19th/9/2023

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SECRETARY
PRESIDENTIAL ELECTION PETITION COURT 2023

IN THE SUPREME COURT OF NIGERIA
HOLDEN AT ABUJA

IN THE MATTER OF THE ELECTION TO THE OFFICE OF THE PRESIDENT OF THE FEDERAL REPUBLIC OF NIGERIA HELD ON THE 25TH DAY OF FEBRUARY, 2023

J.J EKPEROBE Esq

SC. /2023
PETITION NO: CA/PEPC/03/2023

BETWEEN

1. MR. PETER GREGORY OBI
2. LABOUR PARTY

APPELLANTS

AND

1. INDEPENDENT NATIONAL ELECTORAL COMMISION
2. SENATOR BOLA AHMED TINUBU
3. SENATOR SHETTIMA KASHIM
4. ALL PROGRESSIVES CONGRESS

RESPONDENTS

NOTICE OF APPEAL

TAKE NOTICE that the Appellants being dissatisfied with the decisions in **PETITION NO: CA/PEPC/03/2023 – MR. PETER GREGORY OBI & ANOR. v. INDEPENDENT NATIONAL ELECTORAL COMMISSION & ORS.** (consolidated with **Election Petition Nos: CA/PEPC/04/2023** and **CA/PEPC/05/2023**), contained in **pages 3–327** of the Judgment of the Court of Appeal sitting as the Presidential Election Petition Court, Holden at Abuja, Coram: H. S. Tsammani, Stephen Jonah Adah, Misitura Omodere Bolaji-Yusuff, Boloukuroma Moses Ugo and Abba Bello Mohammed, JJ.C.A. ("the Court below") delivered on the 6th day of September 2023, and more particularly stated in paragraph 2 of this Notice of Appeal, do hereby appeal to the Supreme Court on the Grounds set out in Paragraph 3 and will at the hearing of the appeal seek the Reliefs sought in paragraph 4 herein.

PRESIDENTIAL ELECTION PETITION COURT 2023
PAID
DATE 19th/9/23

TAKE FURTHER NOTICE that the names and addresses of the persons affected directly by the appeal are those set out in Paragraph 5.

2. PART OF THE DECISION COMPLAINED OF:

THE WHOLE DECISION IN **PETITION NO: CA/PEPC/03/2023 – MR. PETER GREGORY OBI & ANOR. v. INDEPENDENT NATIONAL ELECTORAL COMMISSION & ORS.** contained at pages 3 – 327 of the Judgment, EXCEPT THE RULINGS IN FAVOUR OF THE APPELLANTS

3. GROUNDS OF APPEAL

GROUND 1: ERROR IN LAW

The learned Justices of the Court below erred in law and thereby reached a wrong conclusion when they found and held as follows:

> *It is instructive that in paragraph 3.2-3.21 of their submission in opposition to the 1st Respondent's Objection, the Petitioners appeared to have conceded that in the averments of the Petition they have not specified the particular polling units where the alleged irregularities and malpractices occurred, or specified the figures of the votes or scores which they alleged have been suppressed, deflated or inflated. Rather, they stated that the details of the polling units are contained in the Spreadsheets and Forensic Analysis Reports which they have incorporated and made part of their pleadings by reference. (See particularly paragraph 67 of the Petition). The Petitioners further argued that since the Respondents have failed to apply for further particulars under paragraph 17(1) and (2) of the 1st Schedule to the Electoral Act, 2022, they are deemed to have understood those averments. However, by Paragraph 15 of the 1st Schedule to the Electoral Act, 2022, when a Petitioner claims "... that he had the highest number of valid votes cast at the election, the party defending the election or return at the election shall set out clearly in his reply particulars of the votes, if any, which he objects to and the reasons for his objection against such votes, showing how he intends to prove at the hearing that the petitioner is not entitled to succeed." This provision presupposes that the Petitioner has a first duty to state clearly in his petition the particulars of such votes in respect of which he claims to have scored the highest number of valid votes and thus entitled to be returned as the winner.*

This also presupposes that it is only after the Petitioner has supplied the particulars of the votes in support of his claim that he scored the highest number of valid votes, that a Respondent will then have a duty to object to any of the particulars of such votes supplied by the Petitioner in order to show that the Petitioner is not entitled to succeed.

and thereafter held, relying on **EFCC v. REINL (2020) 9 NWLR (Pt. 1730) 489 at 517; EKPEMUPOLO v. EDEREMODA (2009) 8 NWLR (Pt. 1142) 166 at 186; MARINE MANAGEMENT ASSOCIATES INC. v. NMA (2012) 18 NWLR (Pt. 1333) 506 at 535-537; DINGYADI v. WAMAKKO (2008) 17 NWLR (Pt. 1116) 395 at 444** and **NIGERIA MERCHANT BANK PLC v. AIYEDUN INVESTMENT LTD. (1997) LPELR-5951(CA),** that the Appellants ought to have attached the documents pleaded by incorporation or reference and that failure to do so was fatal to the paragraphs of the Petition the Court eventually struck out.

Particulars of Error:

a) The Court below overlooked the fact of the Appellants' pleading that certain facts and documents were captured in a particular pleading by incorporation or reference did not amount to a concession that those facts were not pleaded.

b) Paragraph 15 of the 1st Schedule to the Electoral Act 2022, which the Court below relied upon, was inapplicable to the issue in contention.

c) The Court below overlooked the fact that by Paragraph 4(5)(c) of the First Schedule to the Electoral Act, 2022 ("the First Schedule"), a petitioner such as the Appellants herein may only list documents being relied on at the hearing of the Petition, without frontloading them by way of attachment.

d) The Appellants exercised their option of listing all those documents pleaded in the body of their Petition by incorporation/reference; hence complied with the said paragraph 4(5)(c) of the 1st Schedule to the Electoral Act, 2022.

e) A party cannot and should not be penalised for scrupulously complying with both statutory and judicial laws settled in Nigeria.

f) The authority of **NIGERIA MERCHANT BANK PLC v. AIYEDUN INVESTMENT LTD (1997) LPELR-5951 (CA)** relied upon by the Court below is totally irrelevant in this case.; as the *ratio* in that case was based on the fact of reliance "on certain unspecified documents at the trial".

g) The distinction between frontloading of documents to be relied upon by the Appellants and incorporation of documents into pleadings by reference made by the Court below, is erroneous and misconceived.

h) The Court below ignored the established principle of incorporation of documents by reference in pleadings which entitled the Appellants to incorporate the Spreadsheets and Forensic Reports listed in paragraphs 101(dd),(ee),(hh) and (pp), and to rely on same at the trial of the Petition.

i) The Appellants clearly listed all the documents which they would rely on while filing the Petition, and same were tendered before the lower Court in accordance with the provisions of the Electoral Act, 2022.

GROUND 2: ERROR IN LAW

The Court below erred in law and thereby reached a wrong conclusion when, after placing reliance on the provisions of paragraphs 4(1)(d), and (2), 17(1) and (2) and 54 of the 1st Schedule to the Electoral Act, 2022; Order 13 rule 4 of the Federal High Court (Civil Procedure) Rules, 2019 and some decisions of the Supreme Court, and thereafter striking out paragraphs 9, 60, 61, 66, 67, 68, 69, 70, 71, 72, 73, 76, 77, 78, 83 and 99 of the Appellants' Petition, they held that the authorities of **ABUBAKAR v. YAR'ADUA (2008) 19 NWLR (Pt. 1120) 1** and **OMBUGADU v. SULE (2021) 2 NWLR (Pt. 1795) 171 at 183E-F** (which the Court below held had decided the same ratio as the authorities relied upon by the Respondents) did not apply to save the alleged vague and imprecise paragraphs of the Appellants' Petition, notwithstanding also that the Appellants, in conformity with settled case law by the Supreme Court pleaded details or documents by incorporation or reference.

Particulars of Error:

a) The Supreme Court decisions relied upon by the Court below to strike out the above-named paragraphs were/are not the binding precedent on the issue.

b) The binding precedents is the decision of the Supreme Court in the case of **OMBUGADU vs. SULE (supra)** which departed from the previous decisions of the Apex Court; hence the Court below was wrong in claiming it arrived at the same decision of the Supreme Court.

c) It is settled law that when two or more decisions of the Supreme Court conflict, the latest in time is the binding precedent; and in this case, **OMBUGADU v. SULE (supra)** was/is the binding precedent.

d) Pleading by incorporation or reference is permitted in a settled long number of decisions of the Supreme Court.

e) The paragraphs of the Petition struck out are not *"vague, imprecise, nebulous and bereft of material particulars"* as erroneously held by the Court below.

f) Paragraph 60 of the Petition is precise in alleging that the 1st Respondent failed to upload and transmit the polling units results of the election to the IReV as required by law; and the paragraph was also specific in stating that Eighteen Thousand and Eighty-Eight (18,088) blurred and unreadable Forms EC8As were uploaded on the IReV portal by the 1st Respondent.

g) The pleading in paragraph 61 of the Petition related to clearly specified documents, namely: (a) Spread Sheet whose content is specified; and (b) Forensic Report of the Presidential Election; and in that paragraph, also, the complaint regarding the uploading of blurred Forms EC8A was specifically stated to be in Benue State.

h) Paragraphs 66, 67, 68, 69, 70, 71, 76, 77, 78 and 83 of the Petition when read together specifically incorporated the Report of Inspection of election materials as well as the Forensic/Expert Analysis made pursuant to the orders

of the Court, which specified the relevant particulars of the complaints made in the Petition.

i) Paragraph 72 of the Petition is not vague as it constitutes complaint of over-voting in polling units in 13 States specifically pleaded in the Petition, namely, Ekiti State, Oyo State, Ondo State, Taraba State, Osun State, Kano State, Rivers State, Borno State, Katsina State, Kwara State, Gombe State, Yobe State and Niger State, with full and specific itemization in the Forensic Report produced/tendered by the Appellants which was unlawfully discountenanced by the Court below.

j) In paragraph 73 of the Petition which complained about improper computation of results, the averments contained therein were specific with respect to ten (10) States of the Federation pleaded in the Petition; namely, Rivers State, Lagos State, Taraba State, Benue State, Adamawa State, Imo State, Bauchi State, Borno State, Kaduna State and Plateau State, amongst other States.

k) Paragraph 99 of the Petition was precise and specific as same related to clearly identified documents which were pleaded to be relied upon at the trial.

l) By striking out the above paragraphs of the Petition, the Court below unlawfully failed to take into account the Forensic Reports of the election result pleaded in paragraphs 67, 72, 99 and 101 of the Petition.

m) The Court below overlooked that Paragraphs 5 and 17(1) of the First Schedule to the Electoral Act, 2022 regulate pleadings and particulars of same such that both the Court and the Respondents are enjoined to demand for lucidity where they think that the facts are insufficient or lacking; and the Respondents were estopped from so complaining if they failed to demand for further particulars, vide **TOMORI v. OSOBA (2017) 3 NWLR (Pt. 1553) 498 CA.**

n) The Court below overlooked the fact that the Respondents filed their Replies to the Petition and specifically joined issues with the Appellants by answering all the material allegations contained in the said paragraphs of the Petition.

o) The striking out of the paragraphs of the Petition by the Court below resulted to a blatant denial of the Appellants' right to fair hearing and thereby occasioned grave miscarriage of justice.

