IN THE NATIONAL AND STATE HOUSES OF ASSEMBLY
ELECTION PETITION TRIBUNAL
HOLDEN AT SOKOTO
ON SATURDAY, THE 21st DAY OF SEPTEMBER, 2019
BEFORE THEIR LORDSHIPS:

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

PETITION NO: EPT/SKT/HA/33/19

BETWEEN:

1. YUSUF MUHAMMAD GOBIR.
2. ALL PROGRESSIVES CONGRESS (APC) } **PETITIONERS**

AND

1. MUSTAPHA AMINU
2. PEOPLES DEMOCRATIC PARTY (PDP)
3 INDEPENDENT NATIONAL ELECTORAL COMMISSION } **RESPONDENTS**

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

The Petitioners vide a Petition dated the 31st day of March 2019 and filed on the 1st day of April 2019 are challenging the election of the 1st Respondent on the platform of the 2nd Respondent to the office of member, House of Assembly for Sabon Birni North Constituency of Sokoto State held on the 9th day of March 2019. The grounds for presenting the Petition are as follows:

1. The first respondent was not duly elected by majority of lawful votes cast at the election.

2. The election was marred by over voting in Sabon Birni West ward and no voting at all in Allakiru polling unit with No 010, Dantudu polling unit with code No 003, Amazawa 001 and Gidan Dagi 012.

While the reliefs sought are as follows:

1. That it be declared that the 1st respondent did not score the highest number of valid votes cast at the election
2. That there were no elections at all in the following polling units namely Allakiru 010, Dantudu 003, Amazawa 001 and Gidan Dagi 012.

Alternatively

That the said election be nullified or cancelled and the 3rd Respondent is to conduct fresh election for the Member to represent Sabon Birni North State Constituency in the State House of Assembly because there were no voting at all at Allakiru Polling Unit with Code No. 010 and Dantudu polling Unit with Code No. 003 of Lajinge Ward with total number of 1,069 registered voters and Amuzawa and Gidan Dagi polling units with code Nos. 001 and 012 of Tsamaye ward with a total number of 990 of Registered voters.

Upon service of the Petition on the Respondents, the 1st and 2nd Respondents filed their joint Reply to the Petition on the 12th day of April 2019 while the 3rd Respondent filed hers on the 24th day of April 2019. It is noteworthy that all the Respondents incorporated a notice of preliminary objection in their said replies which the Tribunal urged should be argued along with the substantive petition in line with extant laws. The Petitioners filed a reply to the 1st and 2nd Respondent's Reply on the 18th day of April 2019 and filed a counter affidavit to the notice of preliminary objection of the Respondents on the 24th day of April 2019. The 1st and 2nd Respondents thereafter filed a Reply on points of law to the written address of the Petitioner in opposition to the preliminary objection on the 2nd day of May 2019.

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

1. Whether the return of the 1st Respondent as winner of the election for Sabon-Birni North State Assembly Constituency for Sokoto State held on the 9th day of March, 2019 ought not to be set aside on grounds of corrupt practices, substantial non-compliance with the provisions of the Electoral Act 2010 (as amended) and INEC Election guidelines 2019; and
2. Whether the Petitioners have led sufficient and 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 election for the office of Member House of Assembly for Sabon-Birni North Constituency of Sokoto State held on the 9th day of March 2019.

Trial began in this case on the 10th day of June 2019. The Petitioners eventually called two (2) witnesses with the 1st Petitioner himself being the third person to testify in proof of the Petition while only the 1st Respondent testified in rebuttal.

A summary of the case presented by the Petitioners at the hearing is as follows:

PW1, Garba Ummaru kaba adopted his written deposition. A summary of the said written deposition is to the effect that he was an APC agent at Constituency collection unit of Sabon Birni North Constituency in the election for the member representing Sabon Birni North Constituency of Sokoto State in the House of Assembly election conducted by the 3rd Respondent on the 9th day of March 2019. According to him, he knows as a fact that four polling units namely Allakiru 010, Dantudu 003, Amazawa 001 and Gidan Dagi 012 were cancelled by the 3rd Respondent without giving reasons for their cancellation.

Under cross examination, he informed the Tribunal that the only polling unit where he voted was Shiyar Naila 006. After he voted, he waited at his polling until evening before going to the collation centre when they started to bring in the results. He did not visit Allakiru polling unit, but the person bringing the result informed him that elections were cancelled in four polling units. Two from Lajinde ward, Allakiru and Dantudu and two from Tsamaye ward, Amazawa and Gidan Dagi polling units. He did not visit any of the aforementioned polling units. According to him, INEC wrote a report which confirmed that results were cancelled from the concerned polling units.

P.W. 2 Shehu Ahmed Abdulkadir was the electoral officer for Sabon Birni Local Government Area in the last election. He appeared at the Tribunal on a Subpoena duces tecum to produce some documents. He thereafter tendered the following documents which were admitted as exhibits as follows:17 copies of Forms EC8A for Sabon Birni West were admitted in evidence as Exhibits PA1-PA17,3 copies of Forms EC8B for Sabon Birini west, Lajinge and Tsamaye wards were admitted in evidence as Exhibits PB1, BP2 and PB3 respectively,Form EC8C for Sabon Birni North State Assembly Constituency-Exhibit PC, 48 pages voters Register for Allakiru 010 Polling unit at Lajinge ward-Exhibit PD, 61 pages Voter's Register for Dantudu 003 Polling unit at Lajinge ward-Exhibit-PE, 56 Pages Voter's Register for Amuzawa 001 Polling unit at Tsamaye ward-Exhibit-PF, 46 Pages Voter's Register for Gidan Dagi 012 polling unit at Tsamaye ward-Exhibit PG, Form EC40G for Lajinge ward-Exhibit PH, Form EC40G for Tsamaye ward-Exhibit P1, Letter from Dole & Co. to the Resident Electoral commissioner for Sokoto State-Exhibit PJ,Form EC8E Declaration of Result-Exhibit PK,Receipt evidencing payment for CTC Exhibit PL.

The 1st Petitioner, Yusuf Muhammed Gobir thereafter entered the witness box as his own witness. He adopted his witness statement on oath which is to the effect that he was a candidate of the 2nd Petitioner in the election for the member representing Sabon Birni North Constituency in the House of Assembly election conducted by the 3rd Respondent while the 1st Respondent contested in the same election on the platform of the 2nd Respondent on the 9th of March 2019.

According to the 1st Petitioner, the 1st Respondent did not score the highest number of lawful votes cast. Elections were not held in the following polling units Allakiru polling unit with code No 010 and Dantudu polling unit with code No 003 all in Lajinde Ward with total number of registered voters of 1,069. Elections were also not held in Amazawa and Gidan Dagi polling units with code Nos 001 and 012 respectively with total registered voters of 990. Also according to him, there was over voting in Sabon Birni west ward with over 299 votes.

That before the gubernatorial supplementary election, his lawyer A.M. Dole Esq wrote to the 3rd Respondent vide a letter dated the 13th day of March 2019 on the need for supplementary election in Sabon Birni North Constituency because of the above observations and the 3rd Respondent replied on the 20th day of March, 2019

advising that they contest it at the Election Tribunal. He maintained that if over voting is cancelled, he shall be returned as elected having scored the highest number of lawful votes cast.

The 1st Petitioner testified further that in paragraph 7, he stated that his lawyer wrote a letter. The letter he referred to is Exhibit PJ. He was shown Exhibits PH and PI. He explained that Exhibit PH is for the cancellation of two polling units of Lajinge ward to wit; Allakiru polling unit and Dantudu polling unit. Allakiru polling unit has 469 registered voters and Dantudu polling unit has 600 registered voters. Exhibit PH was signed by one Dr. M.S. Magani the Returning officer of Sabon Birni. The document was signed on 10/3/19. He was also shown Exhibit PI, there are two polling units: Amuzawa polling unit 001 with 546 Registered voters; and Gidan Dadi Polling unit 012 with 444 registered voters. The returning officer who signed Exhibit P1 is Abdullahi M. Bello dated 9/3/19. He was shown Exhibit PB 2. It is for Lajinge ward where two polling units were cancelled. They omitted Allakiru Polling unit and Dantudu Polling units. He identified Exhibit PB3 for Tsamaye ward, Amazawa and Gidan Dagi polling units are omitted.

It was also his evidence that when his solicitor wrote to INEC, the 3rd Respondent replied his lawyer. He identified the letter from INEC as Exhibit PM. He testified further that there was over voting in Sabon Birni West. He was shown Exhibit PB 1 wherein he informed the Tribunal that there are 17 polling units in Sabon Birni West. From Exhibit PB 1 the accredited voters for the 17 polling units are 9,934. From Exhibit PB1 the total votes cast are 9,083 votes. The rejected votes are 851. He pointed out that when you add the votes cast to the rejected votes it exceeds the accredited voters.

He identified Exhibit PA1 to PA17 for Sabon Birni West and confirmed that Exhibit PC is the Summary of Results for 6 wards. The accredited votes are 40,730. The valid votes are 37,985. The rejected votes are 2,563. He identified Exhibit PK it is the Declaration of Result Form. His total score is 18,249. His opponent scored 19,504 votes. A difference of 1,255 votes.

Under cross-examination, he informed the Tribunal that he voted at Women Center Polling unit 016 in Sabon Birni West. There are six wards in Sabon Birni West State Constituency. There are 96 polling units in the six wards. Elections were

conducted in all the 96 polling units except 4 polling units. He identified Exhibit P1, two polling units were mentioned: Amazawa and Gidan Dagi. The reason given in Exhibit P1 for not holding in Amazawa is violence. The same reason was given for not holding the election in Gidan Dagi. He identified Exhibit PH, two polling units were affected. The results in the two polling units were cancelled because of over voting. In Exhibits PH and PI none of the candidates who contested were awarded any score. All the candidates were affected by the cancellation. He identified Exhibit PK declaration of result. His score is 18, 249.

He conceded that he did not have any other score apart from the one recorded by INEC. Exhibit PK was signed on 9/3/19 when the election ended on 10/3/19. After casting his vote he remained in his polling unit. He admitted honestly that all what he stated in his Petition are based on what his agents told him. The said agents are all alive. He maintained that his complaint is about over voting and cancellation in Sabon Birni West.

That was the case for the Petitioners.

As earlier stated, only the 1st Respondent testified in rebuttal. A summary of his evidence is as follows:

1st Respondent Aminu Mustapha adopted his written deposition. A summary of the said written deposition is to the effect that he is a member of the 2nd Respondent and was a candidate sponsored by the said 2nd Respondent for Sabon Birni North State Constituency election held on 9th March, 2019. After the general traverse, he insisted that he was duly elected having scored the majority of lawful votes cast at the election and as such was declared winner and returned by the 3rd Respondent. According to him, the election in respect of Sabon Birni North State Assembly Constituency, in which he was declared winner was not marred by any over voting not even in Sabon Birni West Ward but in all the polling units that make up the Constituency, save in Allakiru polling unit 010, Dantudu polling unit 003, of Jalinge Ward. That in Amazawa polling unit 001 and Gidan Dagi polling unit 012 of Tsamaye Ward no election was held due to violence. He denied the allegation of corrupt practices or non compliance with any of the provisions of the Electoral Act, 2010 as (amended) and the INEC Manual for 2019 Election and insisted that the votes scored by him were product of due election, conducted in substantial

compliance with the Electoral Act, 2010 as (amended) and INEC Manual for 2019 Election.

He stated further that all the scores entered into the various forms EC 8A (I), EC8A(II) and EC8A (B) for the various Wards that made up Sabon Birni North State Assembly Constituency, are the correct and actual votes scored by each candidate in the Election in accordance with the Electoral Act, 2010 as (amended) and INEC Manual for election official, 2019. That contrary to the Petitioners' assertion in paragraph 11.4 of the Petition, there was no over voting with 299 votes in Sabon Birni West or any other part making up Sabon Birni North State Assembly Constituency. That he was duly returned as elected, having scored the highest number of valid votes, by the 3rd Respondent. He insisted that the Petitioners are not entitled to any of the reliefs sought and urged the Tribunal to dismiss the Petition as being vexatious, lacking in merit and an abuse of the process of this Honourable Tribunal with substantial cost.

Under cross-examination, he informed the Tribunal that he has no other result apart from the one with which INEC declared him the winner. He identified Exhibits PH and PI. In both, the results of four polling units were cancelled. He identified Exhibit PB1 as the summary result for Sabon Birni West while Exhibit PB2 is the summary of results for Sabon Birni Local Government Area for Lajinge ward. Exhibit PB3 is the summary result for Tsamaye ward which is part of his constituency. There are six wards altogether that form the constituency. The remaining three wards are Unguwar-Lalle, Makuwana and Sabon Birni East. His own Polling unit falls under Makuwana ward. Garin Malawmain 006 was his polling unit.

He admitted voting on the 9/3/19 and insisted that the result was declared on the same day at that Polling unit. He also admitted that he will not be happy if his polling unit or constituency is cancelled. He does not know the number of registered voters in his polling unit. The result of the APC candidate in his polling unit is not known to him but he won there. He does not know the result of the APC candidate in Makuwana. He also does not know the result of the APC candidate for the whole constituency. He did not record the result from his ward Makuwana ward. The result for his constituency is 19, 504 votes. The question whether it is

right for the INEC to cancel the votes in a unit where there is over voting by one vote should be answered by INEC not him.

