**IN THE NATIONAL AND STATE HOUSES OF ASSEMBLY**

**ELECTION PETITION TRIBUNAL, ZAMFARA STATE**

**HOLDEN AT KADUNA**

**ON FRIDAY, THE 28TH DAY OF MAY, 2021**

**BEFORE THEIR LORDSHIPS**

**HON. JUSTICE RALIATU IYABO BUKUNOLA ADEBIYI CHAIRMAN**

**HON. JUSTICE SILAS HARUNA MEMBER I**

**HON. JUSTICE AIGBONA TERRY MOMODU MEMBER II**

**EPT/ZS/SHA/01/2020**

**BETWEEN:**

**1. HON DANKANDE GAMJI**

**2. ALL PROGRESSIVE CONGRESS PETITIONERS**

**(APC)**

**AND**

**1. IBRAHIM T. TUKUR**

**2. PEOPLES DEMOCRATIC PARTY RESPONDENTS/APPLICANTS**

**(PDP)**

**3. INDEPENDENT NATIONAL**

**ELECTORAL COMMISSION RESPONDENT**

**(INEC)**

**RULING**

This is one of three applications filed by the 1st and 2nd Respondents and the 3rd Respondents, respectively, during the pre-hearing session, challenging the competence of the Petition dated 25th December, 2020, amongst other reliefs, seeking to strike out same for want of jurisdiction; seeking to strike out the Petitioners Reply dated 25th January, 2021 filed in response to the 1st and 2nd Respondents Reply to the Petition, to strike out paragraphs in the Reply and seeking to strike out paragraphs in the Petitioners Reply dated 25th January, 2021 filed in response to the 3rd Respondents Reply dated 15th January, 2021.

All applications were opposed and heard by the Tribunal on the 16th of February, 2021. In its ruling delivered on the 19th of February, 2021 the tribunal deferred ruling on the three applications till judgment in view of the ‘sui generis’ nature of the proceedings to enable a determination of the Petition on its merits.

Rulingon the Three applications will be delivered separately**. This is a Motion** **on Notice dated the 20th of January, 2021 filed on 21st January, 2021 by the** **1st and 2nd Respondent’s Pursuant to Paragraphs 47(1)(2)(3) and 53(2)(5) of First Schedule to the Electoral Act, Sections 138(1) and 140(1) and Section 36(1) of the Constitution of Federal Republic Nigeria 1999 (as amended**)” seeking for the following Orders;

***“1. An Order of this Honourable Tribunal permitting the 1st and 2nd Respondents/Applicants to bring and move this application before/outside or during the pre-hearing session.***

***2. An Order of this Honourable Tribunal striking out grounds (1), (2) and (3) contained in paragraph 18 of the Petition for being incompetent;***

***3. An Order of the Honourable Tribunal striking out paragraphs 10-96 of the Petition which are predicated on the incompetent grounds (1), (2) and (3) in paragraph 18 of the Petition and in which allegations of majority of lawful votes, corrupt practices and non-compliance were copiously purportedly pleaded in the Petition;***

***4. An Order of this Honourable Tribunal striking out reliefs 1, 2, 3, 4, 5 and 6 of the Petitioner’s petition for being incongruous, illogical and ungrantable.;***

***5. An Order of this Honourable Tribunal dismissing or striking out the Petition for not stating the result of the election;***

***6. An Order of the Honourable Tribunal dismissing or otherwise striking out the Petition for want of jurisdiction and on the ground that the Petition does not disclose any reasonable cause of action.”***

On grounds as stated on the Motion paper, the 1st and 2nd Respondents filed in support of the application an 11 paragraph affidavit deposed to by Uche Oluchi Vivian on the 21st January, 2021 with a Written Address attached.

The Petitioners filed in opposition to the application a 23 paragraph Counter Affidavit deposed to on the 26th of January, 2021 with a written address attached.

The 1st and 2nd Respondents filed in response a 5 paragraph further affidavit deposed to by Uche Oluchi Vivian on the 3rd of February, 2021 with a Reply on Points of Law attached. The 3rd Respondent did not file any processes in opposition to the application.

The application was moved along with the other two applications and the Written Addresses adopted on the 16th of February, 2021 by Chief Mike Ozekhome SAN who appeared with Benson Igbanoi Esq., S. E. O. Maliki Esq., Akintayo Balogun Esq., and Osilima Mike Ozekhome Esq., learned counsel for the 1st and 2nd Respondents; M. S. Katu SAN with A. I. Ihejirika Esq., Abdullahi Muktar Mohammed Esq., Nanyak Jarfa Esq., and Ahmed Abdulrahman Esq., learned counsel for the 3rd Respondent; and Udzahu Medugu Esq., who appeared with Affis Matanmi Esq., learned counsel for the Petitioners.

**BACKGROUND**

By a Petition filed on the 25th of December, 2020 Hon. Dankande Gamji, the 1st Petitioner and a member of the All Progressive Congress (APC) the 2nd Petitioner, are contesting the results of the Bye Elections of the 2020 Bakura State Assembly Constituency of Zamfara State which held on the 5th and 9th of December, 2020 in which the Independent Electoral Commission, the 3rd Respondent, decleared Ibrahim T. Tukur, the 1st Respondent, candidate of the Peoples Democratic Party, the 2nd Respondent, the winner. The Petitioners are contending that the 1st Respondent was not duly elected by a majority of the lawful votes on three grounds contained in the Petition. The 1st and 2nd Respondents and the 3rd Respondents, respectively, filed Replies on the 19th of January, 2021 and 18th January, 2021, respectively, in response to the Petition to which the Petitioners filed Replies both dated 26th of January, 2021.