GROUND 3: ERROR IN LAW

The Learned Justices of the Court below erred in law when they held that *"where the dispute involves the election in as many as 895 Polling Units, the pleadings in this Petition which alleged electoral malpractices, non-compliance and/or offences in some Polling Units, many Polling Units or several Polling Units cannot be said to have met the requirements of pleadings as stipulated in Paragraph 4(1)(d) of the 1st Schedule to the Electoral Act and/or Order 13 Rules 4(1), 5 and (6)(1) of the Federal High Court (Civil Procedure) Rules, 2009."*

Particulars of Error:

a) The Court below overlooked the fact that the Petition ought to be read as a whole to discover the complaint or grouse of the Appellants.

b) The Court below failed to take into account that the Appellants listed the States and specific areas complained about in the Petition.

c) The Appellants also tendered documents in satisfaction of Section 137 of the Electoral Act 2022.

GROUND 4: ERROR IN LAW

The Court below erred in law when it held that *"It is a misconceived argument...to state that the...decision of the Apex Court...which relates to further particulars under Paragraph 17(1) of the 1st Schedule has departed the specific decisions of the Apex Court in **BELGORE v. AHMED**...on the mandatory requirements for stating material facts as provided in Paragraph 4(1) of the same 1st Schedule to the Electoral Act...A look at the averments in the Petitioners' Petition shows that the Petitioners have only alleged various irregularities and malpractices but failed to specify the particular Polling Units or specific places where the alleged irregularities and malpractices have occurred."*

Particulars of Error:

a) The Presidential Election of 2023 is regulated by the Electoral Act 2022.

b) The Court below overlooked the fact that further particulars are not mandatory under the Electoral Act 2022 to arrive at the justice of the Petition.

c) The Court below failed to take into account that the Appellants had tendered exhibits indicating the Polling Units and Wards where there were widespread irregularities and malpractices but same were not reckoned with by the Court.

d) The Court below resorted to undue technicalities in its consideration and determination of the Petition.

GROUND 5: ERROR IN LAW

The learned Justices of the Court below erred in law when they held as follows:

The Petitioners have also tried to argue that the Respondents having joined issues on the general allegations contained in the petition they are deemed to have understood same. With respect, this is also not a tenable argument in view of the grossly generic allegations made in the Petition. Faced with a similar scenario, this Court, per Ogunwumiju, JCA (as he then was, now JSC), held in UDEAGHA & ANOR v OMEGARA & ORS (2010) LPELR-3856(CA), as follows:... Indeed, in a Presidential election like the one being challenged in this Petition, which was held in 176,846 polling units, 8,809 wards, 774 Local Government Areas, 36 States and the Federal Capital Territory, it is unimaginable that averments in a petition which merely allege irregularities and or malpractices without specifying the particular polling units or particular collation centres where the irregularities or malpractices have allegedly taken place, will be regarded as proper merely because the Respondent has not requested for further particulars. [BELGORE V AHMED (supra) and PDP V INEC (supra)]. Moreso, when an election petition is by nature a declaratory action in which the Petitioner succeeds only on the strength of his own case and not on the weakness of that of the Respondent. See: BUSARI v ADEPOJU (2015) LPELR-41704(CA)... It is in this respect that a Petitioner has an obligation to set up a clear, unambiguous, precise and positive case in his pleadings, since pleadings is the foundation of a party's case, and it

is to the pleadings that the parties to litigation as well as the court are all bound. See: ENANG & ORS v ADU (1981) LPELR-1139(SC) at page 13, paras. C - D, per Nnamani, JSC.

Particulars of Error:

a) The Appellants' pleadings were precise, clear, unambiguous and complied with the Electoral Act 2022 and the Rules of the Federal High Court.

b) The Respondents understood the Petition and replied to same, without any request for further particulars.

c) The parties in this case respectively joined issues at the close of pleadings.

d) The Respondents having joined issues with the Appellants were/are presumed to have understood the case.

e) The Court below overlooked the established principle that the contents of pleading should be read as a whole and not in isolation.

GROUND 6: ERROR IN LAW

The Court below erred in law when it held that the paragraphs of the Appellants' Reply to the 2nd and 3rd Respondents introduced new issues contrary to Paragraph 16(1) of the First Schedule to the Electoral Act, 2022, by holding as follows:

A careful examination of the Petitioners' Petition, the 1st, 2nd and 3rd, as well as the 4th Respondents' respective Replies, and the Replies which the Petitioners filed in response thereof reveals that apart from rehashing what they have already averred in their Petition and denying what the Respondents have stated in their respective Replies, the Petitioners also introduced new facts in their Replies to the Respondents' Replies which were not contained in their Petition. This is in clear contravention of Paragraph 16(1)(a) of the 1st Schedule to the Electoral Act, 2022...An examination of paragraph 4(iii), (iv) and (v) of the 1st Respondent's reply shows that the paragraph has not raised any new issue, contrary to the assertion of the Petitioners in paragraph 15 of their Reply to the 1st Respondent's Reply to the Petition. It is only a response to paragraphs 7 and

8 of the Petition. But the Petitioners' averment in the same paragraph 15 that the 1st Respondent's officials at the polling units failed to give clear copies of the results of the election (Forms EC8A) to the Petitioners' agents, as the pink copies given to the Petitioners' agents were very faint and unreadable, is a new fact which tends to amend the Petition. Paragraphs 16(i) – (vii), 17, second part of 18, 22 and 24 of the 1st Respondent's Reply are traverse to paragraphs 21-27 of the Petition. Hence, paragraph 16 of the Petitioners' Reply which purport to respond to new issues in paragraphs 17, 18, 19, 21, 22 and 24 of the 1st Respondent's Reply actually contain new facts which will amount to amendment of the Petition. Also, paragraphs 17, 18, 19, 24, 25, 27, 28, 29, 30, 31, 32, 34, 35, 36 and 37 of the Petitioners' Reply to the 1st Respondent's Reply are either a rehash of the facts already averred in the Petition or contain new facts which will amount to amendment of the Petition. In respect of the Petitioners' Reply to the 2nd and 3rd Respondents Reply to the Petition, the latter are seeking for an order striking out paragraphs 8-42 of the Petitioners Reply. However, a careful examination of those paragraphs shows that only paragraph 21 of that Reply has raised a new allegation against the 1st Respondent of attempts to manipulate the data uploaded on the backend server of the AWS. The said paragraph 21 of the Petitioners' Reply to the 2nd and 3rd Respondents' Reply is hereby struck out. Similarly, the Petitioners have introduced new facts in paragraphs 16, 17, 18, 20, 22, 23, 24, 25 and 27 of their Reply, some of which contain serious allegations to the 4th Respondent has no opportunity to respond. Being in contravention of Paragraph 16(1) of the 1st Schedule to the Electoral Act, 2022, the said paragraphs are hereby struck out."

Particulars of Error:

a) The Appellants' Reply to the Replies of the Respondents to the Petition substantially complied with the provisions of Paragraph 16 (i)(a) and (b) of the 1st Schedule to the Electoral Act, 2022.

b) The response of the Appellants in paragraph 15 of their Reply to paragraph 4 (iii), (iv) and (v) of the 1st Respondent's Reply did not introduce new facts but rather addressed the new issues pleaded by the 1st Respondent in paragraph 4 (iii), (iv) and (v) of the 1st Respondent's Reply.

c) The 1st Respondent while responding to paragraphs 21-27 of the Petition in

paragraphs 17, 18, 19, 20, 21, 22 and 24 of the 1st Respondent's Reply averred to new facts which the Appellants responded to in paragraph 16 of the Appellants' Reply.

d) The averments in paragraphs 17, 18, 19, 24, 25, 27, 28, 29, 30, 31, 32, 34, 35, 36 and 37 of the Appellant's Reply to the 1st Respondent's Reply to the Petition were neither a rehash of facts already averred in the Petition nor new facts which amounted to an amendment of the Petition but were answers to new facts contained in paragraphs 26, 27, 28, 29, 30, 31, 53, 54, 55 (ii) to (x), 56, 57, 58, 59, 60, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 81, 82, 83, 85, 87, 88 and 90 (i) to (xii) of the 1st Respondent's Reply.

e) Paragraph 21 of the Appellants' Reply to the Reply of the 2nd and 3rd Respondents did not make a new allegation against the 1st Respondent but rather replied to the new facts pleaded by the 2nd and 3rd Respondents in paragraphs 59 and 60 of the 2nd and 3rd Respondents' Reply to the Petition.

f) Paragraphs 16, 17, 18, 20, 22, 23, 24, 25 and 27 of the Appellants' Reply to the Reply of the 4th Respondent to the Petition did not contain new issues of facts but were answers to the new facts pleaded by the 4th Respondent in paragraphs 22 (i) – (iii), 23, 24, 25, 26, 27, 28, 30 (i) – (vii), 31, 34, 35, 36, 37, 40, 48, 49, 62, 77, 82, 85, 86, 93 and 94 of the Reply of the 4th Respondent to the Petition.

g) The Court below failed to take into account that the failure of the Appellants to respond to the fresh issues raised by the Respondents in their respective Replies to the Petition would be perceived as admission by the Appellants of the new averments of the Respondents.

h) The Court below failed to point out and show the new issues the Appellants allegedly raised in their Replies to the Respondents' Replies to the Petition.

GROUND 7: ERROR IN LAW

The learned Justices of the Court below erred in law and occasioned a grave miscarriage of justice when they held that the onus was on the Appellants to prove

that the 1st Respondent failed to comply with the mandatory requirements of Sections 73(2) of the Electoral Act, 2022, in the conduct of the questioned Presidential election.

