IN THE NATIONAL AND STATE HOUSE OF ASSEMBLY
ELECTION PETITION TRIBUNAL
HOLDEN AT SOKOTO
ON THURSDAY THE 30TH DAY OF MAY, 2019
BEFORE:

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

PETITION NO: EPT/SKT/HA/19/2019

ELECTION TO THE OFFICE OF MEMBER, SOKOTO STATE HOUSE OF ASSEMBLY FOR GWADABAWA NORTH CONSTITUENCY HELD ON THE 9TH DAYOF MARCH 2019.

BETWEEN:

1. HON. ASARA NASIRU BALARABE
2. PEOPLES DEMOCRATIC PARTY (PDP)

} PETITIONERS/APPLICANTS

AND

1. ABDULLAHI SIDI GARBA
2. ALL PROGRESSIVE CONGRESS (APC)
3. INDEPENDENT NATIONAL ELECTORAL COMMISSION
4. COMMISSIONER OF POLICE, SOKOTO STATE

} RESPONDENTS

RULING
DELIVERED BY: HON.JUSTICE P.A.AKHIHIERO

This is a Ruling on a Motion on Notice brought pursuant to paragraph 14 of the 1st Schedule to the Electoral Act 2010 (as amended); Order 17 rules 1 and 2 of the Federal High Court (Civil Procedure) Rules 2009 and under the inherent jurisdiction of the tribunal.

The motion is praying the Tribunal for the following reliefs:

1. AN ORDER of this Honourable Tribunal granting leave to the Petitioners to amend their Petition No: EPT/SKT/HA/19/2019 and the accompanying processes by substituting the words ***"Gwadabawa North"*** with ***"Gwadabawa South"*** and deleting the word "***SIDI"*** from

the name of the 1st Respondent as per the Amended Petition and accompanying processes herein annexed as Exhibit C;

2. AN ORDER of this Honourable Tribunal deeming the Amended Petition and the accompanying processes attached as Exhibit C as duly filed and served, the requisite fees having been paid; and
3. AND FOR SUCH FURTHER ORDER(S) as this honourable Tribunal may deem necessary to make in the circumstances.

The application is supported by a four paragraph affidavit deposed to by one Jonathan Ahmadu, with three exhibits attached and marked as Exhibit A, B, and C respectively.

The application is also supported by a Written Address of counsel. In his written address, the learned counsel for the Petitioners, ***F.E.Okotete Esq.*** identified the sole issue for determination thus:

> ***"Whether the tribunal can grant the reliefs sought in this application having regard to all the facts and circumstances of the case?"***

Opening his argument on the sole issue, learned counsel submitted that the Rules of procedure for Election Petition as contained in the 1st schedule to the Electoral Act 2010 (as amended) provides for amendment of an election petition in paragraph14 as follows:

i. ***Subject to subparagraph (2) of this paragraph, the provisions of the civil procedure Rules relating to amendment of pleadings shall apply in relation to an election petition…***

He stated that ***"Civil procedure Rules"*** is defined under paragraph 1 of the said Rules of procedure for election petition to mean ***"the Civil Procedure Rules of the Federal High Court for the time being in force."***

Counsel submitted that ***Order 17, rules 1 and 2 of the Federal High Court (Civil Procedure) Rules 2009*** which is applicable makes provisions for amendment of pleadings as follows.

1. ***A party may amend his originating process and pleadings at any time before judgment but not more than twice.***
2. ***Application to amend may be made to a judge and such application shall be supported by an affidavit exhibiting the proposed amendment and may be allowed upon such terms as to cost or otherwise as may be just.***

Furthermore, he referred to ***paragraph 14 (2) of the 1st Schedule of the Electoral Act*** which provides as follows;

"***After the expiration of the time limited by***

(a) Section 134 (i) of this Act for presenting the Election petition, no amendment shall be made-

i. ***Introducing any of the requirements of subparagraph (I) of paragraph 4 of this schedule not contained in the original election petition filed, or***

ii. Effecting a substantial alteration of the ground for, or prayer in, the election petition.

iii. Except anything which may be done under the provision of subparagraph 2(a) (ii) of this paragraph, effecting substantial alternations or additions to, the statement of facts relied on to support the ground for, or sustain the prayer in the election petition…"

Counsel submitted that the purport of these provisions is that a substantial amendment to an election will not be allowed after the expiration of the time for presentation of petition which, under section 285 (s) of the 1999 constitution of the Federal Republic of Nigerian (as amended), is 21 days after the date of declaration of result of election.