That was the case for the 1st and 2nd Respondents.

A.M. Dambuwa Esq, learned counsel to the 3rd Respondent then informed the Tribunal that the 3rd Respondent will not call any witness in rebuttal. The case was thereafter adjourned for adoption of final address.

The learned counsel to the 1st and 2nd Respondents adopted their final address filed on the 16th day of July 2019 and the Reply on point of law filed on the 28th day of July 2019 and urged the Tribunal to strike out this Petition for being statute barred or dismiss same on its merit with substantial costs. The learned counsel to the 3rd Respondent adopted their final address filed on the 29th day of July 2019 and also urged the Tribunal to dismiss the Petition. Learned counsel to the Petitioners adopted their final address filed on the 25th day of July 2019 and urged the Tribunal to grant their reliefs. He submitted further that Exhibit PB1, PB2 and PH are fundamental to this Petition with Exhibit PB1 having multiple entries from the 3rd Respondent. According to the learned counsel, he is left with no option other than to choose one of the entries to prove their voting.

The case was thereafter adjourned for judgement.

It is noteworthy that the 1st and 2nd Respondents raised a preliminary objection challenging the competence of the petition and the jurisdiction of this Honourable Tribunal to adjudicate on same on the following grounds:

1. That this Honourable Court lacks the jurisdiction to entertain the Petition same having not been properly brought in accordance with the Provisions of the Constitution of the Federal Republic of Nigeria 1999, as (amended) and the Electoral Act, 2010 as (amended).
2. Petition No. EPT/SKT/HA/33/19, is incompetent same having been filed outside the Statutory period of filing an Election Petition arising from the Gubernatorial and State House of Assembly Election conducted on the 9th March, 2019, wherein, result was declared on the same day.

3. The grounds of the petition are vague by failure to provide facts in support thereof.
4. The Petition is not properly constituted.
5. That the petition is incongruous, garrulous and defective.

Whereof, the 1st and 2nd Respondents prayed that the Petition be dismissed/struck out by this Honourable Court.

A.Y. Abubakar, learned counsel to the 1st and 2nd respondents formulated three (3) issues for determination with respect to the said preliminary objection to wit;

1. *Whether or not by the combined effect of the provisions of section 285(5) of the 1999 Constitution of the Federal Republic Of Nigeria as (Amended) and section 134(1) of the Electoral Act, 2010 as (Amended), the Petition No: EPT/SKT/HA/33/19,is not filed out of time.*

2. *Whether ground 11.2 as contained at page 4 of the petition is a competent ground and recognizable by this Tribunal having not founded on any ground(s) for challenging an election as provided by section 138 (1) of the electoral Act 2010 (as amended). (sic)*

3. *Whether or not this Honourable Tribunal has the jurisdiction to hear and determine Petition No. EPT/SKT/HA/33/19, as presently constituted.*

With respect to the first issue, learned counsel submitted that it is elementary and rather trite that petitions arising from the conduct of an election must be filed within 21 days after the declaration of result and referred the Tribunal to the

provisions of section 285(5) of the 1999, Constitution as (amended) and section 134(1) of the Electoral Act, 2010 as (amended).According to the learned counsel, an aggrieved party wishing to challenge the declaration or return of a winner to an election, must bring his petition within 21 days after the declaration of the result. Any petition filed outside the period of 21 days would be said to have been filed out of time and is liable to be struck out. See the Supreme Court case of EMINUE V. NKEREUWEN & ORS (1966) LEPLR -25348(SC) *Per* ADEMOLA, JSC.

In the meantime, the election being challenged by the petitioners herein was held on 9th day of March, 2019 wherein, the 1st Respondent was declared winner and returned on the same day. See paragraph 10 of the petitioners' petition. Therefore, the petitioners have 21 days after declaration of result to challenge the declaration and the return of the 1st Respondent who have been declared winner at the said election. Time began to run from the 10th day of March and automatically ended on 30th March, 2019. Sadly, the present petition against the return of the 1st Respondent and against the Peoples Democratic Party (PDP) the political party that sponsored the 1st Respondent was only filed on 1st April, 2019, 23 clear days after the declaration of the result. Learned counsel referred the Tribunal to the case of AKPAN & ANOR V. LUKE & ORS (2015)LPELR-41651(CA) *Per* YAHAYA, JCA *(Pp. 7-8 paras. F-D)*

> *"The petition having been filed on the 2nd day of May 2015, was filed in 22 days time. It was therefore filed out of time by one day. The law is clear, if a statute makes provisions, spelling the procedure for doing an act, the door is closed for adopting a different procedure – OKEREKE VS. YAR'ADUA (SUPRA). For the instance petition to be maintainable, it ought to have been filed within the stipulated 21 days. It was not. It was therefore not maintainable……"*

Learned counsel submitted that it is apt to state here, that the provision of section 285(5) of 1999 Constitution, as (amended) and indeed section 134(1) of the Electoral Act, 2010 as (amended) are clear and unambiguous and no aid are required for their interpretation. See PDP V. OKOROCHA & ORS (2012) LPELR-14187(CA) *Per* ABDULLAHI, JCA *(Pp.24-25, para B).* The learned counsel then posed the question, when does time to file an election petition begin to run? He referred to the holding of the court in the case of ALATAHA V. ASIN (1999) 5NWLR (PAT.601) 32 @ 44 paras D-F held thus,

> "Time begins to run when there is in existence, a person who can sue and another who can be sued and all facts have happened which are material to be proved to entitle the plaintiff to succeed. In the instant case, time therefore began to run on 7/12/98 when Exhibit 1 R1 were issued declaring the 1st respondent as being the winner of the election"

Applying the above principle in the case at hand, time begins from the date when form EC 8E(I) was signed by the returning officer. Admittedly, the petitioners by their own pleadings admitted this fact in Paragraph 10 of the petition. In fact the same form EC 8E (I) referred to, by the petitioners formed part of the bundle of election document intended to be relied upon at the trial of this petition. He submitted further that, where the date of declaration of result is in dispute, Form EC 8E(I) is the best evidence as to the issue of when a result was declared. See the case of UGOCHUKWU V. NWOKE & ANOR. (2001) 5 WRN 93 @ 105 where SANUSI JCA (as he then was).

An election petition must be presented anytime before the expiration of 21 days, or more concisely put, not later than 21 days from the date the result of the election is declared. See OGBEBOR V. DANJUMA (2003) 15 NWLR (Pt. 843) 403. Compliance with the statutory provision as to filing election petition within 21 days from the date the result is declared is a fundamental pre-condition. Non-compliance leaves the petitioner with an unenforceable cause of action.

He further submitted that even where there are administrative challenges, as the petitioners are trying to suggest in this case, that cannot be a reason for extending time to file election petition. Even where a petitioner complained of inability to file his petition within time due to late arrival of the Tribunal's officers, it was held that such administrative difficulties encountered by the petitioner could not override the express provisions of the law. See MALA V. KACHALA (1999)3NWLR (Pt.594) 309. Therefore, the mere fact that Exhibits were dated 10th March, 2019, is not enough to say that result of the election was declared on 10th March, 2019. Since none of the Forms EC8As tendered as Exhibits bore a different date as contained in Exhibit PK12 (Declaration of Result form EC8E (I).

With respect to the second issue, learned counsel referred the Tribunal to the provisions of section 138(1) of the Electoral Act 2010 as amended (2015) and submitted that it is now settled that the grounds upon which an Election Petition can be presented are those specified in Section 138 (1) of the Electoral Act. Anything outside these grounds statutorily provided, will render the petition invalid. Those grounds and none other are the only valid grounds upon which an election petition can be presented.

Learned counsel noted that on the face of the petition, the Petitioners in ground 11.2 alleged as follows:

> *"the Election is marred by over voting in Sabon Birni West ward and no voting at all at Allakiru polling units with Code No. 010, Dantudu polling units No. 003 Amazawa 001 and Gidan Dagi 012"*

He argued that this ground is clearly outside the grounds set out by section 138 of the Electoral Act, 2010 (as amended), as any ground for questioning election petition must conform to those provided by Electoral Act and any variation or non conformity with those provided by Electoral Act makes them liable to be struck out. He referred to the case of WAMINI-EMI V. IGALI (2008) LPELR-5091 where the Court of Appeal *Per* Lawal, JCA and urged the Tribunal to hold that ground 11.2 of the Petitioners' petition is outside the grounds provided by Electoral Act and liable to be struck out.

The learned counsel also submitted that the petitioner is required as a matter of necessity to state in clear terms the facts giving rise to a ground or grounds upon which he based his petition. Anything short of that renders the ground/grounds ambiguous, vague and incomprehensive, capable of beclouding the mind of the respondent making him unable to understand what he is required to respond to. Where such a situation presents itself, the trial court has no alternative but to strike out such ground (s) or petition/suit. See A.P.G.A V. OHAKIM (2009) 4 NWLR (Pt. 1130) p. 116 @ 125.

With respect to the third issue, learned counsel submitted that it is trite that jurisdiction is the life wire or blood that gives life to any adjudication in whatever system of laws that comes into focus. Jurisdiction is to a court what a gate or door is to a house and thus, very fundamental and essential to adjudication. See DR. TAIWO OLORUNTOBA OJU & 4 ORS V. PROF SHUAIB O. ABDUL RAHMAN & 3 ORS (2009) 5-6 SC(Pt. II) 57.

The jurisdiction of an Election Tribunal to deal with an election petition is of a very special nature different from that in ordinary civil cases. The slightest default in complying with a procedural step which otherwise either could be cured or waived in ordinary civil proceedings could result in fatal consequences to the petition. See the cases of AJAYI V. NOMIYE (2012) 7 NWLR (Pt. 1300) P. 593, BUHARI V. YUSUF (2003) 14 NWLR (Pt. 841) P. 466.

By the combined effect of sections 285(5) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) 134(1) of the Electoral Act, 2010 (as amended), an election petition must be presented and filed within 21 days after the declaration of the result. Any petition filed outside the period of 21 days is incompetent and

the Tribunal is robbed of the jurisdiction to hear and determine same. See PDP V. OKOROCHA & ORS (Supra) *Per A*BDULLAHI JCA.

Learned counsel in summation submitted that since the result was declared on 9th March, 2019 same day the election was held, and this petition was only filed on 1st April 2019, Petition No. EPT/SKT/HA/33/19 is incompetent and therefore, this Honourable Tribunal lacks the jurisdiction to entertain same. Consequently, he urged the Tribunal to so hold and strike out the Petition with substantial cost.

Learned counsel submitted with respect to the substantive petition that this petition was filed on the 1st day of April, 2019 by the Petitioners against the Respondents; pursuant to the Election of a Member, Sokoto State House of Assembly representing Sabon Birni North State Constituency held on 9th March, 2019, wherein, the 1st Respondent was declared winner of the said election, upon the grounds as stated at page 4 of the petition. Learned counsel thereafter formulated the following issues for determination.

1. *Whether this Honourable Tribunal has the jurisdiction to hear and determine this petition as presently constituted, same having been filed out of time.*

2. *Whether the Petitioners have proved that the 1st Respondent was not duly elected by majority of lawful votes cast at the said election*

3. *Whether the Petitioners have proved the allegations of corrupt practices and or non compliance with the provisions of the Electoral Act 2010 (as amended), and if in the affirmative, whether the said allegations have substantially invalidated the election.*

4. *Whether the Petitioners are entitled to any reliefs claimed having regards to the pleadings and the evidence before the Tribunal.*

With respect to the first issue, learned counsel reproduced his submission under the preliminary objection relating to this issue and cited the same case laws. He submitted further that whether it is on 9th day of March 2019 or on the 10th day of March, 2019 the result of the election was declared by the 3rd Respondent, the reality is that the petition was filed out of time thus incompetent and liable to be struck out. He thus urged the Tribunal to so hold.

With respect to the 2nd, 3rd and 4th issues, learned counsel submitted that because of the coterminous nature of issues 2, 3, and 4, he decided to coalesce those issues and argue same together and sought the leave of this Honourable Tribunal to do so. According to the learned counsel, the law is trite, that in an election petition, the Petitioner must succeed on the strength of his own case and not on weakness of his adversary. See the case of NWOBODO V. ONOH (2004) 10 WRN 27 AT 41.

Learned counsel noted that the Petitioner's ground supporting this petition are those stated in paragraphs 11.1 and 11.2 of the petition while facts supporting the grounds are those contained in paragraphs 11.3. 11.4 and 11.5. It is instructive here to note that the facts averred in paragraph 11.3 and 11.4 are ambivalent, vague, uncertain and imprecise. Such averments are insufficient in establishing the allegation of the petitioners and runs contrary to the requirement that pleadings should be couched in precise and specific manner in such a way to give the other party and indeed the court the clear picture of the allegation contain therein.