Particulars of Error:

a) By the pleadings of the parties in the Petition, the Appellants pleaded that the Respondents did not comply with the mandatory provisions of Section 73(2) of the Electoral Act, 2022, whilst the 1st Respondent pleaded that there was due compliance by the 1st Respondent with the provision in question.

b) The Appellants' assertion regarding non-compliance with Section 73(2) of the Electoral Act was in the negative but that of the 1st Respondent was in the positive.

c) The Court below conceded that the law is settled that the onus of proof is generally on a party who makes a positive assertion on an issue and not on the party that makes a negative assertion.

d) The facts and circumstances of the present case do not come within any exception to the rule on onus of proof where a party asserts the negative of an issue, as erroneously held by the Court below.

GROUND 8: ERROR IN LAW

The learned Justices of the Court below erred in law which occasioned a serious miscarriage of justice when they held as follows:

> *It is instructive to observe that Section 74(1) of the Electoral Act, 2023 (sic) mandates the Resident Electoral Commissioner in a state where an election is conducted to within 14 days after an application is made to him by any of the parties to an election petition, cause a certified true copy of such document to be issued to the said party. Subsection (2) of that section even provides that any Resident Electoral Commissioner who fails to comply with subsection (i) commits an offence and is liable on conviction to a maximum fine of N2,000,000.00 or imprisonment for a term of 12 months or both. A look at the*

letters in Exhibits PCQ1 – PCQ6 shows that they were all addressed to the Chairman of INEC instead of the Resident Electoral Commissioners in the States as required of the Petitioners by Section 74(1) of the Electoral Act, 2023(sic). It is therefore clear that the Petitioners have failed to follow the clear legal procedures of requesting for those documents. More so, when the record shows that the subpoenas which they claimed to have served upon the 1st Respondent were also served on the Chairman of the 1st Respondent and as stated by the Officer who answered the subpoena, as same was served only the previous day to her appearance in court.

Particulars of Error:

a) The Court below overlooked that Section 74(1) of the Electoral Act, 2022, only mandates a Resident Electoral Commissioner in a State where election is conducted to avail any party to such election, the certified true copies of any election materials applied for within 14 days.

b) Contrary to the position taken by the Court below, there is no provision in the Electoral Act 2022 or any other extant statute which makes recourse to Section 74(1) of the Electoral Act the only or sole manner or means of obtaining documents used in an election from the 1st Respondent.

c) The Court below overlooked the evidence before it that the Resident Electoral Commissioners in the States had also failed and refused to issue the relevant documents to the Appellants upon their application.

d) The Court below overlooked the fact that the questioned Presidential election which is the subject matter of this Appeal was not conducted in a State but was conducted in the Federal Republic of Nigeria.

e) The Court below overlooked the fact that whereas by Section 69 of the Electoral Act, 2022; *"The Chief Electoral Commissioner or any officer authorized by him or her shall keep official custody of all the documents, including statements of result and ballot papers relating to the election, which are returned to the commission by the returning officers"*, Section 152

of the same Act provides that *"Chief Electoral Commissioner means the Chairman of the Independent National Electoral Commission."*

f) The Court below also overlooked the fact that the Chairman of the 1st Respondent is the officer in lawful custody of the election documents which the Appellants had applied for, within the meaning and contemplation of both the Electoral Act, 2022 and the Evidence Act, 2011(as amended).

g) Despite the service of the subpoena on the 1st Respondent, the 1st Respondent still failed to produce the election documents up to and until the conclusion of proceedings in the trial Court.

h) The refusal and or failure of the 1st Respondent to produce the election materials, in all the circumstances, amounted to disobedience of court order and raised the presumption of withholding evidence under Section 167(d) of the Evidence Act, 2011 against the 1st Respondent.

GROUND 9: ERROR IN LAW

The learned Justices of the Court below erred in law and occasioned a grave miscarriage of justice when they held: *"It is therefore clear from the above that the Petitioners were unable to establish their allegation of non-compliance by INEC with Section 73(2) of the Electoral Act, 2023 (sic.). The evidence (sic.) PW12 and Exhibits PCQ1 – PCQ6 have not been able to rebut the presumption of regularity which enures to the 1st Respondent under the law, which can only be rebutted with cogent and credible evidence".*

Particulars of Error:

a) The Court below failed to take into account that the evidence of PW12 on the failure of the 1st Respondent to comply with Section 73(2) of the Electoral Act was not challenged under cross-examination.

b) The Court below overlooked the fact that no other witness in the entire proceedings gave evidence on the issue of non-compliance by the 1st Respondent with Section 73(2) of the Electoral Act.

c) The Court below failed to take into account that the 1st Respondent did not deny the receipt of Exhibits PCQ1 to PCQ6 from the Appellants.

d) The 1st Respondent proffered no explanation for its refusal and or failure to respond to the lawful requests in Exhibits PCQ1 to PCQ6.

e) The 1st Respondent did not call any witness or adduce any other evidence with respect to compliance with Section 73 (2) of the Electoral Act.

f) The onus, if any, on the Appellants to prove non-compliance with Section 73(2) of the Electoral Act was discharged on the balance of probabilities.

g) The statutorily prescribed consequence for failure to comply with the mandatory requirement of Section 73(2) of the Electoral Act, 2022 is to render the election invalid.

GROUND 10: ERROR IN LAW

The Court below erred in law and thereby occasioned a grievous miscarriage of justice when it held that: "*...any written statement on oath of a witness filed outside that 21 days limitation will amount to a surreptitious amendment of the Petition and a breach of paragraph 14 of the 1st Schedule to the Electoral Act. This is irrespective of whether the witnesses to be called are ordinary or expert witnesses, or whether they are willing or subpoenaed witnesses*".

Particulars of Error:

a) The authorities of **OKE v. MIMIKO (No. 1) (2014) 1 NWLR (Pt. 1388) 225** and **OGBA v. VINCENT (2015) LPELR – 40719 (CA)** heavily relied on by the Court below are totally inapplicable and irrelevant to the instant Petition.

b) The Court below overlooked that the focus in the decision of OGBA v. VINCENT (supra) is "the injustice in allowing the piece of evidence not covered by the pleading to be presented to the court when the opposing party will not have the opportunity to react to it."

c) The Court below mistook the evidence of a witness summoned by the subpoena issued by the Court itself with seeking to amend and or introduce fresh facts to the Petition.

d) The Court below overlooked and ignored its later decision in **BELLO v. ODOFIN (2021) LPELR-55941 (CA)** and others to the effect that once a subpoena has been served on a witness, he is competent to testify.

GROUND 11: ERROR IN LAW

The Court below erred in law and lacked jurisdiction when it held (a decision which inter alia led to the striking out of the entire evidence led by 10 out of the 13 witnesses called by the Appellants), relying on section 285(5) of the 1999 Constitution as amended; Section 132(7) of the Electoral Act, 2022; Paragraphs 4(5)(a)-(c), 6 and 14(2); **OKE vs. MIMIKO (2013) LPELR-20645 (SC)** that:

> *From the foregoing judicial decisions, it is clear that in election petition litigation, whether the witnesses which a party intends to call are ordinary or expert witnesses and whether they are willing or subpoenaed witnesses, their witness depositions must be filed along with petition before such witnesses will be competent to testify before the tribunal or court. It is instructive to observe that one of the leading Senior Counsel for the Petitioners in this Petition, Dr. Onyechi Ikpeazu, SAN, was the lead Counsel to the 2nd Respondent in ARARUME & ANOR v INEC & ORS (supra), wherein he successfully challenged the competence of a subpoenaed witness, Ama Ibom Agwu (PW2) on the same ground that the witness statement on oath of the said witness was filed on 9/7/2019, long after the time limited for filing of the Petition. Therefore, the Petitioners in this case were well aware of the settled legal position on subpoenaed witnesses in election petitions, stated by the Supreme Court and by this Court. Yet, they embarked on subpoenaing PW3, PW4, PW5, PW6, PW7, PW8, PW9, PW10, PW11 and PW13 (ten out of their thirteen witnesses), whose witness statements on oath were not frontloaded along with the Petition.*

Particulars of Error:

a) The Court below erroneously relied on the authority of **ARARUME v. INEC (2019) LPELR – 48387 (CA)** in reaching the wrong conclusion that *"a*

written deposition filed by a witness not listed in the petition nor his deposition frontloaded cannot be countenanced by the court or the tribunal after the expiration of the time prescribed for filing the petition."

b) The decision of the Supreme Court in **OKE v. MIMIKO (supra)** relied upon by the Court below had nothing to do with subpoenaing of witnesses in election petitions.

c) The Appellants relied on several decisions of the Court below which expressly sanctioned the subpoenaing of witnesses in election matters, but which the Court below did not rule on one way or the other.

d) The Court below overlooked the fact that in at least two decisions of the Supreme Court – **DICKSON v. SYLVA (2017) 8 NWLR (Pt. 1567) 167 at 192E-H** and **UZODINMA v. IHEDIOHA (2020) LPELR-50260(SC)** – the Supreme Court held as admissible the evidence of a witness on subpoena and also (in **Uzodinma's case**) even evaluated same and gave weight to it.

e) The Court below failed to take judicial notice of the fact that at the time of filing the Petition, the issues necessitating applications for Subpoena had not crystallized.

f) The Court below relied on the irrelevant fact that one of the leading Senior Counsel for the Appellants, Dr. Onyechi Ikpeazu, SAN, was the lead Counsel of the 2nd Respondent in ARARUME v. INEC (supra) and that the said lead Counsel successfully challenged the competence of a subpoenaed witness to file a witness statement on oath after the time limited for filing of the petition.

g) The authority of **OKWURU v. OGBEE (2015) LPELR – 40682 (CA)** quoted and relied on by the Court below is also irrelevant to the instant Petition.

h) The issuance of subpoenas is regulated by the Evidence Act 2011, which applies to and binds all courts of law, including the Court below without distinction – whether or not such courts are election courts.

i) There is nothing in any of the constitutional and statutory provisions cited and relied upon by the Court below that suggests, directly or indirectly, that witnesses on subpoena must have their witness depositions frontloaded at the time of filing an Election Petition.

j) Their Lordships of the Court below breached the right to fair hearing of the Appellants when they turned round to discountenance the evidence of subpoenaed witnesses, when the subpoenas upon which they appeared to testify were not set aside. Being Orders of the Court, the subpoenas were still binding on the Court and all the parties.

k) The Court below overlooked the fact that a subpoena is an order of court which is liable to be set aside for valid reasons; and the Court below, without setting aside its orders and without such orders being set aside on appeal, lacked jurisdiction to nullify the evidence of PW3, PW4, PW5, PW6, PW7, PW8, PW9, PW10, PW11 and PW13.

l) The Court below misapplied the provision of paragraph 54 of the First Schedule to the Electoral Act when it construed that the requirement of filing a petition and or amending a petition within a 21-day time limit constitutes a bar to filing a witness statement on oath by a subpoenaed witness after the time limit of filing the petition.

m) The Court below failed to appreciate that in its recent unreported Judgments in **Appeal No: CA/PH/EP/SEN/06/2023 – APM v. INEC & ORS, delivered on 10th August 2023** and **Appeal No: CA/KN/GOV/KAN/05/2023 – ABBA YUSSUF v. APC, delivered on 24th August 2023**, it reiterated its earlier position that it will be incongruous and preposterous to hold that statements on oath of subpoenaed witnesses must accompany an Election Petition.

n) Having regard to Paragraph 41 of the First Schedule and Section 2 of the Evidence Act 2011, the Court below slaughtered justice on the altar of legal technicalities when they discountenanced the evidence of PW3, PW4, PW5, PW6, PW7, PW8, PW9, PW10, PW11 and PW13 and the Exhibits tendered through them.

