

**IN THE EDO STATE LOCAL GOVERNMENT ELECTION**  
**TRIBUNAL HOLDEN AT BENIN CITY.**

**ON FRIDAY THE 29<sup>TH</sup> DAY OF DECEMBER, 2023**

**BEFORE HIS LORDSHIP: HON. JUSTICE A.T. MOMODU ..... (CHAIRMAN)**  
**HIS HONOUR: O.D. FIADÉ-ISIRAMEN (MRS), PRESIDENT SP. GD. .... (1ST MEMBER)**  
**HIS WORSHIP: F.I. OGHOATOR (MRS) CHIEF MAGISTRATE SP. GD. .... (2<sup>ND</sup> MEMBER)**

**PETITION NO: ED/LG/PET/01/2023.**

**BETWEEN:**

1. MASHIDO OSAMUDIAMEN EGHAGHE ..... PETITIONERS  
2. LABOUR PARTY

AND

1. EDO STATE INDEPENDENT ..... RESPONDENTS  
ELECTORAL COMMISSION (EDSIEC)  
2. DR. ERIC OSAYANDE  
3. PEOPLE DEMOCRATIC PARTY

**JUDGMENT DELIVERED BY HON. JUSTICE A.T. MOMODU (CHAIRMAN)**

By a petition dated 01/10/2023 and filed on the same day, Eghaghe Mashido Osamudiamen (1<sup>st</sup> Petitioner) a member of the Labour Party (2<sup>nd</sup> Petitioner) a political party duly registered in Nigeria are challenging the outcome of the Local Government Council election held on the 02/09/2023 into the Chairmanship position of Ikpoba Okha Local Government Council in which the Edo State Independent Electoral Commission (EDSIEC) (1<sup>st</sup> Respondent), returned Dr. Osayande Eric Iyobo (2<sup>nd</sup> Respondent) candidate of the Peoples' Democratic Party (3<sup>rd</sup> Respondent) as the winner.

The Petitioners are seeking from this tribunal the following prayers at paragraph 56 a, a, b, c, d & e as follows:

***“(a) A Declaration that the election of 2<sup>nd</sup> September, 2023 conducted pursuant to the Edo State Local Government Electoral Law and the Edo State Independent Electoral Commission Establishment (re-enactment) (Amendment 1), Law, 2022 predicated on the Electoral Act of 2010, is null and void; the 2010 Act have been expressly repealed by the Electoral Act of 2022.*”**

- (a) A declaration that no valid election held in Ikpoba Okha Local Government Area of Edo State on the 2<sup>nd</sup> day of September, 2023 by reason of the deliberate refusal of the 1<sup>st</sup> Respondent to conduct the election in compliance with Constitution of the Federal Republic of Nigeria 1999 (as amended), the Electoral Act, 2022, regulations and guidelines for the conduct of elections for Local Government Councils, and other relevant Laws.***
- (b) An Order setting aside the election conducted by the 1<sup>st</sup> Respondent on the 2<sup>nd</sup> of September, 2023 for the office of Chairman Ikpoba Okha Local Government Council of Edo State for failure of the 1<sup>st</sup> Respondent to comply with all relevant statutes and guidelines in Nigeria for the conduct of the disputed election.***
- (c) An Order mandating the Edo State Independent Electoral Commission to conduct a fresh election into the office of Chairman Ikpoba Okha Local Government Area of Edo State in all the wards of the Local Government in strict compliance with the enabling laws and guidelines for the conduct of the elections in Nigeria.***
- (d) An Order setting aside the Certificate of Return issued by the 1<sup>st</sup> Respondent to the 2<sup>nd</sup> Respondent.***
- (e) An Order directing the 1<sup>st</sup> Respondent to conduct a fresh election into the office of Chairman, in all wards and polling units of Ikpoba Okha Local Government Area, within 60 days from the date of the judgment of this court.”***

The petition was challenged by the Respondents. The 1<sup>st</sup> Respondent by a Notice of Preliminary objection dated and filed on 23/10/2023, challenge the jurisdiction of the tribunal to hear the petition on the grounds that the petition is not based on any cognizable grounds for presenting a petition under the law setting up this tribunal, along with a Reply to the petition on the merit seeking for an order to dismiss the petition in its entirety.

The 2<sup>nd</sup> and 3<sup>rd</sup> Respondents on 30/10/2023 filed a Reply consisting of a Notice of Preliminary Objection praying for an order striking out the petition for being incompetent on the grounds that the grounds upon which the petition is premised are not cognizable under the law establishing this tribunal, failure on the part of the

Petitioners to state the name and address of the occupier and that the reliefs sought by the Petitioners in the petition are ungrantable by this tribunal.

The Petitioners filed a Reply to the 1<sup>st</sup> Respondent's Reply on 29/10/2023. The Petitioners also filed a Reply to the 2<sup>nd</sup> & 3<sup>rd</sup> Respondents Reply on 6/11/2023.

The Petitioners filed a Motion on Notice on 11/11/2023 praying the tribunal to set down some paragraphs of their petition for hearing before commencement of the hearing of the petition. The Respondents challenged the application.

All the applications filed by the parties were contested. The applications were heard and Ruling deferred till today. Rulings on the applications were delivered before the commencement of the delivery of this judgment, notwithstanding the tribunals findings in the three applications, we shall proceed to consider the petition on its merit in the abundance of caution, peradventure our decisions are found to be wrong and also in view of the '*sui generis*' nature of election petition.

Trial commenced on 23/11/2023. The Petitioners presented 22 witnesses; P.W1 – P.W22 and tendered through the witnesses Exhibits A – F. The Petitioners closed their case on 28/11/2023.

The 1<sup>st</sup> Respondent opened and closed their case on 02/12/2023 after calling two witnesses who testified as R.W1 and R.W2. The 1<sup>st</sup> Respondent tendered Exhibits "G – G3" and "H".