Allegation "that there is over voting with 299 votes in Sabon Birnin West Ward" and "that there was no election at all in the following polling units namely Allakiru polling units with code no. 010, Dantudu Polling unit with code no. 003 Amazawa 001 and Gidan Dagi" is far short in establishing the desired facts necessary to

sustained an election petition. The Petitioners stated in paragraphs 11.4 “that there is over voting with 299 votes in Sabon Birnin West Ward” without stating the specific polling unit(s) where the actual alleged acts of over voting took place. This leaves the case of the Petitioners bare and such failure is catastrophic to prove the allegations of over voting.

The petitioners ought to have averred the facts showing the particular polling unit(s) where the said over voting took place and the number of vote(s) affected in each of the Polling units in the ward as alleged. He drew brevity in this submission and referred to the case of OGBORU V. OKOWA (2016) 11 NLWR(PT. 1522) 84 PAGE 95 RATION 10 the Supreme Court held that;

> *“over voting can only occur where the total number of votes cast in a polling unit exceeds the total number of registered voters for the polling booth. Over voting cannot arise when more votes than the registered numbered of electorate are caste in a constituency because polling station and not constituencies are the foundation on which election process can be faulted.”*

Furthermore, on the allegation that no voting took place at all in Allakiru polling units with code No. 010, Dantudu Polling unit with code no. 003 Amazawa 001 and Gidan Dagi” suffer the same vice as the earlier averment in paragraph 11.3 as the Petitioners failed to state the exact number of registered voters in each of the polling units where the election was alleged not to have been taken place. This is very necessary as it will go a long way in establishing the allegation of the petitioners that the 1st Respondent was not elected by the majority of the lawful votes cast at the election.

In the instant case there was no place where the petitioners averred facts showing the figures involved in the acts of non compliance or over voting and how those

figures affects substantially the result of the election as conducted by the 3rd Respondent. Stating the precise figure in the petition is sine qua non to successful proof of the ground upon which this petition was brought. He referred the Tribunal to the case of Nadabo vs. Tabai (2011) NLWR (pt. 1254) 155 at 162.

Thus, such failure is fatal to the case of the petitioners as the Court cannot go into a voyage of discovery to fish out the numbers of voters registered in the affected polling Units stated in paragraph 11.5 of the petition. Such a vague and imprecise pleading is not appetizing to the mind of Courts in election petition proceedings and cannot sustain a ground where the Petitioner is alleging that the Respondent did not score the majority of lawful votes cast during the election. He also referred the Tribunal to the case of OJO V. ESOHE & 2 ORS (1999) 5 NWLR (603) 444 AT 451 PARAS C-D Per Tabai JCA.

Having not complied with the rudimentary rules of pleading, the Petitioners have failed to present a positive and precise case and thereby have made the tribunal and the Respondents to grope in the dark more particularly the Respondents who are faced with those vague and imprecise allegation of facts are the most disadvantaged in this case, as the respondents cannot join issue properly with the Petitioners who supplied vague and imprecise facts in the petition. See the case of OJONG V. DUKE (2003) 14 NWLR (PT. 841) 581 AT 618.

The petitioner further alleged at 11.3 that the election was invalid by reason of non compliance with the substantial requirement of the electoral Act 2010 (as amended) and the third respondent's guidelines for 2019 general elections." This particular paragraph ought to be one of the grounds challenging the election as provided for in section 138 of the Electoral Act.2010 (as amended). Notwithstanding he took it as fact supporting the grounds of the petition. For the

purpose of sustaining a petition on an allegation of non compliance with the provision of the Electoral Act, there must be pleaded facts in the petition that the non compliance substantially affects the result. See the case of OJUKWU V. YAR ADUA(2009) 12 NLWR (1154) 50 and the case of ANDREW v. INEC(2018) 9 NWLR (1624) PAGE 507 AT 522 RATION 18.

He hastened to add at this juncture that an allegation of corrupt practices/over voting is an imputation of crime, the standard of prove required in such circumstances is proof beyond reasonable doubt. The petitioner can only do this by proving same from polling unit to polling unit and through a party agent. In the circumstances of this case the petitioners has a duty to present witnesses who are direct eye witness to happenings in the polling units where the said infractions occurred as alleged in paragraphs 11.3 and 11.5 of petition. He referred the Tribunal to the case of LADOJA V. AJIMOBI (2016) 10 NWLR(PT. 1516)PAGE 87 AT PAGE 103 RATION 14.

In the instant case all the witnesses paraded by the petitioners especially PW1 and PW3 admitted during cross examination that they were never at the polling units the alleged acts of non compliance took place. Further to this all the witnesses admitted that all the information they deposed to in their Witness Statement on oath were based on the information received from other people. This rendered their testimony inadmissible for being hearsay. See the Supreme Court case of OJO V. GHARORO(2006) 1 ALL FWLR (PT. 316) 197 AT 217 per Tobi, JSC and NJOKU V. STATE(2013) 2 NWLR (1339) 548 AT 568 PARAS G-H. Accordingly, the testimony of PW1 and PW3 is of no moment and cannot be relied on by this Honourable Tribunal. He therefore, urged the Tribunal not to attach any probative value thereto.

He reiterated that no evidence was led by the petitioners to match the allegations made in the petition to any of the exhibits. This is very clear in that there is no fact supporting such exhibits from the petition itself. During the tendering of those exhibits, the witness did not make any attempt to link the exhibits to the particular part of the case of the petitioner where those exhibits were tendered to prove, none of the witnesses' depositions (i.e. PW1 & PW 3) made reference to any of the documents tendered in proof of the alleged over voting and cancellation. The documents were just dumped on the Court. It is not the duty of the Court to do so for the Petitioners. See the Supreme Court case of EMANNUEL V. UMANA & ORS (2016) LPELR 40037 Pp. 67-68, paras. C-B Per NWEZE, JSC.

Furthermore, the Supreme Court set out the criteria for proving allegation of over voting in an election petition. See the case IKPEAZU V. OTTI (2016) 8 NWLR (Pt.1513) p.38 @ 51. Where the Court held,

> *" To prove over voting, the petitioner must do the followings:*
>
> *a) tender the voters' register;*
> *b) tender the statement of results in the appropriate forms which would show the number of accredited voters and number of actual votes;*
> *c) relate each of the documents to the specific area of his case in respect of the documents tendered;*
> *d) show that the figure representing the over voting, if removed would result in victory for the petitioner.*
>
> *In proof of an allegation of over- voting, the petitioner bears the responsibility of calling eye-witnesses from each polling unit to give*

evidence of the circumstances that led to the over voting, preferably party agents.....”

One of the things expected to be done by the petitioner in respect of his allegation of over voting in Sabon Birni West, is not only to tender the voters’ register and the Statement of result from the polling units complained of but also to tie those documents to the particular polling unit. This, the petitioners have failed woefully to do in the build up of their case. None of exhibits PA1-PA17 and PD, PE, PF and PG respectively, were either pleaded or referred to in either the petition nor in the Witnesses deposition. Therefore, those exhibits couldn’t have been tied to the particular polling units where the alleged over voting took place. The consequence of this, is that any evidence given by PW1 & 3 goes to no issue and thus, liable to be expunged and he urged the Tribunal to so hold.

In the Supreme Court case of OKEREKE V. YAR ADUA (2008) 12 NWLR (PT. 1100) 95 AT 104-141 the court held as follows:

“for our purposes here, a petitioner was required to file the copies or list of all or every document he intended to rely on at the hearing of his petition, along with the petition. Of course before filling the said petition the said document or the list, the petitioner must plead facts in the petition to which the document so in question related and since the averments in the petitions are pleadings, such documents must be mentioned therein. Where therefore a petitioner in his pleadings specifically named or stated the documents he intended to rely on at the hearing of his petition and filed same along with his petition as required by the provision of paragraph 1(1) (c) above, he cannot and would not be permitted to tender any other documents not listed or

accompanied in the petition as it would be outside his pleading. In law, where a party specifically plead certain documents to established his case, he cannot during the trial rely on documents other than those specifically pleaded, see Hashidu V Goje (2006) 3 EPR 789 @ 816"

As part of preliminary points for considering the reliefs claimed by the Petitioner at paragraph 12.1 and 12.2 which is the principal reliefs claimed in this petition, learned counsel argued that those reliefs are contrary to the provision of the law and therefore, this Honourable Tribunal cannot grant such relief that is unknown to law. The reliefs in paragraphs 12.1 and 12.2 cannot be traced to the provision of section 140 of the Electoral Act dealing with grantable reliefs which did not envisage part nullification and a declaration that 1st respondent did not score the highest number of valid vote simplicter.

The language of law as can be deduced from the wordings of the section 140 (1) (2) and (3) is that "the Court shall nullify the election" and "shall order fresh election" and "shall declare as elected the candidate who scored the highest number of valid votes" thus where tribunal found out that the petitioner proved the alleged acts of corrupt practice affected substantially the result of the election or that the candidate elected did not score the highest number of valid votes at the election. The law is clear and shall be given its ordinary meaning. Thus the election tribunal is not an all-purpose Court that can entertain all sorts of claims or reliefs. It is created purposely to grants reliefs provided for under the electoral Act. He therefore urged the Tribunal to strike out and refuse the grant of relief 12.2 as sought by the Petitioners.

Learned counsel noted that the 1st and 2nd Respondents denied the allegation of any malpractice and claimed that even where election were cancelled, such cancellation

affected all the candidates that participated in the said election. This fact was admitted by the 1st petitioner under cross -examination. The law is trite that in an election petition, the Petitioner must succeed on the strength of his case and not on the weakness of his adversary. See the case of NWOBODO V. ONOH (2004) (SUPRA). He thereafter called the attention of this Honourable tribunal to his earlier submission that the petitioners having failed to prove their case are therefore, not entitled to the relief claimed.

In conclusion, learned counsel respectfully urged the Tribunal to hold that the petitioners have failed to provide cogent and reasonable ground that will make this honourable Tribunal to change the will and wish of the people. He also urged the Tribunal to uphold the election and the return of the 1st Respondent by the 3rd Respondent, having scored the majority of lawful votes cast at the election held on the 9th day of March, 2019 for Member House of Assembly of Sokoto State and dismiss this petition.

The 3rd Respondents also incorporated a preliminary objection challenging the competence of the petition and the jurisdiction of this Honourable Tribunal to adjudicate on same in his reply to the petition on the following grounds:

a. *That this Honourable Court lacks the jurisdiction to entertain the Petition same having not been properly brought in accordance with the Provisions of the Constitution of the Federal Republic of Nigeria 1999, as (amended) and the Electoral Act, 2010 as (amended).*
b. *That Petition No. EPT/SKT/HA/33/19, is incompetent for having been filed outside the Statutory period of filing an Election Petition arising from the Gubernatorial and State House of Assembly*

Election conducted on the 9th March, 2019, wherein, result was declared on the same day. Hence the Petition is statute barred.

c. *The grounds of the petition are vague, unfounded and defective by failure to provide facts in support thereof.*

However, Shamsuddeen M. Hussaini Esq, learned counsel to the 3rd Respondent raised a sole issue for determination in his final address to wit;

Whether this Honourable Tribunal has jurisdiction over this Petition before it with the Petitioners' failure to observe a mandatory condition precedent to the commencement of this Petition challenging the result of the election to the membership of the Sokoto State House of Assembly for Sabon Birni North, State constituency, held on the 9th day of march, 2019 by failure to file this petition or action within 21 (twenty one) days in compliance with the mandatory provisions of Section 285 (5) of the 1999 Constitution of the Federal Republic of Nigeria (As amended.

Learned counsel submitted that in considering the importance of issues of jurisdiction in any matter, before a Court or Tribunal, especially in election petition, which is sui generis, the 3rd Respondent seeks to address this sole issue for determination to the exclusion of any other. According to the learned counsel, the issue of exercise of jurisdiction by a court or Tribunal, or lack of it, on a matter before it in any legal System is an issue which goes to the root of the competence of that court to adjudicate on the matter. Equally, this issue of jurisdiction is not strange, but also applicable to our legal system. Our apex court, the Supreme Court in a plethora of cases has decided on the effect of lack of jurisdiction of a court or tribunal. One of such recent cases is the case of *Goodwill& Trust Investment Ltd. & Anor V. Witt & Bush ltd.* (2011) LPELR-1333(SC).

Learned counsel submitted that it is indisputable that the petitioner filed this petition on the 1st of April, 2019. And it was equally admitted by the Petitioners that the Result of the election was declared on the 10th of March, 2019. Even though relevant document such as EC8E (declaration of result Form) was dated the 9th of March, 2019. Also assuming, without conceding that the provision of section 285 (5) of the 1999 constitution as amended excludes the day of the announcement and the computation of time begins from after the day of the declaration, the petitioner filed this petition on the 1stof April, 2019, which is 22 days after the day of declaration of the result of the election, not 21 days after as clearly provided and specified by the combined provisions of the Constitution and the electoral Act. Thus the action is defective from the onset for being instituted out of the 21 days after declaration of Result of the disputed election.

In law, the implication of the contravention of the above statutes in filing this petition by the Petitioners is that where the law provides for the bringing of action within a prescribed period, in respect of a cause of action accruing to the Petitioners, proceeding shall not be brought after the time prescribed by the statute. This is the position of the law as held by the Supreme Court in *Obiofuna vs Okoye (1961) 1 All NLR 357*; and also *Egbe vs Adefarasin (1985) 1 NWLR* (pt. 3) 549 at 568 – 569. Once it is established that the action was instituted outside the statutory period, the action is time barred and the court will have no jurisdiction to entertain same. *Alhaji Jibrin Bala Hassan V. Dr. Mu'azu Babangida Aliyu & Ors.* SC.170/2009 (2010) LPELR-1357(SC).

