

IN THE NATIONAL AND STATE HOUSE OF ASSEMBLY
ELECTION PETITION TRIBUNAL
HOLDEN AT SOKOTO
ON FRIDAY THE 20TH DAY OF SEPTEMBER, 2019
BEFORE:

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

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

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

BETWEEN:

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

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

JUDGMENT

DELIVERED BY: HON.JUSTICE P.A.AKHIHIERO (CHAIRMAN)

This judgment is in respect of an election petition filed by the petitioners on the 29th day of March, 2019 challenging the election of the 1st Respondent on the platform of the 2nd Respondent to the office of Member, Sokoto State House of Assembly for Gwadabawa North State constituency held on the 9th March, 2019

wherein the 1st petitioner was a candidate in the said election and claims to have the right to be returned elected.

At the said election, the 3rd Respondent returned the 1st respondent as being duly elected and the winner of the election to the office of Member House of Assembly for Gwadabawa North State constituency with a total score of 13,863 (thirteen thousand eight hundred and sixty three) Votes.

Dissatisfied with the declaration of the 1st Respondent as the winner of the said election by the 3rd respondent, the petitioners filed this petition on the 29th day of March, 2019 challenging the declaration of the 1st Respondent as the winner of the said election on the following grounds:

- (a) That the election was invalid by reason of corrupt practices and/or non-compliance with the provisions of the Electoral Act, 2010 (as amended) and INEC Regulations and Guidelines for the conduct of election 2019;
- (b) That the 1st respondent was not duly elected by majority of lawful votes cast at the said election; and
- (c) That the 4th respondent in their bid to aid the 1st and 2nd respondents threatened, intimidated the supporters of the 1st and 2nd petitioners and stood by wherein the agents and supporters of the 1st and 2nd respondents were thumb printing ballot papers, brought from unknown destination in a sack and put them by force in the ballot box and also prevented many registered voters from exercising their franchise.

In this petition, the Petitioners are seeking the following declarations:

- a. That the Election for the office of member, House of Assembly for Gwadabawa North State Constituency held on 9th day of March, 2019 is invalid by reason of corrupt practices and non-compliance with the provisions of the Electoral Act, 2010 (as amended) and INEC Regulations & Guidelines for the conduct of Elections 2019;
- b. That the 1st Respondent, Abdullahi Sidi Garba of All Progressive Congress (APC), the 2nd Respondent was not duly elected or returned by majority of lawful votes cast at the Election for the office of Member, House of Assembly for Gwadabawa North State Constituency held on the 9th of March, 2019;
- c. That the actions of the 4th Respondent threatening and intimidating the eligible voters which disenfranchised many supporters of the petitioners amounts to infringement on the fundamental rights of the petitioners' supporters and therefore null and void;
- d. That the certificate of Return issued to the 1st Respondent, Abdullahi Sidi Garba of the All Progressive Congress (APC) the 2nd Respondent as member, House of Assembly for Gwadabawa

- North State Constituency on the election held on the 9th day of March 2019 is null and void and of no effect whatsoever;
- e. That the 1st Petitioner, Hon. Asara Nasiru Balarabe of Peoples' Democratic Party, the 2nd petitioner should be returned as member, Sokoto State House of Assembly for Gwadabawa North State Constituency in the Election held on 9th March 2019; and
 - f. That the 3rd Respondents be directed forthwith to issue to the 1st petitioner, Hon. Asara Nasiru Balarabe with a certificate of Return as member, Sokoto State House of Assembly for Gwadabawa North State Constituency in the election held on the 9th day of March 2019.

ALTERNATIVELY, the Petitioners pray that the said election should be nullified and/or cancelled and the 3rd Respondent be mandated to conduct fresh election for the office of Member, Sokoto State House of Assembly for Gwadabawa North State Constituency.

The 1st and 2nd Respondents filed a joint reply on the 11th of April, 2019 and therein incorporated a preliminary objection to the competence and hearing of this petition on the ground that the election of the 1st Respondent into the House of Assembly of Sokoto State is in respect of Gwadabawa South constituency of Sokoto State whereas the petitioners petition is in respect of Gwadabawa North constituency of Sokoto State and that the 1st Respondent is Abdullahi Garba and not Abdullahi Sidi Garba.

The 3rd respondent also filed a reply on the 30th of April 2019 and also contended that the election for which the 1st respondent contested and won was for member, House of Assembly Sokoto State for Gwadabawa South constituency and not Gwadabawa North as alleged by the petitioners.

The petitioners filed a reply to the 1st and 2nd Respondents' reply as well as a reply to the preliminary objection of the 1st and 2nd Respondents on the 17th of April, 2019 and reiterated the fact that the constituency under which the 1st Petitioner and the 1st Respondent contested for election for Member, House of Assembly, Sokoto State was Gwadabawa North and not Gwadabawa South as alleged by the 1st and 2nd Respondents and also that the name of the 1st Respondent as contained in his Form CF001 is Abdullahi Garba Sidi and not Abdullahi Garba.

The petitioners also filed a similar reply to the 3rd Respondents reply to the petition on the 2nd May, 2019.

In proof of the petition, the 1st petitioner testified for himself and called 3 witnesses. The petitioners also tendered documents through a subpoenaed witness, PW2 which were marked as Exhibits PA1-PA3, PB1-PB3, PC1-PC3, PD1-PD3,

PE1-PE3, PF1-PF18, PG1-PG15, PH1-PH5; PI, PJ, PJ1-PJ10, PK and PK1. Exhibits PA1-PA3, PB1-PB3, PC1-PC3, PD1-PD3, PE1-PE3 are some of the ballot papers used in Gwadabawa North state constituency for Asara Kudu, Asara Arewa, Atakwanyo ward, Gigane ward and Gwadabawa ward respectively. Exhibits PF1-PF18 are Forms EC8A i.e. result from polling units for Gigane ward. Exhibits PG1-PG15 are Forms EC8A i.e. results from polling unit for Asara Kudu ward. Exhibits PH1-PH5 are Forms EC8B i.e. result from all the wards in Gwadabawa North constituency. Exhibit PI is Form EC8E i.e. declaration of result for Gwadabawa North Constituency. Exhibit PJ is the certificate of Compliance attached to Exhibit PJ1-PJ10. Exhibits PJ1-PJ10 are photographs. Exhibit PK is a certificate of compliance attached to Exhibit PK1. Exhibit PK1 is the Disk containing a video footage of the election of March 9th, 2019 in Gwadabawa North constituency particularly at Shiyar Galadima, Meli.

The 1st Respondent testified for himself, called two witnesses and tendered Exhibit PM which is the certificate of return issued to the 1st Respondent by the 3rd respondent.

The 3rd Respondent called one witness and tendered Exhibit R which is Form CF001 of the 1st Respondent.

At the close of the evidence, the Tribunal ordered the filing of written addresses by the learned counsels for the parties.

The Petitioners' case is that the 1st Petitioner who is a member of the People's Democratic Party (2nd Petitioner) contested the election for the office of Member; Sokoto State House of Assembly for Gwadabawa North Constituency in the Sokoto State House of Assembly Elections held on the 9th March, 2019 under the platform of the 2nd Petitioner and claims to have the right to be returned as elected.

They also alleged that the 1st Respondent who was sponsored for the same election by the 2nd Respondent was purportedly returned elected as Member, Sokoto State House of Assembly for Gwadabawa North Constituency by the 3rd Respondent with a total score of 13,863 (thirteen thousand eight hundred and sixty three) votes.

That the 4th Respondent has the primary responsibility of maintaining law and order in Sokoto State during the Sokoto State House of Assembly elections conducted by the 3rd Respondent in Sokoto State on the of 9th March, 2019.

The Petitioners maintained that the 1st Respondent was not duly elected by majority of the lawful votes cast at the said election and that they scored the highest number of lawful votes cast at the said election whereas the 3rd respondents apportioned only 12,796 (twelve thousand seven hundred and ninety six) votes to the first petitioner.

They stated that the scores of the candidates who contested for the office of Member, Sokoto State House of Assembly for Gwadabawa North constituency as entered in form EC8E (I) and announced by the 3rd Respondent are as follows:

S/N	NAMES OF CANDIDATE	POLITICAL PARTY	TOTAL VOTES RECEIVED BY CANDIDATE/POLITICAL PARTY	
			IN FIGURES	IN WORDS
1.	Suleiman Abdukadir	ADC	04	Four
2.	Abdullahi Garba	APC	13,863	Thirteen thousand, eight hundred and sixty three
3.	Shehu Ahmadu	APDA	39	Thirty nine
4.	Kasimu K. Bello	DA	02	Two
5.	Rufai Aliyu	JMPP	05	Five
6.	Mamman Sendo	MPN	04	Four
7.	Sanusi Umar	NCP	05	Five
8.	Asara N. Balarabe	PDP	12,796	Twelve thousand, seven hundred and ninety six
9.	Habibatu Momoh	PPN	03	Three
10.	Shehu Moh'd	SDP	08	Eight
11.	Muh'd Kasimu Ashiru	SNP	19	Nineteen
12.	Dayyabu Ibrahim	UPN	01	One

According to them, Gwadabawa North Constituency has five Wards which include the following:

- I. GWADABAWA WARD
- II. ASARA KUDU WARD
- III. ASARA AREWA WARD

IV. GIGANE WARD
V. ATAKWANYO WARD

They maintained that the election was invalid by reason of corrupt practices and/or non – compliance with the provisions of the Electoral Act 2010 (as amended) and INEC Regulations and Guidelines for the conduct of Election 2019.

They alleged that the 4th Respondent in their bid to aid the 1st and 2nd Respondents, threatened, intimidated the supporters of the 1st and 2nd Petitioners and stood by wherein the agents and supporters of the 1st and 2nd Respondents where thumb printing ballot papers. That a lot of ballot papers brought from an unknown destination in a sack were forced into the ballot box and many registered voters were prevented from exercising their franchise.

That pursuant to its Constitutional and Statutory roles under the Constitution of the Federal Republic of Nigeria 1999 as amended and the Electoral Act 2010 as amended, the 3rd Respondent issued Guidelines and Regulations for the Conduct of the elections and any vote at an election that is not returned in strict compliance with the provisions of the Electoral Act 2010 as amended and the INEC Regulations and Guidelines is not a lawful vote.

They stated that in both the Electoral Act, 2010 (as amended) and the INEC Regulations and Guidelines for the Conduct of Elections 2019, it is mandatory:

- i. To use the Smart Card Reader (SCR) for voters accreditation before voting proper;
- ii. To count the votes loudly and announce the results of elections by:
 - a. The presiding officer at the polling unit; and
 - b. The ward collation officer at the ward collation center e.tc.
- iii. For electoral officers including presiding officers to be neutral during elections;
- iv. For the 3rd Respondent not to appoint persons who have sympathy for a Political Party as electoral officer;
- v. For the 3rd Respondent, to provide adequate polling units to accommodate the registered voters;
- vi. For the 3rd Respondent or its agent to accredit registered voters with the use of Smart Card Readers (SCR) in polling Units to cast their votes simultaneously;
- vii. For the 3rd Respondent or its agents to accredit registered voters at polling units before allowing them to cast their votes;
- viii. For the 3rd Respondent not to allow non-accredited persons to vote at the election;

- ix. For the Presiding Officers to follow strictly the steps prescribed in the INEC Regulations and Guidelines for the Conduct of Elections 2019 for the sorting and counting of ballots and allow the Polling agents, voters and Observers to watch the process.

They alleged that it was the advertised regulation of the 3rd Respondent that accreditation and voting shall take place simultaneously from 8:00am and end at 2:00 p.m.

They maintained that the requirements for the accreditation of voters by the use of Smart Card Reader (SCR) and further verification in the voters register is the foundation for the credibility of the elections as well as a buffer against multiple voting, falsification of results and other fraudulent activities and electoral malpractices.

That in the Statutory requirement under the Electoral Act 2010 as amended and INEC Regulations and Guidelines for the Conduct of Elections 2019, it is a mandatory requirement that accreditation shall be conducted simultaneously at all polling Units in the States of the Federation and in all the Local Government Areas in Sokoto State, Gwadabawa inclusive.

That the mandatory steps for accreditation and voting under the extant law are as follows:

- i. Request for the Permanent voters card (PVC) Simplificiter;
- ii. Examine the voter's card through the card reader to ascertain that all the biometrics features of a person conforms with the information in the Smart Card Reader (SCR) and the photo on the Permanent voter's card (PVC) is that of the voter and that the polling Unit details are correct for that Polling Unit;
- iii. In cases of Smart Card Reader (SCR) failures, check the register of voters to confirm that the voter's name, photo and voter Identification Number (VIN) as contained on the Permanent Voters Card (PVC) are in the Register of voters;
- iv. Request the voter to thumb print the appropriate box in the register of voters and provide his/her phone number in the appropriate box in the register of voters;
- v. In cases where the Permanent Voters Card (PVC) fails to be read by the Smart card Reader (SRC) then the Assistant Polling Officer (APO I) shall refer the voter to the polling officer (PO) who shall request the voter to leave the polling unit;
- vi. In circumstances where the smart card Reader (SCR) shows wrong details but correct details are in the register of voters, the APO I and APO II shall if satisfied that the details of the voter is in the

- register, record the phone number of the voter in the appropriate box in the register of voters and continue accreditation;
- vii. Apply indelible ink to the cuticle of the appropriate finger on the left hand;
 - viii. Enter form EC.8A and/or EC.8A (I) EC.8A (II) “statement of Result of poll” the number of voters in the register of voters, the number of accredited voters, the number of ballot papers issued in the polling unit, the number of unused ballot papers, the number of spoiled ballot papers, the number of rejected ballots, the total number of valid votes and the total number of used ballot papers;
 - ix. Enter in form EC.8A and/or EC.8A (I) EC.8A (II) “statement of Result of poll” the name of the assistant presiding officer, his signature, stamp and date certifying that the information in form EC.8A and/or EC.8A (I) EC.8A (II) “statement of Result of poll” are true and accurate account of votes cast in the polling Unit and that the Election was either contested or not contested;
 - x. Give a dully completed EC.8A and/or EC.8A (I) EC.8A (II) “statement of Result of poll” to the respective party agent of the political parties; and
 - xi. The mandatory steps for the accreditation; voting, sorting and counting of ballots, procedure for collation and Declaration of results all stated in the INEC Registrations and Guidelines for the conduct of Elections 2019.

They maintained that a due process of election is one that complies with the Electoral Act 2010 as amended and the INEC Regulation and Guidelines for the conduct of elections 2019 and that in this election, there was no due process with the extant laws regarding the 2019 election.

That the votes credited to the 1st Respondent are not votes cast by registered voters duly accredited to vote in accordance with the Electoral Act 2010 as amended and INEC regulations and guidelines for the conduct of elections 2019 in the various polling units and the exercise was voided by corrupt practices and non-compliance with the INEC Regulations and Guidelines for the conduct of elections 2019.

They stated that at Shiyar Galadima polling units, code 002 in Gwadabawa ward of Gwadabawa Local Government Area of Sokoto State, one Kasimu Alkali an agent of the 1st and 2nd Respondents was openly giving money to voters in order to vote for the 1st Respondent which resulted in the cancellation of the election by the 3rd Respondent.

That based on the aforesaid cancellation of the election, the 3rd Respondent rescheduled the election for the 10th of March, 2019 without officially notifying

the 1st and 2nd Petitioners. That when the Petitioners got to know of the said rescheduled election, the election was over before their supporters got there.

That at Meli Makaranta polling unit at Gigane Ward, Gwadabawa Local Government Area of Sokoto State, the supporters of the 1st and 2nd Respondents took the ballot papers meant for the State House of Assembly Election of 9th March, 2019, to the 3rd Respondent's office at Gwadabawa Local Government Headquarters and later at night the supporters of the 1st and 2nd Petitioners were chased away and already thumb printed ballot papers were stuffed into the ballot box. Thereafter, a purported result was announced by the 3rd respondent after votes were credited to the party in form EC8A (II) and EC8B (II).

That at Meli Makaranta polling unit while voting and counting had being concluded at about 6pm, the PDP agent at that unit, informed the petitioners that the 1st respondent came with the police to beat him up and a sack of thumb printed ballot papers was brought in, and also scattered electoral materials therein and with the help of the security agents the APC thug insisted that the thumb printed ballot in the sack must be put in the ballot box and be counted.

That the acts of the 1st Respondent and his agents were reported to the Police in Gwadabawa by the Local Government Sole-Administrator Alh. Aminu Aya, whereupon the Police took the scattered electoral materials and the presiding officers to the division and later to the 3rd Respondent's office at Gwadabawa, but the electoral officer insisted they should be taken back to the Gigane Ward collation center.