The 2<sup>nd</sup> and 3<sup>rd</sup> Respondents did not present any witness but tendered Exhibits from the Bar. The Exhibits are marked Exhibits "1 – 13", "J – J9" and "K – K1". They closed their case on 05/12/2023. Thereafter, the matter was adjourned for parties to file and exchange final written addresses.

## **FACTS**

The case of the Petitioners is that the election held on 02/09/2023 into the position of Chairman, Ikpoba Okha Local Government Council was not done in accordance with the Electoral Act of 2022 as it relates to the use of Bimodal System for Accreditation of Voters (BVAS), alongside the Edo State Local Government Electoral Law and the Edo State Independent Electoral Commission Establishment (re-enactment) (Amendment 1) Law, 2022 and the guidelines issued by the 1<sup>st</sup> Respondent for the conduct of elections, hereinafter referred to as the EDSIEC Law.

The grounds upon which the petition is brought is contained in paragraph 12 of the petition as follows:

***“a. The election was voided by:***

***(i) Corrupt practices***

***(ii) Offences against the Edo State Local Government Electoral Law and the Edo State Independent Electoral Commission Establishment (re-enactment) (Amendment 1) Law, 2022.***

***(iii) The election was invalid by reason of non-compliance with provisions of the Electoral Act, 2022.”***

The facts as presented by the Petitioners in their petition is that on 01/09/2023, representatives of the Petitioners were at EDSIEC office to monitor the distribution of sensitive materials to the various wards of Ikpoba Okha Local Government Area. At about 10.00pm voting materials were released and taken to the Ikpoba Okha Local Government Secretariat at Idogbo but representatives of the Petitioners were not allowed in. Armed thugs and members of the Edo State Vigilante Network were stationed at the gate, yet only members of the PDP were allowed to go in without hindrance.

The Petitioners averred that on the 02/09/2023, the accreditation of voters during the conduct of the disputed election was not done in accordance with the Electoral Act of 2022 as it relates to the use the Bimodal System for Accreditation of Voters (BVAS) alongside the EDSEIC Law and guidelines issued by the 1<sup>st</sup> Respondent for the conduct of the election. The Petitioners contend that the 1<sup>st</sup> Respondent were under an obligation to conduct the election in strict compliance with Section 104 of the Electoral Act, 2022 and Clause 12 and 14, part 11 of the Regulations and Guidelines for the conduct of Elections 2022 issued by the Independent National Electoral Commission (INEC).

The Petitioners averred that the voting and accreditation procedure provided by the 1<sup>st</sup> Respondent is as set out in paragraph 33.0 of the guidelines for the conduct of the election 2023.

The Petitioners gave an account of what transpired to show the failure of the 1<sup>st</sup> Respondent to carry out proper accreditation of voters in compliance with the

extant laws/regulations in the conduct of the election and other infractions in the polling units during the conduct of the election on 02/09/2023.

The Petitioners also averred that by a letter dated 15/09/2023, they requested for certified true copy of the voters register and other documents used in the conduct of the election but the 1<sup>st</sup> Respondent in a reply dated 21/09/2023, directed the Petitioners to request for the voters register used for the conduct of election from INEC. That when they requested for the voters register from INEC, INEC informed them that the voters register is not in their custody as it does not have any business getting involved with Local Government Council elections. The Petitioners averred as to the efforts made by them to get the materials used for the conduct of the election but the 1<sup>st</sup> Respondent refused to accede to the Petitioners request on the excuse that the commission was still compiling the results and it would be ready after 4 working days, in violation of the orders of court.

The Petitioners contend that some acts of the 2<sup>nd</sup> Respondent as gleaned from evidence of witnesses in various units constitute acts of corrupt practices as provided for under Section 64 of the EDISIEC law. These acts include: thuggery, stealing of ballot boxes, cheating, undue influence, aiding and abetting, counseling or procuring of the aforesaid offences. The Petitioners stated that they would rely on pictures and videos showing the various infractions that took place in the affected polling units during the conduct of the disputed election.

The Petitioners contend that the failure of the 1<sup>st</sup> Respondent to carry out proper accreditation of voters using the Bimodal System for Accreditation of Voters (BVAS) machine alongside the register of voters constitute non-compliance with the laws regulating the conduct of elections with respect to Local Government Councils in Nigeria. It is fundamental that any election conducted under a legal and constitutional framework based on a repealed Act is inherently invalid. Consequently, the local government election held under these circumstances is void.

The Petitioners averred that paragraph 11 of part 11 of the Second Schedule to the constitution of the Federal Republic of Nigeria 1999 (as amended) provides that the National Assembly may make laws for the Federation with respect to the registration of voters and the procedure regulating elections to a Local Government Council.

In addition, paragraph 12 of part 11 of the second schedule to the constitution of the Federal Republic of Nigeria 1999 (as amended) provides that nothing in

paragraph 11 hereof shall preclude a House of Assembly from making laws with respect to election to a Local Government Council, in addition to but not inconsistent with any law made by the National Assembly.

The Electoral Act 2010 came into effect on the 20/08/2010. The Edo State Local Government Electoral Law of 2010 enacted by Edo State House of Assembly came into effect on 24/12/2012. The Edo State Local Government Electoral Law 2012 enacted by the Edo State House of Assembly substantially depended on the Electoral Act of 2010 enacted by the National Assembly.

The Edo State Local Government Council election which was held on 02/09/2023 was conducted pursuant to Edo State Local Government Electoral Law of 2012 which itself was predicated on the Electoral Act of 2010. The Electoral Act 2022 passed by the National Assembly which came into effect on the 25/02/2022 explicitly repealed and replaced the provisions of Electoral Act 2010. Paragraphs 12 of part 11 of the second schedule of the constitution of the Federal Republic of Nigeria 1999 (as amended) prescribed and implies that the Edo State House of Assembly should have amended its existing Local Government Laws to align with the provisions, guidelines and manuals of the Electoral Act 2022. The Edo State House of Assembly is also empowered to enact extensive provisions of the Electoral Act 2022.