For this submission, he cited the following decisions: ***DR. CHRIS NWABUEZE NGIGI V. MR. PETER OBI & OR (2006) 10 WRN 33 at p. 197 – 199***; and ***OBI–ODU V. DUKE (2005) 10NWLR (pt. 932) 105 at 143.***

He said that the question therefore is whether the present amendment which seeks to substitute the words ***"Gwadabawa North"*** for ***"Gwadabawa South"*** as contained in Exhibit C is a substantial amendment for which no amendment can be allowed at this time?

Answering the question, counsel submitted that apart from the fact that the amendment involves only the substitution of the word North with the word South in the petition as contained in Exhibit C, the main substantial issues involved in the petition remains the same. He said that the error sought to be corrected was occasioned by the 3rd Respondent who produced Exhibit A bearing Gwadabawa North instead of Gwadabawa South.

He maintained that the position of the applicants is further strengthened by the fact that the electoral wards containing the polling units complained of in the petition remained unchanged for which the parties have already joined issues in the petition and of which none of the parties were misled as a result.

He submitted that the interest of justice will be greatly served by the grant of this application as it is the duty of courts/tribunals to see that substantial justice is done in any case and not just technical justice. He referred to comments of the court in the case of: ***ETTAH V AKIB (2012) 6 WRN at 177 (ratio 4)*** when they stated thus:

> ***"The facts that elections Petitions are to be speedily or expeditiously tried and determined is not a license to sacrifice justice and equity on that platform"***

He therefore urged the Tribunal to grant this application to ensure the just determination of the real dispute between the parties in this petition. Finally, he urged us to resolve the sole issue for determination in favour of the Petitioners/Applicants.

In opposition to this application, the 1st and 2nd Respondents filed a Counter-Affidavit of 4 paragraphs, and a Written Address of Counsel dated and filed on the 24th of May, 2019.

In his written address, the learned counsel for the 1st and 2nd Respondents, ***Chief J.E.Ochidi*** also formulated a sole issue for determination as follows:

> ***"Whether the petitioners can validly amend the said petition at this stage of the proceedings when the statutory time limited to the petitioners for presentation of an election petition has since lapsed."***

Opening his arguments on the sole issue for determination, learned counsel submitted that the jurisdiction vested on this Honourable Tribunal to amend an election petition is as stipulated in ***paragraph 14(2)(a)(i), (ii) and (iii) of the First Schedule to the Electoral Act, 2010 (as amended)*** which provides as follows: -

> ***"(2) After the expiration of the time limited by –***
>
> ***(a) Section 134(1) of this Act for presenting the election petition, no amendment shall be made: -***
>
> ***(i) introducing any of the requirements of sub paragraph (1) of paragraph 4 of this Schedule not contained in the original election petition filed, or***
>
> ***(ii) effecting a substantial alteration of the ground for, or the prayer in, the election petition, or***
>
> ***(iii) except anything which may be done under the provisions of subparagraph (3) of this paragraph, effecting a substantial alteration of or addition to, the statement of facts relied on to support the ground for, or sustain the prayer in the election petition."***

He submitted that in the instant petition, it is crystal clear that the time limited to the petitioners to file an election petition has since elapsed. He said that the nature of the amendment now sought to be made by the petitioners relate to the right or the *locus standi* of the petitioners to present this election petition as prescribed by ***paragraph 4(1)(b) of the First Schedule to the Electoral Act, 2010 (as amended)*** which provides as follows:

> ***"An election petition under this Act shall –***
>
> ***(b) specify the right of the petitioner to present the election petition".***

Counsel submitted that by the nature of the amendment being sought by the petitioners, the said proposed amendment is tantamount to introducing new facts in proof of the right of the petitioners to present the said election petition as required by the provision of paragraph 4(1)(b) of the First Schedule to the Electoral Act, 2010 quoted above.