GROUND 12: ERROR IN LAW

The learned Justices of the Court below erred in law and breached the right to fair hearing of the Appellants when their Lordships, *suo motu* in the Judgment made the finding that PW3, PW4, PW5, PW6, PW7, PW8, PW9, PW10, PW11 and PW13 are witnesses who were available to the Petitioners and were not competent witnesses to testify.

Particulars of Error:

a) The question whether PW3, PW4, PW5, PW6, PW7, PW8, PW9, PW10, PW11 and PW13 were witnesses who were available and within the control of the Appellants was an issue raised *suo motu* by the Court below; and it was a question of fact, which needed to be proved independently.

b) The witnesses mentioned above appeared on subpoenas which had not been set aside by the Court below.

c) The Court below, having issued the subpoenas, was wrong to turn round to discountenance the evidence of these witnesses on technical grounds that their written statements were not frontloaded and that they were witnesses within the control of the Appellants.

d) The Appellants were denied the opportunity to show that PW3, PW4, PW5, PW6, PW7, PW8, PW9, PW10, PW11 and PW13 were not witnesses within the control of the Appellants at the time the Petition was filed as wrongly held by the Court below.

GROUND 13: ERROR IN LAW

The learned Justices of the Court below erred in law and came to a perverse decision when they held that PW3, PW4, PW, PW6, PW7, PW8, PW9, PW10, PW11 and PW13 were not witnesses of the Court but those of the Appellants who had paid fees for the issuance of the subpoena; and further held: *"It is pertinent to observe that the above ten witnesses subpoenaed by the Petitioners at the time of filing the Petition. They are neither subpoenaed as adversaries nor subpoenaed*

as official witnesses. It is therefore beyond controversy that the witness statements on oath of those witnesses filed after the time limited for presentation of the Petition had elapsed, are incompetent and the said witnesses had no vires to testify in this Petition. Their testimonies as embodied in their respective witness statements on oath, being incompetent, are accordingly struck out."

Particulars of Error:

a) The Appellants applied for the issuance of *Subpoena Duces Tecum* as well as *Subpoena Ad Testificandum* and the Court below issued them.

b) The Court below relied on the irrelevant fact that the applications for the issuance of the subpoena were made by the Appellants who paid the requisite fees as assessed by the Registry of the Court, when Case law has settled it beyond peradventure that a subpoenaed witness is a witness of the Court.

c) By its erroneous approach and misapplication of the law and rules of court regulating the procedure for issuance of subpoena, the Court below ignored that a subpoena issued by and on the authority of the Court is a command by the Court in the name of Federal Republic of Nigeria requiring a person so summoned to attend court and testify.

d) The witnesses whom the Court below held were available at the time of filing the Petition were neither part of the Appellants nor were they under the Appellants' control so as to be simply requested to depose to witness statements and those witnesses would comply; hence, were not 'available' in the practical sense of the word.

e) The decision of the Court below defeats the very essence of issuance of subpoenas; namely, a command to a person who is not under the immediate control of a party to proceed to court to tender evidence.

f) Contrary to the findings made by the Court below, the Petitioners' said witnesses came to testify under compulsion from the Court and not voluntarily; and they were not strictly and totally witnesses of the Petitioners.

g) The depositions of PW3-PW11 and PW13 in their respective written statements on oath that they demanded for subpoeanas to be served on them as a condition for making the witness statements on oath and giving evidence, were not challenged.

h) The decision of the Court below led to a miscarriage of justice.

GROUND 14: ERROR IN LAW

The Court below erred in law when, relying on paragraph 4(5)(b) of the First Schedule to the Electoral Act 2022 requiring for the filing of written deposition of witnesses along with the Petition, it concluded that *"Since the above exhibits are documents, including expert reports, which were tendered through the subpoenaed witnesses whom we have already declared incompetent because their witness statements on oath were filed in violation of the mandatory provisions of Paragraph 4(5)(b) of the 1st Schedule to the Electoral Act, 2022, the documents admitted through them which form part of their evidence are inadmissible and liable to be expunged from the record."*

Particulars of Error:

a) The power/authority of the Court to take evidence of witnesses on subpoena is neither specifically covered by Electoral Act 2022 nor the First Schedule to the Electoral Act, 2022.

b) By the combined reading of Paragraph 54 of the 1st Schedule to the Electoral Act 2022, and Order 3 Rule 3(2) of the Federal High Court Civil Procedure Rule 2019, the evidence of PW3, PW4, PW5, PW6, PW7 and PW8 who were all subpoenaed witnesses were not required to be filed along with the Petition.

c) Under the Evidence Act 2011, which binds the Court below, PW3, PW4, PW5, PW6, PW7 and PW8 were compellable witnesses.

d) The decision of the Court below expunging the documentary evidence on which the Petitioners/Appellants relied adversely affected their case, resulted in grievous denial of fair hearing and occasioned a miscarriage of justice.

GROUND 15: ERROR IN LAW

The learned Justices of the Court below erred in law and reached a perverse decision when they discountenanced and expunged the evidence of PW4, PW7 and PW8 as being persons interested in the outcome of the proceedings, to wit, by finding and holding as follows:

> *In the instant case, PW4 who claimed to be an expert was contracted by the Petitioners before the election to carry out data analysis on the results of the Presidential elections held on the 25th of February, 2023. He even tendered his letter of engagement by 2nd Petitioner dated 20th February, 2023 which was admitted as Exhibit PCF2. According to him, he produced his initial report on 19th of March, 2023. His report was made a day before this Petition was filed on 20th March, 2023. Obviously, the report (Exhibit PCD1 - PCD3) was prepared in anticipation of this Petition. As for PW7, who also claimed to be an expert witness, she admitted that she was not only a member of the 2nd Petitioner, but had contested the House of Representatives election under the platform of the 2nd Petitioner, which election was conducted the same time with the Presidential Election on the 25th of February, 2023. She also admitted that the report she presented in Exhibits PCJ3A - F, are public information hosted by Amazon which she downloaded from the Amazon Website and that the open access information she downloaded in her Report cannot be amended by her. This shows that PW7 was clearly not the maker of the said documents. As for PW8, who claimed to be a cyber security expert, he stated under cross examination by the 1st Respondent that he was engaged by the 2nd Petitioner as an expert on 10th March, 2023 and that he produced a preliminary report on 17th and 18th of March, 2023 and final report (Exhibit PCK1) at the end of May, 2023 while this proceeding was pending. It is therefore evident from the above that PW4, PW7 and PW8 are persons interested in the outcome of this proceedings. The reports produced by PW4 and PW8 qualify as statements made by persons interested in anticipation or during the pendency of this Petition. As for PW7 she is admittedly an interested party having been a member of and even contested election under the umbrella of the 2nd Petitioner. Her interest is further underscored by the fact that she admitted under cross examination that she was attending court throughout the proceedings prior to her evidence. By virtue of Section 83(3) of the Evidence Act, 2011, the reports tendered by those witnesses which form part of their evidence are inadmissible. In view of the foregoing, Exhibits PCD1 - PCD3, PCE1 - PCE4, PCF2, PCG2,*

PCH1, PCJ1, PCJ2, PCJ3A - F, PCJ4, PCK1 and PCK2, tendered through the incompetent PW4, PW5, PW6, PW7 and PW8, are hereby expunged from the record of this Court.

Particulars of Error:

a) The Court below overlooked the established principle that the disqualifying interest under the exclusionary rule in Section 83(3) Evidence Act 2011 does not mean "an interest in the sense of intellectual observation or an interest purely to same party. It means an interest in the legal sense which imports something to be gained or lost".

b) The Court below ignored the principle in **ANYAEBOSI v. R.T BRSCO NIG LTD (1987) 2 NSCC 805** that a person interested means "a person who has a pecuniary or other material interest in the result of the proceedings – a person whose interest is affected by the result of the proceedings, and therefore, would have a temptation to pervert the truth to serve his personal or private ends".

c) The Court below failed to take into account that there is no evidence on record in the instant case that any of PW4, PW7 and PW8 has any pecuniary or material interest in the result of the proceedings.

d) The Court below overlooked the fact that the interest of PW4, PW7 and PW8 in relation to the documentary evidence produced by them, on subpoena, was merely products of intellectual exercise.

e) The Court below erroneously categorized PW7 as *"admittedly an interested party having been a member of and even contested election under the umbrella of the Petitioner"*, because the election to the office of member of House of Representative which PW7 stated to have participated in is, completely, different from and unrelated to the questioned Presidential election: the subject matter of the instant Petition.

f) No adverse finding (as to whether they were persons interested) was made by the Court against PW5 and PW6; yet their evidence was also expunged from the record, thereby occasioning a miscarriage of justice.

g) The evidence of PW4, PW5, PW6, PW7 and PW8 was admissible in law and ought not have been expunged from the record of the Court below.

h) The Court below erroneously expunged from the record of the Court Exhibits PCD1 – PCD3, PCE1 – PCE4, PCF2, PCG2, PCH1, PCJ1, PCJ2, PCJ3A-F, PCJ4, PCK1 and PCK2 as being "tendered through the incompetent PW4, PW5, PW6, PW7 and PW8."