The Petitioners averred that the Edo State House of Assembly failed to enact any new law to ensure compliance with the Electoral Act, 2022, as mandated by the constitution. Instead, the 1<sup>st</sup> Respondent persisted in conducting the local government election in line with the outdated procedure stated in the Edo State Local Government Law 2012, fundamentally anchored on the repealed Electoral Act 2010.

The Edo State Local Government Election Law were amended on two separate occasions to wit: 22<sup>nd</sup> of March, 2022 and 16<sup>th</sup> of August, 2022, which amendments focused on minor inconsequential matter while crucial substantive amendments were neglected. The failure of Edo State House of Assembly to make compulsory substantial amendments needed to bring the Edo State Local Government Election Law in compliance with the Electoral Act, 2022 renders the Edo State Local Government Electoral Law of 2012 null and void. This discrepancy between the Edo State Local Government Law, 2012 and the Electoral Act, 2022 highlights the inadequacy of the amendments and their inability to meet the legal requirements for compliance with the 2022 Act. The Petitioners averred that the election conducted based on an invalidated law is unconstitutional and void.

The 1<sup>st</sup> Respondent vide its Reply dated 23/10/2023 and filed on the same date raised a preliminary objected challenging the jurisdiction of the tribunal. Ruling has been delivered on the preliminary object as earlier stated in this judgment.

In responding to the petition on its merits, the 1<sup>st</sup> Respondent, averred that contrary to the averments in paragraph 12 – 19 and 43 of the Petitioners facts of the petition, that it issued guidelines for the Local Government Council Elections 2023 and that it reserved the right to conduct the election in manners it might find suitable at the time the election was conducted, and that it conducted the said election with substantial compliance to the extant laws and guidelines governing the conduct of the election.

The 1<sup>st</sup> Respondent maintained that there exists no report of violence, voters apathy, or late arrival of any of its various personnel assigned to man the electoral processes in all the wards of Ikpoba Okha Local Government save for certain two polling units, which the 1<sup>st</sup> Respondent promptly cancelled the polls in the said two polling units.

The 1<sup>st</sup> Respondent denied conducting the election on any repealed law but rather, same was based on extant Electoral Act, 2022, the Edo State Local Government Electoral Law and the Edo State Independent Electoral Commission Establishment (Re-enactment) (Amendment) Law 2022. The 1<sup>st</sup> Respondent also stated that the amendment to the said Edo State Electoral Law in 2022 is not inconsequential and minor.

The 1<sup>st</sup> Respondent further averred that even in the few units where the commencement of the election was slightly delayed due to logistics problems, the election still went on and all interested voters afforded the opportunity to cast their vote.

The 1<sup>st</sup> Respondent further averred that it trained and dispatched all its personnel to the field and these personnel did conduct the said election of 02/09/2023 in manners that complied substantially with the law, and that the use of Bimodal System for Accreditation of Voters (BVAS) machine is not mandatory for the conduct of the election, as it duly informed the political parties' stakeholders before the election that the election would be conducted manually.

The 1<sup>st</sup> Respondent states that its duties include but not limited to:

- (i) Preparations for elections

- (ii) Appointment and training of adhoc staff
- (iii) Conduct of elections
- (iv) Announcements of results

The 1<sup>st</sup> Respondent maintained that as part of the process of conducting the elections, the 1<sup>st</sup> Respondent trained Electoral Officers, Assistant Electoral Officers, Local Government Returning Officers, Ward Returning Officers, Supervisory Presiding Officers, Presiding Officers, Poll Clerks and Poll Orderlies. To ensure the credibility of the elections, the 1<sup>st</sup> Respondent held stakeholders meetings in the 18 (Eighteen) Local Government Area of the state to sensitize voters and stakeholders towards the conduct of the elections including security agencies to provide security during the process of the election.

The 1<sup>st</sup> Respondent stated that as part of the process of conducting the elections, the 1<sup>st</sup> Respondent mobilized Electoral officers and distributed the non-sensitive election materials to the Commission's field offices in the 18 (Eighteen) Local Government Areas of the State on 30/08/2023. The sensitive materials which included voters registers, ballot papers and all the required result sheets were moved to the Local Government Areas on 01/09/2023 accompanied by armed security men and witnessed by agents of the cleared political parties and pressmen.

The 1<sup>st</sup> Respondent maintained that the election materials were distributed to the Supervisory Presiding Officers (SPO) who in turn distributed them to the Presiding Officer in the 4519 units in the state. The 1<sup>st</sup> Respondent further averred that the election commenced early, was conducted under conducive atmosphere with accreditation of voters, voting, sorting and announcement of results for Councillorship and Chairmanship respectively in the presence of the representatives of the participating political parties, security agents and the press.

According to the 1<sup>st</sup> Respondents, six political parties registered with the 1<sup>st</sup> Respondent, actively participated in the elections and in all the processes that led to the elections and the outcome thereof. That none of the political parties complained or expressed dissatisfaction or objection with regard to the extant law(s) or guidelines on the basis on which the Edo State Local Government elections were conducted. That there is no law that makes it mandatory for the use of Bimodal System for Accreditation of Voters (BVAS) or other electronic device to conduct the election.



What the enabling law mandate for the conduct of the election is manual accreditation.