That at the Gigane collation center, the Police handed over the electoral materials to the ward collating officer who ordered that all the electoral materials be displayed before all present there and the ballot papers for gubernatorial election were separated from those for House of Assembly election including those already thumb printed ballot papers which were brought in the sack. They alleged that the incident was photographed and videotaped.

That again at Gigane ward collation center, the number of votes cast exceeded the numbers of accredited voters in some polling units whereupon the Petitioner's polling agents insisted that the election be cancelled which cancellation was never done.

That at Shiyar Salihu polling unit 005 the total number of votes cast per party was more than the total number of valid votes recorded.

That at Shiyar Galadima polling unit in Gigane ward in Gwadabawa Local Government, election commenced at about 8:00am and around 6:30pm the thugs/supporters of the 1st and 2nd Respondents upon sensing the victory of the petitioners started snatching ballot papers from the women and thumb printing same on behalf of the women. That the agents of the petitioners seriously objected

to this practice but they were ignored, instead, the supporters of the 1st and 2nd Respondents invited the police.

That when the police men arrived at the polling unit, they beat up all the agents and supporters of the petitioners, chased them away and the 3rd Respondent fabricated the result on FormEC8B (II) despite the fact that the election was flawed with malpractices at the said polling unit.

That there were no elections held in some polling units due to non-compliance with INEC Regulations and Guidelines for the conduct of elections, 2019.

The Petitioners maintained that the votes recorded and/or returned in all the polling units complained of in Gwadabawa North State Constituency does not represent lawful votes cast for the 1st and 2nd Respondents as having been obtained in vitiating circumstances of substantial non-compliance with the mandatory provisions of INEC Regulation and Guidelines for the conduct of Election 2019 and the act of non-compliance substantially affected the validity of the said election. They enumerated the incidences of substantial non-compliance as follows:

- a. The information on the Electoral forms purported to have been used in the said Election were clearly inconsistent with the data base in the smart card Reader;
- b. Some of the purported Electoral forms purportedly used were not stamped and signed thereby vitiating the scores or votes entered thereby especially the polling units the petitioners complained of;
- c. The purported scores entered for the 1st and 2nd Respondents in forms EC8A (i), EC8A (ii) and EC8B for the various polling units complained of in this petition in Gwadabawa North State Constituency were not a product of a due election in accordance with INEC Regulations and Guidelines for the Conduct of elections, 2019;
- d. That if votes from the elections in the aforementioned polling units complained of recorded in favour of the 1st and 2nd respondents were deducted, this Tribunal would easily come to the conclusion that election into the office of a member representing Gwadabawa North State constituency is inconclusive; and
- e. That the 1st Respondent cannot be adjudged to have scored a majority of lawful votes because in some of the polling units falling under Gwadabawa North State constituency, election were cancelled therein for that of Governorship election and the same thing affected the petitioners.

The petitioners are therefore praying the Tribunal for the following declarations:

- a) That the Election for the office of member, House of Assembly for Gwadabawa North State Constituency held on 9th day of March, 2019 is invalid by reason of corrupt practices and non-compliance with the provisions of the Electoral Act, 2010 (as amended) and INEC Regulations & Guidelines for the conduct of Elections 2019;
- b) That the 1st Respondent, Abdullahi Sidi Garba of All Progressive Congress (APC), the 2nd Respondent was not duly elected or returned by majority of lawful votes cast at the Election for the office of Member, House of Assembly for Gwadabawa North State Constituency held on the 9th of March, 2019;
- c) That the actions of the 4th Respondent threatening and intimidating the eligible voters which disenfranchised many supporters of the petitioners amounts to infringement on the fundamental rights of the petitioners supporters and therefore null and void;
- d) That the certificate of Return issued to the 1st Respondent, Abdullahi Sidi Garba of the All Progressive Congress (APC) the 2nd Respondent as member, House of Assembly for Gwadabawa North State Constituency on the election held on the 9th day of March 2019 is null and void and of no effect whatsoever;
- e) That the 1st Petitioner should be returned as member, Sokoto State House of Assembly for Gwadabawa North State Constituency in the Election held on the 9th of March 2019; and
- f) That the 3rd Respondent be directed forthwith to issue to the 1st Petitioner, a certificate of return as member, Sokoto State House of Assembly for Gwadabawa North State Constituency in the election held on the 9th day of March 2019.

ALTERNATIVELY they prayed that the said election should be nullified and/or cancelled and the 3rd Respondent be mandated to conduct a fresh election for the office of Member, Sokoto State House of Assembly for Gwadabawa North State Constituency.

On the behalf of the 1st and 2nd Respondents, the 1st Respondent testified and they called two witnesses (RW1 and RW2) in defence of the petition.

The 3rd Respondent called one witness (RW3) through whom documentary pieces of evidence were tendered and admitted.

In their defence, the 1st and 2nd Respondents maintained that the constituency in which the 1st respondent contested an election to the office of Member, Sokoto State House of Assembly on the platform of the 2nd respondent is GWADABAWA SOUTH STATE CONSTITUENCY of Sokoto State and not Gwadabawa North State Constituency of Sokoto State as claimed by the petitioners in this petition and

that the name of the 1st respondent in the said election is Abdullahi Garba and not Abdullahi Sidi Garba as constituted in this petition.

They stated that the 1st respondent contested and won the said election having polled a total of 13,863 votes to defeat the 1st petitioner who polled a total of 12,796 votes.

The 1st and 2nd respondents stated that at no time did Kasimu Alkali or any other member/sympathizer of the 2nd respondent engage in any act of vote buying at Shiyar Galadima 002 Polling Unit in Gwadabawa Ward of Gwadabawa Local Government Area of Sokoto State on the day of the said election.

They stated that the polling unit of the said Kasimu Alkali is Shiyar Galadima Polling Unit 002 and that on the date of the said election, Kasimu Alkali came to the said polling unit to cast his votes for candidates of his choice in the exercise of his civic responsibility.

That on the said 9th of March 2019, the election which was being conducted peacefully by agents of the 3rd respondent at Shiyar Galadima Polling Unit Code 002 in Gwadabawa Ward of Gwadabawa Local Government Area of Sokoto State was disrupted by the agents of the petitioners who unleashed violence on the voters who had trooped out *en masse* to the polling unit to cast their votes.

That at the said Shiyar Galadima Polling Unit 002 in Gwadabawa Ward, an agent of the petitioners known as Bashar Maikudi Na Kulu came to the said polling unit with a cutlass and damaged the electoral materials at the polling units.

That as a result of the said violence which was perpetuated at the said polling unit on the 9th of March 2019, the said election was cancelled by the 3rd respondent while a re-run election was scheduled by the 3rd respondent to take place at the same polling unit the next day being the 10th of March 2019 and all the Political Parties that fielded candidates for both the Governorship election and the House of Assembly election were informed of this development (the petitioners inclusive).

That on the said 10th of March 2019, the re-scheduled re-run election for the said Shiyar Galadima Polling Unit was conducted by the accredited officials of the 3rd respondent and at the said election, the petitioners polled 150 votes while the 1st and 2nd respondents polled 417 votes.

That after the close of poll at Meli Makaranta polling unit in Gigane ward on the 9th of March 2019, supporters and agents of the petitioners prevented the counting of the ballots to take place so the officials of the 3rd respondent that conducted the said election directed that the ballot boxes containing the cast ballots (for the Governorship election and the House of Assembly election) be conveyed to the 3rd respondent's Gwadabawa Local Government Area Office for the counting process to take place under the watch of security operatives.

That the said ballot boxes were conveyed by the 3rd respondent's officials in the company of all the political parties' agents and security personnel to Gwadabawa INEC office and on arrival at Gwadabawa INEC office, the Electoral Officer of the 3rd respondent for Gwadabawa Local Government Area directed that the proper venue for the counting of the said ballots is the ward collation centre located at Gigane and not the INEC Gwadabawa Office. Accordingly, the said Electoral Officer directed that the said ballot boxes be taken to Gigane Ward Collation Centre for the counting of the ballots papers already cast at Meli Makaranta polling unit and this directive of the said Electoral Officer was complied with.

That under heavy security protection, the said ballot boxes were conveyed to Gigane Ward Collation Centre from Gwadabawa in the company of political parties' agents (agents of the petitioners inclusive) where the said ballot boxes which contained the already cast ballots (both for Governorship election and the House of Assembly election) were counted in the full glare of all persons present and the results of the said elections were publicly and loudly announced to the hearing of all.

The 1st and 2nd respondents stated that contrary to the claims of the petitioners, the ballot box meant for the House of Assembly election was never stuffed with already thumb printed ballot papers by the agents of the 1st and 2nd respondent, neither were the supporters of the petitioners chased away by the agents of the 1st and 2nd respondents. They also denied beating up anyone at Meli Makaranta polling unit. Neither was any sack of already thumb printed ballot papers brought in to the said polling unit at the said election nor any incidence of over voting.

The 1st and 2nd respondents stated that due to the high turnout of voters at Meli Makaranta polling unit on the day of the said election, the ballot box for the Governorship election and the ballot box for the House of Assembly election got filled up with votes of voters who had cast their votes thereby leaving no space for more thumb printed ballot papers of voters to enter into the said ballot boxes. That in order to create room for more ballot papers to enter into the said ballot boxes, the Presiding Officer for the said polling unit agreed with all the political parties' agents that the cast ballots in the said ballot boxes be off – loaded into two separate sacks (one for the Governorship election and the other for the House of Assembly election) so as to create space in the said ballot boxes for other voters to drop their thumb printed ballot papers.

That this was done and it was at this stage that the Sole Administrator for Gwadabawa Local Government Council (an appointee of the Governor of Sokoto State) came to the said polling unit in company of the Chief of Staff to the Governor of Sokoto State and caused crises in the voting process.

That as a result, the ballot boxes and sacks containing the thumb printed ballot papers were taken to the Ward Collation Centre at Gigane for counting and at the end of the exercise, the petitioners scored 122 votes while the 1st and 2nd respondent scored 254 votes.

The 1st and 2nd respondents admitted paragraph 17.18 of the petition and stated that at the said polling unit, the petitioners scored 156 votes while the 1st and 2nd respondents scored 123 votes. They urged the tribunal to nullify the election conducted by the 3rd respondent at this polling unit for the reasons stated by the petitioners in the petition. The 1st and 2nd respondents stated that no form of electoral malpractice was perpetuated by the 1st and 2nd respondents or their agents at Shiyar Galadima polling unit in Gigane ward of Gwadabawa Local Government Area of Sokoto State in the course of the conduct of the said election.

They maintained that the election to the office of member, Sokoto State House of Assembly for Gwadabawa South State Constituency of Sokoto State was conducted by the 3rd respondent in substantial compliance with the provisions of the Electoral Act 2010 (as amended) as well as the provisions in INEC Guidelines/Manual for the conduct of the said election.

In their defence, the 3rd Respondent stated that the election to which the 1st Petitioner was a candidate was the Election for the Gwadabawa South State Constituency and the candidate of the 2nd Respondent who participated in and won the Gwadabawa South State Constituency Election is ABDULLAHI GARBA and a certificate of return was duly issued to him to that effect. That the 3rd Respondent does not have in its records any person known as ABDULLAHI SIDI GARBA who allegedly participated in the Gwadabawa South State Constituency on the 9th day of March 2019.

They stated that the election throughout the constituency was conducted in substantial compliance with the provisions of the Electoral Act, and the 3rd Respondent's Regulations and guidelines and all relevant laws.

That that the elections complained of by the Petitioners took place at the same date and time as the gubernatorial election in Sokoto State but they did not complain about the Gubernatorial Election or the results.

At the close of evidence, the learned counsel for the parties filed their Final Written Addresses.

In their Final Written Address dated and filed on the 2nd of August, 2019, the learned counsel for the 1st and 2nd Respondents, *Chief J.E.Ochidi* identified the Issues for Determination in this Petition as follows:

ISSUE ONE

Whether by virtue of Form EC.8A (1) (Declaration of Result) bearing the names of the 1st petitioner and 1st respondent and produced by the 3rd respondent, the 1st petitioner and 1st respondent contested election for member representing the Gwadabawa North State Constituency for Sokoto State House of Assembly held on the 9th March 2019.

ISSUE TWO

Whether the 1st petitioner has the locus standi or capacity to institute this petition either alone or together with any other person challenging any return for the Gwadabawa North State Constituency election held on the 9th day of June 2019 when he was never a candidate in that election.

ISSUE THREE

Whether the 2nd respondent's action and joinder in this petition when the said respondent is a party to another petition challenging the return of the 2nd respondent's candidate for the Gwadabawa North State Constituency election held on the 9th March 2019 is not an abuse of the court process thereby rendering the petition liable to be dismissed.

ISSUE FOUR

Whether the election of the 1st respondent as member of the Sokoto State House of Assembly held on the 9th day of March, 2019 ought not to be set aside on the grounds of corrupt practices and substantial non – compliance with the provisions of the Electoral Act 2010 (as amended) and INEC guidelines and regulations for the conduct of 2019 general elections.

ISSUE FIVE

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 Sokoto State House of Assembly held on the 9th day of March 2019.

Before proffering arguments on the issues for determination in this petition the learned counsel for the 1st and 2nd Respondents submitted that the ground for presenting this petition before this tribunal as appearing in paragraph 16.3 of the petition is incompetent because the said ground is not a recognizable ground for questioning an election as stipulated in section 138 (1) of the Electoral Act, 2010 (as amended). He reproduced the ground as follows:

“The 4th respondent in their bid to aid the 1st and 2nd respondent threatened, intimidated the supporters of the 1st and 2nd petitioners and stood by wherein the agents and supporters of the 1st and 2nd respondents where thumb printing ballot papers, brought from unknown destination plenty ballot papers in a sack and put

them by force in a ballot box and also prevented many registered voters from exercising their franchise.” (sic)

He submitted that the above quoted ground is not competent as the said ground is outside the grounds stipulated in **section 138(1) of the Electoral Act, 2010 (as amended)** for questioning an election. Accordingly, he urged us to strike out the ground of the petition as appearing in paragraph 16.3 of the petition for being incompetent.

ARGUMENTS ON ISSUES ONE, TWO AND THREE

Learned counsel submitted that Issue One is whether by virtue of Form EC.8A (1) (Declaration of Result) bearing the names of the 1st petitioner and 1st respondent and produced by the 3rd respondent, the 1st petitioner and 1st respondent contested election for Member representing the Gwadabawa North State Constituency for Sokoto State House of Assembly held on the 9th March 2019 while Issue Two is whether the 1st petitioner has the *locus standi* or capacity to institute this petition either alone or together with any other person challenging any return for the Gwadabawa North State Constituency election held on the 9th day of June 2019 when he was never a candidate in that election and the Issue Three is whether the 2nd respondent’s action and joinder in this petition when the said respondent is a party to another petition challenging the return of the 2nd respondent’s candidate for the Gwadabawa North State Constituency election held on the 9th March 2019 is not an abuse of the court process thereby rendering the petition liable to be dismissed.

He posited that the said three issues have arisen in this petition as a result of the preliminary objection raised by the 1st and 2nd respondents in their reply challenging the competence of the petition as particularized in paragraph 2.8 of his written address. He said that it is on record that in response to the said preliminary objection, the petitioners filed a motion on notice before this tribunal on the 20th day of May 2019 praying this tribunal for leave to amend this instant petition by substituting the constituency in which the 1st petitioner and the 1st respondent contested the said election from Gwadabawa North State Constituency of Sokoto State as constituted in this petition to Gwadabawa South State Constituency of Sokoto State.

He said that it is also on record that the 1st – 3rd respondents in this petition opposed the said application of the petitioners and by the ruling of this tribunal delivered on the 30th day of May 2019, the said application of the petitioners was refused by this tribunal and as such, the petition as originally constituted before this tribunal has remained the same till date.

He submitted that there is no controversy as to the polling units and wards in which the 1st petitioner and the 1st respondent contested the said election. That it is

clear from the totality of the evidence presented before this tribunal that the said election was conducted in five wards viz:

- (i) Gwadabawa ward
- (ii) Asara Kudu ward
- (iii) Asara Arewa ward
- (iv) Gigane ward
- (v) Atakwanyo ward

Learned counsel posited that the only issue in contention between the petitioners and the 1st – 3rd respondents on this issue is the name ascribed to the constituency in which the said five wards are situated. That while the petitioners have maintained in this petition that the name of the constituency is Gwadabawa North State Constituency of Sokoto State, the 1st – 3rd respondents have however maintained that the name ascribed to the said constituency is Gwadabawa South State Constituency of Sokoto State.