Furthermore, it is a settled law that consequent to the Sui Generis nature of Election Petition, that Saturdays, Sundays, public holidays, and even court vacations are included in computation of time. This is the Position and holding of

the Supreme Court in the case of *PDP v. CPC (2011) 17 NWLR (Pt. 1277) 485*; and also in the more recent cases of *Okechukwu v. INEC (2014) 17 NWLR (Pt. 1436) 255* and *PDP v. INEC (2014) 17 NWLR (Pt. 1437) 525,* where in both cases the apex Court included Saturdays and Sundays in computation of time being election matters. See also the case of ADAGBA & ANOR V. ONAH & ORS (2015) LPELR.

In conclusion, learned counsel submitted that the 3rd Respondent in line with its mandate is required to exercise its independence, impartiality, and integrity, not only in conducting its main function of conducting elections all over the country, but also in the way it prosecutes its defence in the courts and tribunals in matters of this nature. He took cognizance of this obligation of the Commission and conducted himself accordingly. As such, his obligation in this matter is to assist the court in reaching just determination of the matter before it. This was why they have refrained from addressing any other matter beyond that of jurisdiction. He thus urged the Tribunal to strike out this petition as it is before it. He further urged the Tribunal to dismiss the Petitioner's case for failing to perform mandatory condition precedents for the institution of the present action as illustrated above in the same breath.

A.M. Dole Esq, learned counsel to the Petitioners in response to the preliminary objection formulated two issues for determination to with;

1) *Whether this Court has Jurisdiction to entertain Petition No: EPT/SKT/HA/33/19.*
2) *When was the last election result declared in the Sabon Birni North State Constituency for Sokoto State House of Assembly Election.*

Learned counsel submitted with respect to the first issue that this Tribunal has the Jurisdiction to entertain this Petition. According to the learned counsel, Section 285 (5) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) gave birth to Jurisdiction of this Tribunal in election Petition and their Appellate Courts consequently the current Petition where election was held on the 9th March, 2019 and was declared hours after midnight of the 9th day of March, 2019.

However, the Supreme Court in interpreting Section 285 (5), (6) & (7) of the1999 Constitution of the Federal Republic of Nigeria (as amended) in the case of P.D.P V. C.P.C & ORS (2011) LPEL 299 held as follows:

> *"……. It is my opinion that the sixty (60) days allotted in section 285(7) of the 1999 Constitution (as amended) includes Saturdays and Sundays and Public Holidays as well as Court Vacations because if it was the intention of the framers of the Constitution to exclude these days they would have so stated in clear and unambiguous terms. The only exception may be where the last day of the Sixty (60 days happened to be Sunday or a public Holiday then the action can be completed on the next working day as settled by a long line of authorities. "*

Additionally, the Electoral Act, 2010 (as amended) provides thus in paragraph 1of the first schedule. "Civil Procedure Rules means the Civil Procedure Rules of the Federal High Court for the time being in force". He also referred the Tribunal to paragraph 54 of the first schedule of the Electoral Act 2010 (as amended) and the Federal High Court (Civil Procedure) Rules (2019 as amended) Order 48 (Computation of Time) thereof provides thus: Order 48.

1. Where, by any law or order made by a Judge, a time is appointed or limited for the doing of any act, the period shall be reckoned-

(a) as excluding the day on which the order is made or on which the event occurs;

(b) where the last day of the period is a holiday, the time shall continue until the end of the next day following which is not a public holiday and

(c) … … … … ...

According to the learned counsel, the last day after declaration by the Collation/Returning Officer was 31st day of March, 2019 and it was Sunday. Therefore, the petitioner's petition that was filed on the 1st April, 2019 was in line with the above Supreme Court decisions and the rules of the procedure contained in the Electoral Act 2010 (as amended) and the Federal High Court Rules (supra). Therefore, the petition is competent and he urged the Tribunal to so hold.

With respect to the second issue, learned counsel submitted that generally, Sabon Birni Local Government of Sokoto State is one of the remote Local Government areas in the State and the election results were always declared late in the night or the following morning or some days after the conclusion of election (it is located more than 150 kilometers from the State Capital). Similarly, the election to the membership of the State House of Assembly of Sokoto State for the Sabon Birni North State Constituency held on the 9th of March, 2019 was not an exception. The wards that form the constituency are: Taka Tsaba, Sabon Birni West, Tsamaye, Unguwar Lalle, Makuwana and Lajinge. None of the above results from the ward

level was declared before 8:00pm in the evening and by extension the result for the constituency was declared after 5:00am of the following Morning on the 10th -3-2019 due to the fact that tractor is the means of transportation in most of the polling units.

According to the learned counsel, results of the six wards that constitute the Sabon-Birni North must be collected before it can be ready and afterwards declaration of result could emerge. The retuning officer of Lajinge ward who happened to be the person that cancelled polling units 010 (Allakiru) and 003 (Dan Tudu) signed Exhibits PH (Form 40G) and PB2 (Form E8B). The two Exhibits above (PH & PB2) were signed by one Dr. M.S Magami who dated the said documents on the 10th day of March, 2019 which the 1st Respondent affirmed under cross-examination. Thus the 9th day of March, 2019 in Exhibits PC (Form EC8C) and PK (Form EC8E) was only for reference to the election day not the actual date of declaration since exhibits PC & PK would never have emerged without Exhibit PB2 (and Exhibit PH). He urged the Tribunal to hold that the result was declared on the 10th day of March, 2019 since it was by 5:00 am of the following morning that it was declared based on the above facts.

With respect to the substantive petition, learned counsel reproduced the content of the petition and the reliefs sought in his final address and thereafter formulated three issues for determination as follows:

1. *Whether in view of the overwhelming evidence before the Tribunal, the Petitioners have placed sufficient material entitled to declaration as the rightfully elected candidate in the Sabon-Birni North State Assembly Constituency for Sokoto State House of Assembly election held on the 9th of March, 2019. (sic)*

2. *Whether the return of the 1st Respondent as the winner of the election for Sabon-Birni North State Assembly Constituency for Sokoto State House of Assembly election held on the 9th of March, 2019 is not void for corrupt practices and substantial non-compliance with the provisions of the Electoral Act, 2010 (as amended) and INEC election guidelines 2019.*

3. *Whether the 1st Petitioner was not the rightful candidate duly elected and who should have been returned, having scored the majority of the lawful votes cast at the Sabon-Birni North State Assembly Constituency for Sokoto State House of Assembly election held on the 9th of March, 2019.*

With respect to the first issue, learned counsel submitted that the Petitioners have indeed proved that this Honourable Tribunal can grant the reliefs sought. See Section 140 (1) (2) & (3) of the Electoral Act. The Petitioners called three witnesses and tendered the above exhibits (PA-PM) in order for this Honourable Tribunal to declare the 1st Petitioner as the winner in the election to the membership of the State House of Assembly of Sokoto State for the Sabon Birni North State Constituency held on the 9th day of March, 2019.

According to the learned counsel, in election Petitions, most of the documents to be relied upon are in the custody of the INEC (3rd Respondent). Copies of most of these documents were filed with the Petition. The Petitioners pleaded over voting and no result at all in some polling units (which turn out to be cancellation). See paragraphs 11.2, 11.3, 11.4, 11.5, 12.1, 12.2 and 12.3 of the Petitioners' Petition. Learned counsel thereafter appraised the evidence presented at the trial and submitted that the PW3 has linked all the documents tendered through PW2

(except Exhibits: PD, PE, PF and PG the summary of which could be found in Exhibits PH and PI) to his case and made adequate demonstration to the Tribunal on the said exhibits.

He submitted further that the 3rd Respondent's reply to the Petitioners' Solicitors confirmed that there was over voting (see exhibit PM) at page 3 specifically paragraph 6 of the 3rd Respondent's Reply. Additionally, going through Exhibits PB2 & PB3 one can observe that there is no result at all for the four polling units (Allakiru, Amuzawa, Gidan Dagi and Dantudu polling units). And at the time of filing of the Petition it was safe to say no result at all. See Exhibits PB2 and PB3. Cancellation was made by the 3rd Respondent in four polling units (see EXH. PH & PI) due to over voting and violence in line with the provisions of section 53(2) of the Electoral Act 2019 (as amended) and Section 153 of the Electoral Act 2019.

According to the learned counsel, once there is over voting at any polling unit the result shall be cancelled and where the result of over voting was not cancelled it means that this Tribunal can cancel such a result that was refused or neglected to be cancelled by the INEC. See Rule 1 (iv) & 23(a)&(b), 25 & 26 of the Regulations for the Conduct and Guidelines of Election 2019. According to the learned counsel, the Returning officer in the case refused to obey the above provision of the Law and Guidelines when he wrongly went ahead to make a return and declared the 1stRespondent as the winner. He urged the Tribunal to so hold.

Learned counsel submitted further that the same Exhibits PH & PI showed the number of registered voters in the affected polling units to be: 469, 600, 546 & 444 (with total registered voters of 2059) for polling units code: 010 (Allakiru), 003 (Dan Tudu), 001 (Amuzawa) and 012 (Gidan Dagi) respectively and 2059 registered voters for the above four polling units were unable to vote and the Law is that they shall be given a chance to vote with reference to the above Laws. He

urged the Tribunal to give them the chance they deserve by cancelling the election held on the 9th day of March, 2019 for Sabon Birni North State House of Assembly Constituency and order for fresh election for the four affected polling units or for the whole constituency in line with section 53 (2 & 3) Electoral Act, 2019 (as amended) supra.

With respect to the third issue, he argued same in the negative and submitted that the declaration of the 1st Respondent as evidenced by the 3rd Respondent for the Sabon Birni North State Assembly Constituency held on the 9th day of March 2019 is void for corrupt practices and substantial non-compliance with the provision of the Electoral Act, 2010 and INEC guideline. According to the learned counsel, it is trite law that a petitioner challenging the result of an election who makes noncompliance with the Electoral Act the foundation of his compliant is fixed with the burden to prove before the Tribunal by cogent and compelling evidence that the non-compliance actually took place and the non-compliance were of such a nature as to substantially affect the result of the election. See OKE V. MIMIKO (NO.2) (2014) 1 NWLR (PT 1388) 332@367. See also OPUTE V. ISHIDA (1993)3 NWLR (PT. 278) 34 where it was stated thus:

The Jurisprudence in this Country is settled that a Petitioner should satisfy the Court that non-compliance substantially affected the result of the election to his advantage.

He submitted further that this is in the evidence of the PW3 as contained in his deposition and referred the Tribunal to its records. Interestingly while under cross-examination the PW3 stated thus:

"there was an election in all the polling units except D4 (Amuzawa & Gidan Dagi) because there was violence."

Furthermore, the Respondents' witness (Aminu Mustapha) under cross-examination said:

"I see EXH. PH there are two cancellation of the result in the polling unit…….. I see Allakiru Polling Unit and Dan Tudu Polling Unit no election in the polling unit ……. I see EXH. P1…. Yes two units were cancelled in the EXH. And two Exhibits viz PH & PI emanated from the 3rd Respondent (INEC)"

In the case of BUHARI V. INEC (2008)19 NWLR (PT 1120) @ 366.The Supreme Court per Tobi said

> *"Election and its victory is like soccer and goals scored. The Petitioner must not only show substantial non-compliance but also the figures i.e. votes that the compliance attracted or muted. The elementary evidential burden of (the person who asserted must prove) has not been interrogated from Section 69 of the Electoral Act. The Petitioner must not only assert but must satisfy the Court that non-compliance has so affected the election result to justify nullification".*

It is trite law that evidence which is not contradicted by parties are deemed admitted. The Respondents having failed to deny or contradict the Petitioner's position as put under cross-examination that there was cancellation of result in the four polling units but admitted same is deemed admitted. He thus urged the Tribunal to so hold.

Going by the Petitioners' petition that there was over voting in Sabon Birni West however, 17 Polling Units made the ward (i.e. the polling units in Form EC8A now Exhibits PA1 to PA17). The totals in Exhibit PB1:

a. Under the Total Valid Votes, the final votes is 9472 votes not 9083 as stated in the Exhibit (there is 389 votes decrease).

b. Under the Rejected Votes, the final total is 761 votes not 851 votes as stated in the Exhibit (there is 90 votes increase).

c. Under the Total Votes cast (i.e. the total votes cast plus the rejected votes),the correct final total votes are 10,233 votes not 9,934 votes as stated in the Exhibit (there is 299 votes increase).

In the meantime, the correct total as per Exhibit PB1 for total votes cast less the number of accredited voters in the ward is equal to10,233 – 9934 = 299 votes(See Computer reproduced SABON BIRNI WEST WARD 'EXHIBIT PB1') attached to this address as an annexure. It means that in the Sabon Birni West Ward there is over voting by 299 votes which the Petitioners' pleaded in their Petition. He urged the Tribunal to so hold and cancel the election result of this ward due to over voting as that was the law applied by the 3rd Respondent during the cancellation in the other four polling units.

