' agent at Iddarawa Dan-Fili Primary School Polling Unit 033. It is therefore clear that all the other exhibits tendered in this case by the petitioners have been dumped on the tribunal as the other witnesses did not demonstrate or analyze any of the said exhibits before this Honorable Tribunal. They urged the Tribunal to so hold.

We have carefully examined the address filed by the petitioners and discovered that the learned counsel to the Petitioners did not file any response to the assertion that all the documents tendered by him were dumped on the Tribunal.

A careful perusal of the evidence tendered at trial by the petitioners also shows that the Petitioners called nine (9) witnesses and tendered Exhibits P, P1, P2, P3, P4, P5, P6, P7, P8, P9, P10 and P11 from the bar. It is also worthy of note that no document was tendered through the PW1, PW5, PW6 and PW7. Furthermore, they did not mention any documents in their witness statement on oath, no document was shown to them and they did not demonstrate any document at the trial of this petition.

The PW2, PW3 and PW4 mentioned FORM EC8A for polling unit 007, Form EC8A NO 000517 and EC8A 000502 in their witness statement on oath but no document was tendered through them. They were also not shown any document at the trial or demonstrate the facts to the Tribunal by linking them to the specific areas of their pleadings.

The P.W 8 mentioned in his statement on oath that the refusal of the INEC officials to adhere to the guidelines particularly as it relates to accreditation led to over voting as shown in FORM EC8A No. 000517 for the polling unit. That he protested the irregularities but was ignored by the presiding officer and physically attacked by APC supporters. It is once again noteworthy that the said Form EC8A NO 000517 was not shown to the PW8 to identify and demonstrate to the Tribunal.

It was while the P.W. 9 was testifying that the learned counsel to the Petitioners tendered the Schedule of Documents admitted as Exhibit P, and a host of documents such as Form EC8A for Dankulawa Primary School polling unit which was admitted as Exhibit P1,Form EC8A for Jangalawa Primary School polling unit as Exhibit P2, Form EC8A for Ingaboro Primary School polling unit-Exhibit P3,Form EC8A for Gidan Zafi Dan-Fili Primary School polling unit-Exhibit P4,Form EC8A for Iddarawa Dan-Fili primary School polling unit-Exhibit P5,Form EC8A for Tulfar Baba Dan-Fili Primary School polling unit-Exhibit P6,Form EC8A for Shiyar Sanda Primary School polling unit-Exhibit P7,Form EC8A for Shiyar Ajiya Primary School polling unit-Exhibit P8,Form EC8A for Tudun Bulus Primary School polling unit-Exhibit P9,Form EC8A for Shiyar Hakimi Primary School polling unit-Exhibit P10,Form EC8E(I) Final Declaration of Result-Exhibit P11 from the bar.

PW9 then testified further that he was the polling unit agent for Iddarawa Dan-Fili Primary School polling unit. He was only shown Exhibit P5 which he identified as certified true copies of the result from his polling unit. Under cross-examination, he informed the Tribunal that he knows one Hassan Garba who was the PDP polling agent for Iddarawa Dan-Fili Primary School polling unit. They instructed the said Hassan Garba not to sign Exhibit P5. He had no idea when he signed Exhibit P5. He was not happy that he signed it because there are irregularities.

What can be gleaned from the above is that the PW9 merely identified exhibit P5 as CTC of result from his polling unit. He did not link the said Exhibit P5 specifically with any area of his pleadings or tell the Tribunal the purport or import for which the said document was tendered. He also did not analyse any of the figures therein. He was not even the person who signed it; apparently one Hassan Garba signed it against the instructions of their party. However, the said Hassan Garba did not testify before this Tribunal or identify exhibit P5 as having being made by him.

The question now is whether the PW8 and 9 could be said to have demonstrated all the documents tendered by the Petitioners satisfactorily? We must of necessity answer this question in the negative because whenever a party decides to rely on documents to prove his case there must be a link between the document and the

specific areas of the Petition. He must relate each document to the specific area of his case for which the document was tendered.