He said that in their bid to prove to this Honourable Tribunal that the correct name of the constituency is Gwadabawa South State Constituency as pleaded in the petition; the petitioners placed reliance on the following documents viz:

- (a) 3 ballot papers from Asara Kudu Ward as Exhibit PA1 – PA3.
- (b) 3 ballot papers from Asara Arewa Ward as Exhibit PB1 – PB3
- (c) 3 ballot papers from Atakwanyo Ward as Exhibit PC1 – PC3
- (d) 3 ballot papers from Gigane Ward as Exhibit PD1 – PD3
- (e) 3 ballot papers from Gwadabawa Ward as Exhibit PE1 – PE3
- (f) 18 copies of Form EC.8A for Gidane Ward as Exhibits PF1 – PF18
- (g) 15 copies of Form EC.8A for Asara Kudu Ward as Exhibits PG1 – PG15
- (h) 5 copies of Form EC.8B for the Five Wards in Gwadabawa North State Constituency as Exhibits PH1 – PH5
- (i) 1 copy of Form EC.8E (declaration of result for Gwadabawa North State Constituency as Exhibit PI

However he said that the 1st – 3rd respondents are placing reliance on Exhibit PM which is the Certificate of Return issued by the 3rd respondent to the 1st respondent in which it is clearly stated that the 1st respondent has been elected as member, Sokoto State House of Assembly to represent Gwadabawa South State Constituency of Sokoto State. He also relied on INEC Form CF 001 (admitted as Exhibit R) completed by the 1st respondent and submitted to the 3rd respondent before the conduct of the said election in which the 1st respondent stated the constituency he was contesting the said election to be Gwadabawa South State Constituency.

Learned counsel also relied on Exhibit PL which is the INEC Form CF 001 completed and submitted by the 1st petitioner to the 3rd respondent before the conduct of the said election, in which the 1st petitioner clearly stated the

constituency he was seeking to contest the said election as: Gwadabawa South State Constituency of Sokoto State.

He submitted that upon a consideration of both Exhibit R which was completed by the 1st respondent as well as Exhibit PL which was completed by the 1st petitioner, it was clear that both candidates knew beforehand that they were seeking election to the office of Member, Sokoto State House of Assembly to represent Gwadabawa South State Constituency and not Gwadabawa North State Constituency of Sokoto State as presently constituted in this petition. He therefore urged us to hold that this petition has been instituted by the petitioners under a wrong constituency.

Learned counsel submitted that if this Honourable Tribunal agrees with the contention of the 1st – 3rd respondents to the effect that the correct name of the constituency in which the said election was conducted is Gwadabawa South State Constituency, then, the preliminary objection of the 1st – 3rd respondents is sustained and the petition of the petitioners as presently constituted becomes incompetent and merely academic.

Counsel submitted that by the provisions of Section 75(1) of the Electoral Act, 2010 (as amended), the 3rd respondent is mandated to issue a Certificate of Return to every candidate who has won an election and that it was in compliance with the provisions of Section 75(1) of the said Electoral Act that the 3rd respondent issued Exhibit PM to the 1st respondent.

He said that the petitioners heavily relied on the declaration of result (INEC Form EC.8E) which was admitted in evidence before this tribunal as Exhibit PI to contend that the constituency in which the 1st petitioner and the 1st respondent contested the said election is Gwadabawa North State Constituency of Sokoto State. He however submitted that Exhibit PI is subordinate to the Certificate of Return issued to the 1st respondent by the 3rd respondent as mandatorily required by the provisions of 75(1) of the Electoral Act, 2010 (as amended). Furthermore, he submitted that both Exhibits PL and R which were completed by the 1st petitioner and the 1st respondent respectively before the conduct of the election itself clearly showed that both candidates were aware of the constituency in which they were contesting the said election (i.e. Gwadabawa South State Constituency of Sokoto State.)

On Issues one, two and three counsel submitted that the 1st and 2nd respondents have proffered sufficient and credible evidence before this Honourable Tribunal to show that the constituency in which the 1st petitioner and the 1st respondent contested the said election is Gwadabawa South State Constituency of Sokoto State and not Gwadabawa North State Constituency of Sokoto State as presently constituted in this petition. He therefore urged us to uphold the

preliminary objection of the 1st and 2nd respondents on this issue and to resolve Issues one, two and three in favour of the 1st and 2nd respondents.

ARGUMENTS ON THE COMPETENCE OF THE PETITION ON THE GROUND THAT THE 1ST RESPONDENT IS IMPROPERLY NAMED AND CONSTITUTED IN THE PETITION

Learned counsel referred to paragraph 3 of the reply of the 1st and 2nd respondents to the petition where they averred that the name of the 1st respondent is Abdullahi Garba and not Abdullahi Sidi Garba as presently constituted in this petition. He also referred to Exhibit PI which is the declaration of the result of the election in the State Constituency wherein the name of the candidate of the 2nd respondent that contested and won the said election is reflected by the 3rd respondent as Abdullahi Garba and not Abdullahi Sidi Garba. He emphasized that it is Exhibit PI that gave the petitioners the cause of action in this petition.

Again he referred to the certificate of return issued by the 3rd respondent in respect of the said election (Exhibit PM) which bears the name of Abdullahi Garba and not Abdullahi Sidi Garba.

He therefore submitted that Abdullahi Garba who was the candidate of the 2nd respondent at the said election and who was the candidate that won the said election has not been joined as a party to this petition by the petitioners. That for a court or tribunal to be competent and to have jurisdiction over a matter, proper parties must be identified and joined in the action. That where proper parties are not before the court or tribunal, then such a court or tribunal would have no jurisdiction to hear the matter. He referred to the decision of the Supreme Court in the case of: *COTECNA INTERNATIONAL LIMITED V. CHURCHGATE NIGERIA LIMITED & ANOR (2011) ALLFWLR (PT 575) 252 AT 286*.

He also cited the decisions of the Supreme Court in the cases of: *PEENOK LIMITED V. HOTEL PRESIDENTIAL LIMITED (1983) 4 NCLR 122*; and *IKEME V. ANAKWE (2000) 8 NWLR (PT 669) 484*.

He further submitted that where a court or tribunal purports to exercise jurisdiction in a matter in which it has no jurisdiction, the proceeding before it and its judgment will amount to a nullity no matter how well decided. See the cases of: *MADUKOLU V. NKEMDILIM (1962) 2 SCNLR 341*; *SODE V. ATTORNEY GENERAL OF THE FEDERATION (1986) 2 NWLR (PT 24) 568*; *UMANA V. ATTAH (2006) 17 NWLR (PT 1009) 503*; and *SKENCONSULT (NIG) LIMITED V. UKEY (1981) 1 SC 6*.

Again he submitted that the non – joinder of Abdullahi Garba who was the candidate of the 2nd respondent that won the said election as a party to this petition amounts to a breach of the provisions of *paragraph 4 (1) (a) of the first schedule to the Electoral Act, 2010 (as amended)* which requires that an election petition

must specify the parties interested in the petition. That where a petitioner failed to specify in the petition the proper parties interested in the election petition, such a petition is incurable defective. See the cases of: *UJAM V. NNAMANI & ORS (2003) LPELR – 7216 (CA)*; and *EFFIONG V. IKPEME (1999) 6 NWLR (PT 606) 260 AT 271 – 272*.

He therefore submitted that as Abdullahi Garba who is the candidate of the 2nd respondent and who was declared as the winner of the said election by the 3rd respondent was not joined as a party to this petition, this petition is not properly constituted and this Honourable Tribunal has no jurisdiction to determine this petition on its merit. He therefore urged us to strike out this petition on this ground as well.

ARGUMENTS ON ISSUES FOUR AND FIVE

Issue Four is whether the election of the 1st respondent as member of the Sokoto State House of Assembly held on the 9th day of March, 2019 ought not to be set aside on the grounds of corrupt practices and substantial non – compliance with the provisions of the Electoral Act 2010 (as amended) and INEC guidelines and regulations for the conduct of 2019 general elections while Issue Five is whether the petitioners have led sufficient and credible evidence before this Tribunal to prove that the 1st and 2nd respondents were not duly elected or returned by majority of lawful votes cast at the election.

Learned counsel said that the said two issues are argued only in the ALTERNATIVE that the arguments on the competence of the petition and the jurisdiction of this tribunal to determine same are resolved by this tribunal against the 1st and 2nd respondents.

He posited that in the course of trial of this petition, the petitioners concentrated more in proving before that the election was conducted in Gwadabawa North State Constituency of Sokoto State as opposed to Gwadabawa South State Constituency of Sokoto State as being claimed by the 1st – 3rd respondents. He said that as a result, no attempt was made by the petitioners to prove the allegation of corrupt practices, substantial non-compliance with the provisions of the Electoral Act in the conduct of the said election or in proving that the 1st respondent was not duly elected or returned by majority of lawful votes cast at the said election.

He said that the reliefs being claimed by the petitioners against the respondents are declaratory in nature. That the law is settled that the petitioners in such circumstance must succeed on the strength of their case and cannot rely on the weakness of the case of the respondents to succeed. See the following decisions on the point: *UCHA V. ELECHI (2012) ALL FWLR (PT 625) 237 AT 262*;

C.P.C. V. I.N.E.C. (2012) All FWLR (PT 617) 605 at 6345; BUHARI V. OBASANJO (2005) 2 NWLR (PT 910) 241.

Counsel posited that in this petition, the declaration of the result of the election in issue is as disclosed in Exhibit PI. That in the said Exhibit PI, it is evident that the 1st respondent scored 13,863 votes while the 1st petitioner scored 12,796 votes thereby creating a margin of lead between the said parties to be in the figure of 1,067 votes in favour of the 1st respondent.

He submitted that it is settled law that there is a presumption of correctness of results declared by INEC and that until that presumption is successfully rebutted, the declared result stands correct and valid for all intents and purposes. See the decision of the Supreme Court in ***NYESOM V. PETERSIDE (2016) ALL FWLR (PT 842) 1573 AT 1647.***

He said that in an attempt to dislodge the presumption of correctness of the result of the said election as declared by the 3rd respondent, the petitioners called 3 witnesses as well as the 1st petitioner to testify in this petition. He said that the PW1 who was the petitioners' polling agent at Shiyar Galadima Meli 013 Polling Unit in Gigane ward gave evidence relating to thuggery and stuffing of ballot box with already thumb printed ballot papers at this polling unit where he alleged that APC scored 264 votes while PDP scored 156 votes. He said that the next witness was PW2 who was the 3rd respondent's Electoral Officer for Gwadabawa Local Government Area. She was subpoenaed to produce electoral documents which were admitted in evidence as Exhibits PA1 – PI. He said that the 1st petitioner testified for himself but he was not a polling agent at any of the polling units in the State Constituency and he merely repeated the contents of his petition in his evidence in chief. He said that the last witness called by the petitioners was PW3 who is the Sole Administrator for Gwadabawa Local Government Council. He was not a polling agent at any of the polling units in the state constituency on the day of the election (i.e. on 9th March 2019). His evidence is merely to the effect that he got information that APC thugs were attempting to stuff ballot boxes with thumb printed ballot papers at Meli polling unit and that he rushed there in order to stop the malpractice. That he took digital photographs of the incidence which were admitted by this tribunal in evidence as Exhibits PJ1 – PJ10 in addition to Exhibits PK1 which is the disk of the video recording of the said incidence.

Counsel posited that when the said video recording was played in open court, it became apparent that same has no evidential value as the audio recording is in Hausa language which is not the language of the tribunal.

He said that the PW3 also stated that due to incidence of vote buying at Shiyar Galadima Tshohuwa Magina Polling Unit, election at this polling unit was shifted to the next day being the 10th of March 2019 but that their party (PDP) was not informed of the said rescheduled election.

He said that the foregoing is the graphic summary of the evidence presented by the petitioners in proof of their contention that the said election was marred by corrupt practices and substantial non – compliance with the provisions of the Electoral Act and INEC Guidelines and also in proof of the petitioners’ allegation that the 1st respondent was not duly elected or returned by majority of lawful votes cast at the said election.

On the evidence of the witnesses that testified about the alleged electoral malpractices that purportedly occurred at various polling units, learned counsel submitted that they have no evidential value. He said that the 1st petitioner was never a polling agent at any of the polling units in the constituency where he alleged the occurrence of electoral malpractices. That the law is trite that it is only polling agents that are material and competent witnesses to prove allegation of electoral malpractices at polling units. See: **AJIMOBİ V. INEC (2009) ALL FWLR (PT 477) 91 AT 102** where Omege JCA held thus: -

“It is settled that only polling agents are material witnesses to establish and prove allegations of malpractices. This was further confirmed in the case of Yusuf v. Obasanjo (2005) 10 NWLR (Pt 956) 98 at 118.”

He also referred to the case of: **ANDREW V. INEC (2018) 9 NWLR (PT 1625) 507 AT 575 – 576** where Okoro JSC held thus: -

“The functions of polling agents are defined in Section 45 of Electoral Act, 2010 (as amended). Polling agents represent the respective political parties at the numerous polling units in obvious recognition of the enormity of the task of those monitoring the election in all the polling units of a state. A polling agent, being human, can only be physically present at only one polling unit at a given time and so cannot perform in the other polling units. Therefore, when evidence is to be provided as to what happened in disputed units other than the one he was physically available at, then, he is not qualified to testify thereto. This is because Section 45(2) of the Electoral Act, expects evidence directly from the relevant field officer at the required polling unit.”

Further, at page 558 paragraph B of the same decision, Okoro JSC also held as follows: -

“A court or tribunal has no business to entertain,

consider or rely on the evidence of persons who did not have a first hand, direct, actual and positive interaction with the facts in issue, and in the unlikely event that the testimony of such person is received in evidence, the court is under a bounden duty to expunge the testimony of such witness from its judgment.”

He said that the above submission also applies to the testimony of PW3 who by his own admission was not a polling agent at Shiyar Galadima Meli 013 polling unit in Gigane ward and at Shiyar Galadima Tshohuwa Magina Polling Unit.

He therefore submitted that the testimonies of the 1st petitioner and that of PW3 in this petition as it relates to alleged electoral malpractices which purportedly occurred at several polling units mentioned by them in their respective evidence before this tribunal are of no evidential value and he urged us to discountenance the said testimonies of 1st petitioner and of PW3 in this regard.

He said that the petitioners are therefore left with the testimony of PW1 to prove the alleged electoral malpractices and non-compliance with the provisions of the Electoral Act in the conduct of the said election since that of PW2 who was merely subpoenaed to produce documents is merely documentary.

He said that the allegation of the said PW1 on the said issue of alleged electoral malpractices and non-compliance with the provisions of the Electoral Act can be categorized into the following two headings viz:

- (a) Ballot box stuffing or multiple voting and
- (b) Violence instigated by thugs of the 2nd respondent.

He thereafter addressed the two headings seriatim.

BALLOT BOX STUFFING OR MULTIPLE VOTING

Under this heading learned counsel posited that the PW1 made allegation of ballot box stuffing at Shiyar Galadima Meli 013 Polling Unit in Gigane ward which was denied by the 1st and 2nd respondents in their reply to the petition as well as by the testimony of RW2. He submitted that it is settled law that a petitioner who alleges multiple voting or stuffing of ballot box must tender in evidence the stuffed ballot box in issue alongside the ballot papers therein. See the decision of Omuogbo JCA in ***AJIMOBİ V. INEC (2009) ALL FWLR (PT 477) 91 AT 107*** where his lordship held thus:

“A petitioner who claims that a ballot box in the election was stuffed must tender before the court the stuffed ballot box with the ballot papers therein. A failure to do so cast doubt on the evidence. The appellant failed to do this in the instant case, he must therefore fail.”

He pointed out that in the instant petition, the petitioners who are alleging multiple voting or ballot box stuffing at Shiyar Galadima Meli 013 Polling Unit in Gigane ward have neither tendered before this tribunal the stuffed ballot box in issue nor the thumb printed ballot papers therein as required by law. He therefore submitted that the petitioners have failed to prove the alleged head of malpractice before this Honourable Tribunal.