The Issues for determination in the instant application as formulated by the learned senior counsel for the 1st and 2nd Respondents are as follows:

***“1. Whether this Honourable tribunal can hear and determine this application before the pre-hearing session?***

***2. Whether the prayers of the applicants in the present Application can be granted considering the circumstances and contents of the Petition vis-à-vis the mandatory provision of the Electoral Act, 2010 (as amended), the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and established judicial decisions of the Apex Court?”***

Learned Senior counsel for the Petitioners also formulated two Issues for determination as follows:

***“1. Whether this Honourable Tribunal can hear and determine this application before the pre-hearing session.***

***2. Considering the circumstances and contents of the Petition vis-à-vis the mandatory provision of the Electoral Act, 2010 (as amended), the Constitution of the Federal Republic of Nigeria 1999 (as amended) and decisions of the Apex Court, whether the prayers in the Preliminary Objection will be granted.”***

The arguments raised in support and against the instant application by both learned senior counsel for the 1st and 2nd Respondents and learned counsel for the Petitioner in their written addresses and oral submissions will be considered whilst considering the issues formulated by the tribunal as arising for determination. These issues are extracted from the issues formulated by the parties and the prayers before the tribunal as follow;

***1. Whether grounds 1, 2 and 3 contained in Paragraph 18 of the Petition are competent?***

***2. Whether the Petition ought to be struck out for want of jurisdiction on the ground that it does not disclose any reasonable cause of action?***

***3. Whether the Petition ought to be dismissed or struck out for non-compliance with paragraph 4(1)(a) of the First Schedule to the Electoral Act, (2010) for not stating the results of the election?***

As submitted by learned senior counsel for the 1st and 2nd Respondents prayer 1 of the motion on Notice for leave to bring and move the application before/outside or during the pre-hearing session has become otuse and superfluous, it is accordingly struck out.

**ISSUE 1**

*Whether grounds 1, 2 and 3 contained in paragraph 18 of the Petition are competent?*

Paragraph 18 of the Petition states as follows:

***“Your Petitioners state that the 1st Respondent, Ibrahim T. Tukur was not validly returned as the person duly elected on the following grounds:***

***i. That the 1st Respondent was not qualified to contest election under the Constitution of the Federal Republic of Nigeria 1999 (as amended) at the time of the 2020 Bakura State Constituency Bye Election of Zamfara State was conducted.***

***ii. That the election and return of 1st Respondent was marked by reason of substantial non-compliance with the provisions of the Electoral Act 2010 (as amended) and Regulations and guidelines for the conduct of General Elections and Manual for Election officials and/or corrupt practices that substantially affected the result of the election.***

***iii. That the 1st Respondent was not duly elected by majority of lawful votes cast at the bye election.”***

It is the contention of learned senior counsel for the 1st and 2nd Respondents that in view of the ‘sui generis’ nature of election Petitions any error in complying with the provisions of the Electoral Act 2010 (as amended) is fatal to the Petition, Learned Senior Counsel relied on the decisions of the Court of Appeal, in **MR. DAPO AKINWUNMI AMBODE V. MR. KOLAWOLE OLUJUMI ABGAJE & ORS (2015) LPELR-25667, SAIDA SA’AD & ANOR V. MOHAMMED ABUBAKAR MAIFATA & ORS (2008) LPELR-4915** amongst others.

Learned Senior Counsel submitted that grounds 1, 2 and 3 of the Petition as above stated are incompetent and in gross violation of Sections 138(1) of the Electoral Act 2010 (as amended), paragraph 4(1) of the First Schedule to the Electoral Act, sections 31(5)(6) of the Electoral Act, and Sections 285(a) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) by Fourth Alteration.

As regards **Ground 1**, the contention of learned senior counsel is that there are no facts in the Petition in support of the alleged non qualification of the 1st Respondent to contest the election pursuant to sections 31, 34, 35 and 37 of the Electoral Act 2010 and Sections 106, 107 and 318 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

Learned Senior Counsel further argued in the alternative, that the matters under sections 31, 34, 35 and 87 of the Electoral Act 2010 (as amended) are Pre-election matters which ought to have been contested prior to the elections of 5th and 9th December, 2020 at the High Court of a State, Federal High Court or the Federal Capital Territory (FCT). Relying on **PDP V. INEC (2014) LPELR-23808 (SC),** Learned Senior Counsel submitted that the Petitioners have waived their right to challenge the election on the grounds of the qualification of the 1st Respondent. Learned Senior Counsel submitted that the 1st Respondent is qualified to contest the membership of the State House of Assembly Election having met all the requirements stipulated in Sections 106, 107 and 318 of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

Learned Senior Counsel further reiterated that the provisions of Section 31 of the Electoral Act 2010 (as amended) clearly stipulate that once INEC, the 3rd Respondent, publishes the list of candidates sponsored by each party to participate in the elections, any person who has reasonable grounds to believe that the information given by a candidate is false shall file a suit at the Federal High Court, State High Court or FCT within 14 days as per Section 318 and 285(9) of the Constitution (fourth alteration) and that the Petitioners having failed to do so, the ground has become statute barred.