The 1<sup>st</sup> Respondent stated that in compliance with the extant Electoral Act as to giving of Notice of Elections, the 1<sup>st</sup> Respondent gave Notices on 18/02/2022, 18/08/2022, 30/09/2022 and 02/05/2023 to the concerned/stake holding political parties. That on the basis of these notices, some political parties concluded their primaries while only 7 political parties met with the deadline for submission of nomination of their respective candidates, conducted their primaries, and the ratification of the said primaries contained in the Notice of 02/05/2023. According to the 1<sup>st</sup> Respondent, at the various stakeholders meeting before the conduct of the election, the commission made it known to them that they would not conduct the accreditation of voters with Bimodal System for Accreditation of Voters (BVAS) machine and that the same would be done manually. This practice is also provided for in the Guideline 33.0(a.m) of the Guidelines for the Local Government Council Election, 2023. In conclusion, the 1<sup>st</sup> Respondent contend that a complaint challenging the validity or otherwise of Notice given for the conduct of an election cannot be entertained by an Election Petition Tribunal as the same is a pre-election matter.

The 2<sup>nd</sup> and 3<sup>rd</sup> Respondents vide their Reply dated and filed on 30/10/2023 raised a preliminary objection challenging the jurisdiction of this tribunal. Ruling has been delivered on the preliminary objection as earlier stated in this judgment.

In responding to the petition on merit, the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent denied all the allegations contained in the petition.

The 2<sup>nd</sup> and 3<sup>rd</sup> Respondent stated that at the election for the position of chairman of Ikpoba Okha Local Government Council on 02/09/2023, 7 political parties participated in the election who scored votes and whose scores were dully recorded in the result sheet form EDSIEC E. The purported scores stated in paragraph 13 of the petition are fictitious. The election conducted by the 1<sup>st</sup> Respondent was free, fair and credible as the officers and or officials of the 1<sup>st</sup> Respondent complied with and followed the Rules and Regulations before, during and after the election to the admiration of the electorate in Ikpoba Okha Local Government Area before the 2<sup>nd</sup> Respondent was duly returned as the winner of the election having scored the majority of lawful votes cast at the election. The 2<sup>nd</sup> and 3<sup>rd</sup> Respondents averred that the 1<sup>st</sup> Respondents employed some adhoc staff in the conduct of the election

deploying both the sensitive and non-sensitive materials to the field. The officials of the 1<sup>st</sup> Respondent complied with the procedures as contained in the 1<sup>st</sup> Respondents Rules and Regulations Election Manual for officers and other relevant documents used for the conduct of the election. The 2<sup>nd</sup> and 3<sup>rd</sup> Respondents stated that the various political parties who participated in the election of 02/09/2023 had agents in the respective polling units in all the wards of Ikpoba Okha Local Government Area. All prospective voters were accredited and voted in the units and wards of the Local Government.

The 2<sup>nd</sup> and 3<sup>rd</sup> Respondents maintained that the Petitioners, their supporters boycotted the election sequel to the announcement made by one Barr. Agbontean Ogiefa, the Deputy State Chairman of the 2<sup>nd</sup> Petitioners who directed their members to boycott the election.

The 2<sup>nd</sup> and 3<sup>rd</sup> Respondents stated that the use of Bimodal System for Accreditation of Voters (BVAS) was not utilized for the accreditation of voters in the disputed election. The equipment are owned by INEC which body did not conduct the Local Government Elections in Edo State. The 2<sup>nd</sup> and 3<sup>rd</sup> Respondents stated that the election was not conducted under a repealed law and the EDSIEC law which was enacted by the Edo State House of Assembly was amended in 2013, 2017 and 2022 which is the extant Edo State Local Government Electoral Law under which the 02/09/2023 Edo State election was conducted. The disputed election was not conducted under, neither was it regulated by the Electoral Acts 2022 or the Regulations and Guidelines for the conduct of the General Elections, 2023 as it was not conducted by INEC but the 1<sup>st</sup> Respondent. The 2<sup>nd</sup> and 3<sup>rd</sup> Respondents contend that the disputed election was conducted substantially in accordance with the provisions of the Electoral Act, 2022 and the Regulations and Guidelines for the conduct of elections of the 1<sup>st</sup> Respondent and that the non-compliance (if any) did not substantially affect the result of the election. They urge the tribunal to dismiss the petition.

## **EVIDENCE**

As stated earlier, the Petitioners presented 22 witnesses, P.W1 – P.W22. The P.W1 – P.W21 consist of the 1<sup>st</sup> Petitioner, 1<sup>st</sup> Petitioner's brother, the 2<sup>nd</sup> Petitioner's Party Agents across the various wards that make up the Ikpoba Okha Local Government Area who participated/witnessed the disputed election. The P.W22 is the Secretary to the 1<sup>st</sup> Respondent who attended court in response to ***Subpoena***

***Duces Tecum*** and ***Ad Testificandum*** dated the 24/11/2023 commanding him to produce the “Ticked Voters Register” used in the conduct of the Local Government Election for the position of Chairman, Ikpoba Okha Local Government Area. The subpoenaed witness did not produce the document listed in the subpoena. The exhibits tendered in evidence by the Petitioners were tendered through witnesses either during the examination in chief or under cross examination. In considering the issues arising for determination, the tribunal will refer to the evidence of the Petitioners witnesses and the exhibits as required. It must also be stated that all the Petitioners witnesses were cross examined.

The 1<sup>st</sup> Respondent presented two witnesses R.W1 and R.W2. R.W1 is a staff of the 1<sup>st</sup> Respondent. R.W1 tendered 4 documents in evidence and was cross-examined and discharged on 02/12/2023. The R.W2 testified that she is a nurse by profession and she work with Hospital Management Agency of Edo State and acted as the Electoral Officer during the election. One document was tendered through her as exhibit during cross examination. She was also discharged on 02/12/2023. The 2<sup>nd</sup> and 3<sup>rd</sup> Respondents did not present any witness and closed their case on 05/12/2023.

#### **FINAL WRITTEN ADDRESSES**

Thereafter parties filed and exchanged final written addresses. The 1<sup>st</sup> Respondent final written address is dated and filed on 08/12/2023, the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents’ final written address is dated and filed on 10/12/2023. The Petitioners filed in response to the Respondents’ addresses, a final written address dated and filed on 12/12/2023.