> *The court held in the case of Ucha v Elechi (2012) 8 NWLR (PT 1303)560 that "on no account must counsel dump documents on the trial court. No court will spend precious judicial time linking documents to specific areas of a party's case"*

The court also held in the case of *A.C.N. V LAMIDO (2012) 8 NWLR PT 1303 PG 560 @ 584-58 that*

> *"the basic aim of tendering documents in bulk is to ensure speedy trial and hearing of election petitions. But that does not exclude proper evidence to prop such dormant documents. It is not the duty of a court or Tribunal to embark upon cloistered justice by making inquiry into the case outside the open court not even by examination of documents which were in evidence but not examined in the open court. A judge is an adjudicator not an investigator"*

In the instant case, none of the witnesses called by the petitioners demonstrated the documents tendered by linking each up with the specific areas of the pleading or explain to the Tribunal the relevance of the said documents. Based on all the above, we hereby hold that all the documents tendered by the petitioners were dumped before this Tribunal.

Learned counsel to the Respondents submitted further that a petitioner who seeks to prove over voting at a polling unit has to take the several steps outlined by his lordship, Okoro JSC in *EMERHOR V. OKOWA (2010) ALL FWLR (PT 896) 1868 AT 1905* where the learned jurist held thus: -

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

1. *Tender the voters register to show the total number of registered voters in each unit.*
2. *Tender the statement of result in the appropriate forms which would show the total number of votes cast.*

3. *Relate each of the documents to the specific area of his case in respect of which the documents are tendered.*
4. *Show that the figure representing the over voting if removed would result in victory for the petitioner and*
5. *In view of the introduction of card reader machines in elections, I will add that the petitioner should tender the card reader report if it did not fail to function."*

Learned counsels submitted further that in the instant petition, the petitioners who made allegation of over voting as their only complaint bothering on non-compliance with the provisions of the Electoral Act in this petition did not follow the procedure in proving the said allegation as enunciated by the Supreme Court in the case of Okowa cited above. The petitioners did not tender any register of voters in respect of the 11 polling units in the State Constituency where the petitioners are alleging over voting. The Petitioners merely tendered the CTC of result sheets in respect of some of the polling units complained of without taking any further step to link or demonstrate the said documents to the specific area of the complaint of the petitioners as stated in the petition. The Petitioners relied solely on the information provided in the polling unit result (Form EC.8A) to prove allegation of over voting which is not enough. Learned counsel thus submitted that the petitioners have woefully failed to prove the allegation of over voting in the 11 polling units in Gada West State Constituency complained of.

We are inclined to agree with the learned counsel to the Respondents that to establish over voting, all the requirements listed above must of necessity be satisfied. The court held in the case of LADOJA v. AJIMOBI & ORS delivered on Monday, the 15th day of February, 2016 in suit number SC.12/2016 that

> *"It goes without saying that there are crucial electoral documents which must be tendered by a petitioner in proof of over-voting and how*

such must be tendered. The most important of such are the voters register used in the challenged election, and forms EC8A. These are the documents which the appellant through its witness PW1, admitted they did not tender and thus an admission against interest. See Ipinlaye II v. Olukotun (1996) 6 NWLR (Pt 453) 140 at 165. Also in the recent decision of this Court in SC. 907/2015 – Mahmud Aliyu Shinkafi & Anor. V. A. Abdulazeez Abubakar Yari & 2 Ors (unreported) delivered on 8th January, 2016, it was held that:- "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 would show 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 documents are tendered. 4. Show that the figure representing the over voting, if removed would result in victory for the petitioner …" Per OGUNBIYI, J.C.A. (Pp. 52-53, Paras. F-E)

In the instant case, the petitioners did not tender any voters register. Though the petitioners tendered the results in the appropriate Forms EC8As but same were not demonstrated to the satisfaction of the Tribunal and were held dumped before the Tribunal because same were not related to specific areas of the petition in respect of which the documents were tendered. The petitioners did not demonstrate the figure representing over voting at the trial though these figures were pleaded in the petition and the Forms indicated. The conclusion to be drawn is that the Petitioners expect the Tribunal to link the figures pleaded in the petition with the documents tendered which is untenable.