VIOLENCE ALLEGEDLY INSTIGATED BY THUGS OF THE 2ND RESPONDENT

Counsel posited that the PW1 averred in his deposition that there were acts of violence at Shiyar Galadima Meli 013 Polling Unit in Gigane ward perpetrated by thugs of the 2nd respondent and submitted that the said allegation of crime must be proved beyond reasonable doubt by the petitioners. That in the instant case, no such proof beyond reasonable doubt has been made by the petitioners. That the alleged thugs of the 2nd respondent who instigated the alleged violence at the said polling unit were not named by the petitioners before this tribunal. He submitted that it is settled law that occurrence of violence at a polling unit is not a ground for setting aside the conduct of an election and referred to the decision of Omage JCA in *AJIMOBİ V. INEC* supra at Page 103 where his lordship held thus:-

“Recently, in the Court of Appeal Benin Division, in Appeal No. CA/B/EPT/3/12A/08, the Honourable President of the Court of Appeal in his judgment in the appeal ruled inter alia that the reported incidence of violence is not a sufficient ground to set aside the election especially when the charge is not fixed on any person.”

Counsel submitted that the petitioners have failed to prove any incidence of violence in any of the polling units in the constituency and a fortiori, the petitioners have also failed to prove that the alleged occurrence of violence at the said two polling units substantially affected the result of the said election.

Furthermore, he submitted that where a petitioner contends in an election petition such as in the instant case that an election or return of a respondent should be nullified by reason of non-compliance with the provisions of the relevant electoral statutes and guidelines, such a petitioner must prove that the non-compliance actually took place and that same substantially affected the result of the said election. He said that the said two conditions must be proved cumulatively by the petitioner before such a petitioner can succeed on the allegation and relied on the decisions in: *OGBORU V. ARTHUR (2016) ALL FWLR (PT 833) 1805 AT 1855*; and *NYESOM V. PETERSIDE (2016) ALL FWLR (PT 842) 1573 AT 1635*.

He submitted that in establishing the substantiality of the 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 cases of: *EMERHOR V. OKOWA* (supra) *at Page 1927*; and *UCHA V. ELECHI (2012) ALL FWLR (PT 625) 237 AT 256*.

Furthermore, learned counsel submitted that where in an election petition a petitioner contends that the 1st respondent was not duly elected by majority of lawful votes cast at the said election as in the instant petition, it is incumbent on such a petitioner to plead and tender in evidence two sets of result of the election to enable the tribunal determine the authentic result for the said election. See the cases of: *HERO V. SHERIFF (2016) ALL FWLR (PT 861) 1309 AT 1363 – 1364*; and *ATAMAH V. EBOSELE (2009) ALL FWLR (PT 473) 1385 AT 1397*.

He submitted that in the instant case, there are no two set of results tendered before this Honourable Tribunal by the petitioners. That the only result available before this tribunal is as shown on Exhibit PL where the 1st respondent scored 13,863 votes while the 1st petitioner scored 12,796 votes. He said that by the said result, it is clear that the 1st respondent scored majority of lawful votes cast at the said election and was therefore validly declared the winner of the said election by the 3rd respondent.

In view of the foregoing, he urged the Tribunal to hold as follows: -

- (a) That there is no proof before this tribunal that the election of the 1st respondent as Member of Sokoto State House of Assembly in issue is vitiated by any act of corrupt practices, substantial non-compliance with the provisions of the Electoral Act, 2010 (as amended) and INEC electoral guidelines; and
- (b) That the petitioners on whom the burden of proving their case lies have not led any credible evidence before this Honourable Tribunal to prove that the 1st respondent was not duly elected or returned by majority of lawful votes cast at the said election.

In conclusion he urged this tribunal to dismiss this petition with substantial costs.

In his Final Written Address dated on 1/8/19, filed on 26/8/19, the learned counsel for the 3rd Respondent, *Mallam Mohammed Shuaib* posited that the other issues thrown up by this Petition had been raised in the Third Respondent's application dated the 20/5/19 filed on 22/5/19 and argued on the 27th day of May 2019. That since the issues had been argued in the said application, the parties cannot reargue the said issues in this address.

Thus, he submitted that the sole issue for determination in this Petition is:
Whether the Petitioners have made out a case as would entitle them to the reliefs sought?

Arguing the said issue, he submitted that the Petitioners have not made out a case to entitle them to the reliefs sought in the Petition. He thereafter argued the issue under distinct sub-headings.

ALLEGED CORRUPT PRACTICES AND NON-COMPLIANCE:

Learned counsel posited that in paragraph 17 of the Petition, the Petitioners alleged facts to prove corrupt practices and Non-Compliance with the provisions of the Electoral Act and the Guidelines issued by the Third Respondent for the Election. He submitted that the allegations in the said paragraph 17 are too general in nature to sustain the petition and worse still, they did not lead evidence to establish the general allegations.

He submitted that where the ground for challenging the return of the candidate in an election is by reason of corrupt practices or non-compliance with the provision of the electoral Act, the petitioner must prove;

- a. That the Corrupt Practices and non-compliance took place; and
- b. That the Corrupt Practices or non-compliance substantially affected the result of the election.

See the case of: ***WIKE EZENWO NYESON v. HONORABLE (DR.) DAKUKU ADOL PETERSIDE & ORS (2016) ALL FWLR (pt. 842) 1573 @ 1635, paras. E-F.***

He submitted that in the instant case the Petitioners neither called any witness nor tendered any document to establish that the corrupt practices took place and that the corrupt practices substantially affected the result of the election as declared by the Third Respondent.

He said that in paragraphs 17 to 18 of the Petition, the Petitioners made copious allegations of corrupt practices and non-compliance but the only polling units mentioned in these paragraphs are:

- a. Meli Makaranta Polling Unit allegedly said to be in Gigane Ward;
- b. Shiyar Galadima Polling Unit code 002 allegedly said to be in Gwadabawa Ward; and
- c. Shiyar Salihu Polling Unit 005.

He submitted that no evidence was led by the Petitioners in respect of any of these polling units as well as any of the other polling units in the rest of the wards in the Constituency so the facts alleged in Paragraphs 17 to 18 of the Petition are deemed to have been abandoned by the Petitioners. See the cases of : ***OLANIYAN v. OYEWOLE (2010) LPELR-9109(CA); AJAYI & ANOR v. BOSEDE (2014) LPELR-23984.***

That the Petitioners in their efforts to prove their case called PW1 and PW3 who gave evidence in respect of an alleged Shiyar Galadima Meli Polling Unit 013 which the alleged was purportedly in Gigane Ward. He said

that there is no fact in the Petition to support this evidence because nowhere in the Petition was any allegation made in respect of the alleged Shiyar Galadima Meli Polling Unit 013. That it was not mentioned at all in the Petition and no evidence was led by the Petitioners to show that this particular polling unit is the same as either Meli Makaranta Polling Unit allegedly in Gigane Ward or the Shiyar Galadima Polling Unit code 002 in Gwadabawa Ward.

He submitted that any evidence on facts not pleading go to no issue. See: ***AKINBADE & ANOR v. BABATUNDE & ORS (2017) LPELR-43463***; and ***ALAHASSAN & ANOR v. ISHAKU & ORS (2016)***.

He urged the tribunal to discountenance the entire evidence of PW1, and PW3, because their evidence on the happenings at the alleged Shiyar Galadima Meli Polling Unit 013 is not supported by the pleadings in the Petition.

That no evidence of corrupt practices and non-compliance was led in respect of the other polling units in Gigane Ward or in any of the units in (a) Gwadabawa Ward (b) Asara Kudu Ward (c) Asara Arewa Ward and Atakwanyo Ward. That the allegations of corrupt practices and non-compliance in those places are therefore deemed abandoned. See ***OLANIYAN v. OYEWOLE (Supra)***.

Learned counsel submitted that in his witness Statement on Oath which he adopted as his evidence before the Tribunal, the First Petitioner purported to give evidence on the allegations in paragraphs 17-18 of the Petition but admitted under cross examination that as soon as he voted, he went to his house. That the implication of this is that he was not in the field on the day of the election so his evidence on the facts pleaded in paragraphs 17-18 of the Petition are hearsay. He said that more specifically, the 1st Petitioner admitted that paragraphs 26-37 of his written statement on oath were information he received from third parties. He relied on Section 38 of the Evidence Act and the cases of: ***IWEKA v. FRN (2010) LPELR-4344(CA)***; and ***SHIDE v. STATE (2018) LPELR-45038***.

He submitted that the Tribunal must therefore expunge the 1st Petitioner's evidence from the record and relied on the case of ***ALIMI V OBAWOLE (1998) 6 NWLR (PT. 555) 591 AT P.594***.

He submitted that none of the witnesses presented by the petitioners testified on issues bordering on corrupt practices and non-compliance in the places mentioned in the Petition. That in essence the petitioners failed to establish the alleged corrupt practices.

ADMISSIBILITY OF THE EXHIBITS TENDERED BY THE PETITIONERS:

Learned counsel submitted that the Petitioners in the course of hearing tendered the following public documents as exhibits:

1. Three ballot papers for Asara Kudu ward-Exhibit PA1 to PA3
2. Three ballot papers for Asara Arewa ward-Exhibits PB1 to PB3
3. Three ballot papers for Atakwanyo ward-Exhibit PC1 to PC3
4. Three ballot papers for Gigane ward-Exhibit PD1 to PD3
5. Three ballot papers for Gwadabawa ward-Exhibits PE1 to PE3.
6. Eighteen copies of Forms EC8A for Gigane ward-Exhibits PF1 to PF 18
7. Fifteen copies of Forms EC8A for Asara Kudu ward -Exhibit PG1 to PG 15
8. Five copies of Forms EC8B for Gwadabawa North-Exhibits PH1 to PH5
9. Form EC8E for Gwadabawa North Constituency-Exhibit PI.

He submitted that Exhibits PA1 – PA3, PB1-PB3, PC1-PC3, PD1-PD3 and PE1-PE3 are original documents which require no certification but Exhibits PF1-PF18, PG1-PG15, PH1-PH5 and Exhibit PI are photocopies of the originals and to be admissible, the Petitioners must show that the strict conditions on certification laid down by Section 104 (1) of the Evidence have been complied with.

He submitted that there is no evidence that there has been any payment of certification fees for Exhibits PH1 to PH5 and referred to the case of: ***TABIK INVESTMENT LTD V G.T.B. PLC (2011) LPELR – 3131.***

Counsel submitted that there is nothing to show that the Petitioners have paid the required fees stipulated in the Evidence Act 2011 and it follows that in line with the holding in ***TABIK INVESTMENTS LTD*** above, the certified copies of the documents tendered by the Petitioners are invalid and inadmissible and he urged this Honourable Tribunal to expunge all the exhibits of the Petitioner in line with the holding in ***ALIMI V OBAWOLE. (supra).***

Learned counsel submitted that the Tribunal cannot consider any of the documents and the exhibits must be treated as if they have never been admitted. See ***KUBOR VS DICKSON (SUPRA).***

THE CONFLICT BETWEEN THE ORAL EVIDENCE OF THE FIRST PETITIONER, RW4 (UNDER CROSS EXAMINATION) ON THE ONE HAND AND EXHIBITS PL AND PN:

Learned counsel submitted that the Petitioners alleged in their petition that the return of the election they are challenging was that of Gwadabawa North and they cross-examined RW4 and led her to also say that the Election was for Gwadabawa North contrary to her evidence in chief. He however pointed out that

Exhibits PL and PN, the forms filled by the First Petitioner and the Second Respondent's candidate, Abdullahi Garba before they ran for the election showed clearly that the two candidates contested for the Gwadabawa South State Constituency.

He therefore urged the Tribunal to accept exhibits PL and PN, which are documentary evidence made on oath and discountenance the oral evidence that contradict them. He relied on the case of: *C.A.P. Plc v. Vital Inv. Ltd (2006) 6 NWLR (Pt. 976) 220 at 266 - 267* where the court held that:

“When there is conflict between oral testimony and documentary evidence, the latter is to be preferred. Where there is oral evidence as well as documentary evidence, the documentary evidence should be used as hanger from which to assess oral testimony.”

THE PETITIONERS' FAILURE TO APPLY FOR THE ISSUANCE OF PRE-HEARING NOTICE AS IN FORM TF 007 WITHIN 7 DAYS AFTER THE SERVICE OF THE THIRD RESPONDENT'S REPLY AS MANDATORILY PROVIDED IN THE FOURTH SCHEDULE TO THE ELECTORAL ACT 2010.

Learned counsel submitted that the Petitioners are obliged by Paragraph 18 (1) and (4) of the Fourth Schedule to the Electoral Act to apply for the issuance of Pre-Hearing Notice as in Form TF 007 within 7 days. He reproduced the said Paragraph as follows:

“18(1) Within 7 days after the filing and service of the Petitioners' Reply on the Respondent or 7 days after the filing and service of the Respondent's Reply, as the case may be, the Petitioner shall apply for the issuance of pre-hearing notice as in Form TF 007.

18(3) The Respondent may bring the application in accordance with sub-paragraph (1) where the Petitioner fails to do so, or by Motion which shall be served on the Petitioner and returnable in 3 clear days apply for an order to dismiss the petition.

18(4) Where the Petitioner and the Respondent fail to bring an application under this paragraph, the Tribunal or Court shall dismiss the Petition as abandoned Petition and no application for extension of time to take step shall be filed or entertained, (Underlying that of counsel for emphasis).

He submitted that the Petitioners must file the application for the issuance of the Pre-Hearing session only after the filing and service of the Third Respondent's

Reply to the Petition. That any application before and or after the prescribed mandatory seven (7) days as required by the above provisions is defective, premature and of no effect whatsoever to which the Tribunal has no option than to dismiss the Petition *in limine*. He maintained that the Petitioners did not file the application for the issuance of the Pre-Hearing Notice as in Form TF 007 within 7 days from the date they were served with the Third Respondent's Reply.

He further submitted that by the provisions of Paragraph 49 of the First Schedule to the Electoral Act, 2010 (As Amended) where there is more than one Respondent in an election petition, the election petition against each Respondent is deemed to be a separate petition and therefore the Petitioner has a duty to apply for the issuance of Pre-Hearing Information Sheet against each and every Respondent separately within the time specified and failure to do so will render the petition liable to be dismissed. He posited that in the case of: **PREYE OSEKE AND ANR V. INEC (2011) LPELR** the Court of Appeal had cause to interpret the provisions of Paragraph 18 and 49 of the Fourth Schedule to the Electoral Act. The Court, Per Awotoye JCA held at pages 7-9, Paras D-A that:

“In interpreting paragraph 18 of the First Schedule, the entire provision of the Electoral Act must be considered. See CHIMIE v. UDE (1996) 3 NWLR Pt. 46 376; NWULE v. IWUAYANWU (2004) 15 NWLR 61 at 85.

I am of the respectful view that paragraph 18 should be read with paragraph 49 of the First Schedule. It reads: "49 Two or more candidate may be made respondents to the same petition and their case may, for the sake of convenience be heard at same time but for all purposes (including the taking of security) the election petition shall be deemed to be a separate petition against each of the respondents."

The implication of reading paragraph 18 with paragraph 49 is that when there are more than one respondents, the election petition against each of the respondents shall be deemed to be a separate petition. In other words where the petitioner is to apply for issuance of pre-hearing notice as in form TF007 under the said paragraph 18, he is to do so within 7 days after each respondent files and serves his reply or after the petitioner had filed and served petitioner's reply to each of the respondent's reply.

If he fails to do so in respect of one of the respondents, that respondent is empowered to invoke the provision of paragraph 18 (3) or as the case may be, the tribunal is empowered to suo motu dismiss the petition against such respondent. The petitioner is not to wait for all the respondents to file and serve their respective replies before applying for pre-hearing notice, See IKORO V.

IZUNASO (supra). Though the respondents are jointly sued before the tribunal, the election petition against each of the respondents is deemed under paragraph 49 of the Electoral Act to be a separate petition."

He also cited the case of ***CAN V. AMAEWHULE (2011) CA/PH/EPT/6/2011*** delivered on 16th of November 2011 and submitted that the Petitioners did not apply for the issuance of the Pre-Hearing Notice as in Form TF 007 within 7 days as they were obliged to do after the Third Respondent filed and served its Reply and that their petition is therefore incompetent.

In conclusion learned counsel submitted that the Petitioners have not made out a case to entitle them to the reliefs sought in this petition and he urged this Tribunal to dismiss it with substantial costs.

The learned counsel for the Petitioners, ***Mohammed Adeleke Esq.*** filed a Final Address dated and filed on the 9th of August, 2019. In his address, learned counsel identified the Issues for Determination as formulated by the Tribunal and argued them.