Learned Senior Counsel further argued that any challenge to the qualification of the 1st Respondent to participate in the election is a pre-election matter.

Learned Senior Counsel urged the court to hold that ground 1 is grossly incompetent and invalid rendering same liable to be struck out.

In response learned counsel to the Petitioners submitted that a ground which borders on the qualification of a candidate at a general election can be brought either as a pre-election or election matter. Learned counsel relied on Section 138(1)(e) of the Electoral Act 2010 (as amended) and the decision of the Supreme Court in **FAYEMI V. ONI & ORS (2019) LPELR-49281.**

In his reply on Points of Law learned Senior Counsel for the 1st and 2nd Respondents reiterated his earlier submission that the Petitioners have waived their right to challenge the election on the grounds of disqualification of the 1st Respondent and also failed to state the grounds or show the tribunal how the 1st Respondent stands disqualified from participating in the Bakura State Assembly Bye-elections.

By the provisions of section 138(1) of the Electoral Act 2010 (as amended) an election can be questioned on any of four grounds including the non-qualification of a candidate. Section 138(1)(a) stipulates as follows:

***“(a) That a person whose election is questioned was, at the time of the election not qualified to contest the election.”***

This provision provides that a petition may be instituted and questioned on the ground that the candidate who took part in the election was not qualified to contest. The courts before which Petitions may be instituted challenging the conduct and results of Elections are enumerated in Section 133(1) and (2) of the Electoral Act 2010 (as amended) as follows:

***“(1) No election and return of an election under this Act shall be questioned in any manner other than by a petition complaining of an undue election, or undue return (in this Act referred to as an election petition) presented to the competent tribunal or court in accordance with the provisions of the Constitution or of this Act, and in which the person elected or returned is joined as a party.***

***(2) In this part ‘tribunal or court’ means –***

***(a) In the case of Presidential Election, the Court of Appeal; and***

***(b) In the case of any other elections under this Act, the election tribunal established under the Constitution or by this Act.”***

The combined effect of Sections 138(1) and 133 of the Electoral Act 2010 (as amended) is that contrary to the argument of Learned Senior Counsel to the 1st and 2nd Respondents a challenge to the qualification of a candidate is both a Pre and Post Election matter. The Pre-election challenge is governed by section 31(5) of the Electoral Act 2010 (as amended) which stipulates that challenges may be made to the qualification of a candidate by filing a suit at the Federal High Court, State High Court or FCT and the provisions of sections 285 (14)(b) of the Constitution of the Federal Republic of Nigeria (Fourth Alteration No. 21) Act 2017 Act No. 8.

The decision of the Supreme Court in **FAYEMI V. ONI & ORS (Supra),** cited by learned counsel to the Petitioner, settles the issue that qualification/disqualification of a candidate is both a pre-election and Petition matters. The decision of the Apex Court in **FAYEMI V. ONI & ORS (supra)** Per Paul Adamu Galumje JSC @ Pages 19-24 Paras D-F is reproduced hereunder:

***“On the contrary qualification of a candidate is both pre and post-election matter that can be challenged either in the Federal or State High Court or the Tribunal. In Dangana & Anor v. Usman & Ors (2013) 6 NWLR (Pt. 1349) 50 this Court, Per Onnoghen JSC (as he then was) held:- “An issue of qualification of a candidate to contest an election under the Electoral Act, 2010 (as amended) is both a pre-election and an election matter which both the High Courts and the relevant Election Tribunals have jurisdiction to hear and determine. Where an aggrieved party decides to go through the High Court to challenge or question the qualification of such a candidate, his right of appeal terminates at the Supreme Court. Where however, he decides to go through the Election Tribunal route and the election to which the issue relates is a National or State Houses of Assembly Election, then his quest for justice constitutionally terminates at the Court of Appeal by operation of section 246(3) of the 1999 Constitution (supra). On the other hand if the election being question is a Governorship Election, then the issue of qualification as a ground of questioning the election can be canvassed up to the Supreme Court by virtue of Section 233(1) (iv) of the said 1999 Constitution. The jurisdiction to hear and determine the issue of qualification of a candidate in an election is therefore parallel-one through the High Courts and the other through the Election Tribunal.”***

Accordingly, the non qualification of the 1st Respondent as a Candidate to the election can be considered as a post election matter. Learned Senior Counsel for the 1st and 2nd Respondents also submitted that paragraphs 24, 25 and 26 of the Petition which contained the pleadings on non-qualification did not reveal any facts to substantiate ground 1. The Petitioners counsel perhaps agreeing with Learned Senior Counsel made no response to this submission.