The court held in the case of A.N.P.P. V INEC (2010) 13 NWLR (PT 1212) 549 that

"a judge is to descend from his heavenly abode no lower than the tree tops, resolve earthly dispute and return to the supreme lord. His

duties entail examining the case as presented by the parties in accordance with standards well laid down. Where a judge abandons that duty and start looking for irregularities in electoral documents and investigating documents not properly before him, he will most probably be submerged in the dust of the conflict and render a perverse judgement in the process".

In any case, we have already held in an earlier part of this judgement that all the documents tendered by the petitioners were dumped on the Tribunal which in effect means none can be examined to ascertain figures.

With respect to the allegation of corrupt practice, learned counsels to the Respondents noted that the petitioners also made various unfounded allegations of corrupt practices and non – compliance with the provisions of the Electoral Act and INEC Guidelines in the conduct of the said election. They therefore submitted that whenever a petitioner contends in an election petition that the election was invalid by reason of corrupt practices or non-compliance with the provisions of the Electoral Act, 2010 (as amended), such a petitioner must prove before the tribunal that the corrupt practices or non-compliance complained of actually took place and also that same substantially affected the result of the said election. These two conditions must be satisfied by the petitioner cumulatively before such a petitioner can succeed on an allegation of this nature. It was further submitted that in establishing the substantiality of the corrupt practice and or non-compliance, the petitioner must prove the effect of such acts polling unit by polling unit while the required standard of proof is not on a minimal proof but on the balance of probabilities.

Learned counsel to the Petitioners submitted with respect to the allegation of corrupt practices that all the witnesses called by the Petitioners were all polling agents who were eye witnesses at the polling units and as such are in the true position to testify as to what transpired. Based on this, learned counsel surmised that the answers to both issues are YES and YES. Learned counsel submitted further that the Election was not conducted in substantial compliance with the provisions of the Electoral Act and urged the Tribunal to grant the prayers/reliefs sought or stated in the petition, and declared the Petitioners as winners of the election.

Upon careful considerations of the case presented by the petitioners, we noted that the Petitioners called nine (9) witnesses, the areas of their evidence which can be related to non compliance/ corrupt practices are as follow; the PW1 testified that card readers were not used for accreditation of voters and thumb-printing of the voters register and after voting was concluded, counting of the ballot papers were disrupted, some of the ballot papers were destroyed and the ballot box taken away. He was later informed that the ballot box was taken to the ward polling centre where votes were allocated and recorded in FORM EC8A.

It is noteworthy that the PW1 did not substantiate the allegation that card readers were not used in the accreditation of voters by tendering the card reader printout to show that it was not used. The voter's registers were also not tendered to show that manual accreditation was not done. Furthermore, the ballots papers allegedly destroyed were also not tendered before this Tribunal. What can be gleaned from the evidence of the PW1 was that he was not present at the polling centre where votes were allegedly allocated and recorded in Form EC8A as he confirmed he got this information from a source he did not disclose. It is noteworthy that the source of his information having not been revealed to the Tribunal renders his evidence hearsay evidence.

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.*

Based on the above, we hereby hold that the evidence of the PW1 is hearsay evidence.

The P.W 2 also alleged in his witness statement on oath that some voters were not accredited by the use of card reader and did not thumb print the voter's register and supply their phone numbers to the extent that in FORM EC8A for polling unit 007 the total number of used ballot papers were more than the number of voters accredited. Further that there were no security personnel attached to the polling unit. That he protested the irregularities but was ignored by the presiding officer. The number of registered voters in his polling unit was 373. He does not know the number of accredited voters. APC scored 86 votes. They said that PDP scored 65. He did not agree with the results hence his refusal to sign. The invalid votes were 150. He did not know the number of used ballot papers. The number of used ballot papers is more than the accredited voters.

What can be gleaned from the evidence of the PW2 is that he had no idea of the number of accredited voters, he knows the number of registered voters in his polling unit is 376, the invalid votes is 150, APC scored 86 while PDP scored 65 yet according to him, the number of ballot papers used was more than the accredited voters. He did not back any of his allegations up with documentary evidence. No Card reader report or voters card was tendered or identified by him. He did not identify the Form EC8A for polling unit 007 mentioned by him during the trial or demonstrate the figures by linking them with the requisite documents.