GROUND 16: ERROR IN LAW

The learned trial Justices of the Court below erred in law and contradicted themselves when they held, relying on some previous decisions, that the Appellants did not plead sufficient/specific facts to support the admissibility of Exhibits PD1 - PD18, PJ1 - PJ8, PK1 - PK31, PL1 - PL18, PN1 - PN31, PP1 - PP13, PQ1 - PQ13, PR1 - PR25, PU1 - PU18, PV1- PV7, PW1 - PW21, PY1 - PY8, PAA1 - PAA21, PAB1 - PAB12, PAC1 - PAC25, PAD1 - PAD18, PAE1 - PAE25, PAF1 - PAF25, PAG1 - PAG11, PAK1 - PAK31, PAL1- PAL18, PAM1 - PAM15, PAN1 - PAN31, PAQ1 - PAQ12, PAR1 - PAR8, PAT1 - PAT18, PAU1 - PAU10, PAV1 - PAV18, PAX1 -PAX25, PAY1 - PAY18, PAZ1 -PAZ33, PBA1 - PBA23, PBB1 - PBB23, PBC1 - PBC16, PBD1 - PBD25, PBK1 - PBK16, PBL1 - PBL15, PBM1 - PBM23, PBN1 - PBN11, PBR1 - PBR16, PBQ1 - PBQ21, PBT1 - PBT25, PBW1 - PBW17, PBY1 - PBY10, PBZ1 - PBZ29, PCH37 - PCH39, PCN5 - PCN12, PCN16 - PCN18, PCN22, PCN25, PCN27, PCN29, PCN33, PCN37 - PCN39, PCN51; hence the said Exhibits were expunged by the Court for being inadmissible in law.

Particulars of Error:

a) The Court below, before proceeding to make its adverse findings against those Exhibits, had held that *"The Petitioners have specifically averred in paragraph 101 of the Petition that they will be relying on 'all 1st Respondent's electoral and all other necessary documents used for the conduct of the Presidential Election," including the documents which they listed as items (a)-(ccc) of the paragraph."*

b) The Court below overlooked the settled position of the law that documents are sufficiently pleaded once facts in support thereof are pleaded – which was done by the Appellants herein.

c) The Court below overlooked that, in addition, the Appellants pleaded facts covering all the documents tendered by incorporation or reference, which has been held in a great deal of cases commended to the Court below to constitute sufficient pleading of the facts pleaded in a pleading document; in this case, the Appellants' Petition.

d) The Court below failed to appreciate that when a pleading contains averments that certain facts are incorporated into the facts pleaded, the question of the sufficiency of those pleaded facts cannot be determined without reference to the document(s) pleaded to be so incorporated.

e) In arriving at its decision on this, the Court below did not make any reference to, let alone consider, the documents pleaded by incorporation/reference by the Appellants – which contained the details of polling units and scores, etc, which the Court of Appeal had erroneously held were lacking in the Petition.

GROUND 17: ERROR IN LAW

The learned trial Justices of the Court below erred in law, misapprehended the issues raised before them, and occasioned a miscarriage of justice when they first held as follows:

> *As regards the objection to Exhibits PCE1 - PCE4, said to be 18,088 blurred results downloaded from IReV and contained in 4 boxes, the Petitioners have contended that the Respondents' request for the Petitioners to specify the 18,088 polling units to which those blurred reports relate is an impossibility, because the results are unreadable and the details of most of the polling units are stated in Exhibits PCD1 - PCD3, the expert report tendered by PW4. This contention of the Petitioners is however misconceived. This is because the Petitioners who claim that they could not specify the polling units in the 18,088 blurred results because those results are unreadable, are the same persons who have stated*

*that the said polling units have been specified in the expert report of PW4, through whom the blurred results were tendered. However, PW4 who stated under cross examination that the primary source of the data he used in producing his report was the IReV portal did not state how he was able to determine the particular polling units and the impacted votes, accredited voters and number of PVCs collected. As I earlier noted, PW4's report was concluded on 19th of March, 2023 before the Petitioners filed this Petition on 20th of March, 2023, which means the Petitioners were aware of the polling units to which their complaints relate even before they filed the Petition. So, their theory of impossibility which they invented around the 18,088 blurred results is misconceived and an obvious misadventure. Again, in paragraphs 7 and 8 of the Petition, the Petitioners admitted that they have agents in the polling units and those agents signed and collected duplicate copies of the results sheets. Those paragraphs read as follows.... Having clearly admitted that their agents signed and collected duplicate copies of the result sheets, their contention that they are unable to determine the polling units from which the blurred results emanated is untrue. In fact, this admission reinforces the need for the Petitioners to specify all the polling units in respect of which they have made complaints since their agents were availed with copies of the results of the polling units. As regards the Petitioners contention that they have complied with paragraph 4(5)(c) and 41(8) of the 1St Schedule to the Electoral Act, 2022, I had earlier considered this argument of the Petitioners while resolving the Respondents' objections to the Petitioners pleadings, wherein I held that the provision of Paragraph 4(5)(c) of the 1st Schedule to the Electoral Act, 2022 only relates to the front-loading of documents to be relied upon by the Petitioners as their evidence during trial. It does not obviate the mandatory requirement for pleading material facts as stated in Paragraph 4(1)(d) & (2) and 41(8) of the same Schedule, so as to enable the adverse party to know the exact case he is to meet and to respond to same accordingly. As I also stated in our earlier ruling, the reports which the Petitioners stated they had detailed the polling units was not filed along with the Petition so as to afford the Respondents the opportunity to respond to same, but was merely tendered at trial, by which time the Respondents had no opportunity to respond. Since the Petitioners have failed to specify in the Petition the polling units to which PCE1-PCE4, the 18,088 blurred results relate, the said documents are clearly inadmissible. See: **BELGORE v AHMED (supra) and PDP v INEC (supra).** The said Exhibits are hereby discountenanced and expunged from the record.*

Particulars of Error:

a) Contrary to the findings made by the Court below, the response by the Appellants that the details of the polling units covered by the said Exhibits (the 18,088 blurred results) can be found in the Expert Reports was well grounded in law, when the Appellants tendered **Exhibits PCD1-PCD3.**

b) The Exhibits in question which were electronic evidence downloaded from the IReV complied with Section 84 of the Evidence Act, 2011 and were, therefore, admissible in evidence.

c) The Appellants pleaded material facts to enable the admissibility of the Exhibits in question, which pleading included pleading by incorporation or reference, which is permissible in law.

d) The fact that the Appellants' agents signed and collected duplicate copies of results does not contradict the fact that the 1st Respondent uploaded blurred results on its IReV Portal.

e) The dual decision that the affected results were both inadmissible and were expunged from the record of the Court was grossly wrong and occasioned a miscarriage of justice against the Appellants.

GROUND 18: ERROR IN LAW

The learned Justices of the Court of Appeal erred in law and thereby reached a perverse decision when they ignored and failed to take into account the unchallenged documentary evidence produced by PW7 and PW8.

Particulars of Error:

a) PW7 produced Exhibits PCJ3A-F which were the Reports of the Health Status of the Amazon Web Services (AWS) Servers in the Six Regions where AWS host their Cloud Servers.

b) The Court below overlooked that the Health Status Report of the AWS Servers produced by PW7 are public information documents that are available and accessible to the public.

c) The Court below overlooked the Health Status Report (Exhibits PCJ3A-F) of the AWS Server Report which clearly shows that there was no "technical glitch" on any of the AWS Servers in any of the Six Regions on the day of the questioned Presidential election, namely, 25th February, 2023.

d) The Court below overlooked Exhibit PCK2 which is a copy of the 1st Respondent's Press Release dated 11th November 2022, which was produced by PW8 using his expert knowledge to obtain publicly accessible information of resources/materials published and issued by the 1st Respondent from 2018 to 2023, and contained at the Uniform Resource Identifier (URI) http://wpl.inecnigeria.org/wp-content/uploads/2022/11/1-2-500x749.jpeg

e) The Court below failed to take into account that Exhibit PCK2 contained the 1st Respondent's representation of its commitment to upload and transmit the result of the election from the polling units to the IReV in real-time, and in keeping with the use of technology introduced by the Electoral Act 2022.

GROUND 19: ERROR IN LAW

The learned Justices of the Court below erred in law when they held that *"Exhibits RA1, RA2, being in the public record of the 1st Respondent are public documents and are therefore admissible in evidence, having been certified by the 1st Respondent under Section 104 of the Evidence Act, 2011"*; and when they further held that the Petitioners' objection to Exhibits RA1, RA2, RA6 and RA7 tendered by the 1st Respondent was unmeritorious.

Particulars of Error:

a) The Court below erroneously held that Exhibits RA1, RA2, RA6 and RA7 tendered by the 1st Respondent are admissible.

b) The decision of the Court below admitting the exhibits was perverse.

c) There was no evidence of payment of certification fees as required by the Evidence Act, 2011.

GROUND 20: ERROR IN LAW

The learned Justices of the Court below erred in law when they found and held that *"...a careful examination of those paragraphs shows that only paragraph 21 of the Petitioners' Reply has raised a new allegation against the 1st Respondent of attempts to manipulate the data uploaded on the backend server of AWS."*

Particulars of Error:

a) The Court below overlooked the fact that paragraph 21 of the Petitioners' Reply was simply a Reply to the fresh issues raised by the 1st Respondent in its Reply.

b) The Petitioners were entitled to answer to all fresh issues that arose from the 1st Respondent's Reply to the Petition.