Paragraphs 24, 25 and 26 of the Petition contained the following averments:

***“24. The Petitioners state that the 1st Respondent was not duly sponsored by the 2nd Respondent to contest the Bakura State Assembly Bye Election held on 5th and 9th December, 2020 in accordance with the Electoral Act, 2010 (as amended).***

***25. Your Petitioners state that in order for a person to qualify to contest election for the office of State House of Assembly Election, he must have been duly sponsored by the political party in accordance with the provisions of Section 31, 34, 35 and 87 of the Electoral Act, 2010 (as amended); in addition to satisfying the requirements of Sections 106, 107 and 318 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).***

***26. Further to paragraph 25 above, that the 1st Respondent was not qualified to contest election to represent Bakura Local Government in the bye elections held on 5th and 9th December, 2020.”***

Paragraph 4(1)(d) of the First Schedule to the Electoral Act 2010 (as amended) stipulates that an election petition shall state clearly the facts of the election petition, the ground and the reliefs sought. By the provision of paragraph 4(1)(d) of the First Schedule to the Electoral Act 2010 and the decision of the Supreme Court in **FAYEMI V. ONI (supra),** above reproduced, the grounds of challenge to the qualification of a candidate must be clearly pleaded. The Petition contains no specific averments in paragraphs 24, 25 and 26, above stated, challenging the qualification of the 1st Respondent to contest the elections. For this reason, Ground 1 is found to be non-cognizable and is accordingly hereby struck out.

**GROUND 2**

***“That the election and return of 1st Respondent was invalid by reason of substantial non-compliance with the provisions of the Electoral Act 2010 (as amended) and Regulations and Guidelines for the conduct of General Elections and Manual for Election Officials and/or corrupt practices that substantially affected the result of the election.”***

Learned Senior Counsel for the 1st and 2nd Respondents submitted that Ground 2 of the Petition as above reproduced, is incompetent for being in contravention of Section 138(1)(b) of the Electoral Act 2010 (as amended) which provides as follows:

***“An Election may be questioned on any of the grounds, that is to say;***

***(b) That the election was invalid by reason of corrupt practices OR non-compliance with the provisions of the Act.”***

Learned Senior Counsel submitted that in view of the ‘sui generis’ nature of Election matters the provision of section 138(1)(b) of the Electoral Act 2010 (as amended)must be strictly complied with and any default is visited with fatal consequences. Learned Senior Counsel cited in support, the decision of the Supreme Court in **OJUKWU V. YAR’ADUA (2009) 12 NWLR (PT 1154) 50** where the Apex Court held that a Petitioner cannot add or subtract from the provision of section 145(1) of the Electoral Act 2006, which is in paramateria with section 138(1)(2) of the Electoral Act 2010 (as amended). Learned Senior Counsel also cited in support the decision of the Supreme Court in **OBASANJO & ORS V. YUSUF & ANOR (2004) LPELR-2151.**

The objection to ground 2 of the Petition is also based on the fact that the grounds of non-compliance and corrupt practices which were lumped together are distinct. By the provisions of section 138(1)(b) of the Electoral Act 2010 (as amended). Learned counsel cited in support of this contention the decision of the Court of Appeal in **HON. AMOS GOMBIGOYOL V. INEC (2012) 11 NWLR (PT. 1311) 207 @ 229-230** wherein Nwodo JCA held that the use of ‘or’ is a disjunctive principle used to express an alternative that should not be joined together.

Learned Senior Counsel further argued that the addition of the phrase ‘and Regulations and Guidelines for the conduct of General Elections and Manual for Election officials and/or corrupt practices that substantially affected the result of the election’ in ground 2 is outside the provisions of sections 138(1)(b) of the Electoral Act 2010 (as amended) and therefore makes same liable to be struck out. Learned Counsel relied on the decision of the Apex Court in **NYESOM V. PETERSIDE (2016) 7 NWLR (PT. 1512) 574 @ 528.**

Learned Senior Counsel urged the Tribunal to strike out Ground 2 for being defective on the ground that the Petitioners have deliberately expanded the language or wordings of the statute and for combining two distinct grounds of non-compliance contrary to sections 138(1)(b) of the Electoral Act 2010 (as amended).

In response to these arguments, learned counsel to the Petitioners submitted that the case of **OJUKWU V. YARADUA (supra)** cited by the 1st and 2nd Respondents counsel is irrelevant and that the Regulations and Guidelines referred to in Ground 2 does not affect the competence of ground 2 or contravene section 138(1)(b) of the Electoral Act 2010 (as amended).

The Petitioners counsel argued that Election Guidelines and Manuals are made pursuant to Sections 153 and 73 of the Electoral Act 2010 (as amended). Relying on the decision of the Court of Appeal in **AJADI V. AJIBOLA (2004) 16 NWLR (PT. 898) 91** which he submitted implies that where a ground of challenge to an election is non-compliance, it means that the election that produced the person returned as the winner was not conducted in compliance with the relevant electoral law. Learned counsel further argued that the word ‘or’ in section 138(1)(b) of the Electoral Act 2010 (as amended) is not always construed as being disjunctive and that the framers of the Electoral Act intended that both grounds of corrupt practices and non-compliance be raised together under one ground.