The court held in the case of IKPEAZU v. OTTI & ORS (2016) LPELR-40055(SC) that;

> *"in order to prove over-voting, which was one of the contentions in this case, the petitioner must tender the voters register, the statement of results in appropriate forms and must relate each of the documents to the specific area of his case. He must also show that the figure representing the over voting, if removed would result in victory for the petitioner." Per KEKERE-EKUN, J.S.C. (P. 74, Paras. B-D)*

In the instant case, the PW2 did not satisfy any of the stipulated requirements necessary to establish over voting, non compliance or corrupt practice thus his evidence lacks substance.

The P.W.3's evidence was to the effect that the refusal of the INEC officials to adhere to the guidelines particularly as it relates to accreditation led to over voting

as shown in FORM EC8A No. 000517 for the polling unit. That he protested the irregularities but was ignored by the presiding officer and physically attacked by APC supporters. Further that the smart card reader stopped and the APC member said that they will continue without the card reader. They objected to it so the election was conducted without card reader. He also maintained that there was over voting at the polling unit. The excess votes were 335, he arrived his polling unit between 7:00 am to 8:00 am and left between 10:00 am and 11:00 am. There were no INEC officials at that polling unit. He voted at that polling unit. No voter was accredited with smart card reader. He was chased away.

What can be gleaned from the evidence of the PW3 is that he appears confused. According to him, there was no INEC official at that polling unit yet he voted there. How this was possible was not explained to the Tribunal. He mentioned Form EC8A NO 000517 which was not identified by him in open court. He claimed there was excess of 335 votes yet did not tender any documentary evidence in prove of same. The PW3's evidence cannot establish over voting, non compliance or corrupt practice.

The P.W. 4's evidence was to the effect that there was chaos due to disagreement with the mode and manner of conducting the polls. That about 1 O'clock in the afternoon, he and the petitioner's co-agents were chased away from the polling unit by supporters of the All Progressive Congress thus there was no agent of the petitioner in the polling unit from the hour of 1 O'clock till the close of voting. According to him, he latter saw the result of the election as declared by INEC and discovered that the following result was recorded in FORM EC8A No. 000502

No. of accredited voters	-	426
No. of rejected ballots	-	7
No. of ballot papers issued	-	646
No. of unused ballot papers	-	104
Total No. of valid votes	-	423
Total No. of used ballot papers	-	427

Under cross-examination, he admitted not knowing when the voting ended because he was not there. He did not know the number of accredited voters. He did not

know the scores of the candidates. He did not know the number of spoilt ballot papers.

What can be gleaned from the PW4's evidence was that he did not know the number of accredited voters or the scores of the candidates apart from the one he was later shown since he was not there when the results were declared or recorded in the appropriate FORM EC8A which also makes his evidence hearsay evidence. He did not tender any document or demonstrate any document to show the figure representing over voting. The PW4's evidence is obviously of no probative value as far as the establishment of allegation of over voting is concerned.

According to the P.W.5, card reader was used until it was time for the 2 O'clock prayers. However, by the time he came back from break during prayers ballot papers were fraudulently thumb-printed and stuffed in the ballot boxes thereby resulting in over-voting as reflected in FORM EC8A where the number of ballot papers used are more than the accredited voters.When he came back he met them thumb printing ballot papers and putting them into the box and when he challenged them, someone slapped him. He did not know the number of ballot papers that were put into the ballot box. He did not know the actual number of ballot papers that were added.

What can be gleaned from the evidence of the PW5 was that some nameless people were thump printing and stuffing the ballot box which resulted into over voting. He did not know the number of ballot papers that were put into the ballot box. He did not know the actual number of ballot papers that were added. It is noteworthy that allegation of ballot box stuffing is a criminal allegation which must be proved beyond reasonable doubt.