GROUND 21: ERROR IN LAW

The Court below erred in law and occasioned a grievous miscarriage of justice by its misapprehension of the substance of the Appellants' complaint of irregularity/non-compliance in the questioned Presidential election when it held:

> *From the above functions of the BVAS, it is clear to me that, apart from using the BVAS to scan the physical copy of the polling unit result and upload same to the Result Viewing Portal (iReV) there is nothing in the Regulations to show that the BVAS was meant to be used to electronically transmit or transfer the results of the Polling Unit direct to the collation system. It should be noted that INEC Results Viewing Portal (IReV) is not a collation system...that both the Electoral Act and the Regulations and Guidelines provide for manual collation of election results, and the electronic transmission to a collation system apparently introduced by the 1st Respondent in the Regulations and Guidelines are not mandatory as contended by the Petitioners herein."*

Particulars of Error:

a) The Court below erroneously surmised that *"where allegations of non-compliance and corrupt practices are made, such as in the instant petition, the polling units, wards or other places where those irregularities and malpractices are alleged to have occurred must be specifically pleaded. The Petitioners have argued that the issue of non-compliance by the 1st Respondent to its laws, guidelines and relevant statutes is a universal complaint because it is an infraction against the Nigerian people and the Nigerian State. However, this contention of the Petitioners is not in consonance with the requirement of the law.....this is more as the Petitioners' allegation of non-compliance is interwoven with allegations of corrupt practices and the same set of facts are pleaded for both."*

b) The Court below erroneously overlooked the fact that the use of technology in the conduct of the Presidential election was pivotal to the integrity/credibility and transparency of the questioned Presidential election.

c) The finding/conclusion by the Court below is contrary to the binding decision of the Supreme Court in **OYETOLA v. INEC (2023) LPELR-60392.**

d) The Court below failed to take into account the admission by RW1 under cross examination regarding the significance/impact of blurred copies of the purported result of the election uploaded and transmitted by the 1st Respondent to the IReV.

e) The Court below overlooked the significance of the admission by RW1 that the copies of Form EC8A uploaded to the IReV ought to be, and are, the same with the hard copies of Form EC8A obtained in the polling units for the questioned Presidential election.

f) The Court below overlooked the fact that the Presiding Officers were mandated/obligated to upload/transmit the results, including the total number of accredited voters and results of the ballot, from the BVAS to the IReV.

g) The Court below erroneously concluded that *"the Petitioners failed to state the scores improperly computed and how they were disfavoured in reference to the Petitioners complaint that "based on the uploaded results, the votes recorded for the 2nd Respondent did not comply with the legitimate process for computation of the result and disfavoured the Petitioners, and listed the States of Rivers, Lagos, Taraba, Benue, Adamawa, Imo, Bauchi, Borno, Kaduna, Plateau and other States of the Federation."*

h) The Court below erroneously concluded that *"a look at the entire Petition shows that no single complaint was made by the Petitioners in respect of any of those states as to make those exhibits relevant to the Petitioners' case.*

i) It is clear from the pleadings and evidence adduced that the failure of the 1st Respondent to upload and transmit the results of the elections from the polling unit to IReV as mandated by law substantially affected the outcome of the election, in that the credibility, integrity and transparency of the entire election process were compromised and could not be guaranteed.

GROUND 22: ERROR IN LAW

The Court below erred in law and reached a perverse decision when it relied on the decision in **Appeal No: CA/LAG/CV/332/2023 – APC v. LABOUR PARTY & 42 ORS** as well as in **Suit No.: FCII/ABJ/CS/1454/2022 – LABOUR PARTY v. INEC** to hold: *"Since the above judicial pronouncement have decided that under the Electoral Act and INEC Regulation and Guidelines for the conduct of the election, the 1st Respondent cannot be compelled to electronically transmit election result, the Petitioners are clearly estopped by those decisions from contending in Ground 2 of this Petition that the 1st Respondent is mandatorily required to transmit the election result to the collation system."*

Particulars of Error:

a) As part of its erroneous decision, the Court below mistakenly concluded that INEC Result Viewing Portal (IReV) is not a collation system.

b) The findings and decision of the Court below are *per incuriam*, having regard to the authoritative recent decision of the Supreme Court in **OYETOLA v. INEC 2023 LPELR-60392 (SC)**.

c) The Court below ignored and overlooked the key objective of the Electoral Act 2022, which is the introduction and use of technologies in the conduct of election including the questioned Presidential election as a means to guaranteeing the integrity, credibility and transparency of the election.

d) The Court below erroneously relied on principles and authorities that were determined under the old Electoral Act 2010 (as amended) and not under the Electoral Act 2022, which occasioned a miscarriage of justice in this case.

GROUND 23: ERROR IN LAW

The Court below erred in law and thereby reached a perverse decision when it stated and held that *"the electronic transmission of the result of the election is not expressly stated anywhere in the Act, but was only introduced by the 1st Respondent in its Regulations and Guidelines 2022, and in the INEC Manual for Election Officials 2023. By Section 134(2) of the Electoral Act 2022, only an act or omission which is contrary to Electoral Act 2022 can be a ground for questioning the election. Complaint relating to non-compliance with the provision of the Regulation and Guidelines or Manual for Election Official are not legally cognizable for reasonable complaint for questioning an election. Since, as shown above, the electronic transmission of election results is not specifically provided for in the Electoral Act, 2022, but was only provided in the Regulations and Guidelines for Conduct of Elections, 2022 and INEC Manual for Election Officials, 2023, the failure to electronically transmit election results cannot be made a ground for challenging an election under Section 134(1)(b) of the Electoral Act, 2022."*

Particulars of Error:

a) The Court below failed to advert its mind and attention to the objectives of the Electoral Act 2022 to provide for measures aimed at checkmating instances of electoral mischief prevalent under the old legal regime; and also disregarded

the mischief sought to be remedied by the introduction of the use of technology (BVAS) in the present electoral regime.

b) The Court below overlooked that by the express provisions in Paragraph 2.9.0 at page 36 to 49 of the INEC Manual for Election Officials "the real time publishing of polling units level results on IReV Portal and transmission of results using the BVAS demonstrates INEC's commitment to transparency in results management…", and "is backed by Sections 47(2), 60(1,2 and 5), 64 (4a and 4b) and 64(5) of the Electoral Act 2022, which confers INEC with the power to transmit election results electronically."

c) The Court below overlooked the settled position of the law decided in many cases that INEC Regulations, Guidelines and the Manual of Election officials are subsidiary legislations made pursuant to the Electoral Act 2022; and therefore, have the force of law and command obedience.

d) Section 134(1)(b) of the Electoral Act 2022 makes non-compliance with the provisions of the Act a Ground for questioning Election, which was also a Ground in the instant Petition.

e) The Court below erroneously concluded *"the failure to electronically transmit election result cannot be a ground for challenging the election result under Section 134(1)(b) of the Electoral Act 2022."*

f) The Court below misinterpreted Section 134(2) of the Electoral Act 2022 and misapplied the case of **NYESOM v. PETERSIDE (supra)**.

g) Contrary to the decision of the Court below, the issue of the use of BVAS as a technological device provided for in the INEC Manual and Regulations and the electronic transmission of results with the BVAS raised by the Appellants, does not conflict with the Electoral Act 2022; rather, it complements the provisions of the Electoral Act 2022 on the issue.

h) The Court below overlooked that since the provisions of the INEC Guidelines and Regulations complement the provisions of the Electoral Act 2022 in this respect, there is no conflict between the provisions of the Electoral Act and the

Guidelines and Regulations; and the issue of the Electoral Act superseding or prevailing over the Guidelines does not arise in the circumstance.

i) The case of **NYESOM V. PETERSIDE (supra)** quoted did not jettison the INEC Regulations, Guidelines and Manual for Election officers as erroneously held by the Court below; rather, the case recognised the powers of INEC to issue same "For the conduct of election" in reference to S. 134(2) of the Electoral Act 2022.

j) The complaints relating to non-compliance with the provisions of Regulations and Guidelines or the Manual of Election Officials cannot be said to amount to a Ground of the Petition filed by the Appellants; but were merely part of the facts pleaded in support of the Grounds complaining about non-compliance with the provisions of the Electoral Act 2022.

k) There is nowhere in the Petition where the Appellants made the failure to electronically transmit the election results a ground to challenge the questioned election; and the failure to electronically transmit in real-time the results from the polling units to the IREV was predicated on the Ground for non-compliance and supports it.

l) The Court below misconceived the purpose of the ground in a Petition alleging non-compliance and the facts in support of the said Ground.

GROUND 24: ERROR IN LAW

The Court below erred in law and arrived at a wrong conclusion which occasioned a miscarriage of justice when it held as follows:

> *Subsection (6) of the same Section provides for what the collation or returning officer will use to determine the correctness of disputed result where there is a dispute. These are: (a) the original of the disputed collated result for each polling unit where the election is disputed (which in our view means the physical or hard copy of the disputed collated result); (b) the technological device used for accreditation of voters in each polling unit where the election is disputed; (c) the data of accreditation recorded and transmitted directly from each polling*

unit where the election is disputed as prescribed under Section 47(2) of this Act; and (d) the votes and result of the election recorded and transmitted directly from each polling unit where the election is disputed as prescribed under Section 60(4) of the Act (which requires only the counting and announcement of the result at the polling unit).

A careful examination of the above Sections relied upon by the Petitioners shows that the Electoral Act had used the words "deliver" in Section 62(1), "transfer" in Section 60(5) and "transmitted directly" in Sections 50(2), 64(4), (5) and (6), of the Electoral Act, 2022, in stating how results of elections should be handled under those provisions. A look at the definitions of those words in the Blacks' Law Dictionary, Sixth Edition shows that the word "transfer" is defined at page 1497 as "to convey or remove from one place, person, etc., to another;" or to "pass or hand over from one to another"; or to "specifically to change over the possession or control." The word "transmit" on the other hand is defined by the same Law Dictionary to mean "to send or transfer from one person or place to another or to communicate." In my view, the Electoral Act, 2022 has used the words "deliver", "transfer" and "transmitted directly" interchangeably to describe how the results of the election shall be moved from one stage to another until the results are finally collated and declared. In all these, the Electoral Act, 2022 has not specifically provided that the results of the election shall be electronically transmitted.

Particulars of Error:

a) Sections 41 (1), 47 (2), 50 (2), 62 (1) & (2), 64 (4) (a) & (b), (5), (6) (c) & (d), (7) & 152 of the Electoral Act 2022, when interpreted together, provide for IReV and the electronic transmission of Polling Unit results to IReV.

b) IReV is a creation of the Electoral Act 2022 whose content is uploaded to one single database that is statutorily provided as indistinguishable from the PU's physical copy.

c) The power of the 1st Respondent's collation officers to collate the result emanating from Polling Units during the conduct of the 25th February, 2023 general elections under contention in this Appeal is subject to copies of those

polling unit results being transmitted to the IReV, which in this instance had more than 18088 blurred images transmitted to the IReV from Polling Units.

d) The Court below was in error to adopt the definition contained in the Black's Law Dictionary for transmission, since Section 152 of the Electoral Act, 2022 had adequately provided for a satisfactory definition.

GROUND 25: ERROR IN LAW

The Court below erred in law and occasioned a grave miscarriage of justice when it abdicated its primary duty of making findings on the material issue of estoppel the Appellants raised against the 1st Respondent on the electronic transmission of polling units results to the IReV.