To restate Section 138(1)(b) of the Electoral Act, 2010 (as amended) stipulates as follows:

***“An Election may be questioned on any of the following grounds, that is to say***

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

The Supreme Court held in **OJUKWU V. YARADUA (supra)**, that a party has no legal right to expand the language or wordings of a statute. The Supreme Court Per Tobi JSC (of blessed memory) at page 121 paragraphs C-E of the judgment stated as follows:

***“A Petitioner is required to question an election on any of the grounds in Section 145(1) of the Act. He is expected to copy the Section 145(1) grounds word for word. I think a petitioner can also use his own language to convey the exact meaning and purport of the subsection. In the alternative situation, a petitioner cannot go outside the ambit of section 145(1) of the Act. In other words, he cannot add to or subtract from the provision of section 145(1). In order to be on the safer side, the ideal thing to do is to copy the appropriate ground or grounds as in the subsection. A Petitioner who decides to use his own language has the freedom to do so, but he should realize that he is taking a big gamble if not a big risk.”***

This principle of law has been restated in a plethora of authorities see **OSHIOMOLE V. AIRHIAVBERE & ORS (2013) LPELR-19762 (SC) & ALHASSAN & ANOR V. ISHAKU & ORS (2016) LPELR-40083 (SC)** and **HON. AMOS GOMBIGOYOL V. INEC (2012 11 NWLR (PT. 1311) 207 @ 229-230.**

The petitioners herein sought not to copy ground 2 word for word as contained in section 138(1)(b) of the Electoral Act 2010 (as amended) nor did they seek to use language that would merely explain the provision but rather they joined together the two distinct legs of section 138 (1)(b) of the Electoral Act 2010 (as amended) and then inserted another leg.

The provision of section 138(1)(b) of the Electoral Act 2010 (as amended) distinguishes clearly between the grounds, the criminal aspect i.e invalidity based on corrupt practices and the civil aspect compliance with the provisions of the Electoral Act.

It is settled law that where a statute is capable of being given two meanings when interpreted, the court shall adopt the interpretation which would not defeat the interpretation of the law makers. See **WIKE EZENKWO NYESOM V. PETERSIDE & ORS (2018) LPELR-25724 (SC)**.

In view of the ‘sui generis’ nature of Election Petition matters, the law and rules governing them must be strictly complied with and any error no matter how slight it is, in complying with the provisions is fatal to the petition. See **APC V. PDP (2015) LPELR-24587; BUHARI V. YUSUF (2003) 12 NWLR (PT. 814) 446 @ 498-499**.

The tribunal finds that ground 2 is incompetent for offending the provisions of Section 138(1)(b) of the Electoral Act 2010 (as amended) it is therefore accordingly hereby struck out.

**GROUND 3**

***“That the 1st Respondent was not duly elected by majority of lawful votes cast at the bye election”.***

Learned Senior Counsel for the 1st and 2nd Respondents has challenged the validity of Ground 3 for being predicated on ground 2, corrupt practices. The contention of learned senior counsel is that there is an absence of requisite facts in support of the ground therefore it should be struck out. Learned Senior Counsel relied on paragraph 4(1)(d) of the First Schedule to the Electoral Act 2010 (as amended) and on the decisions of the Court of Appeal in **UZODINMA V. UDENWA (2004) 1 NWLR (PT. 854) 303** and the Supreme Court in **OJUKWU V. YARADUA (supra)**.

Learned senior counsel submitted that paragraphs 38, 54, 55, 57, 59, 61, 68, 70, 95 and 96 of the Petition purportedly containing averments in support of ground 3 contain allegations of falsification of results and as these are facts of corrupt practices and non-compliance giving rise to ground 2, they cannot stand in support of ground 3 as ground 2 is incompetent.

Learned counsel to the Petitioners in opposition submitted that the argument of learned senior counsel in this regard is not sustainable as the ground that the 1st Respondent was not duly elected by majority of lawful vote cast, is anchored on facts which are evident in paragraphs 27, 28, 29, 30, 65, 66 and 67 of the Petition.

Paragraph 4(1)(d) of the First Schedule to the Electoral Act 2010 (as amended) relied upon by the 1st and 2nd Respondents stipulates as follows:

***“An election petition under this Act shall –***

***(d) State clearly the facts of the election petition and the ground or grounds on which the petition is based and the reliefs sought by the petition.”***

Upon a cursory evaluation of the pleadings contained in paragraphs 27, 28, 29, 30, 65, 66 and 67 of the Petition, the tribunal finds that the facts contained in the stated paragraphs give rise to both grounds 3 and 2. Inspite of the court’s earlier finding that ground 2 is invalid, the facts which support ground 3 are sufficient to uphold Ground 3. The principle of law that a party can disregard surplus or unnecessary averments in pleadings and rely on the relevant ones also avails the averments in support of Ground 3. See **OMOBORIOWO V. AJASIN (1984) LPELR-2643**.

The objection against Ground 3 accordingly fails and is hereby dismissed. Ground 3 is found to be congnizable under the Electoral Act.

**ISSUE 2**

*Whether the Petition ought to be struck out for want of jurisdiction on the ground that it does not disclose any reasonable cause of action?*

Learned Senior Counsel for the 1st and 2nd Respondents submitted that the principle that pleadings must disclose a reasonable cause of action is applicable to election petitions even though they are ‘sui generis’ and that in order to decipher whether a reasonable cause of action has been made the petition itself must be determined in line with paragraph 4(1)(d) of the First Schedule to the Electoral Act 2010 (as amended). He cited in support **OSHIOMOLE V. AIRHISVBERE (2013) 7 NWLR (PT. 1353) 326 @ 404.**

Learned Senior Counsel submitted that the facts contained in the Petition are insufficient or lack requisite particulars to sustain the complaints or cause of action.