In conclusion, learned counsel surmised that from the antecedents of this petition, the Petitioners have placed reliable and credible evidence from all the issues raised above and deserve the reliefs sought in the Petition. He once again urged the Tribunal to so hold and grant the main reliefs or the alternative relief in the Petition.

A.Y. Abubakar Esq, learned counsel to the 1st and 2nd Respondents filed a reply on points of law in response to the final address of the Petitioners. With respect to the point raised by the learned counsel to the Petitioners urging the Tribunal to hold that Sunday should be excluded in calculating the 21 days, learned counsel argued that elections being *sui generis* in nature, computation of time in those cases is exclusively governed by the Constitution and Courts are not allowed to have recourse to any legislation including rules of court in interpreting the provision of section 285(5) (6) and (7) of the Constitution 1999 as amended. The

Supreme Court had since settled this vex question on non applicability of other legislation (Rules of Court inclusive) in the computation of time in election matters. He referred the Tribunal to the case of PDP V. CPC & ORS (2011) LPELR-2909 Pp. 25-26, paras. G-E Per ONNOGHEN, JSC where it was held as follows:

> *"On the aspect concerning application of Court rules in computation of time with regards to periods of Court vacation, I must say that rules of Court have the status of subsidiary legislation far below constitutional provisions which sit at the apex of the hierarchy and consequently supreme. Secondly, no Court rules which are contrary to Section 285(5), (6) and (7) can apply to election matters or be valid. The sections enact as follows-*
>
> *"(5) an election petition shall be filed within twenty-one (21) days after the date of the declaration of result of the elections;*
>
> *(6) an election tribunal shall deliver its judgment in writing within one hundred and eighty (180) days from the date of the filing of the petition:*
>
> *(7) an appeal from a decision of an election tribunal or Court of Appeal in an election matter shall be heard and disposed date of the delivery of judgment of the tribunal or Court of Appeal."*

I hold the considered view that in terms of time to do anything relating to an election petition or judgment thereon or arising there from, it is the above provisions that apply and that no Court has the power to extend the times as

constitutionally provided in Section 285(5)-(7) of the 1999 Constitution (as amended), by interpretation of the sections or otherwise."

In light of the above position of the law, learned counsel submitted that the case of the Petitioners cannot get any solace or respite from the hammers of time limit in the provision of Paragraph 54 of the Electoral Act (2010) as amended and 0rder 48 of Federal High Court (Civil Procedure) Rules due to their subordinate status to the provision of the Constitution. Due to the exigencies of the reality of the election matter as a time-bound proceedings and public interest vested therein, in the computation of time, Saturdays, Sundays and public holidays are not excluded they formed part of the days to be reckon with. He recommended for consideration the decision of Court of Appeal in the case of ADAGBA & ANOR V. ONAH & ORS (2015) LPELR 40450 PAGES 4-5 PARAS E-C per Jauro, JCA.

Therefore, from the facts of the instant petition, time begins to run for the petitioners from the date of the declaration i.e. 9th day of March, 2019 as appeared on the Exhibit PK (form EC8E declaration of result) and ended on the 29th day, March, 2019. See also paragraph 10 of the Petition. He further submits that where the date of declaration of result is in dispute, Form EC 8E(I) is the best evidence as to the issue of when a result was declared. See the case of UGOCHUKWU V. NWOKE & ANOR. (2001) 5 WRN 93 @ 105.

Assuming but not conceding, that the result was declared on the 10th day of March, 2019, time for presenting the petition ends on the 30th day of March, 2019 which is the last of the 21 days allocated to a party aggrieved by the results declared to challenge same by filing a petition under the provision of section 285(5) of the 1999 Constitution (as amended). In the computation of time for

presenting an election petition, date of declaration is included. See OKECHUKWU V. INEC(2014) 17 NWLR (1436) 255 AT 266 ration 10. According to the learned counsel, based on the position of law expressed in cases cited above, this petition is incompetent for being time barred. He thus urged the Tribunal to discountenance with the Petitioners' submission on this and dismiss this petition.

On the issue that the case of the Petitioners stand proven on the strength of the evidence of the 1st petitioner as argued by the Petitioners' Counsel at paragraph 7.9 and 7.12 of the address, learned counsel to the 1st and 2nd Respondents argued that the evidence of the 1st petitioner herein, PW3 being laced with hearsay is inadmissible and same cannot be relied upon by this Tribunal. See the case of OJO V. GHARORO(2006) 1 ALL FWLR (PT. 316) 197 AT 217 per Tobi, JSC where "Hearsay evidence" was defined

On the issue of non compliance with the electoral Act, the petitioners sought to rely on the evidence of the DW1 elicited during cross examination to the effect that there are cancellations in some polling units. In response, learned counsel submitted that for any evidence elicited during cross examination to benefit such a party eliciting them such evidence must be on a pleaded fact. AKOMOLAFE V. GUARDIAN PRESS LTD. (PRINTERS) (2010) ALL FWLR (PT. 517) AT 784 the Supreme Court per ONNOGHEN JSC.

At paragraph 8.8 of the petitioners' address, learned counsel to the Petitioners advanced argument in proof of over voting by alluding to certain figures as established through exhibit PB1. It needs to be stated that this line of argument is not appealing to conscience of a Court of law as the evidence upon which the argument flows from was not pleaded. The position of the law is that evidence led

on facts not pleaded goes to no issue. He referred the Tribunal to the case of ACCESS BANK PLC V. MUHAMMAD (2014) 6 NWLR (PT1404) 613 AT 625 PARA D-E.

Furthermore, the law places a burden on the petitioners alleging over voting to prove same through polling units as the foundational pillars to start the issue of over voting and not pleading figures of over voting at ward level as did by the petitioners.

In conclusion, learned counsel urged the Tribunal to discountenance with the submission of the Petitioners and dismiss this action with substantial cost.

We have carefully examined all the processes filed, records of proceedings, the written addresses of counsels and the reply on points of law of the Petitioners in this Petition. It is noteworthy that the learned counsels to the 1st and 2nd Respondents filed a preliminary objection in their joint replies to the petition raising jurisdictional issues which the Tribunal urged should be argued along with the substantive petition in line with extant laws.

It has been held in a plethora of decided cases that issues bordering on jurisdiction are threshold issues which ought to be determined first and could be raised for the first time before an appellate Court. It could also be raised by any party; the trial Court inclusive, see the case of UCHEGBU & ORS V. THE SHELL PETROLEUM DEV. CO. NIG. LTD.(2009) LPELR-8891(CA).

We shall therefore resolve the issues raised in the preliminary objection filed by the learned counsels to the 1st and 2nd Respondents first. The grounds for the said preliminary objection have already been reproduced above so we need not restate same here. As earlier noted, the learned counsel to the 1st and 2nd Respondents raised three (3) issues for determination with respect to the said preliminary objection to wit;

1. *Whether or not by the combined effect of the provisions of section 285(5) of the 1999 Constitution of the Federal Republic Of Nigeria as (Amended) and section 134(1) of the Electoral Act, 2010 as (Amended), the Petition No: EPT/SKT/HA/33/19 was not filed out of time.*

2. *Whether ground 11.2 as contained at page 4 of the petition is a competent ground and recognizable by this Tribunal having not founded on any ground(s) for challenging an election as provided by section 138 (1) of the electoral Act 2010 (as amended).*

3. *Whether or not this Honourable Tribunal has the jurisdiction to hear and determine Petition No. EPT/SKT/HA/33/19, as presently constituted.*

We have carefully considered all the arguments canvassed by both parties. With respect to the first and third issues raised by the learned counsel to the 1st and 2nd Respondents in arguing the preliminary objection which are both based on the jurisdiction of this Tribunal to entertain this petition which was alleged to have been filed out of time thus statute barred. It is settled law that where a statute provides the institution of an action within a prescribed period, proceedings shall not be brought after the time prescribed by such statute.

In other words where an action is statute barred, a party who had a cause of action automatically loses the right to enforce the cause of action by judicial process because the time laid down by the relevant limitation laws for instituting the action has elapsed. Thus where an action is statute barred, the court will lack the requisite jurisdiction to entertain it. See the case of Nyeson V Peterside (2016) 7 NWLR PT 1512 PG 452 @ 511.

By the provisions of Section 285(5) of the 1999 Constitution of the Federal Republic of Nigeria, an election petition shall be filed within 21 days after the date of the declaration of result of the election. In other words, an election petition must be presented any time before the expiration of 21 days or not later than 21 days from the date the result was declared. This is a fundamental pre-condition. See the case of Ogbebor v Danjuma (2003) 15 NWLR PT 843 @ 403.

In the instant petition, the election was indisputably held on the 9th day of March 2019. Going by paragraph 10 of the petition itself, the declaration of result Form EC8E (1) was dated 9th day of March 2019. Though the petitioners made a round about turn in their final address and urged the Tribunal to hold that the result was declared on the 10th day of March 2019. The learned counsel's reason for urging the Tribunal to so hold was that Sabon Birni Local Government of Sokoto State is one of the remote Local Government areas in the State and the election results were always declared late in the night or the following morning or some days after the conclusion of election (it is located more than 150 kilometers from the State Capital).

Learned counsel submitted further that the election to the membership of the State House of Assembly of Sokoto State for the Sabon Birni North State Constituency held on the 9th of March, 2019 was not an exception. The wards that form the constituency are: Taka Tsaba, Sabon Birni West, Tsamaye, Unguwar Lalle, Makuwana and Lajinge. None of the above results from the ward level was declared before 8:00pm in the evening and by extension the result for the constituency was declared after 5:00am of the following Morning on the 10th -3-2019 due to the fact that tractor is the means of transportation in most of the polling units.

In the meantime, a careful perusal of the pleadings before the Tribunal and evidence led at the trial failed to yield the above information contained in the learned counsel's final address. It is now settled law that counsel's address, no matter how brilliant cannot be a substitute for evidence, see the case of Elumeziem & Ors V Amadi (2014) LPELR-22459 (CA).In the instant case, the administrative lapses referred to by the learned counsel to the Petitioners were not borne out of the records.

Apart from the above, the learned counsel to the Petitioners also urged the Tribunal to hold that the result was declared on the 10th of March 2019. In the meantime, this relief sought in the final address has no correlation with either the grounds for the petition or the reliefs sought from the Tribunal. It has been held in myriad of cases that the court is not father Christmas. The court held in the case of Nzenwata & Ors V Nzenwata (2016) LPELR-41089(CA) that

> *"it is a cardinal principle of law that a court ought not to make an award to a party of what the said party has not claimed"*

We are inclined to agree with their law Lord in the above case that the petitioners having failed to claim any relief praying the Tribunal to declare that the election results were declared on the 10th day of March 2019, they are stopped from asking for such prayers in their final address.

In the meantime, the courts have held in myriad of cases that whenever there is dispute as to the date of declaration of election results, the best and the most reliable evidence to be reckoned with is the declaration of result form EC8E (1). The court held in the case of Ugochukwu V Nwoke & Anor (2010) (CA)

"a careful perusal of Exhibit Annexed to the motion on notice which is the said Form EC8E (1) the declaration of result form clearly shows that the result of the disputed election was signed and issued on the 14th day of April 2007(see page 306 of the records). The said form has been duly certified by INEC. That exhibit is therefore the best and most reliable evidence to be reckoned with when trying to ascertain the date the results were declared. It is immaterial to harp on who signed it in as much as the issuer INEC has authenticated it as the valid and lawful result declaration form in the said election. It therefore excludes any evidence oral or documentary on that issue' Per Sanusi JCA.

In the instant case, a peep at exhibit PK, that is the declaration of result shows that it is dated the 9th day of March 2019. The 1st Petitioner also confirmed under cross examination that Exhibit PK is dated the 9th of March 2019. Thus by the foregoing, we shall rely on Exhibit PK in the ascertainment of the date the results of the election was declared in this petition which is the 9th day of March 2019 to the exclusion of all other oral or documentary evidence.

Another vexed issue to be determined now is whether the prescribed 21 days will be calculated from the date of the declaration of result itself or the following day? On this fundamental issue, the provisions of the amended Section 285 (5) of the 1999 Constitution comes to fore, it provides thus:

> *"An election petition shall be filed within 21 days after the date of declaration of result of the election."*

The controversial aspect of the amendment is in relation to the word *'after'*. It is evident that a plain interpretation of the words *"after the date of declaration of result of the election"* should exclude the day of declaration. That is quite in tandem with the provisions of *section 15 (2) (a) of the Interpretation Act* which stipulates as follows:
"15. (2)A reference in an enactment to a period of days shall be construed-

(a) *Where the period is reckoned from a particular event, as excluding the day on which the event occurs;"* (underlining for emphasis).

That was the simple interpretation given by the earlier decisions of the superior courts in consonance with the provisions of the Interpretation Act but the law has since changed. Sometime in 2014, the Supreme Court introduced a radical departure in their interpretation of such provisions in statutes relating to election petitions. In the case of: *Okechukwu v. INEC (2014) 17 NWLR (Pt.1436) 255*, the apex Court categorically stated that not only in Practice Directions, but in the 1999 Constitution as amended and in the peculiarity of our Electoral Act:

"Time shall run..... from the day of the act and the day shall not be excluded."