He submitted that the proposed amendment now been sought by the petitioners *vide* this application comes within the purview of the provision of paragraph 14(2)(a)(i) of the First Schedule to the Electoral Act, 2010 which states as follows:

> ***(2) "After the expiration of the time limited by –***
>
> ***(a) Section 134(1) of this Act for presenting the the election petition, no amendment shall be made:***
>
> ***(i) introducing any of the requirements of subparagraph (1) of paragraph 4 of this Schedule not contained in the original petition filed,".***

He submitted that where the amendment comes under the purview of the above quoted paragraph 14(2)(a)(i) of the First Schedule to the Electoral Act, 2010 (as amended), the tribunal is not permitted to consider whether the amendment sought is typographical in nature, neither can it consider the substantiality of the said proposed amendment.

Again, he submitted that where such an amendment is within the purview of paragraph 14(2)(a)(i) of the First Schedule to the Electoral Act, 2010 (as amended), the tribunal is not permitted to consider the reason or reasons necessitating the petitioners to apply for such an amendment. He maintained that in all circumstances, where the amendment sought relates to introduction of any of the requirements of sub-paragraph 1 of paragraph 4 of the First Schedule to the Electoral Act 2010, the tribunal has no option but to refuse such an application no matter the reason advanced by the petitioner for making such a request for amendment of the petition especially when the period limited by statute to the petitioner to file an election petition had lapsed as in the instant case.

He further submitted that where a petitioner pleaded in the petition a constituency which is at variance with the real constituency in dispute, an amendment to reflect the correct constituency cannot be granted by the tribunal. For this submission, learned counsel relied on the case of: ***ONYEMERE VS. ORJI (PETITION NO. CA/OW/EPT/HA/97/2015*** (referred to at ***page 28 of "Modern Nigerian Election Petitions and Appeals Law" written by KELECHI PETER IKOROHA ESQ published in November, 2017)*** where the National and State Houses of Assembly Election Tribunal for Abia State refused an application for amendment of the petition to change the constituency pleaded in the petition from "Umuahia Urban State Constituency" to "Umuahia Central State Constituency".

He also referred to the Supreme Court decision in the case of: ***OKE VS. MIMIKO (2013) ALL FWLR (PT. 693) 1853 AT 1881*** which examined the legal implication of an amendment to a petition where the amendment sought is intended to introduce any of the requirements of sub-paragraph(1) of paragraph 4 of the First Schedule to the Electoral Act. He referred to the dictum of ***Galadima JSC*** at page 1881 thereof thus:

> "***My careful study of the amendment sought clearly reveals that it has the effect of amending the matters relating to the substance of the petition after the expiration of time limited by law. For section 14(2) of the First Schedule to the Election Act provides as follows:***
>
> ***"After the expiration of the time limited by:***
>
> ***(a) Section 134(1) of this Act for presenting the election petition no amendment shall be made:***
>
> ***Introducing any of the requirements of sub paragraph 1 of paragraph 4 of the Schedule not contained in the original election filed….."***
>
> ***More importantly, section 285(5) of the 1999 Constitution (as amended) provides that:***
>
> ***"An election petition shall be filed within 21 days after the date of the declaration of result of the elections"***
>
> ***The use of the word shall "in the section 285(5) (supra) connote a "command or mandatory obligation". It places a complete bar on any form of amendment to a petition filed and does not also allow for an exercise of discretion: Ugwu V. Araraume (2007) All FWLR (Pt. 377) 807 or (2007) 12 NWLR (Pt. 1048) 367."***

He also referred to the decision of the Court of Appeal in the case of: ***DALHATU VS. DIKKO (2005) ALL FWLR (PT 242) 483 AT 501*** where the Court held thus: -

> *"**By virtue of section 14(2) (a) of the Electoral Act 2002, after the time limited by section 154***

of the Electoral Act for presentation of an election petition, no amendment shall be made. In the instant case, by 4th of June, 2003 when the motion for amendment was brought by the appellant, the time for presenting the election petition had expired and as such, it was too late to effect any amendment in the petition."