Learned Senior Counsel further submitted that paragraphs 10, 11, 12, 13, 14, 15, 22, 23, 24, 25, 26, 28, 29, 30, 31, 32, 54, 55, 57, 61, 62, 66, 70 and 77 of the Petition are generic, vague, unseveriable, non-specific, nebulous, imprecise, speculative and at large; for the reasons that the names of the polling units and wards in Bakura State Assembly election were listed without providing necessary and desirable particulars regarding the complaints. The further contention of learned senior counsel is that no evidence can be led on the averments in view of the absence of details. He cited in support of the principle of law, that parties are bound by their pleadings the decisions in **NGIGE V. OBI (2006) 14 NWLR (PT. 999) 1 @ 142, OYEKOLA V. AJIBADE (2004) 17 NWLR (PT. 902) 356 and IGBINOKPE V. OGEDEGBE (2001) 18 NWLR (PT. 748) @ 18**.

In addition to the contention that the paragraphs above listed ought to be struck out for lacking in particulars being general and vague, learned senior counsel for the 1st and 2nd Respondents further submitted that paragraphs 43, 46, 51 and 63 of the Petition borders on allegations of non-use of smart card readers, lack of verification and authentication of voters cards which are not tied to any ground of the petition nor predicated on any extant legislation. The 1st and 2nd Respondents, counsel further contended that paragraphs 38, 54, 55, 57, 59, 61, 65, 68, 70, 95 and 96 of the Petition relates to wrongful entries, being an unknown allegation is incompetent.

Learned Senior Counsel reiterated the arguments in support of his contention that the Petition does not disclose a reasonable cause of action and submitted that the Petition is initiated contrary to paragraph 4(1)(2) of the First Schedule to the Electoral Act 2010 (as amended) and sections 133, 137 and 138 of the Electoral Act 2010 (as amended) and therefore is incompetent and the court lacks the jurisdiction to act upon it. He relied on **DIM CHUKWUEMEKA OJUKWU V. ALHAJI UMAU YAR’ADUA & 4 ORS (2009) 12 NWLR (PT. 1154) 50** in urging the Tribunal to strike out or dismiss the petition.

The 1st and 2nd Respondents counsel further submitted that the allegation of forgery and fraud in the Petition cannot be determined as the tribunal lacks the jurisdiction to try criminal offences. He relied on **DENLOYE V. MEDICAL & DENTAL COUNCIL PRACTITIONERS DISCIPLINARY TRIBUNAL (1986) ALL NLR 300 @ 303**.

Learned Counsel further argued that as the allegations of corrupt practices in the Petition are not made against any person or individual in particular they cannot be maintained. He submitted that there is no vicarious liability in the realm of criminal law and cited in support **APC V. PDP (2015) 15 NWLR (PT. 1481)**.

Learned Counsel to the 1st and 2nd Respondents urged the Tribunal to hold that the Petition is incompetent and to strike it out for being vague, and not disclosing a reasonable cause of action.

Learned Counsel for the Petitioners submitted in response to the objection to paragraphs 10, 11, 12, 13, 14, 15, 22, 23, 24, 25, 26, 28, 29, 39, 31, 32, 54, 55, 57, 61, 62, 66, 70 and 71 of the petition that by paragraph 5 of the First Schedule to the Electoral Act 2010 (as amended) a Petitioner is not required to plead evidence but facts in support of their pleadings. Learned counsel further submitted that paragraph 17(1) of the First Schedule to the Electoral Act 2010 (as amended) imposes a duty, on any Respondent who wishes to have further particulars to apply to the Tribunal for further particulars any time after entry of appearance and not more than ten days after the filing of the Reply, requesting for particulars or directions for which he prays, where he finds that some paragraphs are vague or more particulars are needed. Learned counsel submitted that the 1st and 2nd Respondents have failed to apply for further particulars and by filling their Reply have shown that they are not misled by any of the averments. Learned counsel cited in support; **APC & NWANKWO V. YAR’ADUA (2010) 12 NWLR (PT. 1209) 518**.

Learned counsel to the Petitioner urged the court to read and interpret the paragraphs complained about objectively, collectively and holistically and not disjointly or separately and by so doing it, will be revealed that the said paragraphs duly satisfied the requirements of paragraph 4(1) and (2) of the First Schedule to the Electoral Act 2010 (as amended).

Responding to the contention that the petition does not disclose a reasonable cause of action, learned counsel to the petitioners submitted that a calm perusal of the grounds of the petition and the entire pleadings disclose a reasonable cause of action. Learned counsel referred the tribunal to paragraphs 8-107 of the petition which he submitted contain the necessary parties to the petition, challenge to the conduct of the Bakura State Assembly Bye Election of 5th and 9th December, 2020, the grounds of the petition and supporting facts showing the circumstances that grounded the petitioners cause of action.

Learned counsel to the Petitioner’s further submitted that it is not necessary to join any officer or personnel of the 3rd Respondent even where the allegation or complaint against them is criminal in nature. Learned counsel relied on section 132(3) of the Electoral Act 2010 (as amended) which he submitted prohibits the joinder of Electoral Officers, Returning officers and other staff or agents of the commission. He relied on **APC V. PDP & ORS (2015) LPELR-24587**.