Also in the case of: *AKPAN & ANOR v. LUKE & ORS (2015) LPELR-41651(CA)* the Supreme Court re-emphasized the position when they stated thus:

"So, whether the 1999 Constitution, the Electoral Act 2010 or the Practice Directions state that an event shall be done, 'after, or of or from' in election or election-related matters, the day of the event is to be included, not excluded."

Incidentally, in the very recent case of: *BELLO v. YUSUF & ORS (2019) LPELR-47918(SC)* the Supreme Court restated the position thus:

> *"This Court has also held in decisions too numerous to call that time begins to run against a plaintiff, for the purpose of limitation, from the date the cause of action accrues which, generally, is the date on which the incident or event giving rise to the cause of action occurs.See: ACTION CONGRESS OF NIGERIA & ANOR V. INEC(2013) LPELR 20300 (SC)."*

We wish to emphasize that the facts in the cases of: *AKPAN & ANOR v. LUKE & ORS (2015) supra* and *BELLO v. YUSUF & ORS (2019) supra* are almost on all fours with the present one. So the voices of infallibility have spoken. It does not lie in our mouths to question their decisions. In the light of the foregoing authorities, this Tribunal is constitutionally bound to follow and apply the current decisions of the more superior courts on the computation of time in election petition matters.

Based on the above decisions, computation of 21 days from the 9th day of March 2019 will expire on the 29th day of March 2019. The said day happens to be a Friday thus the argument of the learned counsel to the Petitioners that Sunday being a public should be excluded does not come into play in this petition at all.

In any case, even if the result was declared on the 10th of March 2019 as alleged by the petitioners, by the foregoing, the 21 day prescribed will still have expired on the 30th day of March 2019. In the recent case of ADAGBA & ANOR V. ONAH & ORS (2015) LPELR, it was clearly held per Jauro, JCA, that

> *"in computing time in election matters, the Courts includes Saturdays, Sundays and Public Holidays as well as Court vacations". Thus exclusion of Sunday being a public holiday is not feasible in the instant case.*

In the meantime, it is an undisputed fact that this Petition was filed on the 1st day of April 2019, it was therefore clearly filed out of time by two days. It is therefore statute-barred and the Tribunal has no jurisdiction to entertain it because a Court is not competent to entertain an action and determine it if the case was initiated by the process of law *without fulfilling a condition precedent for the exercise of the court's jurisdiction*. See: *MADUKOLU vs. NKEMDILIM (1962) 2 SCNLR 341; and OHAKIM vs. AGBASO (2010)19 NWLR (Pt. 1226) 172.*

We will therefore uphold the preliminary objection and resolve issues 1 and 3 in favour of the Respondents.

Since the matter is statute barred we are tempted to strike out the petition at this stage without going into the merits. However, in the very unlikely event that we are wrong in our decision on the matter being statute barred, to be on the safe side,

we will still proceed to determine the petition on the merits. We will therefore proceed to determine issue 2 posited by the 1st and 2nd Respondent in the preliminary objection before proceeding to the merit of the substantive petition.

With respect to the second issue, learned counsel drew the attention of the Tribunal to the provision of section 138(1) of the Electoral Act 2010 as amended (2015) which provides for grounds upon which election petitions can be based and submitted that it is now settled that the grounds upon which an Election Petition can be presented are those specified in Section 138 (1) of the Electoral Act. Anything outside these grounds statutorily provided, will render the petition invalid. In the instant case, on the face of the petition, the Petitioners in ground 11.2 alleges as follows:

> *"the Election is marred by over voting in Sabon Birni West ward and no voting at all at Allakiru polling units with Code No. 010, Dantudu polling units No. 003 Amazawa 001 and Gidan Dagi 012"*

He argued that this ground is clearly outside the grounds set out by section 138 of the Electoral Act, 2010 (as amended), as any ground for questioning election petition must conform to those provided by the Electoral Act and any variation or non conformity with those provided by the Electoral Act makes them liable to be struck out.

The question now is whether this ground of the petition as couched can fall under any of the grounds for presenting election petitions as stipulated under the Electoral Act, 2010 (as amended)?. In the meantime, Section 138 of the Electoral Act, 2010 (as amended) provides the following as grounds for the presentation of petitions:

138 ''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 the reason of corrupt practices or non-compliance with the provisions of this Act;*
c. *That the respondent was not duly elected by the 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 now settled law that a Petitioner is free to either present his Petition before any Election Petition Tribunal to challenge or question the return of any candidate in an election under one or more of the grounds specified under Section 138 of the Electoral Act 2010 (as amended) depending on the circumstances of each case or the Petitioner may present his Petition under Sections 7 and 9 of the Constitution of the Federal Republic of Nigeria (Second Alteration) Act 2010 which provides that;

> *9 (1) there shall be established for each state of the federation and the federal capital territory one or more election tribunals to be known as the National and State Houses of Assembly Election Tribunals which shall to the exclusion of any Court or Tribunal have original jurisdiction to hear and determine petitions as to whether;*
>
> a. *Any person has been validly elected as a member of the National Assembly; or*
> b. *Any person has been validly elected as a member of the House of Assembly of a state.*

See the case of Adebiyi V Babalola (1993) 1 NWLR PT (267) 1.Oshiomhole V Airhiavbere (2013) 7 NWLR (PT 1353) 376 @ 396, Oyegun v Igbinedion & Ors (1992) 2 NWLR PT (226) 947, Okonkwo v INEC &Ors (2003) 3 LRECN 599

In addition to the requirement that the ground forming the basis of an election petition must be cognizable under the electoral Act or the Constitution, it must also

be related to or have arisen out of Acts or omissions that were contemporaneous with the conduct of an election because an election Tribunal has no power to investigate matters which took place before the conduct of election, see the case of *National Electoral Commission V National Republican Convention (1993) 1 NWLR PT 267 120 @ 126*

The position of our laws is that, couching the grounds of the Petition in the exact language used in the Electoral Act is a must or at best the wording as couched must be cognizable under the Electoral Act or the Constitution failing which the ground will be declared incompetent especially where the objection to the ground was raised timeously, see the cases of Ogboru V Ibori (2004) 7 NWLR (PT 871) 192, Kurfi v Mohammed (1993) 2 NWLR (PT 277)602 @ 616 , Buhari v INEC (2008) 4 NWLR PT 1078 546 @643-664. In the instant case, objection to that particular ground of the Petition was raised timeously vide a preliminary objection incorporated in the Respondents Reply.

A careful examination of the said Paragraph 11.2 of the Petition shows it falls outside the specified grounds for presenting election petitions as stipulated under the Electoral Act 2010 (as amended) and S 9 of the Constitution of the Federal Republic of Nigeria (Alteration Act)2010. It is also clearly not cognizable under either law. Based on the above, the said ground as stated in paragraph 11.2 is held to be incompetent and same is hereby struck out. Thus issue two is also resolved in favour of the Respondents.

All in all, the preliminary objection succeeds and is hereby upheld.

However per chance we are wrong to have upheld the preliminary objection, we shall now proceed to resolve the issues raised in the substantive petition. However before going into the substance of the case, there is a need to resolve some ancillary issues raised by the parties first.

The first ancillary issue was raised by the learned counsel to the 1st and 2nd Respondents to the effect that no evidence was led by the petitioners to match the allegations made in the petition to any of the exhibits because there are no facts supporting such exhibits from the petition itself. During the tendering of those exhibits, the witness did not make any attempt to link the exhibits to the particular part of the case of the petitioner where those exhibits were tendered to prove. None

of the witnesses' depositions (i.e. PW1 & PW 3) made reference to any of the documents tendered in proof of the alleged over voting and cancellation. The documents were just dumped on the Court. It is not the duty of the Court to do so for the Petitioners. See the Supreme Court case of EMANNUEL V. UMANA & ORS (2016) LPELR 40037 Pp. 67-68, paras. C-B Per NWEZE, JSC,

The learned counsel to the Petitioner in response submitted that the PW3 has linked all the documents tendered through PW2 (except Exhibits: PD, PE, PF and PG the summary of which could be found in Exhibits PH and PI) to the Petitioner's case and made adequate demonstration to the Tribunal on the said exhibits. He submitted further that the 3rd Respondent's reply to the Petitioners' Solicitors confirmed that there was over voting (see exhibit PM) at page 3 specifically paragraph 6 of the 3rd Respondent's Reply. Additionally, going through Exhibits PB2 & PB3 one can observe that there is no result at all for the four polling units (Allakiru, Amuzawa, Gidan Dagi and Dantudu polling units). And at the time of filing the Petitioners' Petition it was safe to say no result at all. See Exhibits PB2 and PB3. Cancellation was made by the 3rd Respondent in four polling units (see EXH. PH & PI) due to over voting and violence in line with the provision of section 53(2) which provides;

We have carefully perused the Petition and took cognizance of the fact that the Petitioners only mentioned Form EC8E (1) in paragraph 10 of the Petition. The Petitioners also listed the following documents as documents to be relied on at the trial in the list of documents filed along with the petition;

1. Constitution of the Federal Republic of Nigeria 1999 as amended.
2. Electoral Act 2010 as amended.
3. FORM EC8A (1), FORM EC8B (II), FORM EC8C (II), FORM EC8E (1)
4. Letter written by the Petitioners counsel to the resident electoral commissioner dated 13/03/19
5. Reply by the resident electoral commission to the petitioners counsel dated the 20/03/2019

In the meantime, at the trial of this petition, the petitioners tendered the following documents;

1. 17 copies of Forms EC8A for Sabon Birni West are admitted in evidence as Exhibits PA1-PA17
2. 3 copies of Forms EC8B for Sabon Birini west, Lajinge and Tsamaye wards are admitted in evidence as Exhibits PB1, BP2 and PB3 respectively.
3. Form EC8C for Sabon Birni North State Assembly Constituency-Exhibit PC
4. 48 pages voters Register for Allakiru 010 Polling unit at Lajinge ward-Exhibit PD
5. 61 pages Voter's Register for Dantudu 003 Polling unit at Lajinge ward-Exhibit-PE
6. 56 Pages Voter's Register for Amuzawa 001 Polling unit at Tsamaye ward-Exhibit-PF
7. 46 Pages Voter's Register for Gidan Dagi 012 polling unit at Tsamaye ward-Exhibit PG
8. Form EC40G for Lajinge ward-Exhibit PH.
9. Form EC40G for Tsamaye ward-Exhibit P1
10. Letter from Dole & Co. to the Resident Electoral commissioner for Sokoto State-Exhibit PJ
11. Form EC8E Declaration of Result-Exhibit PK.
12. Receipt evidencing payment for CTC Exhibit PL

In the meantime, as could be seen above, the petitioners listed FORM EC8A (1), FORM EC8B (II), FORM EC8C (II), FORM EC8E (1) as documents they will rely on at the trial though only Form EC8E (1) was mentioned in paragraph 10 of the petition. The petitioners however tendered Forms EC8A, EC8B, Forms EC8C and EC8E which were neither pleaded nor listed.

The law on pleadings is firmly established. The law is that parties are strictly bound by their pleadings and they are not allowed to make a case that is at variance with their pleadings. Evidence which is at variance with the averments in the pleadings goes to no issue. See: *Buhari vs. Obasanjo (2005) 2 NWLR (Pt. 910) 241, Makinde vs. Akinwale (2000) 1 SC 89 and Allied Bank (Nig) Ltd vs. Akubueze (1997) 6 NWLR (Pt. 509) 374.* Moreover, where a party specifically pleads a document in any proceedings, he cannot be allowed to rely on any other document

different from the one pleaded. This is because the aim of pleadings is to narrow down the case of the parties and to avoid surprises.

In the case of *Hashidu vs. Goje (2003) 15 NWLR (Pt.843) 352* which is almost on all fours with the instant case, the Petitioners pleaded Forms EC8A, EC8B, EC8C and EC8D to prove allegations of inflation of vote and falsification of election results. At the trial, they tendered Forms EC8A1, EC8B1 and EC8C1 which the Tribunal admitted and acted upon. On appeal, the Court of Appeal held that Forms EC8A1, EC8B1 and EC8C1 were wrongly admitted by the Tribunal and ought to have been rejected.
The court also held in the case of: *BUHARI V. INEC & OTHERS (2008) LPELR-814 (SC) Per* Tobi JSC that;
"… a document which is inadmissible but erroneously admitted, can be expunged from the record at the stage of writing judgment"
Consequently, Forms EC8As for Sabon Birni West admitted as Exhibits PA1-PA17, Forms EC8B for Sabon Birini west, Lajinge and Tsamaye wards admitted as Exhibits PB1, PB2 and PB3, Form EC8C for Sabon Birni North State Assembly Constituency admitted as Exhibit PC and Form EC8E Declaration of Result admitted as Exhibit PK are hereby expunged from the records having been admitted in error.

With respect to the voters register, the petitioners did not specifically plead voters registers in any part of the petition yet tendered same in evidence. The petitioners however stated in paragraph 11.4 that there was over voting with 299 votes in Sabon Birni west ward. The position of the law has always been that parties are to plead facts not documents.