Learned counsel submitted that the above decisions of superior courts accord with one of the cardinal principles of interpretation of statutes which is that where the provision of a statute is clear and unambiguous, the duty of the court is to simply interpret the clear provisions by giving the plain wordings their ordinary interpretation without more. He said that in such a situation, it is not the function of a court of law to bend backwards to sympathize with a party in a case in the interpretation of a statute merely for the reason that the language of the statute seems harsh or is likely to cause hardship to a party. See the cases of*:* ***ABACHA v F.R.N. (2014) 6 NWLR (PT 1402) 43*** *and* ***KRAUS THOMPSON ORGANIZATION LIMITED v N.I.P.S.S. (2004) 17 NWLR (PT 901) 44.***

He therefore submitted that as stringently harsh as the provisions of paragraph 14(2)(a)(i) of the First Schedule to the Electoral Act 2010 (as amended) may seem to be on a party seeking to amend a petition by introducing any of the requirements of sub paragraph 1 of paragraph 4 of the First Schedule to the Electoral Act 2010 after the expiration of the time limited for presentation of an election petition, the tribunal cannot bend backward to grant such an application no matter the reason or reasons advanced by the petitioner in bringing such an application.

He also submitted that it is too late in the day for the petitioners to be granted leave to amend their witness statement on oath to aver to new facts discovered by the petitioners in view of the fact that the statutory period limited to the petitioners to file an election petition had elapsed. See the decision of the Supreme Court in the case of: **OKE v MIMIKO (SUPRA) AT 1878 – 1879**.

He therefore submitted that it is too late in the day for the petitioners to be granted leave to amend the said petition as well as the petitioners' witnesses' statement on oath in the manner proposed by the petitioners.

He therefore urged us to so hold and to resolve the sole issue for determination in favour of the 1st and 2nd respondents.

At the hearing of this application, ***A. Zubairu Esq.*** who represented the 1st and 2nd Respondents made some oral submissions in further opposition to the application. He submitted that ***Abdullahi Sidi Garba*** is a different person from ***Abdullahi Garba***. That by the extant rules, the

Petitioners cannot amend the petition to introduce a new respondent who is unknown to the petition. He urged the Tribunal to refuse the application with costs.

Also in In opposition to this application, the learned counsel for the 3rd Respondent ***Mallam Mohammed Shuaib*** relied on their 19 paragraphs Counter-Affidavit filed on the 23rd of May, 2019 together with his written address in opposition to this application.

In his written address, the learned counsel for the 3rd Respondent identified the issue for determination as follows:

"Whether the Petitioners should be allowed to amend their petition at this

stage of the proceedings."

Arguing the sole issue, learned counsel referred to section 134 and Paragraph 14 (2) (a) (ii) of the 1st Schedule to the Electoral Act, 2010 (as amended) and submitted that a petitioner cannot make substantial amendments to the petition after 21 days of declaration of the results of the election. He relied on the following decisions on the point: ***ALHAJI MOHAMMED DIKKO YUSUF & ANOR VS. CHIEF OLUSEGUN OBASANJO (2003) 16 NWLR (Pt.847) 554; OBI-ODU VS. DUKE (2005) 10 NWLR (Pt.932) 142; NGIGE VS.OBI (2006) 14 NWLR (Pt.999) 136;*** and ***OKE VS. MIMIKO supra.***

He contended that in the instant application, the Petitioners are seeking to amend the constituency in which they contested the election and to bring in the person who was returned as the winner of the election having realized that they sued a total stranger. He submitted that these are substantial amendments that will bring in an entirely new case before this Tribunal. He urged the Tribunal to refuse the amendment.

Furthermore, learned counsel posited that the proposed amendments will affect the reliefs sought in the petition as the very office contested for will be altered. He said that this fact will run foul of the principles laid down in the case of: ***NGIGE VS.OBI (2006) 14 NWLR (Pt.999) 136*** and the provisions of Paragraph 14 (2) (ii) of the 1st Schedule to the Electoral Act, 2010 (as amended).

Again counsel submitted that it is settled law that an incompetent legal process cannot be cured by an amendment and relied on the decisions of the courts in the cases of: ***ABE VS. SKYE BANK PLC (2015) 4 NWLR (Pt.1450) 535***. He referred to their extant motion to dismiss this petition on the ground that it is incurably defective because the necessary parties who were returned as the winners in Gwadabawa North Constituency were not included in the petition.

In his further oral submission at the hearing of this application, the learned counsel for the 3rd Respondent referred to the Reply of the Petitioners to their Counter-Affidavit and Written Address and submitted that the Form CF001 which the 3rd Respondent attached to their affidavit as Exhibit 1 is the authentic Form CF001 which the 1st Petitioner filled and submitted to the 3rd Respondent.