ARGUMENT ON ISSUES ONE AND TWO

Learned counsel submitted that the election conducted and contested for by the 1st Petitioner and the 1st Respondent on the 9th March, 2019 for Gwadabawa North state constituency for Sokoto State House of Assembly was marred by irregularities, misconduct, corrupt practices and noncompliance with the provisions of the Electoral act 2010 (as amended) and the INEC Regulations and Guidelines for the Conduct of Election 2019 amongst other complaints.

He said that by paragraph 15 of the petition, Gwadabawa North State Constituency has five wards which include the following:

- i. GWADABAWA WARD
- ii. ASARA AREWA WARD
- iii. ASARA KUDU
- iv. GIGANE WARD
- v. ATAKWANYO WARD

He said that by paragraph 6 of their Reply, the 1st and 2nd Respondents admitted that the above stated wards are the wards wherein the 1st Petitioner and 2nd Respondent contested the election held on the 9th March, 2019 but they however maintained that the said election was conducted in Gwadabawa South State Constituency of Sokoto State.

He said that the 1st and 2nd Respondents placed heavy reliance on Exhibit PM which is the Certificate of Return issued to the 1st Respondent by the 3rd Respondents while the petitioners vigorously maintained that the election was conducted and contested for under Gwadabawa North constituency of Sokoto state.

He said the petitioners relied on Exhibit PI i.e. Form EC8E which is the declaration of result and other Exhibits consisting of ballot papers, result of election from polling units e.t.c. tendered by PW2, the electoral officer of the 3rd Respondent for Gwadabawa local Government who was on subpoena duces tecum and also testified as RW3

Learned counsel posited that it is not in dispute that Exhibit PI i.e. FORM EC8E is the declaration of result which produced the 1st Respondent as the purported winner of the election of 9th March, 2019 upon which the Certificate of Return, Exhibit PM was issued to the 1st respondent. That it is clear from the face of Exhibit PI that the election contested by the 1st petitioner and the 1st Respondent was in Gwadabawa North Constituency of Sokoto State. He said that it is equally not in dispute that exhibit PI (FORM EC8E) and every other Exhibits tendered in this petition are documents of the 3rd respondent.

He submitted that the 1st petitioner, PW1, PW2 and PW3 all maintained that the election conducted by the 3rd Respondent on the 9th March, 2019 was for Gwadabawa North Constituency and they testified that the wards in Gwadabawa North Constituency are: Gwadabawa ward, Asara Kudu ward, Asara Arewa ward, Gigane ward and Atakwanyo ward. He said that Exhibits PA1-PA3, PB1—PB3, PC1-PC3, PD1-PD3, PE1-PE3, PF1-PF3 are some of the ballot papers used for election for the House of Assembly election in Gwadabawa North State constituency for Asara Kudu ward, Asara Arewa ward, Atakwanyo ward, Gigane ward and Gwadabawa ward respectively.

He posited that the PW2, who was subpoenaed to produce documents used for the election in Gwadabawa North Constituency produced the aforementioned Exhibits PA1-PA3, PB1-PB3, PC1-PC3, PD1-PD3, PE1-PE3, PF1-PF3, PG1-PG15, PH1-PH5 and PI. That PW2 is the Electoral officer of the 3rd Respondent for Gwadabawa local government who equally testified as RW3. That under cross-examination, she testified that Exhibits PA1-PA3, PB1-PB3, PC1-PC3, PD1-PD3, PE1-PE3 are ballot papers used in the said election for Gwadabawa North constituency.

He said that RW3 also confirmed that Exhibit PI is for Gwadabawa North Constituency and it has the names of the 1st petitioner and the 1st Respondent. That she also confirmed under cross-examination that Exhibit PG8 mentioned Gwadabawa North as the constituency where the election was conducted.

Learned counsel submitted that in the whole of Exhibits PG1-PG15, Gwadabawa south was never mentioned as the constituency where the election was conducted. That in Exhibits PG8 and PG14 mentioned Gwadabawa North as the constituency, that no constituency was named on Exhibit's PG1,PG2, PG4,PG6,PG7,PG9,PG12,PG13, and PG15. That Exhibits PG3 and PG 5 on the other hand contains Sokoto constituency while Exhibits PG10 and PG11 contain

Gwadabawa west. That in Exhibits PF1-PF18, none of the Exhibits have Sokoto South written on them, rather Exhibits PF9, PF13 and PF18 contain Gwadabawa North as the constituency wherein the election took place whereas Exhibits PF1,PF2,PF4,PF5,PF7,PF8,PF10,PF11,PF12,PF16 and PF18 do not have any constituency written on it.

Learned counsel submitted that the other Exhibits which are documents of the 3rd Respondents did not bear Gwadabawa South neither was any other documents tendered by the 3rd Respondents to contradict the above tendered documents. That apart from the Certificate of Return, Exhibit PM all the electoral material does not have Gwadabawa South written on them. He said that the 1st respondent under cross-examination equally identified the 5 wards in Gwadabawa North constituency as contained in exhibits PA1-3, PB1-PB3, PC1-P3, PD1-PD3 and PE1-P3 and the 1st respondent also confirmed that he contested under the 5 wards. That these Exhibits are for the wards under Gwadabawa North constituency as no such wards exist in Gwadabawa South Constituency. He maintained that the evidence of the 1st respondent that he contested for election under Gwadabawa South constituency is not valid because oral evidence cannot be used to vary the content of a document. He relied on the following cases: *BALIOL V. NAVCON (2010) 5 SCNJ P. 125 @ 1228 Ratio 8*; and *OGUNDELE V. AGIRI (2009) 12 SCNJ P.141 @ 146 RATIO 6*.

Learned counsel submitted that from Exhibit PI i.e. Form EC8E, bearing the names of the 1st Petitioner and 1st Respondent which was produced by the 3rd Respondent, the 1st Petitioner and the 1st Respondent contested election for Member representing the Gwadabawa North state Constituency for Sokoto State House of Assembly held on the 9th March, 2019 and he urged us to so hold.

He further submitted that RW3 who is the Electoral officer of the 3rd Respondent for Gwadabawa local government did not give any evidence to clarify the discrepancies/irregularities as to the issue of constituency and she only strengthened the case of the petitioners that the 3rd respondent conducted election between the 1st petitioner and the 1st respondent in Gwadabawa North State constituency and not Gwadabawa South State Constituency as the Respondents alleged.

He submitted that there is no evidence to show that an election between the 1st petitioner and the 1st Respondent was conducted for House of Assembly, Sokoto State in Gwadabawa South Constituency. That all electoral materials particularly Exhibit PI i.e. Form EC8E points to the fact that the election of 9th March, 2019 between the 1st petitioner and 1st respondent was contested and conducted for Gwadabawa North constituency. He referred to the case of: *OGUNDELE V. AGIRI (SUPRA) PER 1. F OGBUAGU JSC RATIO 2 @ p. 144*, where it was held that the court can also examine the documents and exhibits in question in a

case and draw necessary inference. That it is not in dispute that Exhibit PI is the declaration of result which produced the 1st Respondent as the purported winner of the election of 9th March, 2019 upon which the Certificate of Return, Exhibit R was issued to the 1st respondent. He therefore urged the Tribunal to critically examine the Exhibits tendered before this court particularly Exhibit PI (Form EC8E), PA1-3, PB1-3, PC1-3, PD1-3, PE1-3 (i.e. ballot papers for Gwadabawa North Constituency vis-a-vis the ward; Exhibits PF1-PF18, PG1-PG15 and PH1-PH5 in arriving at the conclusion that the 1st petitioner and the 1st respondent contested election for Member representing Gwadabawa North State Constituency for Sokoto State House of Assembly held on the 9th March, 2019.

In response to the arguments of the 1st and 2nd respondent in their final written address at paragraphs 5.9, 5.12, 5.17 he submitted that if the court should consider the argument of counsel that Exhibits PL and R were in respect of the election for Gwadabawa South, then the curious question that begs for an answer is: what are the documents/electoral materials used for the election of 9th March, 2019 for House of Assembly Sokoto State for Gwadabawa South? He said that such documents do not exist hence they were not produced before this Tribunal. That in other words, no election was actually conducted between the 1st petitioner and the 1st Respondent for Member House of Assembly, Sokoto State for Gwadabawa South constituency. That none of the results from all the polling units carries Gwadabawa South. That having the certificate of return does not prove anything as you cannot place something on nothing and expect it to stand. He said that it only goes to show that the election was marred with grave irregularities. That this is a grave irregularity wherein only the nullification of the said election will suffice. That the presumption of regularity of election as provided for in section 146 and 148 (1) of the Evidence Act, 2011 cannot avail the respondents in the face of all the contradictory electoral materials before the Tribunal. He referred to the case of: *CPC V. INEC & 41 Others (2011) LPELR-SC.426/2011 AT P.57* where the Supreme Court held thus;

“Any evidence produced by the appellant to rebut the presumption of regularity enjoyed by INEC by virtue of section 168 of the Evidence Act, 2011 (as amended) can only be rebutted by cogent, credible and acceptable evidence. A court of law can only pronounce on judgment based on credible evidence presented and properly established before it. A court is not at liberty to go outside the evidence and search for extraneous evidence in favour of the parties.”

ARGUMENT ON ISSUE TWO

On Issue 2, learned counsel submitted that it is clear that this issue 2 formulated by this Tribunal in its prehearing report of 13th June, 2019 which is in pari material with issue No1 formulated and filed by the 3rd respondent on 10th June, 2019 and also adopted by the 3rd Respondent on the 10th June, 2019 reads as follows: *“whether the 1st respondent has the locus standi to institute this petition either alone or together with any other person challenging any return for the Gwadabawa South State constituency held on the 9th day of March, 2019 when he was never a candidate in that election”*

He said that it is noteworthy that Issue 2 as contained in the 1st and 2nd Respondent’s final address is different from the one stated above as the 1st and 2nd respondent’s counsel in its address substituted 1st respondent with 1st petitioner. He said that it is clear from the petition and the replies before this Tribunal that the 1st Respondent was not the one that instituted this petition, therefore the issue of having locus standi does not arise. He therefore submitted that issue 2 is vague, ambiguous and does not arise from the pleadings of all parties to this petition and as such should be struck out.

However, he submitted that the 1st petitioner who is one of the petitioners in this petition has locus standi to institute this petition based on all the oral and documentary evidence before this court. He adopted his arguments on issue 1 of his address and urged the Tribunal to hold that the 1st petitioner has the locus standi to institute this petition.

ARGUMENT ON ISSUE THREE

On this Issue, learned counsel submitted that there is no iota of evidence before this Tribunal to show that the 2nd Respondent’s candidate is a party to any other petition challenging the return of the 1st respondent for the Gwadabawa North state constituency election held on 9th March, 2019. He said no copy of the alleged petition was tendered before this Tribunal nor any petition number to show that there is another petition wherein the 2nd respondent candidate was sued apart from this instant petition. He therefore submitted that the issue of this petition being an abuse of court process does not arise.

Furthermore, he submitted that this issue was not pleaded by the parties to this petition and as such should be struck. He said that it is trite that the address of counsel cannot take the place of pleadings and evidence.

ARGUMENT ON ISSUE FOUR

Learned counsel urged the Tribunal to resolve this issue in favour of the petitioners since they were able to prove the corrupt practices through parole and documentary evidence. He said that the evidence of PW1 is to the effect that the election commenced at Shiyar Galadima at 8:00am up to 6:30pm when the supporters/thugs of the 1st and 2nd Respondents started snatching ballot papers from petitioners’ women supporters and thumb printed ballot papers for the 1st and 2nd

respondents. That the voting process continued up till late in the night when APC supporters brought a sack full of already thumb printed ballot papers and this prompted the petitioners agent to call the Sole administrator of Gwadabawa Local Government area who came to the polling unit and took pictures as well video of the sack full of already thumb printed ballot papers brought by the 1st and 2nd respondents supporters. He said that it is also in the evidence of the PW1 that due to the above corrupt practices by agents and supporters of 1st and 2nd Respondents, the agent of the petitioners refused to sign the result at Shiyar Galadima Meli polling unit at Gigane ward. He said that PW3 testified that he was at Shiyar Galadima Meli polling unit in the evening of the election where he tried to stop APC thugs/supporters from further stuffing the ballot box with already thumb printed ballot papers hence he took pictures and video tape of the incidence. That the PW3 also testified that APC thugs threatened to kill supporters of the petitioners and as a result, the petitioners supporters left the collation center in order to save their lives and the collation officer still went ahead to record the votes for the said polling unit. That the PW3 further testified that at Shiyar Galadima Tshohuwar Magina polling unit due to the bribe given by the APC in order buy votes, election was postponed to 10th March, 2019 and the officer of the 3rd respondent who ought to officially notify the petitioners of the postponement of the election failed to do so until the actual date of the election (10th day of March, 2019). That this made the supporters of the petitioners to come out late for election on the subsequent date of the poll and were consequently unable to cast their vote.

He submitted that all the above evidence adduced by the petitioners with regards to corrupt practice during the election that led to this instant petition were cogent and unchallenged by the respondents. That it is trite law that material evidence that is unchallenged by the adverse party remains valid and ought to be acted upon by the court.

With regards to the evidence adduced on substantial non-compliance with the provision of the Electoral Act, 2010 (as amended) and INEC Guidelines and Regulations for the conduct of the 2019 general elections, learned counsel submitted that the petitioners were able to establish substantial non-compliance via parole and documentary evidence adduced before this tribunal.

He submitted that to prove the allegation of substantial non-compliance, the following exhibits were tendered by the PW2: Exhibit PA1-3, Exhibits PB1-3, PC1-3, PD1-3, and PE1-PE3, which are the ballot papers used in the conduct of the election. That the PW2 who is an electoral officer of the 3rd respondent identified Exhibits PA1-PA3 to be the ballot papers from 3 polling units in Asara Kudu ward, Exhibits PB1-PB3 to be the ballot papers from 3 polling unit in Asara Arewa ward, Exhibits PC1-PC3 to be ballot papers from 3 polling units Atakwanyo ward, Exhibits PD1-PD3 to be ballot papers from 3 polling units in Gigane wards and

Exhibits PE1-PE3 to be ballot papers from 3 polling units in Gwadabawa ward.

That all the above exhibits represents wards under Gwadabawa North State constituency. That the witness also tendered exhibits PF1-PF18 which are copies of forms EC8A for Gigane ward, Exhibits PG1-PG15 which are 15 copies of forms EC8A for Asara Kudu ward, Exhibits PH1 – PH15 which are 5 copies of Forms EC8A. That the above exhibits substantially bear Gwadabawa North State constituency and these are the results collated by the 3rd respondent that gave birth to exhibit PI which is the final declaration of result. That the 3rd respondent did not lead any evidence to clarify all the discrepancies in the results and other electoral documents/materials emanating from them and upon which they claim that the 1st respondent was returned as the winner of the said election.

That the situation becomes more worrisome due to the fact that the 1st respondent was issued the certificate of return based on all the inconsistent electoral documents especially exhibit PI which is the final declaration of results which clearly bears Gwadabawa North State constituency. That this is a mockery of the whole electoral process which thus touches on its credibility and he urged the court to so hold.

Counsel contended that it is the constitutional duty of the 3rd respondent to properly delineate states into constituencies as provided for under **section 112** of the **Constitution of the federal Republic of Nigeria, 1999** (as amended). That the 3rd respondent in this instant petition must however comply with the procedure as provided for under **section 114** of the Constitution (as amended). That in a situation where the above provision is not complied with, this honourable tribunal cannot be moved to endorse the unconstitutionality of the act of the 3rd respondent by giving effect to the election so conducted in breach of the constitution. That the lack of proper delineation of the constituencies under Gwadabawa local government therefore will constitute substantial irregularity which should result in the nullification of the election in this instant petition.

He finally urged the Tribunal to resolve issue 4 in favour of the petitioners and order the 3rd respondent to go back to the drawing board to conduct a fresh competent and credible election going by the provision of section 140 (2) of the electoral Act 2010 (as amended).

ARGUMENT ON ISSUE FIVE

On issue 5 learned counsel submitted that the petitioners were able to prove that the 1st respondent was not dully elected or returned by majority of lawful votes cast at the said election via parole and documentary evidence adduced before this Honourable Tribunal.

He said that the evidence of PW1 is to the effect that respondents' supporter/thugs came to Shiyar Galadima Meli polling unit with a sack containing

already thumb printed ballot papers. That this piece of evidence was corroborated by PW3 as well as Exhibits PJ1-PJ10 and Exhibit PK. He said that exhibits PJ1 to PJ10 which are the pictures taken by PW3 at the Shiyar Galadima Meli polling unit shows that an agent of the 1st and 2nd Respondent held a sack while exhibit PK1, is a video disc of the incident at Shiyar Galadima polling unit at the day of election in 9th day of March, 2019.