The position of the law is that criminal allegations in election petitions must not only be proved beyond reasonable doubt, it must be linked sufficiently with the Respondents before they can be made to suffer for it. The court held in the case of IHUOMA v. AZUBUIKE & ORS (2015) LPELR-25978(CA) thus:

> *"…by Law, the alleged malpractices complained of, even if established, must be linked, sufficiently, to the Respondents as perpetrators or sponsors, thereof, before they could be made to suffer for same. The law on this has been well developed and expressly pronounced in many*

judicial decisions. See Section 124(6) of the Electoral Act 2010 (as amended) and the case of Buhari v. Obasanjo (2005) 13 NWLR (pt.941) 1; See also the case of DPP and Anor v. INEC & Ors (2008) LPELR – 4046, where it was held that allegation of crime in election Petition must be proved beyond reasonable doubt and must be linked with the Respondent: "The law is settled that where petitioner fails to establish agency relationship between the perpetrators of the alleged acts of violence with the candidate returned as the winner of the election, then he cannot attribute any offence committed by the agent to the candidate. See also Saadu & Anor v. Afolabi & Ors (2012) LPELR – 7873 (CA)." Per MBABA, J.C.A. (Pp. 49-50, Paras. C-B)

The court also held in the case of PDP & ANOR v. INEC & ANOR (2011) LPELR-9236(CA)

"The provision of section 137(3)(a) and (b) of the Act is limited to cover only INEC and its staff related persons. The petition at hand on the pleadings did make serious criminal allegations against the said two persons who were non INEC staff. The constitutional provision is very clear and explicit on the principle of fair hearing wherein a person should not be condemned in his absence. This is more so where the allegation is criminal in nature. The joinder of the said two persons was very necessary as it would infringe against their fundamental constitutional rights to fair hearing. Needless to say that they needed to defend themselves and should under no circumstance be shut out. The learned Tribunal was again, I hold, certainly on a right footing in taking the steps it did. In other words by striking out the offending paragraphs 21 and 23 of the petition." Per OGUNBIYI, J.C.A. (Pp. 15-16, paras. G-D)

In the instant case, the petitioners made serious criminal allegations against some nameless people thumb printing the ballot papers and stuffing the ballot boxes which resulted into over voting without making the said persons parties to this petition. In any case the criminal allegations were not linked in any way whatsoever with the Respondents in this case which makes the evidence of the

PW5 worthless as far as establishing over voting, non compliance or corrupt practice are concerned.

With respect to the evidence of the P.W 6 he testified that voting was ongoing when there was a fracas in the polling unit at about 11 O'clock and voting was disrupted. The ballot box was removed and taken away. That as a result of the disruption of voting there was no counting of votes at the polling unit. That the officials of INEC later released results in respect of the polling unit allocating scores to parties. He did not know the scores allotted to the parties because the ballot boxes were snatched. Some people voted before the ballot box was snatched but they were not up to ten voters. When the ballot box was snatched he could not chase the ballot snatchers because they were armed with sticks. He did his work well as an agent but they over powered him.

What can be gleaned from the evidence of the PW6 also is that he made criminal allegations against nameless men who were not joined as parties to the petition which was not linked to the Respondents same as the PW5. He also had no idea of the scores allocated to each party yet the Petitioners want to rely on his evidence to establish over voting without establishing the figure representing over voting. The PW6's evidence is of no evidential value in proof of the allegations against the Respondents in this Petition.

According to the P.W.7 the card reader malfunctioned and the INEC officials resorted to manual accreditation without the voters' thumb printing the voters register and supplying their phone numbers. That irregularity resulted in over-voting as shown in FORM EC8A. His complaint is that on the day of the election they allowed people to vote without any manual accreditation when the card reader failed that is his only complaint. He saw the voters Register and acknowledged the fact that the tribunal can know if there was accreditation through the voter's register. He did not know the number of valid votes in this polling unit. He did not know the number of invalid votes. On the election day, he voted by 8:30 am. He was the first person to vote. According to him, if the card reader has a problem and the person is not accredited manually he cannot vote and insisted that there was over voting in his polling unit. The over voting was over hundred.

In the instant case, the PW7 alleged irregularities without substantiating same with documentary prove. The court held in the case of OKUNLADE V. AZEEZ & ORS. (2009) LPELR-4730(CA)

> *"In ALADE V. AWODEYIN (1999) 5 NWLR (PART 604) 529 irregularity in an election was defined, it was held that where the total number of votes cast exceeds the total number of accredited voters/ballot papers issued, such a result would be nullified"*

In the instant case, the PW7 claimed he saw the voters Register and acknowledged the fact that the tribunal can know if there was accreditation through the voter's register yet did not tender the voter's register in court. The PW7 did not know the number of valid or invalid votes in this polling unit yet the Petitioners wants to rely on his evidence to establish over voting, non compliance and corrupt practices. The PW7's evidence has not in any way helped the case of the Petitioners.