Learned counsel to the Petitioners urged the Tribunal to do substantial justice and not to adhere to technicalities he cited the decision of the Court of Appeal in **WAMINI-EMI V. IGALO & ORS (2008) LPELR-50911 (CA)** in support.

On the allegation of forgery, learned counsel to the Petitioner’s submitted that an allegation of corrupt practices in a petition is cognizable under section 138(1)(b) of the Electoral Act 2010 (as amended) and must be proved beyond reasonable doubt. Learned counsel submitted that the authorities cited by the 1st and 2nd Respondents in this regard are inapplicable and the Tribunal has the jurisdiction to entertain the petition on this ground.

The first subissue arising for determination is whether paragraphs 10, 11, 12, 13, 14, 15, 22, 23, 24, 25, 26, 28, 29, 30, 31, 32, 34, 55, 57, 61, 62, 66, 70 and 71 of the Petition are generic and vague and lacking in any form of particularity.

Paragraph 4(1)(d) of the First Schedule to the Electoral Act 2010 (as amended) stipulates as follows:

***“4(1) An election petition under this act shall***

***(d) State clearly the facts of the election petition and the ground or grounds on which the petition is based and the relief sought by the petitioner.”***

Before examining the alleged offending paragraphs, above listed, it is necessary to examine the law on pleadings, in order to establish the nature of averments the law requires the petitioners to plead. Civil cases are settled on the pleadings. Pleadings must therefore contain facts and not law. It was held by the Apex Court in **ATIKU ABUBAKAR (GCON) V. ALHAJI MUSA YAR’ADUA (2008) LPELR-51 PAGE 131-132** Per Tobi JSC (of blessed memory) at Pages 131-132 Paras G-A as follows:

***“One basic principle of pleadings is that the facts pleaded must be exact, precise and should not give rise or room for speculation or conjectures. The facts pleaded must be concise and not rigmarole.”***

The tribunal finds upon careful perusal of each of the alleged offending paragraphs, that paragraphs 24, 25, 26 of the petition are lacking in form and particulars and are accordingly struck out. Regarding the contention that paragraphs 43, 46, 51 and 68 of the petition are not tied to any grounds and that paragraphs 38, 54, 55, 57, 59, 61, 65, 68, 70, 95 and 96 relates to wrongful entries, the tribunal finds upon a cursory evaluation of all the paragraphs that they are not vague or imprecise and contain reasonable facts that support the remaining ground 3;

***“That the 1st Respondent were not duly elected by majority of lawful votes cast at the bye election.”***

The other outstanding sub issues for determination are; whether the petition discloses a reasonable cause of action and whether the allegation of forgery and fraud can be tried by the Tribunal?

The meaning and nature of reasonable cause of action and the effect of not disclosing same is a well settled principle of law.

It was held by the Apex Court in **UWAZURUONYEE V. THE GOVERNOR OF IMO STATE & ORS (2012) 11 MJSC 46** Per Onnoghen JSC at Page 65 to 66 as follows:

***“It is settled law that a cause of action is the fact or combination of facts which give rise to a right to sue or institute an action in a Court or Tribunal. The term also includes all things which are necessary to give right of action and every material facts which has to be proved to entitle the plaintiff to succeed/ relief …………………. On the other hand, a reasonable cause of action is a cause of action which when only the allegation in the statement of claim and, I may add, originating process, are considered having some chances of success where it is found that the statement of claim disclosed no reasonable cause of action, Onnoghen JSC held at page 69 of the judgment as follows; ………………………………………………………………………….***

***The above being the case, it is clear that the action so constituted in the said circumstances is grossly incompetent and liable to be struck out. It is therefore my view that Suit No. HOW/92/95 be and is hereby struck out for want of jurisdiction, with costs which I assess and fix at N100,000 against the appellant and in favour of the respondents. Appeal is dismissed.”***

We have carefully considered the averments contained in the Petition, and find that they contain a set of facts which make out a reasonable cause of action against the respondents.

Regarding, the contention of the 1st and 2nd Respondents that the tribunal lacks the jurisdiction to adjudicate over an allegation of fraud or forgery, the tribunal finds this argument to be faulty. The reason is that by the provision of section 138(1)(b) of the Electoral Act 2010 (as amended) the tribunal can adjudicate on petitions challenged on grounds of invalidity by reason of corrupt practices.

Also the well settled position of the law is that even when the officers of the electoral body, in this case the 3rd Respondent, who were allegedly involved in corrupt practices have not been named in the petition, it does not affect the competence of the petition or the Tribunal to hear and determine the petition.