The 1<sup>st</sup> Respondent filed a Reply on Points of Law dated and filed 13/12/2023 in response to the Petitioners final address. The 2<sup>nd</sup> and 3<sup>rd</sup> Respondents filed a Reply on Points of Law, dated and filed on 15/12/2023 in response to the Petitioners final written address.

The final written addresses were adopted on 18/12/2023 by Dr. S. Erhaze who appeared with I.O. Kadiri, P.S.C. (both of the Edo State Ministry of Justice), counsel for the 1<sup>st</sup> Respondent, Y.O. Odiase who appeared with C. J. Ajobor for 2<sup>nd</sup> & 3<sup>rd</sup> Respondents, Osaro Eghobamien (SAN) who appeared with Samuel O. Atoe Esq., Kanu O. Stephen Esq. and H.C. Ike, counsel for the Petitioners.

The issues formulated by learned Counsel to the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents and learned Senior Counsel to the Petitioners as arising for determination are as follows:

**1<sup>ST</sup> RESPONDENT ISSUES;**

- “a. Whether the claims and reliefs in this petition against the 1<sup>st</sup> Respondent are not pre-election matters.***
- b. Whether with due regard to the facts and circumstances of this petition, the 1<sup>st</sup> Respondent conducted the elections of this petition with substantive compliance to law.***
- c. Whether the Petitioners have proven their claims in this petition to the standard required by law.”***

**2<sup>ND</sup> & 3<sup>RD</sup> RESPONDENTS’ ISSUES:**

- “a. Whether the Petitioners have discharged the obligation to establish entitlement to the reliefs sought in the petition.***
- b. Whether the election was not conducted in substantial compliance with the provisions of the Edo State Local Government Electoral law and the Edo State Independent Electoral Commission Establishment (Re-Enactment) (Amendment 1) Law, 2022.”***

**PETITIONERS ISSUES:**

- “ – Having regard to the unequivocal admission of the Respondents that the Bimodal System for Accreditation of Voters (BVAS) was not used for the accreditation of voters in the Chairmanship election of Ikpoba Okha Local Government Council, whether it can be said that there was a valid election.***
- Whether the Respondents have been able to discharge the evidential burden imposed on them by law that a proper election was conducted for the position of Chairman, in the disputed election of 2<sup>nd</sup> September, 2023.”***

From the decision of the Tribunal in its ruling delivered in respect of the Preliminary Objection filed by the respondents, the surviving grounds upon which the petition is based are:

- a. The election was voided by:
  - i. Corrupt practices
  - ii. Offences against the Edo State Local Government Electoral Law and the Edo State Independent Electoral Commission Establishment (re-enactment) (Amendment 1) Law, 2022.

With due respect to the learned Senior Counsel and other Counsel in this matter, after an analysis of the issues formulated by Counsel, the pleadings, evidence and written addresses of Counsel, the Tribunal is of the opinion that the issues that arise for determination are as follows:

1. What is the applicable law(s) regulating the conduct of elections into Local Government Council in Edo State.
2. Whether the 1<sup>st</sup> Respondent complied with the relevant laws, guidelines and manual in the conduct of the disputed election; and
3. Whether the Petitioners were able to prove their petition as required by law to enable the Tribunal grant the reliefs sought in the petition.

### **ISSUE 1**

#### ***What is the applicable law(s) regulating the conduct of elections into Local Government Councils in Edo State?***

One of the vexed issue that arose in the course of hearing this petition is: what is the applicable law(s) regulating the conduct of the disputed election.

The Petitioners position is that the law regulating the conduct of elections to Local Government Council is the Electoral Act, 2022. On the other hand, the Respondents admit that the provisions of the Electoral Act, 2022 to some extent applies to the conduct of the elections to Local Government Councils in addition to the provisions of the Edo State Local Government Electoral Law, 2012 as amended.

The constitution of the Federal Republic of Nigeria, 1999 (as amended) (hereinafter referred to as CFRN) shared legislative powers between the Federal Government and the State Governments. The Exclusive powers of the Federal Government are contained in the Exclusive Legislative List which is set out in part 1 of the second schedule of the constitution. See Section 4(2) & (3) of the CFRN. Certain powers are shared between the Federal Government and the State Government. This

is the concurrent legislative list in part II of the Second Schedule to the constitution. In other words, both the Federal and State Government have the powers to legislate in respect of items contained in the concurrent legislative list. Some of the powers vested between the Federal Government and the State Government are powers to make laws and regulations on matter such as qualifications for elections and the conduct of election.

Items 11 and 12 of the concurrent legislative list provides:

- “11. The National Assembly may make laws for the Federation with respect to the registration of voters and procedure regulating elections to a Local Government Council.***
- 12. Nothing in paragraph 11 hereof shall preclude a House of Assembly from making law with respect to a Local Government Council in addition to but not inconsistent with any law made by the National Assembly.”***

It is crystal clear from the provisions of items 11 and 12 of the Concurrent Legislative List that the National Assembly has the powers to make laws to regulate procedure to be adopted in the conduct of election to Local Government Council.