The P.W 8 testified that card reader was not used and the voter's registered and supplied their phone-numbers. That the refusal of the INEC officials to adhere to the guidelines particularly as it relates to accreditation led to over voting as shown in FORM EC8A No. 000517 for the polling unit. That he protested the irregularities but was ignored by the presiding officer and physically attacked by APC supporters. He did not know when the election closed because he was at the hospital. He left the polling unit at 10:00 am. From 10: am he did not know what happened in the polling unit because he was in the hospital. The registered voters in his polling unit were 954 voters. He has the voters register in this Tribunal it is in his car. There was no election conducted in that polling unit. He did not vote. His wife and son did not vote. He was attacked by APC thugs. He knows the name of the person who led them but do not know the names of the thugs. He is aware that it is a criminal offence to attack a polling unit with thugs. He informed the security agents about the attack. He did not report at the police station.

What the above means is that the PW8 also made criminal allegations against nameless persons who were not made parties to the petition which vitiates the proceedings. He did not even lodge any report of the alleged crime. He left his polling unit from 10 am and had no idea what transpired thereafter because he was at the hospital which makes his evidence hearsay evidence. He alleged lack of accreditation without tendering voter's registers which he informed the Tribunal

was in his car. He did not tender the card reader print out either. He alleged that election did not take place which amounts to disenfranchisement.

The court held in the case of EMMANUEL v. UMANA & ORS that;

> *"The law is trite that a voter is disenfranchised when his right to vote is taken away from him. That is to say he claims to be a registered voter but was not allowed to vote. In other words, the Court would be satisfied on the proof of disenfranchisement of voters when such voters give clear evidence that they were duly registered for the election but were not given the opportunity to cast their votes. In this regard it is necessary for such voters to tender in evidence their respective voters cards and Registers of voters from each affected polling unit to confirm the allegation of non-voting. Most important of all is the need for such disenfranchised voters to give evidence to show that if they had been given the opportunity to vote, the candidate of the political party of their choice would have won the election. See NGIGE & ORS VS. INEC & 3 ORS (2015) 1 NWLR (PT.1440) 281 at 326 OKE VS MIMIKO (No.2) (2014) 1 NWLR (Pt.1388) 332 an UCHE & ANOR VS ELECHI & 2 ORS (2012) 13 NWLR (Pt.1317) 330." Per MOHAMMED, J.S.C. (Pp. 74-75, Paras. B-A)*

In the instant case, the PW8 did not tender his voter's card to show he was duly registered for the election but was not given the opportunity to vote. The PW8 also did not tender the register of voters for his polling unit. He also failed to show the Tribunal that if he had been given the opportunity to vote, the Petitioners would have won the election. The evidence of the PW8 is weightless to say the least.

The P.W. 9 also alleged lack of accreditation and testified further that in an attempt to cover up the irregularity, the INEC officials resorted to indiscriminate accreditation with card readers to the extent that the total the number of used ballot papers exceeded the number of persons accredited as shown in FORM EC8A. The learned counsel to the Petitioners thereafter tendered some Forms EC8As from the bar but only exhibit P5 was shown to the PW9. It is noteworthy that we have held in an earlier part of this judgement that all the documents tendered were not properly demonstrated by the petitioners thus dumped before this Tribunal.

He thereafter acknowledged the fact that one Hassan Garba was the PDP polling unit agent for Iddarawa Dan-Fili Primary School polling unit and that they instructed him not to sign Exhibit P5. He had no idea who signed Exhibit P5. He was not happy that he signed it because there are irregularities. His complaint of this polling unit is that when the card reader stopped working, they continued to give people ballot papers to vote. He later conceded that if the result from his polling unit is cancelled, the APC candidate will still win the election. He had the register of voters for this polling unit but it is not here with him in court. He is a registered voter and he voted. He was accredited before he voted. Some of his family members voted. Those who were not accredited were allowed to vote but they tried to stop them.