The court held in the case of INUWA V BAYERO UNIVERSITY KANO & ANOR (2016) LPELR-41615(CA) that

"a party pleads a document either specifically or pleads the facts which such a document is intended to support"

In the instant case, the petitioners pleaded the fact that there was over voting in Sabon Birni West Ward and tendered the voters registers in support of same. The 1st Petitioner while testifying, specifically informed the Tribunal that Exhibit PH is for the cancellation of two polling units of Lajinge ward to wit; Allakiru polling unit and Dantudu polling unit. He also testified that Exhibit PI is for Amuzawa

polling unit 001 and Gidan Dadi Polling unit 012. It is noteworthy that all the aforementioned polling units were pleaded and the petitioners also alleged that elections in the four polling units were cancelled. In view of the foregoing, we hereby hold that exhibits PD, PE, PF, PG, PH and PI were properly admitted in evidence in this petition.

However, admissibility of documentary evidence is one thing while demonstration of the said document to the satisfaction of the Tribunal is another. The requirement of demonstration of documents cannot be overlooked. The court held in the case of Ucha v Elechi (2012) 8 NWLR (PT 1303)560 that;

> *"When a party decides to rely on documents to prove his case there must be a link between the document and the specific areas of the Petition. He must relate each document to the specific area of his case for which the document was tendered. On no account must counsel dump documents on the trial court. No court will spend precious judicial time linking documents to specific areas of a party's case"*

In the instant case, none of the witnesses called by the Petitioners linked Exhibits PD, PE, PF and PG to any specific area of the pleadings. The learned counsel to the Petitioners also conceded that the PW3 linked all the documents tendered through PW2 except Exhibits: PD, PE, PF and PG (the summary of which could be found in Exhibits PH and PI) to the Petitioner's case and made adequate demonstration to the Tribunal on the said exhibits. Thus having conceded that Exhibits PD, PE, PF and PG were not properly demonstrated as they should, we hereby hold that the said Exhibits PD, PE, PF and PG were dumped on the Tribunal thus of no evidential value since the Tribunal is precluded from going into it to fish for evidence not demonstrated in the open court.

The second ancillary issue was also raised by the learned counsel to the 1st and 2nd Respondents. The said learned counsel submitted that all the witnesses paraded by the petitioners especially PW1 and PW3 admitted that all the information they deposed to in their witness statement on oath were based on the information received from other people. This rendered their testimony inadmissible for being hearsay. He referred to the Supreme Court of OJO V. GHARORO (2006) 1 ALL FWLR (PT. 316) 197 AT 217 per Tobi, JSC where Hearsay evidence was defined

and submitted that the testimonies of PW1 and Pw3 is of no moment and cannot be relied by this Honourable Tribunal. He therefore, urged the Tribunal not to attach any probative value thereto.

It is once again noteworthy that the learned counsel to the Petitioners did not canvass any argument in opposition to this issue. We shall therefore resolve same based on the argument advanced by the 1st and 2nd Respondents counsel and the law as espoused by the superior courts. The rule against hearsay evidence is to the effect that for oral evidence to be admissible, it must be evidence of what the witness testifying saw, heard or perceived or where it is evidence of opinion, it must be the evidence of the person holding the opinion stating the grounds or basis on which the opinion is held. See the case of FRN V USMAN (2012) 8 NWLR PT 1301 @ PG141.

In the instant case, the PW1 while testifying informed the Tribunal that he was APC agent during the election at the collation Center. The only polling unit where he voted was Shiyar Naila 006. After he voted, he waited at this polling till evening before going to the collation center when they started to bring in the results. He did not visit Allakiru polling unit, but the person bringing the result informed him that elections were cancelled in four polling units. Two from Lajinde ward, Allakiru and Dantudu and two from Tsamaye ward. He did not visit Dantudu polling unit. He did not visit Amazawa polling unit. He did not visit Gidan Dagi polling unit but INEC wrote a report which confirmed that results were cancelled from the aforesaid polling units.

What can be gleaned from the evidence of the PW1 was that he was not present at any of the polling units where over voting with 299 votes in Sabon Birni West Ward was alleged. He was also not present at Allakiru 010, Dantudu 003, Amazawa 001 and Gidan Dagi 012 where allegations that no elections took place were made. To further worsen the case of the petitioners, the PW1 admitted that a nameless person who brought the result informed him that elections were cancelled in four polling units. The PW1's evidence clearly falls within those classified as hearsay evidence thus vitiated.

The PW2 was a subpoenaed witness from the office of the 3rd Respondent. He merely tendered documents without giving evidence while the PW3 was the 1st

Petitioner in this case. According to the 1st Petitioner, he voted at Women Center Polling unit 016 in Sabon Birni West and after casting his vote he remained in his polling unit. He admitted clearly that all he stated in his Petition are based on what his agents told him. The said agents are all still alive.

The court held in the case of Doma & Anor V INEC (2012) LPELR-7822(SC) that

> *"PW14 and PW44's testimony that there were malpractices in polling units they admitted they never went to is evidence of what they were told or what they heard from someone else. This is second hand evidence is clearly hearsay evidence and it is inadmissible to prove that there were actually malpractices in the polling units they never went to. Hearsay evidence is thus inadmissible to prove that fact"*

In the instant case, the 1st Petitioner clearly admitted not visiting the 4 polling units where results were cancelled or the ones where over voting and cancellation of results were alleged. He did not inform the Tribunal why his agents who he confirmed were all alive were not produced in court to testify. His evidence is thus tainted with hearsay.

The third ancillary issue was also raised by the learned counsel to the 1st and 2nd Respondents. According to the leaned counsel, the pleading of the Petitioners are vague, ambivalent, uncertain and imprecise. Such averments are insufficient in the establishment of the allegation of the petitioners and runs contrary to the requirement that pleadings should be couched in precise and specific manner in such a way to give the other party and indeed the court the clear picture of the allegation contain therein.

In the instant case there was no place where the petitioners averred facts showing the figures involved in the acts of non compliance or over voting and how those figures affects substantially the result of the election as conducted by the 3rd Respondent. Thus, such failure is fatal to the case of the petitioners as the Court cannot go into the voyage of discovery to fish out the numbers of voters registered in the affected polling Units stated in paragraph 11.5 of the petition.

In the meantime, the position of the law on this issue is that opposing parties reserves the right to demand for better and further particulars, see the case of ALHAJI ATIKU ABUBAKAR, GCON & ORS. V. ALHAJI UMARU MUSA YAR'ADUA & ORS.(2008) LPELR-51(SC) the court held that

> *"A party asks for further and better particulars where, in his view, the pleadings are not only generic and omnibus but vague, nebulous and lacking specificity. In such a situation, the party asks for further and better particulars to make the pleadings more exact or precise. The purpose of further and better particulars is not to amend or rewrite the pleadings. The purpose is to explain them so that they can sound more exact and precise.* The court went on further to hold that *"the need to demand for further particulars however does not arise where the parties have joined issues in a case"*

In the case of AGBAMUCHE v. IKOLODO & ANOR (1982) LPELR-12324(CA) the court held that

> *"Where a party pleads insufficiently, his case does not lie to be struck out, for there are other remedies: matters not pleaded must be disregarded when given in evidence. See Usenfowoken v. Idowu (1969) 1 ALL. 1. L.R. 125. A defendant is so entitled to ask for further and better particulars. The argument that the petition "is bereft of legally pleaded facts on which evidence of triable issues could be founded" is, in my view, unsatisfactory and cannot be made the basis for holding that the petition was rightly struck out. What does this argument mean? I understand it to be holding that the pleading was not adequate and that evidence which would be given as to those facts pleaded would not suffice to establish a claim made." Per IKWECHEGH, J.C.A.(P. 23, paras. B-E)*

In the instant case, the 1st and 2nd Respondents did not make any demand for further and better particulars. Furthermore, the Respondents joined issues with the petitioners herein on all issues raised. By the foregoing, this petition does not lie to be struck out based on this issue, at best, matters led on unpleaded facts will be disregarded.

We shall now resolve the issues raised in the substantive petition.

It is noteworthy that the Tribunal formulated two issues for determination in this petition at the close of the pre-hearing session to wit;

1) *Whether the return of the 1st Respondent as winner of the election for Sabon-Birni North State Assembly Constituency for Sokoto State held on the 9th day of March, 2019 ought not to be set aside on grounds of corrupt practices, substantial non-compliance with the provisions of the Electoral Act 2010 (as amended) and INEC Election guidelines 2019.*
2) *Whether the Petitioners have led sufficient and 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 election for the office of Member House of Assembly for Sabon-Birni North Constituency of Sokoto State held on the 9th day of March 2019.*

In the meantime, the learned counsel to the 1st and 2nd Respondents formulated four issues in his final address as earlier noted while the 3rd Respondent formulated a sole issue. The Petitioners on their part formulated three (3) issues in their final address. We are not unmindful of the fact that the parties ought to have based their arguments on the issues formulated by the Tribunal but in the interest of justice, all the issues formulated by all the parties will be resolved in this case alongside those formulated by the Tribunal. In any case, all the issues formulated are interwoven.

It is noteworthy that the sole issue raised by the 3rd Respondent and issue 1 raised by the 1st and 2nd Respondent are on all fours with the 1st and 3rd issues already determined under the preliminary objection in an earlier part of this judgement. We hereby reaffirm our reasoning and holding above on the said issues and hold that this Petition was filed two (2) days out of time thus statute barred.

In view of the foregoing, issues 1 of the 1st and 2nd Respondents and the sole issue raised by the 3rd Respondent are hereby resolved in favour of the Respondents.

However as earlier stated, we shall still determine this petition on its merits just in case we are wrong to have held that the petition was statute barred.

With respect to the 2nd issue posited by learned counsel to the 1st and 2nd Respondents which is on all fours with the 3rd issue posited by the learned counsel to the Petitioners, it is noteworthy that the aforesaid issues are on all fours with the 2nd issue posited by the Tribunal.

Learned counsel to the 1st and 2nd Respondents submitted with respect to this issue that there was no place where the petitioners averred facts showing the figures involved in the acts of non compliance or over voting and how those figures affects substantially the result of the election as conducted by the 3rd Respondent. According to the learned counsel, stating the precise figure in the petition is sine qua non to successful proof of the ground upon which this petition was brought. He referred the Tribunal to the case of Nadabo VS. Tabai (2011) nlwr (pt. 1254) 155 at 162.

He submitted further that such failure is fatal to the case of the petitioners as the Court cannot go into the voyage of discovery to fish out the numbers of voters registered in the affected polling units stated in paragraph 11.5 of the petition. Such a vague and imprecise pleading is not appetizing to the mind of Courts in election petition proceedings and cannot sustain a ground where the Petitioner is alleging that the Respondent did not score the majority of lawful votes cast during the election. He referred the Tribunal to the case of OJO V. ESOHE & 2 ORS (1999) 5 NWLR (603) 444 AT 451 PARAS C-D Per Tabai JCA .

Having not complied with the rudimentary rules of pleading, the Petitioners have failed to present a positive and precise case and thereby have made the tribunal and the Respondent to grope in the dark more particularly the Respondents who are

faced with those vague and imprecise allegation of facts are the most disadvantaged in this case, as the respondents cannot join issue properly with the Petitioners who supplied vague and imprecise facts in the petition. See the case of OJONG V. DUKE (2003) 14 NWLR (PT. 841) 581 AT 618.

We have examined all the arguments canvassed in support of this issue. It is noteworthy that a complaint that a candidate did not score the majority of lawful votes cast at an election is an invitation to compare and contrast figures. To establish this complaint, there must be proper tabulation of votes secured by each of the candidates. A party to an election who alleges that he was entitled to more votes at an election than he was credited with or that his opponent scored less votes, must:

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

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

c. show that those votes when added to his own would have tilted the election in his favour. See the case of ChumaAnozie vs Dr. Ken Obichere&Ors (2006) 8 NWLR (Pt 981) 140

In the instant case however, it is clear that the Petitioner did not adduce any shred of evidence as highlighted above. A careful perusal of the petition once again shows that the petitioners in paragraph 10 of the furnished the result declared by INEC which enjoys the presumption of regularity. It was evident therein that the 1st Respondent scored the highest number of votes. The petitioners also claimed in paragraphs 11.4 and 12.2 that there was over voting with 299 votes in Sabon Birni West Ward while mentioning the total number of registered voters in the alternative prayer.

The 1st Petitioner while giving evidence in court attempted to smuggle in figures into the petition by mentioning the number of registered voters in the exhibits shown to him. He however conceded that he did not have any other scores apart from the one recorded by INEC in Exhibit PK where his own total score is 18,249 while his opponent's scored 19,504 votes.

The learned counsel to the petitioners in his final address at paragraph 8.8 submitted that the correct total as per exhibit PB1 for total votes cast less the number of accredited voters in the ward is equal to 10,233-9934=299. Alas, no such arithmetic calculation is visible in the pleadings or from evidence adduced at the trial.

In any case Exhibits PB1 and PK have been expunged from the records while Exhibits PD, PE, PF and PG have been held as lacking evidential value having not satisfied the requirements of demonstration of documents. Furthermore, the evidence of the PW1 and PW3 (1st Petitioner) have been held to be tainted with hearsay. Apart from this, we have already held above that counsel's address no matter brilliant cannot take the place of legal proof.