Pursuant to the powers vested on the National Assembly by the constitution, the National Assembly enacted the Electoral Act, 2022. The relevant provisions of the Electoral Act, 2022 to this issue is Section 150 which provides:

- “1. In furtherance to the provision of paragraph 11 of part II of the second schedule to the constitution, the procedure regulating elections conducted by the commission to Area Councils in the Federal Capital Territory under this Act shall be the same and apply with equal force as the procedure regulating elections conducted to Local Government Areas by any State Commission.***
- 2. For the purpose of subsection (1), a State Commission shall be deemed to have and exercise the powers of the commission in respect of the procedure regulating elections to Area Councils under this Act.***
- 3. Any election to a Local Government Area that is conducted by a State Commission in violation of subsection (1) shall be invalid.***

4. ***Any official of a State Commission who contravenes the provisions of subsection (1) commits an offence and shall be subject to prosecution as if he were an official of the commission who committed the same offence under this Act.***

When it comes to ranking of enactments where both the National Assembly and the State Government has concurrent powers to enact law on the subject matter, the enactment of the National Assembly have superior legislative force than the subordinate legislation. In fact, under the doctrine of covering the field, it forbids a State House of Assembly from enacting a law in respect of a matter where there is already in existence provisions of the constitution or an Act of the National Assembly on the same subject matter. See: **AIRTEL NETWORK LTD. V. A.G. OF KWARA STATE & ANOR (2014) LPELR – 23790 (CA); A.G. ABIA STATE & ORS V. A.G. FEDERATION (2002) LPRLR – 611 (SC).**

The doctrine of covering the field is succinctly put by **TOBI J.S.C.** (of blessed memory) in the case of **INEC V. MUSA (2003) LPELR – 24927 (SC)** as follows:

***“The doctrine of covering the field can arise in two distinct situations. First, wherein the purported exercise of the legislative powers of the National Assembly or a State House of Assembly, a law is enacted which the constitution has already made provisions covering the subject matter of the Federal Act or the State law. Second, where a State House of Assembly, by the purported exercise of its legislative powers enacted a law which an Act of the National Assembly has already made provisions covering the subject matter of the state law. In both situations, the doctrine of covering the field will apply because of the “Federal Might” which relevantly are the constitution and the Act”***

Conflict arising between the legislation of a State and the Federal Legislation on a matter in the concurrent legislative list creates room for a battle for the superiority of laws so passed, this was a necessitating factor for the constitutional provision that states that ***“If any law enacted by the House of Assembly of a State is inconsistent with any law validly made by the National Assembly, the law made by the National Assembly will prevail, and that other laws shall to the extent of its inconsistency be void”***. See: Section 4(5) of the CFRN.

When a State law is enacted which is the same with the National Assembly, the law made by the State House of Assembly as it relates to that same matter will be in

abeyance and becomes inoperative for the time the statute of the National Assembly is alive. See: **LAGOS STATE V. EKO HOTELS (2017) LPELR – 43713 (SC).**

The clear picture that emanates is that where there is an enactment by the National Assembly side by side with an enactment of the State House of Assembly on the same subject matter, if the enactment of the State House of Assembly is inconsistent with that of the National Assembly, the enactment of the National Assembly will prevail; and even when both enactments are the same, the enactment of the State House of Assembly will be in abeyance for the time the enactment of the National Assembly is alive.

Applying the above principles to the contention between the Petitioners and the Respondent, it is our view that the provisions of the Electoral Act, 2022 is the applicable law regulating the conduct of elections into Local Government Councils. In other words, the provisions of the Electoral Act, 2022, is the extant law regulating the conduct of elections into Ikpoba Okha Local Government Council and not the EDSIEC law as contended by the Respondents.

## **ISSUE 2**

***Whether the 1<sup>st</sup> Respondent complied with the relevant laws, Guidelines and manual in the conduct of the disputed election.***

In determining this issue, the starting point is to state the procedure for the conduct of election into the Local Government Council as provided under the extant law, which is the Electoral Act, 2022. Thereafter, take a look at the procedure adopted by the 1<sup>st</sup> Respondent in the conduct of the disputed election, and then draw a conclusion as to whether or not the 1<sup>st</sup> Respondent complied with the relevant laws and guidance.

Section 150(1) of the Electoral Act, 2022, provides:

***“In furtherance of the provision of paragraph 11 of part II of second schedule to the constitution, the procedure regulating elections conducted by the commission to Area Councils in the Federal Capital Territory under this Act shall be the same and apply with equal force as the procedure regulating elections conducted to Local Government Areas by any State Commission.”***

In the case of **IBRAHIM V. BARDE (1996) 9 NWLR (Pt. 474) 513 at 577 UWAIS, CJN** held thus:- ***“It is a cardinal rule of the construction of statutes that statutes***



***should be construed according to the intention expressed in the statute themselves. If the words of the statutes are themselves precise and unambiguous, then no more is necessary than to expound the words in their natural and ordinary sense. The words of the statute do alone, in such a case, best declare the intention of the law maker”***

The words in Section 150(1) of the Electoral Act in their natural and ordinary sense is that the procedure regulating elections conducted by the commission to Area Councils in the Federal Capital Territory under the Act shall be the same procedure to be adopted by State Commission in conducting election to Local Government Council. What then is the procedure for election to Area Council? Section 98(2) of the Electoral Act, 2022 provides:

***“The register of voters compiled and the polling units established by the Commission and any other regulations, guidelines, rules or manuals issued or made by the Commission shall be used for elections into the Area Councils or recall of a member”.***

Section 104 of the Electoral Act, 2022 provides:

***“The procedure for filing nominations and the casting and counting of votes for Area Council elections shall be the same as is applicable to other elections under this Act”***

Section 47 of the Electoral Act, 2022 provides:

- “1. A person intending to vote in an election shall present himself with his voter’s card to a Presiding Officer for accreditation at the polling unit in the constituency in which his name is registered.***
- 2. To vote, the Presiding Officer shall use a smart card reader or any other technological device that may be prescribed by the Commission, for the accreditation of voters, to verify, confirm or authenticate the particulars of the intending voter in the manner prescribed by the Commission.***
- 3. Where a smart card reader or any other technological device deployed for accreditation of voters fails to function in any unit and a fresh card reader or technological devices is not deployed, the election in that unit shall be cancelled and another election shall be scheduled within 24 hours if the Commission is satisfied that the result of the election in that polling unit will***

***substantially affect the final result of the whole election and declaration of a winner in the constituency concerned.”***

In the exercise of the powers conferred by the constitution and the Electoral Act, 2022, the INEC issued Regulations and Guidelines for the conduct of election. Part II of the Regulations and Guidelines for the conduct of Elections, 2022, provides for the procedure of accreditation and voting at elections. Paragraph 18(a) of the regulations provides:

***“In accordance with Section 47(2) of the Electoral Act, 2022, a person intending to vote shall be verified to be the same on the register of voters by the use of Bimodal Voters Accreditation System (BVAS) or any other device approved by the Commission in the manner prescribed in these Regulations and Guidelines”***

The above provisions in the Electoral Act, 2022 and the Regulations and Guidelines for the conduct of Election 2022 regulate the procedure for the conduct of election to Area Councils of the Federal Capital Territory, which are also applicable to conduct of elections in Local Government Council.