It was held by the Supreme Court in **OMOBORIOWO V. AJASIN (1984) LPELR-2643** Per Obaseki JSC at **Pages 39040 Paras D-B** as follows:

***“The non joinder of the returning officer in my view in no way detracts from the competence of the election panel of the High court to hear and determine the Petition. There are only two compulsory necessary statutory respondents namely, (1) the successful candidate and (2) the Chief Federal Electoral Officer of Ondo State for the proper constitution of the election petition. See Section 12(a) and (c) of the Electoral Act 1982. Where the Petition complains of the conduct of the returning officer, he shall for all purposes be deemed to be a respondent. The effect of non-joinder of the returning officer where allegations of misconduct are made against him is that proof of the misconduct will not be entertained by the court in the absence of a joinder. The issue of the misconduct of a returning officer is a quite separate and distinct from the issue. Whether a person has been validly elected to an offence as required by the constitution.”***

Furthermore, by the provisions of section 124(6) of the Electoral Act 2010 (as amended) a criminal action can be maintained against a candidate in an election. In the instant case as the 1st Respondent, the candidate, is a party to the Petition the allegations of corrupt practices are properly brought in the petition, for these reasons, we find that the Petition discloses a reasonable cause of action and the tribunal has the jurisdiction to hear and determine same.

**ISSUE 3**

*Whether the Petition ought to be dismissed or struck out for non-compliance with paragraph 4(1)(c) of the First Schedule to the Electoral Act (2010) for not stating the results of the election?*

Paragraph 4(1)(c) of the First Schedule to the Electoral Act 2010 (as amended) stipulates as follows:

***“An election under this Act shall***

***(c) State the holding of the election the scores of the candidates and the person returned as the winner of the election.”***

The petition stated at paragraph 16 all the political parties and the scores of only two of the fourteen candidates that participated in the election. The candidate of the APC (2nd Petitioner) and PDP (2nd Respondent).

Learned senior counsel for the 1st and 2nd Respondents’ contended that the failure of the petition to contain the scores of each of the candidates declared winners in each local government and polling unit renders the petition defective.

Learned senior counsel cited in support the decision of the Court of Appeal in **CHIEF NWAFORUJANI V. Chief NNAMANI & ORS (2006) 2 LPR 185 @ 171-172**.

Learned counsel to the petitioner’s in response, relied on the decisions of the Court of Appeal in **EMOJI V. POSITIVE (2001) 1 NWLR (PT. 1174) 48, OWURU V. INEC (2004) 9 NWLR (PT. 622) 210 @ 212 and KALU CHUKWUMEREJE (2012) 11 NWLR (PT. 1315)425 @ 454-455** in support of his submission that omission of scores of candidates in an election is not enough to render the petition incompetent.

Learned senior counsel for the 1st and 2nd Respondents argued in his Reply on points of law that the cases relied upon by the petitioner are stale and no longer represent the position of the law, learned counsel relied on the decision of the Court of Appeal in **NEKA & ANOR V. KUNINI & ORS (2018) LPELR-26031** where it was held that the provision of paragraph 4(1)(c) of the First Schedule to the Electoral Act 2010 (as amended) mandatorily requires the Petitioner to state the names and scores of all candidates who contested the election together with their scores.

Learned Senior Counsel submitted that the decision in **NEKA V. KUNINI (supra)** overrides the Court of Appeal decisions cited by the Petitioner being later in time.

The provision of paragraph 4(1)(c) of the First Schedule to the Electoral Act 2010 (as amended) – contains the word ‘shall’. The law is well settled that use of the word ‘shall’ in a provision makes compliance with the provision mandatory. The word ‘shall’ in a statute is a form of command which is not permissive. See **BAMAYI V. A. G. FEDERATION (2001) 12 NWLR (PT. 722); IFEZUE V. MBADUGHA (1984) 1 SCNLR (P. 427) CHUKWUKA V. EZULIKE (1986) 5 NWLR (PT. 45).**

The provision of paragraph 4(1)(c) is therefore mandatory as it commands the Petitioners to state the names and scores of all candidates that participated in the election in the petition. The Tribunal is again guided by the settled principle of law that in view of the ‘sui generis’ nature of Election Petitions all rules and laws guiding them **must** be complied with. Any slight defect in any procedural step which are pardonable in other proceedings is not redeemable in election Petitions and noncompliance attracts fatal consequences. See **BUHARI V. YUSUF (SUPRA)**. Following from the above, the decision of the Court of Appeal in **NEKA & ANOR V. KUNINI & ORS (supra)** which this court is bound to follow, for being later in time. (See **MUJAKPERUA & ORS V. AJOBENA & ORS (2014) LPELR-23264)**, the Court finds that the Petition is incompetent and liable to be struck out.

In conclusion, the prayers in the application of the 1st and 2nd Respondent succeeds in part. It is hereby ordered as follows:

1. Grounds 1 and 2 contained in paragraph 18 of the Petition dated 25th December, 2020 are hereby struck out for being incompetent.

2. Paragraphs 24, 25 and 26 of the Petition are hereby struck out.

3. The Petition is hereby struck out in its entirety for not stating the results of all the candidates that took place in the election in compliance with the provisions of paragraph 4(1)(C) of the First Schedule to the Electoral Act, 2010 (as amended).

4. In view of the striking out of the Petition all the reliefs stated at paragraph 107 of the Petition are accordingly hereby struck out.

We so hold.

**SGD**

**HON. JUSTICE R. I. B. ADEBIYI**

**CHAIRMAN**

**28/05/2021**

**SGD**

**HON. JUSTICE SILAS HARUNA**

**MEMBER**

**28/05/2021**

**SGD**

**HON. JUSTICE A. T. MOMODU**

**MEMBER**

**28/05/2021**