Furthermore, he submitted that Order 9 Rule 6 of the Federal High Court Rules, on amendments applies to ordinary proceedings before the Federal High Court and not to election petition proceedings. He maintained that the person returned must be sued in the name with which he was returned and urged the Tribunal to dismiss the application.

The learned counsel for the Petitioners filed a 3 paragraphs affidavit in Reply to the Counter-Affidavit of the 3rd Respondent on the 25th of May 2019 accompanied with a Written Address.

In his written address, learned counsel submitted that ***Order 17, rules 1 and 2 of the Federal High Court (Civil Procedure) Rules 2009*** which is applicable makes provisions for amendment of pleadings as follows:

1. ***A party may amend his originating process and pleadings at any time before judgment but not more than twice; and***
2. ***Application to amend may be made to a judge such application shall be supported by an affidavit exhibiting the proposed amendment and may be allowed upon such terms as to cost or otherwise as may be just.***

He also referred to the provisions of paragraph 14(2) of the First Schedule to the Electoral Act 2010 (as amended) and ***Section 134 (i) of the Electoral Act.***

He referred to Exhibit A attached to his affidavit in reply and submitted that the name of the 1st Respondent is captured in the attachment to Exhibit A as Abdullahi Sidi Garba which buttresses the fact that the 1st Respondent is usually known and addressed by that name.

He contended that the interest of justice will be greatly served by the grant of this application and that it is the duty of courts/tribunals to see that substantial justice is done in any case and not just technical justice. He referred to the case of: ***ETTAH V AKIBA (2012) 6 WRN at 177 (ratio 4)*** where the court observed thus:

> ***"The fact that elections petitions are to be speedily or expeditiously tried and determined is not a license to sacrifice justice and equity on that platform"***

He therefore urged the Tribunal to grant the application to enable the just determination of the real dispute between the parties in this petition.

We have carefully examined all the processes filed in this application together with the submissions of counsel on the matter.

Upon a careful examination of the issues formulated by the parties in the application we adopt the sole issue as formulated by the Applicants to wit:

> ***"Whether the tribunal can grant the reliefs sought in this application having regard to all the facts and circumstances of the case?"***

Amendment of pleadings in ordinary civil suits is allowed at any stage, in order to settle the dispute between the parties. The courts have very wide discretion in granting or refusing leave to amend. *See:* ***Ojoh & Ors V Ogboni (1976) 1 NMLR 95, Oguntimehin V Gubere (1964) 1 All NLR 176.***

In election petitions however, considering its peculiar and *sui generic* nature, time is of great essence. See: ***Osunbor V Oshiomole (2007) 1 NWLR (Pt.1065) 32 at 40, Odon V Barigha-Amange (no.1) (2010) 12 NWLR (Pt. 1207) 1 at 10.***

Consequently amendment in an election petition is subjected to restriction as to time limitation.

On the amendment of Election Petitions, ***Paragraph 14 of the 1st Schedule to the Electoral Act, 2010 (as amended)*** provides as follows:

"14. (1) Subject to subparagraph (2) of this paragraph, the provisions of the Civil Procedure Rules relating to amendment of pleadings shall apply in relation to an election petition or a reply to the election petition as if for the words "any proceedings" in those provisions there were substituted the words "the election petition or reply".

(2) After the expiration of the time limited by-

(a) Section 134 (1) of this Act for presenting the election petition, no amendment shall be made:

(i) introducing any of the requirements of subparagraph (1) of paragraph 4 of this Schedule not contained in the original Election petition filed, or;

(ii) effecting a substantial alteration of the ground for, or the prayer in, the election petition, or;

(iii) except anything which may be done under the provisions of subparagraph (3) of this paragraph, effecting a substantial alteration of or addition to, the statement of facts relied on to support the ground for, or sustain the prayer in the election petition; and

(b) Paragraph 12 of the Schedule for filing the reply, no amendment shall be made-

(i) alleging that the claim of the seat or office by the petitioner is incorrect or false; or

(ii) except anything which may be done under the provisions of subparagraph (2) (a) (ii) of this paragraph, effecting any substantial alteration in or addition to the admissions or the denials contained in the original reply filed, or to the facts set out in the reply."