From the pleadings and the evidence of witnesses of the 1<sup>st</sup> Respondent, the disputed election was conducted based on the Electoral Act, 2022, the Edo State Local Government Electoral Law and the Edo State Independent Electoral Commission Establishment (Re: Enactment) (Amendment 1) Law, 2022. They also issued the Edo State Independent Electoral Commission Guidelines for the Local Government Council Elections 2023 which also prescribe the procedure to be adopted in the conduct of the election. The 1<sup>st</sup> Respondent stated that it reserved the right to conduct the election in manners it might find most suitable at the time the election was conducted. The 1<sup>st</sup> Respondent claimed that use of Bimodal System for Accreditation of Voters (BVAS) machine is not mandatory for the conduct of the election as it duly informed the political parties, stakeholders before the election it would be conducted manually.

From the evidence before the tribunal, the 1<sup>st</sup> Respondent did not use the Bimodal System for Accreditation of Voters (BVAS) machine for the conduct of the disputed election. The accreditation of voters were done manually.

Let us digress a little, before trial of this petition, the Petitioners approached the 1<sup>st</sup> Respondent to avail them with a Certified True Copy of the marked voters

register used in the conduct of the election, the 1<sup>st</sup> Respondent directed them to INEC. INEC informed the Petitioners that ticked voters register is not in their custody. The Petitioners again approached the tribunal for an order to make the marked voters register used in the conduct of the election, which the court granted. The enrolled Order of this Order was served on the 1<sup>st</sup> Respondents on 22/09/2023. The 1<sup>st</sup> Respondent did not obey the order of the tribunal. During the trial of this matter, the Petitioners again applied for ***Subpoena Duces Tecum/Ad Testificandum*** requesting the 1<sup>st</sup> Respondent to produce before the tribunal the ticked voters register used in the conduct of the Local Government Election for the position of Chairman, Ikpoba OKha Local Government Area. On 28/11/2023 when Sunday Osayande, the Secretary of the 1<sup>st</sup> Respondent testified based on the Subpoena issued on the 1<sup>st</sup> Respondent, he testified under cross examination as follows:

***“I do not have the ticked voters register used for the conduct of the election in Ikpoba Okha Local Government. I am aware that a subpoena is an Order of Court. I am aware that there is consequences for disobedience of court’s order . . .***

***I know the importance of voters register in the conduct of election. Voters’ register is one of the requirements to hold an election. An election could not hold without voters register”***

The witness still under cross examination by the counsel representing the 1<sup>st</sup> Respondent stated:

***“The voters register is not in court because there was a letter from the 2<sup>nd</sup> and 3<sup>d</sup> Respondents requesting for Certified True Copies of the voters register amongst others”***

Till the close of trial, the 1<sup>st</sup> Respondent did not make any attempt to furnish the court with the ticked voters register it used for the conduct of the disputed election. From the circumstances, we presume that 1<sup>st</sup> Respondent deliberately refused to produce the voters register it claimed it used in the conduct of the election either because it does not exist or it would go against it. See: **Section 49(d) Evidence Act 2011** (as amended). From the evidence on record, the 1<sup>st</sup> Respondent, has failed to even convince the tribunal on the procedure it adopted for the conduct of the disputed election. It could not even tender the ticked voters register it claimed it used in the conduct of the election.

Without much ado, from the evidence before the tribunal, the 1<sup>st</sup> Respondent did not comply with the relevant laws, guidelines and manual in the conduct of the disputed election, it conducted on 02/09/2023.

We will conclude on this issue with some remarks. Public perception of an election starts with transparency in the voting. For election to be transparent, it must be conducted in such a manner that the public is able to see and verify each essential steps, being who can vote (voters list), who did vote (poll list or participating voters list) and counting of votes. At the close of the 23<sup>rd</sup> year into the 21<sup>st</sup> century in our dear State that prides itself as ***“The Heartbeat of the Nation”*** the 1<sup>st</sup> Respondent who is saddled with the responsibility of conducting elections into public offices in all the Local Government Councils in the State cannot produce before the court, the voters register it used or purportedly to have been used in the conduct of election to the position of Chairman of Ikpoba Okha Local Government Council is an assault on the constitution which is the basis of its existence, the Electoral Act 2022, and the psyche of voters in the election. I dare say EDSIEC ***“put your house in order”***, I repeat ***“put your house in order”*** and for emphasis ***“put your house in order”*** by complying with the extant law in respect of the conduct of election to Local Government, which is the Electoral Act, 2022.

### **ISSUE 3**

Whether the Petitioners were able to prove their petition as required by law to enable the Tribunal grant the reliefs sought in the petition.

The surviving grounds of the petition after the determination of the preliminary objections raised by the Respondents are:

- (1) Corrupt practices, and
- (2) Offences against the Edo State Local Government Electoral Law and the Edo State Independent Electoral Commission Establishment (re-enactment) (Amendment 1) Law, 2022.