He said that Exhibit PK1, was played before this Honourable Tribunal and it revealed that what was contained in the sack held by the supporters of the 1st and 2nd respondents in exhibit PJ1-PJ10 were already thumb printed ballot papers. That despite this discovery, the 3rd respondent still went ahead to declare the 1st respondent as the winner in that polling unit. He said that this piece of evidence was neither controverted nor discredited by the respondents.

That the PW3 also testified that the supporters of the 1st and 2nd respondents were involved in buying of votes which led to postponement of the election at Shiyar Galadima Tshohwar Magina polling unit on the 10th March, 2019 while the 3rd respondent failed to inform the petitioners of the reschedule date.

He said that contrary to the arguments of the 1st and 2nd Respondents counsel in paragraph 7.5 and 7.6 of their address, he submitted that exhibit PI upon which the 1st respondent was duly returned by the 3rd respondent is not meant for Gwadamawa South State constituency which he claimed to have contested election for but Gwadamawa North State Constituency. He submitted that the authority of *NYESOM V. PERTERSIDE (2016) ALL PWLR (PT. 842) 1573 AT 1647* cited by the learned counsel to the 1st and 2nd respondent was cited out of context and is not applicable to the instant petition and he urged us to so hold because the said presumption is rebuttable and cannot stand in the face of cogent and credible evidence to the contrary.

In response to paragraphs 7.10 and 7.11 of the 1st and 2nd respondents address he submitted that PW3 is an eye witness who testified before this Honourable Court on what he heard and saw and took pictures and videoed the incident. That the PW3 testified that the APC thugs threatened to kill supporters of the petitioners and as a result, the petitioners' supporters left the collation Centre in order to save their lives and yet the collation officer went ahead to record the votes for shiyar Galadima Meli polling unit in Gigane ward.

Learned counsel referred to *Section 125 and 126 of the Evidence Act 2011* which provides that:

“125. All facts, except the contents of documents, may be proved by oral evidence.

126. Subject to the provisions of part III oral evidence must, in all cases whatever, be direct

- a. *If it refers to a fact which could be seen, it must be the evidence of a witness who says he saw that fact'*
- b. *If it refers to a fact which could be heard, it must be the evidence of a witness who says he heard that fact...''*

ARGUMENTS AGAINST PRELIMINARY OBJECTION

In response to the arguments canvassed by the 1st and 2nd respondents' counsel on the competence of the petition on the ground that the 1st respondent was not properly named nor joined in this petition counsel submitted that the 1st respondent put up appearance and even testified as the 1st respondent in this petition. Furthermore, that exhibit R which is form CF001 filled by the 1st respondent in contesting the election bears Abdullahi Garba Sidi and the 1st Respondent placed reliance on the said exhibit.

He urge this tribunal to take a critical look at page 11 of the exhibit R which is the form CF001 filled by the 1st respondent which reflects otherwise than the name Abdullahi Garba simpliciter as falsely presented before this Honourable tribunal by the 1st respondent. He said that exhibit R shows that the 1st respondent presented two (2) different names to INEC which thus constitute an irregularity. He therefore urge this Tribunal to discountenance the submission of the counsel to the 1st and 2nd respondent and overrule their objection and hold that this petition is competent as presently constituted.

In conclusion, learned counsel urged us to withdraw the certificate of return issued in error to the 1st respondent, nullify and/or cancel the said election and mandate the 3rd Respondent to conduct a fresh election for the office of Member, Sokoto State House of Assembly for Gwadabawa North Constituency in other to regularize the discrepancies, misconduct and irregularities in the said election.

Upon receiving service of the 3rd Respondent's Final Address, the Petitioners' counsel filed a Reply on Points of Law.

In the said Reply on Points of Law, learned counsel submitted that it is trite law that an order of the court must be obeyed and the said order of the court remains valid and subsisting until/unless set aside by a superior court. That this Honourable Tribunal in its report issued after the conclusion of the pre-hearing session in this petition formulated 5 issues for the determination of this petition in line with paragraph 18 (10) of the 1st schedule to the electoral Act, 2010 as amended. That the third respondent formulated another issue distinct from the one contained in the pre-hearing report. He submitted that the 3rd Respondent at this stage cannot formulate another issue different from the one formulated by the Tribunal.

He referred us to the cases of: *AUWALU V FRN (2010) 16 WRN 1 AT 26;*
UGHELLI S.L.G.C V. EDOJAKWA (2018) 38 WRN 172 AT 182.

However, he said that in the event that we are inclined to look into the 3rd respondent's final address, he submitted that the entire arguments canvassed therein are full of approbation and reprobation.

On the submission of the counsel on the issue of corrupt practice and noncompliance as contained in paragraph 4.1 of the final written address, he submitted that the petitioners are in full compliance with the provision of Section 138 (1) of the Electoral Act, 2010 and was able to prove the contents of the said section as they relate to this petition that there was non-compliance and that the non-compliance largely affected the entire essence and results of the election.

On the submission of the counsel to the 3rd respondent that the evidence of the 1st petitioner amounts to hearsay, he said that this submission is contrary to the true position of the law. That the witness statement on oath of the 1st petitioner is in full compliance with the provision of section 115 (1) of the evidence Act, 2011. He referred to paragraph 2 of the 1st petitioners witness statement on oath and submitted that if read together, this Honourable tribunal will find that the evidence of the 1st petitioners does not amount to hearsay. That all the authorities cited by the counsel to the 3rd respondent as regards hearsay evidence are cases decided on oral evidence and not affidavit evidence as in this petition. He urged us to so hold.

On the submission of the 3rd respondent's counsel in paragraph 4.6-4.9 of his final written address as it relates to section 104 of the Evidence Act, 2011 on the issue as to the payment of legal fees for certification of document, he submitted that the 3rd respondents counsel's submission is a misconception of the true position of the law. That this Honourable Tribunal subpoenaed the 3rd respondent to produce some documents and in compliance with the said subpoena the 3rd respondent produced the documents which were tendered in evidence.

He submitted that whatever document so produced by the 3rd respondent on the order of the court whether primary or secondary is not caught up by the provision of section 104 of the Evidence Act, 2011.

On the submission of the counsel to the 3rd respondent on the conflict between oral evidence and documentary evidence, he submitted that the case of **C. A.P. PLC V. VITA INVESTMENT LTD** cited by the counsel is in full support of the petitioner's case as there are lots of documentary evidence which corroborated the case of the petitioners.

On the submission of the learned counsel to the 3rd respondent in paragraphs 6, 6.1 and 6.2, as to the application for the issuance of pre-hearing notice, he submitted that he who comes to equity must come with clean hands and he who seeks equity must do equity. That the 3rd respondent came into this petition during the pre-hearing session where the 3rd respondent applied via a motion on notice for extension of time to file their reply to the petition. That the Petitioners applied for the issuance of pre-hearing conference notice on the 17th April, 2019 within time.

He submitted that the cases of *CHIMIE V UDE*; and *NWULE V IWUAYANWU* cited by the counsel were cited out of context as same relates to where two or more candidates are concerned. That the 3rd respondent in this petition is not a candidate but an electoral umpire; therefore they cannot apply for multiple pre-hearing conference notice on all the parties to this petition.

On the whole he submitted that the arguments of the learned counsel for the 3rd respondent are full of technicalities and he urged the Tribunal to so hold.

We have carefully considered all the processes filed in respect of this Petition together with the arguments of learned counsels for the parties on all the issues formulated together with some other ancillary objections raised in this petition. Before we determine this petition on the merits, we shall resolve some of the preliminary objections raised in this petition. The preliminary objections are hydra headed. They range from objection to a ground of the petition; objection to the name of the 1st Respondent; objection to the alleged failure of the Petitioners to apply for the issuance of a specific Pre-Hearing Notice within 7 days after the 3rd Respondent filed and served their Reply and then the much orchestrated issue of the Petitioners allegedly suing in respect of a wrong constituency. For the sake of clarity, we will determine them *seriatim*.

The first objection is on one of the grounds for presenting this petition appearing in paragraph 16.3 of the petition which reads as follows:

“The 4th respondent in their bid to aid the 1st and 2nd respondent threatened, intimidated the supporters of the 1st and 2nd petitioners and stood by wherein the agents and supporters of the 1st and 2nd respondents where snatch the ballot box and also prevented many registered voters from exercising their franchise.” (sic)

The objection is that the alleged ground is not a cognizable ground for questioning an election as stipulated in ***section 138 (1) of the Electoral Act, 2010 (as amended)***.

In his written address, the learned counsel for the Petitioners did not advance any arguments to validate the ground.

For the avoidance of doubt ***Section 138 (1) of the Electoral Act, 2010 (as amended)*** provides as follows:

“138.(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 lawful votes cast at the election; or***
- d) that the petitioner or its candidate was validly nominated but was unlawfully excluded from the election.”***

It is settled law that before a Petitioner can question the election of the Respondent, his petition must fall within the grounds specified by the Act. See: *Oyegun v. Igbinedion & Ors. (1992) 2 NWLR (Pt. 226) 947; (1991) 2 LREC N 1j. (P. 302, para. B); Okonkwo v INEC & Ors (2003) 3 LREC N 599*

Under *section 138 (1) of the Electoral Act*, a petitioner is free to present his petition before any election tribunal to challenge or question the return of any candidate in an election under one or more or all the grounds specified under the section, depending on the circumstances of each case. Any ground which is not cognizable under the Electoral Act or the Constitution is liable to be struck out for being incompetent. See: *OSHIOMHOLE v. AIRHIAVBERE (2013) 7 NWLR (Pt. 1353) 376 @ 396 (SC); IBRAHIM v. UMAR (2012) 7 NWLR (Pt.1300) 502.*

It is evident that the ground in question is not cognizable under the relevant statutes and it is accordingly struck out.

On the objection on the name of the 1st Respondent, the 1st and 2nd Respondents have made heavy weather of the addition of the name “SIDI” to the name of the 1st Respondent. According to them the name of the 1st Respondent is simply “ABDULLAHI GARBA”. They contended that “ABDULLAHI SIDI GARBA” is not the same as “ABDULLAHI GARBA”. That ABDULLAHI GARBA was the person who contested and won the election and that failure to join him was fatal to the petition because the Tribunal will lack the jurisdiction to determine the matter in the absence of the person who won the election.

It is settled law that where an incorrect name is given in a writ and the parties are not misled, in that they know the identity of the person suing or being sued, such is to be regarded as a mere misnomer. See the cases of: *Osawaru & Anor Vs Fay - Dessy Cathering (2011) LPELR - 4872 (CA); Agbonmagbe Bank Ltd and Anor Vs C.F.A.O (1961)1 All NCR (Pt.1) 116; AB Manu & Co. Vs Costain (W.A) Ltd (1994)8 NWLR (Pt.360)1 12, Njemanze Vs Shell BP (1966) All NLR 8; Nkwocha Vs Fed. University of Technology (1996)1 NWLR (PT.442) 112; Njoku Vs U.A.C Foods (1999) 12 NWLR (Pt.632) 557. See also Njoku & Ors Vs Onwunelega (2017) LPELR - 43384 CA...*

We have examined all the processes filed and considered the arguments canvassed on this objection and we are of the view that the addition of SIDI to the names of the 1st Respondent has not occasioned any miscarriage of justice because the 1st and 2nd Respondents have not shown how they were misled or prejudiced by the addition of that name. Issues were properly joined by the parties without any doubt or uncertainty of the identity of the 1st Respondent. In the event, this objection is overruled.

The next objection is on the alleged failure of the Petitioners to apply for the issuance of a specific Pre-Hearing Notice within 7 days after the 3rd Respondent

filed and served their Reply. Much argument has been canvassed on whether or not the Petitioners are expected to file a specific notice for each Respondent. We must observe that this is an area where the law is quite recondite. There are a few hazy decisions on the point. We will not want to make any pronouncement on such an uncertain area where our jurisprudence of election petitions is still evolving.

However, we are of the view that even if there was a default on the part of the Petitioners to file another Notice, the default amounts to a mere irregularity which can be cured by the provisions of *Paragraph 53 of the 1st Schedule to the Electoral Act, 2010 (as amended)* which provides as follows:

- 53 (1) *Non-compliance 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.***
- (2) *An application to set aside an election petition or a proceeding resulting therefrom for irregularity or for being a nullity, shall not be allowed unless made within a reasonable time and when the party making the application has not taken any fresh step in the proceedings after knowledge of the defect.***
- (3) *An application to set aside an election petition or a proceeding pertaining thereto shall show clearly the legal grounds on which the application is based.***
- (4) *An election petition shall not be defeated by an objection as to form if it is possible at the time the objection is raised to remedy the defect either by way of amendment or as may be directed by the Tribunal or Court.***
- (5) *An objection challenging the regularity or competence of an election petition shall be heard and determined after the close of pleadings.***

At this stage, we must observe that the current and prevailing principle in the administration of justice is that where in the beginning or in the course of the proceedings, a party commits an omission or mistake in the laid down practice and procedure, it can be regarded as an irregularity which the tribunal or court can and should rectify or even ignore so long as it is satisfied that the omission or mistake is incapable of occasioning any miscarriage of justice. This is the principle that is enshrined in *Paragraph 53 (1), (2) and (4) of the First Schedule to the Electoral Act 2010 (as amended)*. See the following decisions on the point: *Sa'eed v.*

Yakowa (2013) 7 NWLR (Pt.1352) 124 @ 144-145, Paras H-B; Gundiri v. NYAKO (2014) 2 NWLR (Pt.1391)211 @ 244.

In the instant case, we are of the view that the alleged failure of the Petitioners to file a separate Notice was a mere irregularity which has not occasioned any miscarriage of justice on any side. The Pre-Hearing Session was duly conducted without any hitch and the matter progressed to trial with the 3rd Respondent participating fully in the trial. It is too late in the day for the 3rd Respondent to complain of such an alleged irregularity. Consequently, this objection is also overruled.

We now come to the salient objection on the alleged error in stating the constituency. The 1st and 2nd respondents in their reply to the petition raised a preliminary objection to challenge the competence of the said petition in the following terms:

- (i) That the election of the 1st respondent into the House of Assembly of Sokoto State is in respect of Gwadabawa South State Constituency of Sokoto State whereas the instant election petition of the petitioners is in respect of Gwadabawa North State Constituency of Sokoto State;
- (ii) That the petitioners have not disclosed any right in the instant petition vesting the said petitioners with any *locus standi* to present this petition to challenge the election conducted by the 3rd respondent for Gwadabawa South State Constituency of Sokoto State contrary to the provisions of paragraph 4(b) of the First Schedule to the Electoral Act, 2010 (as amended);
- (iii) That this instant election petition as presently constituted is incompetent and ought to be struck out by this Honourable Tribunal; and
- (iv) At the hearing of this preliminary objection, the 1st and 2nd respondents shall rely on the Certificate of Return issued by the 3rd respondent to the 1st respondent to show that it was the House of Assembly seat for Gwadabawa South State Constituency of Sokoto State that the 1st respondent contested and won at the said election and not Gwadabawa North State Constituency as constituted in this petition.

Incidentally, during the Pre-Hearing Session the learned counsel for the 3rd Respondents moved a motion dated 20th of May, 2019, filed on the 22nd of May, 2019 raising a similar preliminary objection, praying *inter alia* for an order dismissing this Petition on the ground that the Petitioner lacks the *locus standi* to institute an action against the Respondents for Gwadabawa North Constituency

even though the 1st Petitioner did not participate in the election for the Gwadabawa North Constituency held on the 9th of March, 2019.

At the Pre-Hearing Session, after taking the arguments of counsel on the preliminary objection, the Tribunal ruled that by virtue of the provisions of **Paragraph 12 (5) of the 1st Schedule to the Electoral Act 2010 as amended** the ruling on the Preliminary objection will be taken along with the substantive petition.

The essence of a preliminary objection is to terminate at infancy, or to nip in the bud, without dissipating unnecessary energies in considering an unworthy or fruitless matter in a court's proceedings. In other words, it forecloses hearing of the matter in order to save time. See: *Efet vs. I.N.E.C. (2011) 7 NWLR (Pt.1247) 423; and A.P.C. vs. I.N.E.C. (2015) 8 NWLR (Pt.1462) 531 at 541.*

Furthermore, where there is a preliminary objection, that objection should be determined first before going into the substantive matter. See: *A.P.C. vs. I.N.E.C. (2015) 8 NWLR (Pt.1462) 531 at 541.*

We will therefore consider the arguments of the learned counsels for the 1st, 2nd and 3rd Respondents on the preliminary objection and deliver a ruling on it before proceeding to determine the petition on the merits.