By virtue of the aforesaid paragraph 14 (2) of the Schedule the courts have consistently held that no substantial amendments to the petition or reply can be made at the expiration of the time prescribed by section 134 of the Electoral Act.

Substantial amendments to the petition or reply are excluded, where not made within the time for filing the petition or reply under the provision stipulated by section 134 of the Electoral Act. See: ***JANG v. DARIYE (2003) 15 NWLR (Pt.843) 436; OBI-ODU v. DUKE (2005) 10 NWLR (Pt. 932)***

105 @ 143. No amendment outside the period prescribed for presenting a petition will be allowed if the amendment will be substantial. See**: *YUSUFU v. OBASANJO (2003) 16 NWLR (Pt.847) 554 @ 606; OJUKWU v. ONWUDIWE (2007) 3 EPR 892*.

It must however be noted that the said section 134 has been deleted from the present Electoral Act. So there is no provision in the Electoral Act that prescribes the time for the filing of a petition or for the hearing and determination of petitions. However, by virtue of *section* ***9(5) of the Constitution of the Federal Republic of Nigeria (Second Alteration) Act, 2010***, the time for filing and determination of petitions are now matters of Constitutional provisions. ***Section 9(5) of the second Alteration Act*** stipulates that ***"an election petition shall be filed within 21 days after the date of the declaration of result of the elections."***

Thus, the cross reference in Paragraph 14(2)a of the Schedule to the deleted section 134 of the Electoral Act should now be to section 9(5) of the Constitution of the Federal Republic of Nigeria (Second Alteration) Act, 2010.

In the light of this statutory development, previous decisions of the courts that took cognizance of the provisions of the deleted section 134 of the Act can still be considered as precedents in considering applications for amendments. See: ***OKE v. MIMIKO (No. 1) (2014) 1 NWLR (Pt.1388) 225***, where the Supreme Court noted the fact of the non-existence of section 134 of the Electoral Act.

Where a petitioner intends to make substantial amendments to the petition or the respondent to the reply, such application for amendment has to be made within the time prescribed for the filing of the petition (in the case of an amendment to a petition or reply).

However, the electoral Act does not define what amounts to substantial alteration or addition to the contents of a petition. It is to be determined in the light of the nature of the particular amendment sought.

In the instant application it is not in dispute that the application for amendment was filed long after the expiration of the 21 days limited for filing an election petition. The main thrust of the objection of the respondents is that the intended amendments are substantial and that they go beyond the correction of typographical errors.

What then are the proposed amendments as reflected in the proposed Amended Petition attached to the supporting affidavit as Exhibit C?

To get a clear picture of the nature of the proposed amendments it will be expedient to reproduce some salient paragraphs of the Applicants affidavit in support of this application. The relevant paragraphs are reproduced hereunder as follows:

> ***"3. That on the 18th day of May at about 3:00pm, I was informed by F.E. Okotete Esq. lead counsel for the Petitioners/Applicant in the chambers of my employers of the following facts which I verily believe to be true.***
>
> ***i. That the Petitioner/Applicant had on the 29/3/2019 filed their petition complaining against the election for the office of member representing Gwadabawa North state constituency at the Sokoto State House of Assembly held on the 9th March 2019.***
>
> ***ii. That the Petition was based on the information contained in Form EC8E (I) i.e. Declaration of results produced by the 3rd Respondent and bearing the names of the 1st***

Petitioner/Applicant and that of the 1st Respondent under Gwadabawa North. A certified True Copy of the said Form EC8E (I) is herein attached as Exhibit A.

iii. That during the 2015 general elections the state House of Assembly constituencies in Gwadabawa were delineated into Gwadabawa East and Gwadabawa West and the aspirants were not familiar with the new Gwadabawa North/South delineation made by the 3rd Respondent in the 2019 general Elections.

iv. That further to paragraph 3(c) above some of the aspirants in Gwadabawa Local Government like the 1st Petitioner were not familiar with the new delineation made by the 3rd Respondent, including the aspirant who purportedly won the seat of member representing Gwadabawa North State Constituency as he filled "Gwadabawa East" in his Form CF001. A Certified True Copy of Form CF001 for Muhammed Bello Idris is herein attached and marked as Exhibit B.