What can be gleaned from the evidence of the PW9 is that he did not appear to be sure of what he was saying. His ignorance about how Exhibit P5 was signed puts a question mark on his credibility. His evidence is unreliable. The PW9 also alleged lack of accreditation without tendering voter's registers which he claimed he had or the card reader print out. He however acknowleged the fact that he was accredited before he voted.

One part of his evidence which is worthy of note is that he conceded that if the result from his polling unit is cancelled, the APC candidate will still win the election. This piece of evidence rather than assist the Petitioners weighs heavily against them.

The court held in the case of PDP v. INEC & ORS. (2011) LPELR-8831(CA) that;

> *"an act of non-compliance with the Electoral Act may be defined as the conduct of an election contrary to the principles or requirements of the Electoral Act or Rules and Regulations made there under. Generally, the question in every case where non-compliance is alleged is, whether or not in view of the findings of the Court, the Constituency was allowed to elect its representatives. See INEC V. OSHIOMOLE (2009) 4 NWLR (Pt.1132) p.607. The onus of proving the particular non compliance alleged and its effect on the result of the election is on the Petitioner. This is more so, as it is not every non-compliance that will lead to the result of the election being invalidated, because, no human endeavor is error free as such, the law reckons that in the conduct of an election, mistakes may willy nilly occur. In that respect, for an act of non-*

compliance to affect the result of an election, it must be substantial and also substantially affect the result. It is for the Petitioner to adduce cogent and credible evidence showing that the non-compliance he complains of is substantial and that it affected the result of the election substantially. See UKPO V NNAJI (2010) 1 NWLR (Pt.1174) p.175; ANPP v. INEC (Supra) at p.598, BUHARI V OBASONJO (Supra) at p.192 and EZE v. OKOLOAGU (2010) 3 NWLR (pt.1180) p.183." Per TSAMMANI, J.C.A (Pp. 58-59, paras. E-C)

The Petitioners also alleged corrupt practices. In the meantime, there are plethora of authorities that corrupt practices in an election petition being an allegation that is criminal in nature, must be proved beyond reasonable doubt. See the case of *IKPEAZU V. OTTI (2016) ALL FWLR (PT 833) 1946 AT 1974* where Galadima JSC held thus: -

"*Where in an election petition, the petitioner makes an allegation of a crime against a respondent and he makes the commission of the crime the basis of his petition. Section 135(1) of the Evidence Act, 2011 imposes strict burden on the said petitioner to prove the crime beyond reasonable doubt. If he fails to discharge the burden, his petition fails."*

Finally, the Petitioners alleged over voting, in the meantime to establish over voting, the decision of the superior court in the case of LADOJA v. AJIMOBI & ORS SC 12/20 LOR 15/02/2016 is quite helpful. Their Lordships held;

"It goes without saying that there are crucial electoral documents which must be tendered by a petitioner in proof of over-voting and how such must be tendered. The most important of such are the voters register used in the challenged election, and forms EC8A. These are the documents which the appellant through its witness PW1, admitted they did not tender and thus an admission against interest. See Ipinlaye II v. Olukotun (1996) 6 NWLR (Pt 453) 140 at 165. Also in the recent decision of this Court in SC. 907/2015 - Mahmud Aliyu Shinkafi & Anor. V. A. Abdulazeez Abubakar Yari & 2 Ors (unreported) delivered on 8th January, 2016, it was held that:- "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 would show 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 documents are tendered. 4. Show that the figure representing the over voting, if removed would result in victory for the petitioner ..." Per OGUNBIYI, J.C.A. (Pp. 52-53, Paras. F-E)

In the instant case, the Petitioners did not tender a single voter's register, the Forms EC8As tendered were dumped on the Tribunal same having not been properly demonstrated by relating them to the specific areas of the Petition or informing the Tribunal of their purport and import. The Petitioners also failed to show the Tribunal the figure representing the over voting.