Particulars of Error:

a) The 1st Respondent, pursuant to Section 60(5) of the Electoral Act 2022, provided for the prescribed manner in which the transmission of polling unit results by the presiding officers to the IReV should be carried out.

b) Pursuant to its mandate under Section 60(5) of the Electoral Act 2022 referred to above, the 1st Respondent explicitly provided in the Regulations and Guidelines for the Conduct of the Election 2022 and the Manual for the Election Officials 2023 the step-by-step processes of uploading and transmission of the results of the election from the polling units to the IReV.

c) The Regulations and Guidelines and the Manual for Election Officials made by the 1st Respondent are subsidiary legislations promulgated by the 1st Respondent in accordance with Section 148 of the Electoral Act 2022.

d) A breach of the duties incumbent on the presiding officer as mandated is punishable upon conviction with a fine or imprisonment.

e) The 1st Respondent prescribed the manner for the transfer of results, including the total number of accredited voters in its Regulations and Guidelines and the Manual for Election Officials.

f) In paragraph 2.9.0 on page 36 of the Manual for Election Officials, the 1st Respondent, under the sub-heading **"Electronic transmission/upload of election result and publishing to INEC Result Viewing (IREV) Portal"**, captured the fundamental importance of the requirement of electronic transmission of the result of the election. It stated that:

> "One of the problems noticed in the electoral process is the irregularities that take place between the Polling Units (PUS) after the announcement of results and the point of result collation. Sometimes results are hijacked, exchanged, or even destroyed at the PU, or on the way to the Collation Centers."

It also stated that: "it becomes necessary to apply technology to transmit the data from the Polling Units such that the results are collated up to the point of result declaration. The **real-time** publishing of polling unit-level results on IREV Portal and transmission of results using the BVAS demonstrates INEC's commitment to transparency in results management."

g) The 1st Respondent further stated in paragraph 2.9.0 of the Manual for Election Officials that this commitment is backed by Sections 47(2), 60(1, 2 & 5), 64(4)(a & b) and 64(5) of the Electoral Act 2022, which confers INEC with the power to transmit election collation and improve the accuracy, transparency, and credibility of the results collation process."

h) It is in furtherance of the above provisions in the Electoral Act, Regulations and Guidelines and the Manual for Election Officials, that the 1st Respondent through several media and press briefings represented/reassured Nigerians and the International Community of its commitment to the compliance of the law by the electronic transmission of the election results from the polling units using the BVAS to the IREV and that this commitment and compliance were not negotiable.

i) Those assurances are contained in **Exhibits PH3, PH4, PCH1** and **PCG2** tendered by the PW3, PW5 and PW6.

j) The assurances/representations given by the 1st Respondent were further given impetus in a Press release dated November 11, 2022, signed by Festus Okoye Esq, then National Commissioner and Chairman Information and Voter Education, tendered in evidence and marked as **Exhibit PCK2**.

GROUND 26: ERROR IN LAW

The Court below erred in law and occasioned a grave miscarriage of justice when it failed to consider, determine, treat, resolve or make any pronouncement or finding on the material issue of the 1st Respondent issuing certified true copies of 8123 blurred results comprising not only blurred results but blank A4 papers, pictures/images of unknown persons and purporting them to be certified true copies of polling unit results of the election.

Particulars of Error:

a) The Court's attention was, for instance, drawn to the following: **Exhibit PCA14**, which represents 741 blurred results from Kaduna State (the Local Government or Local Governments Areas were not shown); **Exhibit PBS 19**, which contains EC8B (in place polling unit result and passport photograph of unknown person); **Exhibit PBS 21** comprising 51 blurred results from Bauchi State and not linked to any Local Government Area.

b) Its attention was also, for instance, drawn to **Exhibit PBZ9**, which has 709 blurred results from Gombe State but which were not linked to any Local Government Area; **Exhibits PCA 25**, which contains **2 EC8B** results, **PCA26** which had **4 EC40G** (PU) Forms, **PGA 28** which had **EC60** Form, and **PCA 29** which had 14 blank results.

c) The RW1 claimed under cross-examination that the physical result could be obtained to get **"the required information."**

d) The CTC of blank and blurred documents must be the same as the originals they purport to be copies or duplicates.

e) The CTC of blank result sheets can only give birth to blank result sheets, and blurred result sheets can only give birth to blurred result sheets.

f) The failure of the Court below to make findings/pronouncements on such fundamental issues canvassed before it led to a breach of the Appellants' right to a fair hearing; and also led to a grave miscarriage of justice.

GROUND 27: ERROR IN LAW

The Court below erred in law when it held as follows: *"Responding on behalf of the Petitioners, Dr Ozoukwu (sic), SAN, submitted that the 1st Respondent had, in response to the request by the Petitioners for certified copies of electoral documents including Forms EC8A issued CTCs of 18,088 blurred electoral forms and blank papers and irrelevant images which they certified as the result of the election. He submitted that since the 1st Respondent manually collated the result of the elections with hardcopies of the EC8As, the 1st Respondent should have certified the hardcopies and issued them to the Petitioners. He cited the cases of* ***DICK v OUR AND OIL CO. LTD (2018) 14 NWLR (Pt 1638); and UZOMA v ADODIKE (2009) LPELR-8421(CA), on certification of documents."***

Particulars of Error:

a) Nowhere in the Final Address of the Appellants did Dr Uzoukwu, SAN, make the statement the Court below credited to him.

b) The 1st Respondent did not issue the Appellants with certified true copies of 18,088 blurred electoral forms and blank papers, etc or any part thereof, and the learned silk did not claim it did.

c) On the contrary, the address clearly stated the 1st Respondent issued the Appellants **certified true copies of 8123 blurred results**.

d) The Statement of the Court below demonstrates a deep misapprehension of the Appellants' case.

e) The misapprehension led to a failure of justice.

GROUND 28: ERROR IN LAW

The Court below erred in law when it held as follows: *"As for PW3, PW5 and PW6, they merely tendered flash drives containing speeches of the INEC Chairman Mahmoud Yakubu and INEC National Commissioner Festus Okoye wherein they gave assurances that results of the election will be transmitted to the iRev for public viewing. Being mere assurances, the evidence of these witnesses had no utilitarian value in establishing allegation of corrupt practices made by the Petitioners in this case."*

Particulars of Error:

a) The evidence of the PW3, PW5 and PW6 supported the case of the Appellants on the failure of the 1st Respondent to transmit polling unit results in **real-time** to the IReV using the BVAS.

b) The complaint of non-transmission of polling units results to the IREV in real-time was pleaded to support the Appellants' ground in their Petition on **non-compliance** and its substantiality.

c) The argument with respect thereto was copiously made in support of **Issue 2** of the Appellants, which is the same as **Issue 2** adopted by the Court below.

d) Rather than consider the Appellants' evidence and the Exhibits they tendered within the prism and province of **non-compliance**, the Court below dismissed the same as being of no value in proving allegation of corrupt practices.

e) The finding shows a deep misconception of the Appellants' case, which occasioned a grave miscarriage of justice.

GROUND 29: ERROR IN LAW

The Court below erred in law and thereby reached an erroneous conclusion that *"On the preponderance of evidence, I am convinced that the Petitioners have failed*

to establish their assertion that the 1st Respondent has deliberately failed to upload the Presidential election result to the IReV in order to manipulate the result in favour of the 2nd Respondent."

Particulars of Error:

a) The Court below failed to take into account the admission by RW1 that the alleged "technical glitch" on the 1st Respondents e-transmission portal was successfully repaired, and thereafter *"the first Presidential election result was successfully uploaded at 8:55pm on the 25th February 2023."*

b) The Court below ignored the unchallenged notorious fact that the result of the Presidential election was still being uploaded on the IReV even as at the time of the unlawful declaration of the 2nd Respondent as the winner of the Presidential election.

c) The Court below refused and neglected to take into account the evidence of the blurred documents purportedly uploaded as the result of the election in 18,088 polling units.

d) Notwithstanding that RW1 stated that there was testing on the e-transmission system on 4th February 2023 and a report was issued, the Court below ignored that non-production of the alleged Report entitled the Court to invoke the presumption under Section 167(d) of the Evidence Act 2011.

e) The Court below ignored the significance of Exhibit X1 (Report of the Vulnerability Assessment and Penetration Testing dated 22nd February 2023), which identified a high risk vulnerability of the INEC e-transmission system.

GROUND 30: ERROR IN LAW

The learned Justices of the Court below erred in law and occasioned a miscarriage of justice when they held that *"from the totality of the evidence adduced on this issue, I am of the considered view that the Petitioners have failed to prove substantial non-compliance with the provisions of the Electoral Act, 2022. Issue 2 is also resolved against the Petitioners and in favour of the Respondents."*

Thereafter, it proceeded to hold as follows:

"In addition, learned Counsel submitted that there are 8,123 blurred results also issued and certified by INEC, the details of which cut across 14 states and 168 Local Government Areas. He submitted that the 18,088 blurred results downloaded by the Petitioners from the iRev and the 8,123 blurred results, blank sheets and images of persons that are part of the iRev reports, which the Respondent certified have a combined total figure of 26,211 blurred results. He argued that even the 8,123 results are substantial."

Particulars of Error:

a) The Petitioners adduced credible and substantial evidence, both oral and documentary, that proved substantial non-compliance with the Electoral Act 2022 by the Respondents in the conduct of the election.

b) The Court below overlooked that the Respondents failed to disprove the evidence of substantial non-compliance adduced by the Petitioners.

c) The Court below ignored and overlooked the key objective of the Electoral Act 2022, which is the introduction and use of technologies in the conduct of election including the questioned Presidential election as a means of guaranteeing the integrity, credibility and transparency of the election.

d) From the pleadings and evidence adduced, the Petitioners established that the failure of the 1st Respondent to upload and transmit the results of the elections from the polling unit to IReV as mandated by law, substantially affected the outcome of the election, in that the credibility, integrity and transparency of the entire election process were compromised and could not be guaranteed.

e) The complaint about the certified true copies of 8123 blurred results that were issued to the Appellants was argued under their **Issue 2**, which was predicated on non-compliance that substantially affected the election result.

f) Issue 2, as adopted by the Court, is the same as the Appellants' Issue 2; and the complaint of 8123 blurred results was argued under the said Issue 2 and under a very broad heading under: "SUBSTANTIAL NON-COMPLIANCE."

g) The Court below, without adverting to the complaint of 8123 blurred results, resolved Issue 2 against the Appellants and in favour of the Respondents.

h) For inexplicable reason(s), the Court below chose to consider the said complaint of 8123 blurred results under its Issue 3, which is predicated on corrupt practices.

i) While the burden of proof for an allegation of non-compliance is on preponderance of evidence, the burden of proof of corrupt practices is much heavier than a criminal allegation.

j) The Court below, in its Issue 3, merely made a passing reference to the complaint of 8123 blurred results and made no finding on it whatsoever.

k) The approach in handling of the complaint of the 8,123 blurred results by the Court below led to the non-resolution of a material issue and the breach of the Appellants' right to a fair hearing, which occasioned a grave miscarriage of justice.