v. That the Petitioners/Applicants were misled by the content of Form EC8E(I) produced by the 3rd Respondent to bring their Petition under Gwadabawa North whereas their Petition ought to have been brought under Gwadabawa South State constituency.

vi. That while the 1st Respondent is generally known and addressed as Abdullahi Sidi Garba which is the name by which he is now sued, the name that he used during the election does not contain 'Sidi'

vii. That it is not in Issue between the parties that the 1st Petitioner and the 1st respondent contested for house of Assembly seat for the state constituency covering Gwadabawa Ward, Asara Kudu ward, Asara Arewa ward, Gigane ward and Afakwanyo ward as contained in paragraph 15 of the petition under the platform of the 2nd Petitioner and the 2nd Respondent respectively whether called Gwadabawa North or Gwadabawa South in respect of which the substance of the Petitioners Petition is based and containing all the polling units for which the petitioners complain of in their petition.

viii. That the use of "Gwadabawa North" instead of "Gwadabawa South" in the Petition is a misnomer or an irregularity which is not substantial and which this Tribunal can correct by an amendment to enable the Tribunal fully determine the dispute between the parties as per the Amended Petition and accompanying processes herein attached as Exhibit C."

Upon a careful examination of the above paragraphs, it is evident that the amendments are mainly to substitute the name of the actual constituency (***Gwadabawa South***) in place of the one erroneously stated on the petition (***Gwadabawa North***). Thus it is evident that ***Gwadabawa South*** and ***Gwadabawa North*** are two different and distinct constituencies. The two constituencies are in different locations. Furthermore, they are seeking to amend the petition to bring in the correct name of the person who was returned as the winner of the election having realized that they sued a party under a wrong name. These amendments appear to be substantial.

The excuses proffered that the aspirants were not familiar with the delineation of constituencies for the 2019 elections or the correct names of the 1st Respondent appear rather weak and untenable. A diligent Petitioner ought to know the correct constituency he contested for and the correct names of his co-contestants. Those facts are salient facts which are relevant

to his petition.

Where a petitioner pleaded in the petition a constituency which is at variance with the real constituency in dispute, an amendment to reflect the correct constituency cannot be granted by the tribunal. See the case of: ***ONYEMERE VS. ORJI (PETITION NO. CA/OW/EPT/HA/97/2015*** which was rightly cited by the learned counsel for the 1st & 2nd Respondents. Moreover, upon the exchange of pleadings, the parties have joined issues on the basis of these salient facts already pleaded.

We are also in agreement with the learned counsel that the proposed amendment is intended to vest the petitioners with the *locus standi* to present this petition as required by ***paragraph 4(1)(b) of the First Schedule to the Electoral Act***, ***2010 (as amended).*** This factor *per se* underlines the substantial nature of the amendment. In the case of: ***Mustapha vs. Gamawa & Ors. (2011) LPELR – 9226 (CA) Jauro J.C.A*** restated the position thus:

> ***"It therefore follows that any substantial amendment relating to the contents of a petition as envisaged by Paragraph 4 of the First Schedule must be done within the 21 days limited for filing an election petition."***

The proposed amendments appear to be quite pervasive. It extends beyond the pleadings to the depositions of witnesses. This will completely change the character of the entire petition. Furthermore, we are in agreement with the learned counsel for the 3rd Respondent that the proposed amendments will affect the reliefs sought in the petition as the very office contested for will be altered. The reliefs are the soul and substance of the petition. Any amendment that will affect the reliefs sought is a substantial amendment which cannot be effected outside the timeline.

In view of the foregoing, ***the sole issue for determination is resolved in favour of the Respondents. The application is accordingly dismissed with costs assessed at N20, 000.00 (twenty thousand naira) in favour of each of the Respondents.***

HON. JUSTICE P.A. AKHIHIERO
CHAIRMAN

HON. JUSTICE A.N. YAKUBU
1ST MEMBER

HIS WORSHIP S.T BELLO
2ND MEMBER

COUNSEL:

1. MOHAMMED ADELEKE ESQ……1^{ST} & 2^{ND} PETITIONERS/APPLICANTS
2. CHIEF J.E.OCHIDI…….1^{ST} & 2^{ND} RESPONDENTS/RESPONDENTS
3. MALLAM MOHAMMED SHUAIB……3^{RD} RESPONDENT/RESPONDENT