By the foregoing, can the Petitioners be said to have established non compliance capable of vitiating the election results declared by INEC (which is presumed to be regular) substantial enough to affect the said result and warrant the Tribunal to set it aside? We must answer this question in the negative. As can be seen above, the evidence of the PW1 was held to be hearsay evidence, that of the PW2 lacks substance, that of the PW3 is full of confusion, the evidence of the PW4 apart from lacking probative value was tainted with hearsay, that of the PW5 was declared worthless, the PW6's evidence was of no evidential value, that of the PW7 does not assist the Petitioners in establishing over voting classed as non compliance, the evidence of the PW8 was weightless while the PW9 categorically admitted that if the result of his polling unit is cancelled, the APC will still win the election.

It is obvious with all the foregoing that the Petitioners did not establish over voting categorized as non compliance with the Electoral Act or corrupt practices capable of vitiating the result declared by INEC which enjoys the presumption of regularity to warrant the election being set aside.

The court held in the case of MADUABUM V. NWOSU & ORS.(2009) LPELR-4455(CA)

"Evidence Act in section 150(1) provides: "When any judicial or official act is shown to have been done in manner substantially regular, it is

presumed that formal requisites for its validity were complied with. Be it noted, by virtue of the above provision of the law, the result of any election declared by the Electoral Commission is presumed to be correct and authentic but such presumption is rebuttable and the burden is on the party who disputes the correctness and authenticity of the result to lead credible evidence in rebuttal"

The question now is, was the Petitioner in this case able to rebut the presumption of regularity of the result declared by the 3rd Respondent in this case? we must once again answer this question in the negative going by the reasons already adumbrated above.

In view of the foregoing, issue one is hereby resolved in favour of the Respondents.

With respect to the 2nd issue, i.e whether the Petitioners have led sufficient and credible evidence before this Honourable Tribunal to prove that the 1st and 2nd Respondents were not duly elected or returned by majority of lawful votes cast at the election for the office of Member House of Assembly for Gada West Constituency held on the 9th day of March 2019.
Even though this issue was lumped together with allegations of non-compliance and corrupt practices yet both the Petitioners and the Respondents did not advance any argument in support of same in their final address.
In the meantime, to establish that the Respondents were not duly elected by majority of lawful votes cast is an invitation to compare and contrast figures. To establish this complaint, there must be proper tabulation of votes secured by each of the candidates. A party to an election who alleges that he was entitled to more votes at an election than he was credited with or that his opponent scored less votes, must:

a. Obtain leave of court to file the head of votes;

b. file the list of such votes to support his complaint that his votes were short counted or given to his opponent.

c. show that those votes when added to his own would have tilted the election in his favour.

See the case of **ChumaAnozie vs Dr. Ken Obichere&Ors (2006) 8 NWLR (Pt 981) 140**

In the instant case, it is clear that the Petitioners did not adduce any shred of evidence as highlighted above. As a matter of fact, the only result before this court is the one declared by the 3rd Respondent wherein the Petitioners scored 10,466 votes while the 1st and 2nd Respondents scored 13,522 votes as pleaded in paragraph 2 of the Petitioners amended Petition. The PW9 also admitted that if the result from his polling is cancelled, the 1st and 2nd Respondents will still win. The Petitioners herein did not present two results before the Tribunal or show the votes which if added to his own will entitled him to a declaration in his favour that he won the election.

To further worsen the case of the Petitioners, this particular issue was not canvassed at the trial where analysis of the figures in contention ought to have been presented before the Tribunal and easily ascertainable figures presented. The learned counsels to both parties also failed to canvass any argument in support of this issue in their final written addresses. They appear to have abandoned the issue

In any case, we are of the view that the Petitioners did not lead any credible evidence to to prove that the 1st and 2nd Respondents were not duly elected or returned by majority of lawful votes cast at the election for the office of Member House of Assembly for Gada West Constituency held on the 9th day of March 2019. In the event, Issue two is also resolved in favour of the Respondents.

Having resolved the two issues for determination in favour of the Respondents, we hold that this 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

COUNSELS:

1. G. O. Uwadiae Esq……PETITIONER
2. Chief J.E. Ochidi ……1ST& 2ND RESPONDENTS
3. B.K. Adam Esq ……..3RD RESPONDENT