Essentially, the objection of the Respondents is grounded on their allegation that the constituency in which the 1st petitioner and the 1st respondent contested the said election is Gwadabawa South State constituency of Sokoto State and not Gwadabawa North State constituency of Sokoto State as alleged by the Petitioners. To resolve this controversy we need to consider the evidence adduced at the trial in order to make our findings.

In their bid to prove that the correct name of the constituency is Gwadabawa North State Constituency as pleaded in the petition, the petitioners tendered the following INEC documents viz:

- a) 3 ballot papers from Asara Kudu Ward as Exhibit PA1 – PA3;
- b) 3 ballot papers from Asara Arewa Ward as Exhibit PB1 – PB3;
- c) 3 ballot papers from Atakwanyo Ward as Exhibit PC1 – PC3;
- d) 3 ballot papers from Gigane Ward as Exhibit PD1 – PD3;
- e) 3 ballot papers from Gwadabawa Ward as Exhibit PE1 – PE3;
- f) 18 copies of Form EC.8A for Gidane Ward as Exhibits PF1 – PF18;
- g) 15 copies of Form EC.8A for Asara Kudu Ward as Exhibits PG1 – PG15;
- h) 5 copies of Form EC.8B for the Five Wards in Gwadabawa North State Constituency as Exhibits PH1 – PH5;
- i) 1 copy of Form EC.8E (declaration of result for Gwadabawa North State Constituency as Exhibit PI.

On the part of the 1st – 3rd respondents, to prove that the election was in respect of Gwadabawa South State Constituency, they relied on Exhibit PM which is the Certificate of Return issued by the 3rd respondent to the 1st respondent in where it was stated that the 1st respondent has been elected as member, Sokoto State House of Assembly to represent Gwadabawa South State Constituency of Sokoto State. They also relied on *Section 75(1) of the Electoral Act, 2010 (as amended)* which provides as follows:

“75. (1) A sealed Certificate of Return at an election in a prescribed form shall be issued within 7 days to every candidate who has won an election under this Act- PROVIDED that where the Court of Appeal or the Supreme Court being the final appellate court in any election petition as the case may be nullifies the Certificate of Return of any candidate, the Commission shall, within 48 hours after the receipt of the order of such Court, issue the successful candidate with a valid Certificate of Return.”

The respondents also relied on Exhibit R which is the INEC Form CF 001 completed by the 1st respondent and submitted to the 3rd respondent before the conduct of the said election in which the 1st respondent stated the constituency he was contesting the said election to be Gwadabawa South State Constituency.

In addition they also referred to Exhibit PL which is the INEC Form CF 001 completed by the 1st petitioner and submitted to the 3rd respondent before the conduct of the said election in which the 1st petitioner clearly stated the constituency he was seeking to contest the said election to be Gwadabawa South State Constituency of Sokoto State.

We have carefully examined Exhibit R which was completed by the 1st respondent before the election as well as Exhibit PL which was completed by the 1st petitioner before the same election. It is evident that both candidates knew beforehand that they were seeking election to the office of Member, Sokoto State House of Assembly to represent Gwadabawa South State Constituency and not Gwadabawa North State Constituency of Sokoto State as presently constituted in this petition.

During the trial, the PW 3 who testified for the Petitioner was meticulously cross examined by the learned counsel for the 3rd Respondent on the contents of Exhibit PL. His answers to questions put to him under cross examination are as follows:

“Cross-examination of P.W.3 by Mallam Shu’aibu: I have never contested any election organised by INEC.

I see Exhibit PL, the constituency written therein is Gwadabawa South.

I see page 2 of Exhibit PL, the name therein is that of the 1st Petitioner. The constituency he contested for as contained in his affidavit is Gwadabwa South constituency.

I am aware that there are two constituencies in Gwadabwa Local Government Area.

The 1st Petitioner contested for Gwadabawa South State Constituency.”

It worthy to note that during the Pre-Hearing Session, in a frantic bid to correct the error of wrong constituency as stated in their petition, the petitioners filed a motion on notice before this tribunal on the 21st day of May 2019 praying this tribunal for leave “*to amend the petition No: EPT/SKT/HA/19/2019 and the accompanying processes by substituting the word “Gwadabawa North” with “Gwadabawa South.*”

Some of the paragraphs in support of that motion are quite revealing. We will reproduce the contents of *paragraph 3 (i) to (viii)* 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.”* (underlined for emphasis)

From the contents of the above affidavit in support of their motion for amendment, the Petitioners clearly admitted *that the use of “Gwadabawa North” instead of “Gwadabawa South” in the Petition is a misnomer or an irregularity.* It is settled that a Court can take judicial notice of documents and processes in its file. See the following cases: *Osafile v Odi (1990) 5 S.C. (Pt. 11) 1*; *Lajibam Auto & Agric Concerns Ltd v UBA Plc (2013) LPELR- 20169(CA)*; *Okediran v Ayoola (2011) LPELR-4063(CA)*. See also *Garuba v Omokhodion* (supra), per Chukwuma-Eneh, JSC, where the Supreme Court said: *"It is trite that the Court*

before whom a proceeding is pending or has been completed takes judicial notice of all processes filed in the proceedings as well as the proceeding itself including the judgment as the case may be and so following from this proposition of law all the processes to be relied upon in any application made before that Court in the proceeding are judicially noticed."

However the 1st – 3rd respondents vehemently opposed the application for amendment and on the 30th of day of May 2019, this Tribunal gave a ruling refusing the said application for amendment. In our ruling, we stated *inter-alia* as follows:

"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."

Thus, it was quite clear to the Petitioners that they actually contested for Gwadabawa South State Constituency and not Gwadabawa North State Constituency as they are now contending. They tried to correct their error but failed in the effort. When the Tribunal refused the application to amend the petition, one would have expected the Petitioners to have withdrawn the defective petition. Surprisingly, they did a legal summersault and obstinately proceeded to try to establish that the election was actually in respect of Gwadabawa North State Constituency. What an amazing development! The Petitioners chose to approbate and reprobate in the same suit on such a salient matter that affects the competence of the petition.

In view of the foregoing, we wholly agree with the contention of the 1st – 3rd respondents that the correct name of the constituency in which the said election

was conducted is Gwadabawa South State Constituency and not Gwadabawa North State Constituency as stated in the petition.

Consequently, the preliminary objection of the 1st – 3rd respondents is upheld and the petition as presently constituted is incompetent, academic and an exercise in futility. We ought to strike out the petition at this stage but in the unlikely event that we are wrong; we will proceed to determine it on the merits.

The issues for determination as formulated by the Tribunal at the Pre-Hearing Session are as follows:

- 1. Whether by virtue of Form EC8A (1) (Declaration of Result) bearing the names of the 1st Petitioner and 1st Respondent and produced by the 3rd Respondent, the 1st Petitioner and 1st Respondent contested election for member representing the Gwadabawa North State Constituency for Sokoto State House of Assembly held on the 9th March 2019.***
- 2. Whether the 1st Respondent has the locus standi or capacity to institute this Petition either alone or together with any other person challenging any return for the Gwadabawa North State Constituency election held on the 9th day of March 2019 when he was never a candidate in that election.***
- 3. Whether the 2nd Respondent's action and joinder in this Petition when the said Respondent is a party to another petition challenging the return of the 2nd Respondent's candidate for the Gwadabawa North state constituency election held on the 9th March 2019 is not an abuse of the court process thereby rendering the petition liable to be dismissed.***
- 4. Whether the election of the 1st Respondent as member of the Sokoto state House of Assembly held on 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) and INEC guidelines and regulations for the conduct of 2019 general elections.***
- 5. 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 Sokoto State House of Assembly held on the 9th day of March 2019.***

We will proceed to resolve the issues *seriatim*.

ISSUES 1 AND 2

It is evident that Issues 1 and 2 are essentially on the issue of wrong constituency which we have decisively resolved in the preliminary objection. Consequently, we hold that the 1st Petitioner and 1st Respondent did not contest election for the office of member representing the Gwadabawa North State Constituency for Sokoto State House of Assembly held on the 9th March 2019.

Furthermore, since they did not contest for Gwadabawa North State Constituency, the 1st Respondent and the 1st Petitioner have no *locus standi* or capacity to institute this Petition either alone or together with any other person challenging any return for the Gwadabawa North State Constituency election held on the 9th day of March 2019 since they were never candidates in the election for that constituency.

Sequel to the above, Issues 1 and 2 are accordingly resolved against the Petitioners.

ISSUE 3

This issue is on whether the 2nd Respondent's action and joinder in this Petition when the said Respondent is a party to another petition challenging the return of the 2nd Respondent's candidate for the Gwadabawa North state constituency election held on the 9th March 2019 is not an abuse of the court process thereby rendering the petition liable to be dismissed.

Again we are of the view that in the light of our salient findings thus far the resolution of this issue will be a mere academic exercise. It has no utilitarian value. The maxim is: *de minimis non cureat lex* (the law does not concern itself with trifles).

ISSUE 4

Whether the election of the 1st Respondent as member of the Sokoto state House of Assembly held on 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) and INEC guidelines and regulations for the conduct of 2019 general elections.

This issue is based on the Ground of the Petition which is an off-shoot of ***Section 138(1) (b) of the Electoral Act, 2010 (as amended)*** which stipulates as follows:

“138. (1) An election may be questioned on any of the following

grounds, that is to say:

(b) that the election was invalid by reason of corrupt practices or non-compliance with the provisions of this Act.”

In an Election Petition, the burden of proof rests permanently on the Petitioners, to prove their petition. Under this ground the burden is on them to prove that the election was invalid by reason of corrupt practices or non-compliance with the provisions of the Electoral Act.

In the case of: *ORA EKWE & ANOR v. CHUKWUKA & ORS (2010) LPELR-9128(CA)*, the Court of Appeal shed some light on this ground thus: *“The Appellants challenged the Petition at the Tribunal on the grounds of - (a) Corrupt practices, and (b) Substantial non-compliance with the provisions of the Electoral Act. The two grounds have a common base. Every established act of corrupt practice amounts to non-compliance with the provisions of the Electoral act, but it is not every act of non-compliance that would amount to corrupt practice because corrupt practice imputes a criminal element, the burden of which is proof beyond reasonable doubt. In effect, the burden of proof in any allegation of corrupt practice is higher than the burden on a Petitioner who alleges a mere non-compliance with the provision of the Electoral Act, 2006. Any allegation of corrupt practice must be proved beyond reasonable doubt, and the burden is on the Petitioner to prove same - see Onuigwe V. Emelumba (2008) 1 NWLR (Pt. 1092) 371; ANPP v. Usman (2008) 12 NWLR (Pt. 1100) 1.”*

To determine this issue we will first of all look at the aspect of corrupt practices. In the case of: *IBEZI & ANOR v. INEC & ORS (2016) LPELR-41574(CA)*, the Court of Appeal made some salient pronouncements on the proof of corrupt practices thus:

“The term Corrupt Practices denote or can be said to connote and embrace certain perfidious and debauched activities which are really felonious in character being redolent in their depravity and want of ethics. They become hallmark of a decayed nature lacking in conscience and principle. The charges of corrupt practices are in nature criminal charges and ought to be proved beyond reasonable doubt. It is not sufficient to show that there are reasonable grounds to believe or suspect that there has been a corrupt practice. See NWOBODO v. ONOH (1984) 1 SCNLR page1; OMOBORIOWO v. AJASIN (1984) 1 SCNLR page 108; Oyegun v. Igbinedion & Ors (1992) 2 NWLR (pt.226) at 747. The Petitioner i.e. the 1st Respondent herein and his witnesses had alleged in their statements on oaths that there was violence, and threats to the peaceful atmosphere at C.B.N. Enugu where the materials for the election were

to be collected. In my humble view, where as in this case a petitioner makes an allegation of crime against a respondent in an election petition, and makes the commission of crime the basis of his petition as could be seen from Paragraphs 12B and 12C of the petition that there were no ballot boxes, no forms EC8A and no ballot papers or any other electoral materials for election on both 14/4/2007 and 28/4/2007 and further that there was violence on 14/4/2007 such a petitioner has a strict burden by virtue of Section 138(1) of the Evidence Act to prove the commission of the crime beyond reasonable doubt. If the petitioner fails to discharge this burden his petition fails.

And in Eze v. Okoloagu (2013) 3 NWLR (pt.1180) 183 at 233, this Court again stated thus:

My Lords, the case of malpractices, constitute allegation of commission of criminal activities, in an election petition, the petitioner had the burden of proving the allegation beyond reasonable doubt. To discharge the burden, it must be established that the respondents, particularly, the 1st respondent before the Tribunal (appellant herein), committed the act personally or aided, abetted, counseled or procured the commission of these alleged wrong doings. Moreover, the acts were committed by an agent or servant, there must be evidence that the agent was permitted to act in that capacity or had a general authority to act. Our law did not say that if the winner of the election benefitted from the alleged irregularities and or malpractices then the election or votes will be nullified. It says, participated either directly or indirectly.(Underlining, ours) In Wali v. Bafarawa (2004) 16 NWLR (pt.898) 1 at 44-45 this Court, Kaduna Division, said:

A respondent who is a candidate in an election cannot be held responsible for what other people did in the form of unsolicited act of which the candidate or his agent was ignorant.”

Coming to the instant case, in order to establish corrupt practices, the Petitioners called the 1st petitioner who testified for himself and called 3 witnesses. The petitioners also tendered several INEC documents.

In his written address, the learned counsel for the Petitioners highlighted some of the evidence adduced to substantiate the allegations of corrupt practices. We will scrutinise the allegations and make some preliminary findings on them as we proceed.

The learned counsel commenced with the evidence of PW1 to the effect that at Shiyar Galadima polling unit, the supporters/thugs of the 1st and 2nd Respondents started snatching ballot papers from some female voters and thumb printed ballot papers for the of the 1st and 2nd respondents. That the APC supporters brought a sack full of already thumb printed ballot papers and this prompted petitioners’

agent to call the Sole administrator of Gwadabawa Local Government area who came to the polling unit and took pictures as well videoed the sack full of already thumb printed ballot papers brought by the 1st and 2nd respondents supporters. That due to the above corrupt practices by the agents and supporters of 1st and 2nd Respondents, the agent of the petitioners refused to sign the result at Shiyar Galadima Meli polling unit at Gigane ward.

Furthermore, PW3 testified that at Shiyar Galadima Meli polling, some APC thugs/supporters were stuffing the ballot box with already thumb printed ballot papers and he took pictures and videotaped the incident. He also alleged that APC thugs threatened to kill supporters of the petitioners and as a result, the petitioners' supporters left the collation center in order to save their lives and the collation officer went ahead to record the votes for the said polling unit. The same PW3 also testified that at Shiyar Galadima Tshohuwar Magina polling unit due to the bribe given by the APC in order to buy votes, election was postponed to 10th March, 2019 and the officer of the 3rd respondent who ought to officially notify the petitioners of the respondent the postponement of the election day failed to do so until the actual date of the election (10th day of March, 2019). That as a result, the supporters of the petitioners were unable to cast their vote.

The PW1 and PW3 appear to be the star witnesses for the Petitioners in proof of their allegations of corrupt practices. On the part of the PW1, his evidence appears to be direct evidence of what he observed as a polling agent at Shiyar Galadima Meli polling unit. He said that he saw the thugs of the 1st and 2nd Respondents snatching ballot papers and thumb printed ballot papers for the of the 1st and 2nd respondents. It must be emphasized that these allegations are criminal allegations which must be proved beyond reasonable doubt. From the evidence of the PW1, the identities of the alleged thugs have not been disclosed. Furthermore, he has not told us how he came to the conclusion that the thugs were acting on the directives of the 1st and 2nd Respondents to incorporate the respondents as *participes criminis* (parties to the crimes). On the authorities earlier referred to in this judgment, *to discharge the burden, it must be established that the respondents, particularly, the 1st respondent before the Tribunal, committed the act personally or aided, abetted, counseled or procured the commission of these alleged wrong doings. Moreover, that the acts were committed by an agent or servant, there must be evidence that the agent was permitted to act in that capacity or had a general authority to act. Our law did not say that if the winner of the election benefitted from the alleged irregularities and or malpractices then the election or votes will be nullified. It says, participated either directly or indirectly.* See: *Eze v. Okoloagu (2013) 3 NWLR (pt.1180) 183 at 233.*

It is settled law that the Petitioner must link the 1st and 2nd Respondents directly with the said corrupt practices as to justify the conclusion that they were

responsible for them See: *Onyema v. Ekweremadu 9 EPR. 705.*

In the instant case, the evidence of the PW1 has not sufficiently linked the 1st and 2nd Respondents with the corrupt practices of snatching ballot papers and thumb printing ballot papers. Furthermore, nothing to show that the 1st and 2nd Respondents aided, abetted, counseled or procured the anonymous thugs to commit these alleged corrupt practices.