What is glaringly obvious in the case presented by the petitioners is that they did not present a second set of results different from that declared by INEC. They also failed to demonstrate in court the figure which ought to be added to theirs that will warrant the Tribunal to set aside the result declared by INEC which enjoys presumption of regularity.

Based on the above, we hereby hold that the petitioners herein failed to prove that the 1st Respondent was not elected by majority of the lawful votes cast. By the foregoing issue two posited by the Tribunal is hereby resolved in favour of the Respondents.

With respect to the 1st issue posited by the Tribunal which is on all fours with the 2nd issue posited by the Petitioners and the 3rd issue posited by the 1st and 2nd Respondents. The Petitioner's grouse with respect to this issue can be sub-divided into 3 limbs.

1. Over voting.
2. Cancellation of results in polling units/Disenfranchisement.
3. Corrupt practices/Non compliance with the provisions of the electoral Act.

With respect to the allegation of over voting, the learned counsel to the 1st and 2nd Respondents submitted on this issue that facts supporting the grounds are those contained in paragraphs 11.3. 11.4 and 11.5 of the petition. He was of the opinion that the facts averred in paragraphs 11.3 and 11.4 are ambivalent, vague, uncertain and imprecise. According to the learned counsel, allegations "that there is over voting with 299 votes in Sabon Birnin West Ward" without stating the specific polling unit(s) where the actual alleged acts of over voting took place leaves the case of the Petitioners bare and such failure is catastrophic to prove of the allegations of over voting.

Learned counsel to the Petitioners in response to this submitted that the PW3 has linked all the documents tendered through PW2 (except Exhibits: PD, PE, PF and PG the summary of which could be found in Exhibits PH and PI) to his case and made adequate demonstration to the Tribunal on the said exhibits. He submitted further that the 3rd Respondent's reply to the Petitioners' Solicitors confirmed that there was over voting (see exhibit PM) at page 3 specifically paragraph 6 of the 3rd Respondent's Reply.

Additionally, going through Exhibits PB2 & PB3 one can observe that there is no result at all for the four polling units (Allakiru, Amuzawa, Gidan Dagi and Dantudu polling units). And at the time of filing of the Petition it was safe to say

no result at all. See Exhibits PB2 and PB3. Cancellation was made by the 3rd Respondent in four polling units (see EXH. PH & PI) due to over voting and violence in line with the provision of section 53(2) which provides.

Learned counsel thereafter submitted that once there is over voting at any polling unit the result shall be cancelled and where the result of over voting was not cancelled it means that this Tribunal can cancel such a result that was refused or neglected to be cancelled by the INEC. See Rule 1 (iv) & 23(a)&(b), 25 & 26 of the Regulations for the Conduct and Guidelines of Election 2019. Thus, the Returning officer in the case have refused to obey the above provision of the Law and Guidelines when he wrongly went ahead to make a return and declare the 1stRespondent as the winner. He thus urged the Tribunal to so hold.

We have carefully considered all the argument of both parties. The question now is, can the petitioners be held to have established the allegation of over voting substantial enough to warrant the Tribunal to cancel the whole elections? We must of necessity answer this question in the negative.

The court in the case of *EMERHOR V. OKOWA (2010) ALL FWLR (PT 896) 1868 AT 1905* learned jurist held thus: -

> "*In a plethora of decisions of this court, we have made it abundantly clear that a petitioner seeking to prove over voting in an election must do the following:*
>
> 1. *Tender the voters register to show the total number of registered voters in each unit.*
> 2. *Tender the statement of result in the appropriate forms which would show the total number of votes cast.*

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

The court also held in the case of LADOJA v. AJIMOBI & ORS delivered on Monday, the 15th day of February, 2016 in suit number SC.12/2016 that

> *"It goes without saying that there are crucial electoral documents which must be tendered by a petitioner in proof of over-voting and how such must be tendered. The most important of such are the voters register used in the challenged election, and forms EC8A. These are the documents which the appellant through its witness PW1, admitted they did not tender and thus an admission against interest. See Ipinlaye II v. Olukotun (1996) 6 NWLR (Pt 453) 140 at 165. Also in the recent decision of this Court in SC. 907/2015 – Mahmud Aliyu Shinkafi & Anor. V. A. Abdulazeez Abubakar Yari & 2 Ors (unreported) delivered on 8th January, 2016, it was held that:- "To prove over-voting, the law is trite that the petitioner must do the following:- 1 Tender the voters register. 2. Tender the statement of results in the appropriate forms which would show the number of accredited voters and number of actual votes. 3. Relate each of the documents to the specific area of his case in respect of which the documents are tendered. 4. Show that the figure representing the over voting, if*

removed would result in victory for the petitioner …" Per OGUNBIYI, J.C.A. (Pp. 52-53, Paras. F-E)

In the instant case, the petitioners tendered voters register but the 1st Petitioner while testifying only mentioned the total number of registered voters in exhibits PB1 and PB2. He also identified Exhibit PC and PK as the summary of results for the 6 wards and the Declaration of result form of INEC. In the meantime, the petitioners listed FORM EC8A (1), FORM EC8B (II), FORM EC8C (II), FORM EC8E (1) as documents they will rely on in their petition but at the trial tendered Forms EC8A , EC8B, Forms EC8C and EC8E which were neither pleaded nor listed. It is noteworthy that exhibits PB1, PB2, PB3, PC and PK have all been expunged from the records while Exhibits PD, PE ,PF and PG have been held of no evidential value.

The petition itself was devoid of any mention of figures representing the over voting which if removed would result in victory for the petitioner. The Petition only mentioned in paragraph 11.2 that there was over voting with 299 votes in Sabon Birni West ward without calling any eye witness/agent from that ward or tendering cogent documentary evidence in proof of same. The learned counsel to the petitioner in his final address calculated figures that were not borne out of records. To crown it all the PW1 and PW3's evidence have been declared tainted with hearsay evidence while the PW2 was merely subpoenaed to tender documents.

From the foregoing, it is obvious that the petitioners herein failed to establish the allegation of over voting vide cogent and credible evidence.

With respect to the allegation of cancellation of results, it is noteworthy that the allegation of the Petitioners in the petition was that no election took place at the alleged four polling units and prayed for an order of the Tribunal for the election to be set aside on this ground. This amounts to disenfranchisement. It was at the trial that the petitioners did an about turn by canvassing cancellation of results. In the meantime, the position of the law on this is that parties are bound by their pleadings.

In the instant case, the petitioners pleaded in 11.2 and 11.5 of the petition that voting did not take place at all in Allakiru poling unit with code NO 010, Dantudu polling unit with code NO 003, Amazawa 001 and Gidan Dagi 012 polling units. The 1st Petitioner took the same position in his witness statement on oath in paragraph 4 and 5 that elections were not held in above stated polling units with registered voters of 1,069 and 990 respectively. The alternative prayer of the petitioners is also insightful. We shall reproduce same for ease of reference;

"That the said election be nullified or cancelled and the 3rd Respondent is to conduct fresh election for the Member to represent Sabon Birni North State Constituency in the State House of Assembly because there were no voting at all at Allakiru Polling Unit with Code No. 010 and Dantudu polling Unit with Code No. 003 of Lajinge Ward with total number of 1,069 registered voters and Amuzawa and Gidan Dagi polling units with code Nos. 001 and 012 of Tsamaye ward with a total number of 990 of Registered voters".

At the trial however, the petitioners tendered Exhibits PJ and PM i.e the letter from Dole & Co. to the Resident Electoral commissioner for Sokoto State and Letter from Independent National Electoral Commission to A.M. Dole Esq. Dated 20/3/19 in support of the allegation of cancellation of results from the aforementioned four polling units.

A cursory look at Exhibit PJ shows that the petitioners alleged that there was cancellation at the four polling units. There is however nothing whatsoever in Exhibit PM that could be construed as acceptance from 3rd Respondent that there was cancellation of results. Paragraph 2 of Exhibit PM specifically stated that *"Please be guided that no election or return shall be questioned in any manner other than by petition while paragraph 3 referred the petitioners to section 133 (1) of the Electoral Act 2010 as amended"*

In the meantime, allegation that election did not take place at all amounts to disenfranchisement. The court held in the case of PDP V INEC (2012) LPELR-8411(CA) that

> *"Disenfranchisement is provable by the tendering of voter's registers, voter's cards and of course the verbal or oral testimony of those who claim to have been disenfranchised"*

In the instant case, though the petitioners tendered voter's registers but the said voters registers have been held as lacking evidential value. The petitioners did not tender any voter's card or call witnesses from the polling units where the alleged disenfranchisement took place. Both the PW1 and the 1st Petitioner admitted they did not visit the concerned polling units. Exhibits PH and PI records over voting in one while the other records violence. The question now is, are these two exhibits enough to establish that there was cancellation of results at the aforementioned polling units when no eye witness from the said polling units gave evidence in court? We must of necessity answer this question in the negative based on the reasons already adumbrated above.

In view of the foregoing, we hereby hold that the petitioners herein failed to establish either disenfranchisement or cancellation of results from Allakiru, Dantudu, Gidan Dagi or Amuzawa polling units that could warrant the Tribunal to order a fresh election.

With respect to the allegation of corrupt practice and non-compliance with the provisions of the electoral Act, to establish this allegation, the Petitioner alleging corruption or non compliance must not only prove non compliance but also prove that the act of non compliance substantially affected the outcome of the election. See the case of ANDREW v. INEC (2018) 9 NWLR (1624) PAGE 507 AT 522 RATION 18 .

On the other hand, allegations of corrupt practices is an imputation of crime, the standard of prove required in such circumstances is prove beyond reasonable doubt The petitioner can only do this by proving same from polling unit to polling unit and through a party agent. In the circumstances of this case the petitioners have a duty to present witnesses who are direct eye witness to happenings in the polling

units where the said infractions occurred as alleged in paragraphs 11.3 and 11.5 of petition. He refer the Tribunal to the case of LADOJA V. AJIMOBI (2016) 10 NWLR(PT. 1516)PAGE 87 AT PAGE 103 RATION 14.

In the instant case, the petitioners herein did not call witnesses from the alleged polling units, the evidence of the PW1 and the 1st Petitioner was held to be hearsay evidence. Can the petitioners herein now be held to have established corrupt practice or non-compliance capable of vitiating the results declared by INEC which enjoys the presumption of regularity? We must once again answer this question in the negative. Based on the above, the 2nd issue posited by the Tribunal is also resolved in favour of the Respondents.

With respect to the 4th issue posited by the 1st and 2nd Respondent which is on all fours with the 1st issue posited by the Petitioners, the question to be asked here is whether the Petitioners have established their entitlement to any of the reliefs claimed having regards to the pleadings and the evidence before the Tribunal? We must once again answer this question in the negative.

For the avoidance of any doubt, the reliefs sought from the Tribunal will be reproduced here for ease of reference;

While the reliefs sought are as follows:

a. T*hat it be declared that the 1st respondent did not score the highest number of valid votes cast at the election*
b. *That there were no election at all in the following polling units namely Allakiru 010, Dantudu 003, Amazawa 001 and Gidan Dagi 012.*

Alternatively

That the said election be nullified or cancelled and the 3rd Respondent is to conduct fresh election for the Member to represent Sabon Birni North State

Constituency in the State House of Assembly because there were no voting at all at Allakiru Polling Unit with Code No. 010 and Dantudu polling Unit with Code No. 003 of Lajinge Ward with total number of 1,069 registered voters and Amuzawa and Gidan Dagi polling units with code Nos. 001 and 012 of Tsamaye ward with a total number of 990 of Registered voters.

The learned counsel to the 1st and 2nd Respondents submitted that the reliefs being claimed by the petitioner runs contrary to the provisions of the law under section 140 of the Electoral Act.

We have carefully examined the provisions of Section 140 of the Electoral Act and noticed that the petitioner did not violate any part of that provision. In any case, the court provides for many consequential reliefs not captured in that section contrary to the claim of the 1st and 2nd Respondents.

It is noteworthy that the 2nd ground of the petition was struck out as incompetent while upholding the preliminary objection thus the only ground of the petition left before the Tribunal is the one alleging that the 1st Respondent was not elected by majority of the lawful votes cast. This issue has already been resolved against the petitioners in the earlier part of this judgement.

In the meantime, the 1st relief sought can be subsumed under the 2nd issue posited by the Tribunal which has already been resolved in favour of the Respondents. The 2nd and alternative reliefs relate to the 1st issue posited by the Tribunal which has also been resolved in favour of the Respondents. Based on the above, the 3rd issue posited by the petitioner and the 4th issue posited by the 1st and 2nd Respondents are hereby resolved in favour of the Respondents.

Having resolved all the issues for determination in favour of the Respondents, we hold that this petition lacks merit and it is accordingly dismissed with N20,000.00 (Twenty thousand naira) costs in favour of each Respondent.

HON. JUSTICE P.A. AKHIHIERO

CHAIRMAN

HON. JUSTICE A.N. YAKUBU

1ST MEMBER

HIS WORSHIP S.T BELLO

2ND MEMBER

COUNSELS:

1. A.M. Dole Esq …… PETITIONER
2. A.Y. Abubakar Esq ……1ST& 2ND RESPONDENTS
3. Shamsuddeen M. Hussaini Esq……..3RD RESPONDENT