### **CORRUPT PRACTICES**

The Petitioners in paragraph 20 of their petition pleaded as follows:-

***“A vivid account of what transpired showing the failure of the 1<sup>st</sup> Respondent to carry out proper accreditation of voters in compliance with the extant laws/regulations governing the conduct of Local Government***

***Council Elections and other infractions at the polling units during the conduct of elections in Ikpoba Okha Local Government Area of Edo State on the 2<sup>nd</sup> of September, 2023 is represented hereunder.”***

Section 64 of the Edo State Local Government Electoral Law 2012 (as amended) provides

**“64**

- (1) *If any corrupt practice is committed by any candidate elected at an election held under the provisions of this law, the election of such candidate shall be invalid if the offence is proved in an electoral tribunal.***
- (2) *The expression “corrupt practice” as used in this law, means any of the following offences:***
  - a. impersonation***
  - b. cheating***
  - c. undue influences***
  - d. bribery***
  - e. thuggery, or***
  - f. aiding, abetting, counseling or procuring the commission of any of the aforesaid offences***
  - g. stealing of ballot boxes***
- (3) *A corrupt practice shall be deemed to be committed with his knowledge if it is committed with his knowledge or consent or with the knowledge or consent of a person who is acting under the specific authority of such candidate with reference to the election”***

The Petitioners called witnesses to testify to the alleged corrupt practices that were alleged to have occurred on the day of the election. One common feature that runs through the evidence of all the witnesses of the Petitioners is that there was no accreditation. In some of the units, they alleged that there was voting but that it was only the supporters of the 3<sup>rd</sup> Respondent, the Peoples’ Democratic Party (PDP), that were allowed to vote. The P.W1, 3, 4, 7, 8, 9, 11 and 17 in addition to stating that there was no accreditation, also alleged that the thugs of the Peoples Democratic Party (PDP) and Edo State Vigilante group intimidated the supporters of the Petitioners from voting. No doubt that the act of thuggery is a corrupt practice

recognized under the provisions of EDSIEC law. The witnesses of the Petitioner who testified as to the alleged acts of thuggery also stated that they did not lay any complaint to the security agents or precisely the Police. It is settled law that for a Petitioner to succeed in a petition founded on corrupt practices which is a criminal offence, the Petitioners has to prove it beyond reasonable doubt. See: **OLAFEMI & ORS V. AYO & ORS (2009) LPELR – 4739(CA); ATTAHIR & ANOR V. MUSTAPHA & ORS (2008) LPELR – 3818 (CA)**. There is no evidence from the Petitioners showing that the Respondents, especially the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents committed the acts of thuggery personally, aided, abetted, counseled or procured the acts of thuggery. See: **OYEGUN V. IGBINEDION (1992) 3 NWLR (Pt. 231) 708, YUSUF V. OBASANJO (2006) ALL FWLR (PT. 294) 387 at 460.**

Without any difficult of any kind, we find that the evidence adduced by the Petitioners in proof of the allegation of corrupt practices against the Respondents, do not come near the ingredients required to sustain the allegation of corrupt practices. The Petitioners failed woefully to adduce credible evidence to sustain this ground of the Petition to warrant the invalidation of the disputed election on this ground.

**OFFENCES AGAINST THE EDO STATE LOCAL GOVERNMENT ELECTORAL LAW AND THE EDO STATE INDEPENDENT ELECTORAL COMMISSION ESTABLISHMENT (RE-ENACTMENT) (AMENDMENT 1) LAW, 2022**

Part 6 Section 61 – 77 of the Edo State Local Government Electoral Law 2012 (as amended) prescribes certain acts as offences against it and also imposed punishment on the same. However, the Edo State Independent Electoral Commission establishment (Re-enactment) (Amendment 1) Law, 2022, did not create any offence.

The Petitioners called 22 witnesses i.e. P.W1 – P.W22, we cannot deduce evidence of any offence against the Edo State Local Government Electoral Law, 2012 (as amended) except the issue of thuggery which has been dealt with. Again, the Petitioner failed woefully to adduce any evidence to sustain this ground of the petition to warrant the invalidation of the disputed election on this ground.

It is the ground on which a petition is based that determines the nature of the reliefs that the court can grant. Though in course of this judgment, we stated that the 1<sup>st</sup> Respondent did not conduct the disputed election in compliance with the extant laws. The grounds upon which the Petitioners based their petition having failed, any relief(s) that are based on the same will also collapse as you cannot put something on nothing and expect it to stand. See **U.A.C LTD V. MCFOY (1961) 3 ALL E.R. 1169;**

**SALEH V. MINGUNO & ORS (2006) LPELR – 2992 (SC); ODEDE V. PDP (2015) LPELR – 24738 (SC).**

We want to thank Counsel for the parties. Our special thanks go to K.E. Mozia (SAN) and Osaro Eghobamien (SAN) for their etiquette, display of sound legal knowledge in presenting their clients’ case and their useful suggestions that aided the tribunal to comply with the timeframe to hear and determine this petition. We also thank Counsel from the Ministry of Justice, Edo State and Counsel that appeared with the learned Senior Counsel, who in their advocacy have shown that they are the future of the profession. We thank you all.

In conclusion, we did not reach the decision we are about to pronounce without being mindful of the magnitude and weight of the issue involved in this petition. We are also mindful of our solemn duty to apply the law without being swayed by public reaction to the decision that the law mandates us to reach. Our verdict is that this petition be and it is hereby dismissed.

..... <b>HON. JUSTICE A.T. MOMODU</b> <b>(CHAIRMAN)</b> 29/12/2023	..... <b>O.D.FIADE-ISIRAMEN (MRS)</b> <b>(1<sup>ST</sup> MEMBER)</b> 29/12/2023	..... <b>F.I. OGHOATOR (MRS)</b> <b>(2<sup>ND</sup> MEMBER)</b> 29/12/2023
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**Counsel:**

Osaro Eghobamien (SAN)	.....	Petitioners
I.O. Kadiri (Esq)	.....	1 <sup>st</sup> Respondent
K.E. Mozia (SAN)	.....	2 <sup>nd</sup> and 3 <sup>rd</sup> Respondents