Coming to the PW3, he is the Sole Administrator of Gwadabawa Local Government Area, who allegedly took the photographs and the video clip of the incidents. In his evidence, he tried to analyse and explain the pictures and the video clip which was played in open court. The salient parts of his evidence in chief while analyzing the photographs and video clips are as follows:

“I see Exhibits PJ1 to PJ10, they are the Pictures of the person we saw carrying a sack filled with thumb printed ballot papers.

There were other ballot papers on the mat. The other people in Pictures are party agents and security agents.

I watched the video Exhibit PK1 as it was being played. What was played on the disk is also what was captured in the Pictures Exhibit PJ1 to PJ10.

In the video I saw a person who is an APC agent carrying a sack full of thumb printed ballot papers.

He was trying to mix the thumb printed ballot papers with the ones in the ground. We stopped him from doing that and we requested the presiding officer to seize the sack from him and to tell us where he got the papers from. This is what I stated in Paragraph 2 and 3 of my deposition.”

What is the gravamen of his evidence vis-à-vis the proof of corrupt practices? To say the least the evidence appears rather weak to prove the criminal allegations of ballot snatching and thumb printing of ballot papers. According to him an alleged APC man was trying to mix the thumb printed ballot papers with the ones on the ground and they stopped him from doing that. He said that they ***requested the presiding officer to seize the sack from him ...*** Who was this APC man? Why was he not joined as a party? The pictures tendered as Exhibits PJ1 to PJ10 are incapable of establishing any crime against anyone because the identities of the people in the pictures are unknown. It looks like the case of the unknown soldiers that burnt down the late Fela Anikulapo Kuti’s Kalakuta Republic. Of course the video clip was a complete waste of precious judicial time. The picture quality was very bad, the language of those speaking was unknown to the court and there was no attempt to translate anything. It was simply a cacophony of sound and fury signifying nothing.

On the evidence adduced at the trial, no case of corrupt practices was made out to implicate any of the respondents.

Next we come to the aspect of non-compliance with the provisions of the Electoral Act and the INEC Guidelines. In his written address, the learned counsel for the petitioners highlighted the alleged non-compliance with the provisions of the Electoral Act (as amended) and the INEC guidelines and regulations for the conduct of the 2019 general elections.

To establish the allegations of substantial non-compliance, the Petitioners relied heavily on some manifest irregularities which they found in some INEC documents such as ballot papers and INEC Forms.

They referred to Exhibits PA1-PA3 which are ballot papers from 3 polling units in Asara Kudu ward, Exhibit PB1-PB3 which are ballot papers from 3 polling units in Asara Arewa ward, Exhibit PC1-PC3 which are ballot papers from 3 polling units in Atakwanyo ward, Exhibit PD1-PD3 which are ballot papers from 3 polling units in Gigane wards and exhibit PE1-PE3 which are ballot papers from 3 polling units in Gwadabawa ward. All the above exhibits the PW2 stated to represent wards under Gwadabawa North State constituency. She also presented exhibits PF1-PF18 which are copies of form EC8A for Gigane ward, Exhibits PG1-PG15 which are 15 copies of form EC8A for Asara Kudu ward, Exhibits PH1 – PH15 which are 5 copies of Form EC8A.

He maintained that the above exhibits substantially bear Gwadabawa North State constituency and these are the results collated by the 3rd respondent that gave birth to exhibit PI which is the final declaration of result. That the 3rd respondent did not lead any evidence to clarify all the discrepancies in the results and other electoral documents/materials emanating from them but went ahead to issue the certificate of return based on all the inconsistent electoral documents. He said that this affected the credibility of the entire electoral process.

Again the learned counsel contended that it is the constitutional duty of the 3rd respondent to properly delineate states into constituencies as provided for under **section 112** of the **Constitution of the federal Republic of Nigeria, 1999** (as amended). That the 3rd respondent must however comply with the procedure as provided for under **section 114** of the Constitution (as amended). That in a situation where the above provision is not complied with, this Tribunal cannot endorse the unconstitutionality of the act of the 3rd respondent by giving effect to the election so conducted in breach of the constitution. He submitted that the lack of proper delineation of the constituencies under Gwadabawa local government constitutes a substantial irregularity which should result in the nullification of the election in this petition.

We must confess that on the face of it, this constitutional issue of improper delineation of constituencies by the 3rd Respondent looks quite formidable. But on

close scrutiny, it will be observed that the parties did not join issues on it. The vehement vituperations of the learned counsel on this ground of non-compliance arising from the alleged confusion in the INEC documents and the breach of the constitution arising from the lack of proper delineation of the constituencies under Gwadabawa local government appears to be coming out of the blues. In the Petitioners' pleadings and in the depositions of their witnesses, all these allegations of non-compliance were not raised. Their major complaints of non-compliance were: non-accreditation of voters, improper accreditation of voters, over-voting snatching of ballot papers and disenfranchisement of voters.

The Petitioners have introduced these new areas of non-compliance in a desperate bid to salvage the petition at all cost.

It is settled law that parties are bound by their pleadings, See: *Kyari vs. Alkali (2001) 11 NWLR (Pt. 724) 412 at 433-434*.

Furthermore, the address of counsel no matter how brilliant can never supplant or supplement the pleadings and the evidence adduced at the trial. See: *Vassilev vs. Paas Industry Ltd. (2000) 12 NWLR (Pt.681) 347 at 355; and Sanyaolu vs. INEC (1994) 7 NWLR (Pt. 612) 600 at 611*.

It is settled law that a matter is said to be in issue when it is properly raised as an issue and becomes relevant for deciding a disputed question. See: *Overseas Construction Ltd v. Creek Enterprises Ltd (1985) 3 NWLR (PT.13) 407*. Therefore, a Court will not and ought not deal with and determine any issue or question which was not properly raised or prayed for by a party. See: *Ebba v. Ogodo (1984) 1 SCNLR 372 AT 385; Adeleke v. Aserifa (1990) 3 NWLR (Pt.136) 94 at 112; UZOKWE V. UZOKWE (2016) LPELR-40945(CA)*

In the case of: *OLUSANYA V. OLUSANYA (1983) 1 SCNLR134, GUMEL, JCA* opined thus: *"It is a cardinal principle of adjudication in this country that when an issue is not placed before a Court of law, it has no business whatsoever to deal with it."*

In the light of the foregoing, we are of the view that we cannot go into the issues of confusion in relation to INEC Forms and improper delineation of constituencies on the matter of non-compliance with the provisions of the Electoral Act and the INEC Guidelines.

Furthermore, it is settled law that where a petitioner complains of non-compliance with the provisions of the Electoral Act, the petitioner has a duty to prove the non-compliance alleged based on what happened at each polling unit. The import of that duty is that the petitioner has to *call witnesses who were at each polling unit during the election*. See the cases of: *Gundiri v. NYAKO (2014) 2 NWLR (Pt.1391) 211; and Abubakar v. Yar'Adua (2008) 19 NWLR (Pt.1120) 1 @ 173*.

Also, a petitioner who alleges in his petition a particular non-compliance has

the onus to establish the non-compliance and satisfy the court that it affected the result of the election. See: *Dzungwe v. Swem 1960-1980 LRECN 313*.

In election petitions based on non-compliance with the Electoral Act, the intendment of the statute is to ensure *substantial compliance with the provisions of the Electoral Act* and not an *absolute compliance* with the Act. This principle of substantial compliance is enshrined in *Section 139(1) of the 2010 Electoral Act (as amended)* which stipulates as follows:

“139.(1) An Election shall not be liable to be invalidated by reason of non-compliance with the provisions of this Act if it appears to the Election Tribunal or Court that the election was conducted substantially in accordance with the principles of this Act and that the non-compliance did not affect substantially the result of the election.”

Consequently, a petitioner who alleges non-compliance with the Electoral Act must call credible witnesses to prove that there was *substantial non-compliance with the Electoral Act*: see the cases of: *EMMANUEL v. UMMANAH (No. 1) (2016) 12 NWLR (Pt.1526) 179 @ 256-257 paras G-C; NYEMSON v. PETERSIDE (2016) 7 NWLR (Pt.1512) 425*.

In the case of: *Buhari v. I.N.E.C. (2008) 19 NWLR (Pt. 1120) 746, @ p. 442* the Supreme Court restated the position thus:

“...the mere fact that there were irregularities or failure to strictly adhere to the provisions of the Act is not sufficient to void the election. In order to void the election it must be shown that:

- (1) That the irregularities or failures constitute a substantial departure from the principles of the Act and that;***
- (2) The irregularities or failures have substantially affected the results of the election.***

From the foregoing, it is clear that for any Court or tribunal to proceed to invalidate an election the conditions set out above must be met.

It follows therefore that a situation where the irregularities do not constitute a substantial departure from the principles of the Act and had not been shown to have affected the result of the election the Court or tribunal has no power to invalidate the election. Even in a situation where the Court considers that the proven irregularities constitute non-compliance, the Court still has to be satisfied that the non-compliance has affected the result of the election before election can be nullified.”

Again, in the case of: *Ucha & Anor v. Elechi & 1774 Ors (2012) 13 NWLR (Pt.1317) p.330*, the Court emphasised the principle of substantial compliance thus: ***“The results declared by INEC are prima facie correct and the onus is on the***

petitioner to prove the contrary. Where a petitioner complains of non-compliance with provisions of the Electoral Act, he has a duty to prove it polling unit by polling unit, ward by ward and the standard required is proof on the balance of probabilities and not on minimal proof. He must show figures that the adverse party was credited with as a result of the non-compliance, Forms EC8A, election materials not stamped/signed by Presiding Officers. He must establish that non-compliance was substantial, that it affected the election result. It is only then that the Respondents are to lead evidence in rebuttal..."

In the instant case the Petitioners were unable to prove the allegations of non-compliance in each of the affected polling units on the balance of probabilities. They could not show definite figures that the 1st and 2nd Respondents were credited with as a result of the alleged non-compliance. More importantly, they failed to establish that the alleged non-compliances were substantial and how they affected the election result.

In view of the foregoing, we hold that the Petitioners have not proved that the election of the 1st respondent as member of the Sokoto State House of Assembly held on the 9th day of March, 2019 ought to be set aside on the grounds of corrupt practices and substantial non – compliance with the provisions of the Electoral Act 2010 (as amended) and INEC guidelines and regulations for the conduct of 2019 general elections.

ISSUE 5

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 Sokoto State House of Assembly held on the 9th day of March 2019.

It is settled law that in election petition matters, the petitioner who filed the petition has the burden to prove the grounds. This is because he is the party alleging the grounds and he has a duty to prove the affirmative. He is the party who will lose if no evidence is given on the grounds. If the petitioner does not prove his case, the petition will be dismissed.

In the case of: ***Buhari V. INEC (2008) 19 NWLR (Pt. 1120)246 at 350 para. E; Tobi, J.S.C*** enunciated and restated the time honoured legal principle on the fixation of the burden of proof in election petitions when he expounded thus:

“The petitioner who files a petition under Section 145 (1) of the Electoral Act has the

burden to prove the grounds. This is because he is the party alleging the grounds and he has a duty to prove the affirmative. He is the party who will lose if no evidence is given on the grounds. If the petitioner does not prove his case under Section 145 (1) of the Act, the action fails.”

Where as in the instant case, the Petitioners are alleging that the 1st respondent was not duly elected or returned by majority of lawful votes cast at the election, the onus is on them to prove the allegations on the balance of probability, otherwise their petition would be dismissed.

Thus, the burden is on the Petitioners to adduce evidence to establish their case before the Respondents can become obliged to call any evidence in rebuttal of the evidence adduced by the Petitioners.

The question now is whether the Petitioners have adduced sufficient evidence before this Tribunal to prove that the 1st respondent did not obtain the majority of lawful votes cast at the election.

In order to ascertain whether the Petitioners discharged the burden on them it will be expedient to carefully examine the evidence adduced in that regard.

In proof of this issue, the Petitioners relied mostly on the evidence of their witnesses who mainly testified about acts of malpractices in some polling units. Their witnesses did not lead evidence on the votes scored in each polling unit to enable us ascertain whether the 1st Respondent actually failed to obtain the majority of votes scored.

It is settled law that where a ground of petition is that the respondent was not elected by majority of lawful votes, the *petitioner ought to plead and prove the votes cast at the various polling stations, the votes illegally credited to the “winner”, the votes which ought to have been credited to him and also the votes which should be deducted from that of the supposed winner* in order to see if it will affect the result of the election. Where this is not done, it will be difficult for the Court to address the issue. See: *Awolowo vs. Shagari (1976) 6-9 S.C.51; and Nadabo vs. Dubai (2011) 7 NWLR (Pt.1245) 155 at 177.*

Furthermore, it is settled law that in order to prove the aforementioned salient factors; the proof is largely based on documentary evidence. In the reported case of: *IKPONMWOSA V. EGHAREVBA & ORS (2009) LPELR-4685(CA)*, the Court opined thus:

“It is settled law that in an election petition, the decision on who had majority of lawful votes is based largely on documentary evidence mainly election results

Forms. This is because documents when tendered and admitted in Court are like words uttered and do speak for themselves. They are more reliable and authentic than words as they bear an eloquent testimony of what really transpired. See NGIGE V. OBI (2006) 14 NWLR (PT. 999) 233 and AIKI V. IDOWU (2006) 9 NWLR (PT. 984) 47.”

In this case, although the Petitioners tendered some documentary exhibits, we observed that the exhibits were not analysed by any of the witnesses to show that the 1st Respondent did not obtain the majority of lawful votes.

It is settled law that a ground in an election petition alleging that the respondent was not duly elected by majority of lawful votes cast at the election is tantamount to an allegation that the declaration of result made by the 3rd respondent is a falsified result. To establish such an allegation, the petitioner must tender in evidence two set of results: one being the result declared by INEC and the other being the result available to the petitioners upon which they are urging the tribunal to declare that the respondent was not duly elected by majority of lawful votes.

In the case of: ***ABARI & ORS v. ADUDA & ORS (2011) LPELR-19750(CA)***, the Court of Appeal stated the position thus:

“It is more than settled in a long line of cases by both this Court and the Supreme Court that when a Petitioner challenges the return of a statutory Respondent on account of falsity of result, it is incumbent on such Petitioner to plead and produce in evidence two sets of results one correct and the other stigmatized as false.”

See also the case of: ***HERO V. SHERIFF (2016) ALL FWLR (PT 861) 1309 AT 1363 – 1364*** aptly cited by the learned counsel for the 1st and 2nd Respondents.

In the instant petition, the only result available before this tribunal is the result declared by INEC (the 3rd respondent) Exhibit PL wherein the 1st respondent scored the majority of lawful votes cast at the said election by polling 13,863 votes while the 1st petitioner scored 12,796 votes. The petitioners did not plead or tender any other result in respect of the said election to contradict the contents of the said EXHIBIT PL. Since EXHIBIT PL is the only result available before this tribunal, the tribunal is obliged to accept same as the only authentic result declared by the 3rd respondent in respect of the said election.

Furthermore, applying the principle laid down in the earlier cited decisions of: ***Awolowo vs. Shagari (1976) 6-9 S.C.51; and Nadabo vs. Dubai (2011) 7 NWLR (Pt.1245) 155 at 177***, we are of the view that the petitioners also failed to plead and prove the votes cast at the various polling stations, the votes illegally credited to the 1st Respondent, the votes which ought to have been credited to him and also the votes which should be deducted from that of the 1st Respondent in

order to see if it will affect the result of the election. Having failed to do this, it will be impossible to resolve this issue in favour of the Petitioners.

In view of our findings made so far, we are of the view that the Petitioners have not led sufficient and credible evidence 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 Sokoto State House of Assembly held on the 9th day of March 2019.

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

HON. JUSTICE P.A. AKHIHIERO
CHAIRMAN

HON. JUSTICE A.N. YAKUBU
1ST MEMBER

HIS WORSHIP S.T BELLO
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