GROUND 31: ERROR IN LAW

The learned Justices of the Court below erred in law when they held that *"the evidence of the witnesses which the Petitioners called as experts to establish that the 1st Respondent is mandatorily required to transmit election result for purposes of collation or to link the delay in the upload of the Presidential Election results to IReV by the 1st Respondent to any of the malpractices which they alleged are devoid of any value."*

Particulars of Error:

a) The Petitioners called unchallenged credible witnesses to prove that INEC failed to transmit election result in accordance with the provisions of the Electoral Act, 2022, its Regulations, Guidelines and Manuals.

b) The use of BVAS for the transmission of election results for collation and upload to IReV, in real-time and without delay, was/is mandatory.

c) The Respondents, including the 1st Respondent (INEC) did not give evidence in rebuttal of the facts pleaded and proved by the Appellants.

d) The Petitioners pleaded and gave technical details of the failure of the 1st Respondent to transmit election results from the Polling Units using the BVAS machines.

e) The 1st Respondent's failure/delay in transmitting the election results adversely affected the election process and due collation of the results on the election from the various polling units.

GROUND 32: ERROR IN LAW

The learned Justices of the Court below erred in law and occasioned a miscarriage of justice when they held and concluded that *"the Petitioners have failed to establish their allegations of corrupt practices and over-voting. In consequences, Issue 3 is also resolved against the Petitioners and in favour of the Respondents."*

Particulars of Error:

a) The Court below did not take into account the ample evidence adduced before it by the Appellants' witnesses that the purported results of the election in the polling units were inaccessible on the IReV, and same was unchallenged by the Respondents.

b) It was established before the Court below, including by the evidence of RW1, that the failure of the 1st Respondent to electronically transmit the results of the election from the polling units to the IReV using the BVAS compromised the integrity and transparency of the election in the States identified in the Petition, which resulted in suppression of scores; unlawful reduction and inflation of results; uploading of fictitious results, misrepresentation and

manipulation of results, over-voting and wrong computation of results by the 1st Respondent.

GROUND 33: ERROR IN LAW

The learned Justices of the Court below erred in law when they held thus:

> *It is pertinent to observe that upon our careful perusal of Exhibits X2 and RA23, which are the certified true copies of the Supreme Court unanimous judgment in PDP v INEC & 3 ORS (supra), it is clear to us that the Apex Court had not only determined that the Petitioners in that case had no locus standi to question the nomination of the 3rd Respondent herein, the Court proceeded to determine with finality that there was no double nomination on the part of the 3rd Respondent. On the contention relating to the locus standi of the Petitioners to complain about the double nomination of the 3rd Respondent, the Apex Court, per His Lordship Jauro, JSC delivering the lead judgment in PDP v INEC & 3 ORS (supra), held at pages 30 - 31, paras. C- D, as follows:... The above legal position as determined by the Apex Court in PDP v INEC (supra), clearly shows that the Petitioners in this case who belong to a different political party from the 2nd and 3rd and the 4th Respondents have no locus to complain about the nomination of the 3rd Respondent. Hence, they cannot use same to challenge the qualification of the 2nd and 3rd Respondents to contest the Presidential election.*

Particulars of Error:

a) The appeal in **PDP v. INEC (supra)** was a pre-election matter, not an Election Petition.

b) Section 134(1)(a) of the Electoral Act, 2022 has permitted a Petitioner to challenge the qualification of a person elected in a contested election, like this present one.

c) The Court below ignored and refused to follow its previous decisions in the cases of **APC v. CHIMA (2019) LPELR-48878 (CA)** and **ACHILONU v. CHIMA (2019) LPELR-48837 (CA) at 6-10**, wherein it had relied on extant decisions of the Supreme Court and emphatically held that issue of

double-nomination as raised by the Appellants herein is an issue of qualification that can comfortably be brought and ventilated under 138(1)(a) of the Electoral Act 2010 (as amended), now Section 134(1)(a) of the Electoral Act, 2022.

d) The Court below conceded that it is settled law that the issue of qualification of a candidate to contest an election is traceable and must be based on the Constitution of the Federal Republic of Nigeria, 1999 as amended.

e) The Court below, however, failed to appreciate that by the provisions of Section 131(c) of the 1999 Constitution as amended, a person shall be qualified for election to the office of President if he is a member of a political party and is sponsored by that political party; by Section 142(1) of the same Constitution, a Candidate for election to the office of President must nominate a Vice-Presidential Candidate; while by Section 142(2) thereof, the provisions of Section 131(c) is applicable to the Vice-Presidential Candidate.

f) The Court below overlooked the established position that nomination to contest an election is part and parcel of sponsorship to contest an election, which is a ground of qualification under the 1999 Constitution (as amended).

g) The Court below also overlooked that double nomination is not valid nomination known to law; and is, indeed, invalid nomination.

h) It is not in the contemplation of the framers of the 1999 Constitution (as amended), particularly Sections 131(c) and 142(1) and (2) thereof, that a Candidate nominated for one high office can, whilst still enjoying that nomination, offer/permit himself to be nominated to occupy the office of Vice President of Nigeria.

i) The Appellants, who contested the Presidential Election, have *locus standi* both under Sections 131 and 142 of the 1999 Constitution and Section 134(1)(a) of the Electoral Act, 2022, to institute the Petition leading to this Appeal and to ventilate this issue.

j) The lower Court had jurisdiction to entertain the complaint of non-qualification based on the double nomination of the 3rd Respondent.

GROUND 34: ERROR IN LAW

The learned Justices of the Court below erred in law and occasioned a miscarriage of justice when they held as follows:

> *As for the merit of this issue of double nomination of the #rd Respondent (sic.) [3rd Respondent], I observe that it is an issue that has been agitated as a sole ground in Petition No. CA/PEPC/04/2023 and same will be addressed while consideration (sic.) of that Petition since the three Petitions have been consolidated.*

Particulars of Error:

a) The Court below failed to consider that having consolidated the three Petitions, the petitioner in each action must prove his case independently.

b) The Court below failed to consider that a decision or pronouncement in one consolidated action "is not ditto for the other case"; and there "must be distinct and separate decision in each of or in respect of each of the cases in consolidation", as the Court below reiterated in **INEC v. NYAKO (2011) 12 NWLR (Pt. 1262) 439 at 489 – 490^{A-C}**, per Garba, J.C.A. (now J.S.C.).

c) The Court below failed to consider that the pleadings and evidence adduced by the Appellants to prove their case of double-nomination against the 3rd Respondent in their separate Petition, was distinct from the case and evidence adduced by the Petitioners in Petition No. CA/PEPC/04/2023.

d) The Court below failed to determine that in the instant case, which is distinct, the 2nd and 3rd Respondents' contention that the 3rd Respondent withdrew his candidacy in the Senatorial Election when he wrote the letter dated **6th July 2022** without completing the process by conveying/notifying same to the 1st Respondent did not effective and effectual withdrawal.

e) The Court below failed to determine that in the instant case, which is distinct, the evidence before the Court is that the letter was received by the 1st Respondent on **15th July 2022** after the 3rd Respondent had accepted his nomination as Vice-Presidential Candidate on **14th July 2022**.

GROUND 35: MISDIRECTION

The Court below misdirected itself when it held as follows:

*It is pertinent to observe that upon our careful perusal of Exhibits X2 and RA23, which are the certified true copies of the Supreme Court unanimous judgment in **PDP v. INEC & 3 ORS (supra)**, it is clear to us that the Apex Court had not only determined that the Petitioners in that case had no locus standi to question the nomination of the 3rd Respondent herein, the Court proceeded to determine with finality that there was no double nomination on the part of the 3rd Respondent...On the Petitioners' allegation of double nomination of the 3rd Respondent, the Supreme Court specifically held in **PDP v. INEC & 3 ORS (supra)**, that there was no such double nomination...In fact, in the concurring judgment of His Lordship Augie, JSC, the learned jurist was categorical when he held that there cannot be double nomination on the part of the 3rd Respondent herein, because he did not contest for any primary election for Vice President, but "was merely selected to run for a different office as an associate, a scenario envisaged by Section 142(1) of the Constitution of the Federal Republic of Nigeria, 1999 as amended. As regards the contention of the Petitioners that the pronouncement of the Supreme Court in **PDP v. INEC & ORS (supra)**, which had settled the issue of nomination of the 3rd Respondent is an obiter dictum...The fact that the Supreme Court intentionally decided to consider the merit of that case (supra), is clearly manifest from the pronouncement of Ogunwumiju, JSC at page 74, para. C wherein he stated that: "It is apt in this type of political case of public interest to look into the merits of this case." The pronouncement of the Supreme Court in **PDP v. INEC (supra)** on the status of the nomination of the 3rd Respondent is therefore, undoubtedly a decision on the merit and not an obiter dictum as erroneously contended by the Petitioners...Since it is clear that the Supreme Court in **PEOPLES DEMOCRATIC PARTY v. INEC (supra)**, had finally decided that the nomination of the 3rd Respondent by the 2nd Respondent as his running mate to contest the Presidential Election is valid, the Petitioners' allegation of double nomination of the 3rd Respondent which they have raised in this Petition, is evidently caught up by issue estoppel."*

Particulars of Misdirection:

a) The lead judgment in **PDP v. INEC & 3 Ors. (supra)**, delivered by Jauro, JSC, only decided on the *locus standi* of the Appellants and consequently struck out their case and appeal, without going into the merits thereof.

b) The Court below failed to appreciate that, in law, the opinions of the learned Justices which are outside the substance of the appeal before the apex Court, are in law non-binding judicial precedents.

c) The Court below overlooked that *Estoppel per rem judicata*/estoppel by judgment or issue estoppel does not apply when the judgment/pronouncement in question was made without jurisdiction.

d) The Appellants were not parties to the Judgment in **PDP v. INEC & 3 Ors. (supra);** hence were not caught by the estoppel invoked by the Court below.

e) The Court below failed to determine that by the provisions of Section 31 of the Electoral Act 2022, as interpreted by the Courts in many cases, including **EKPE v. ITANJAH (2019) LPELR-48462 (CA)** (per Agim, JCA; now JSC), all the features of the provision, including the requirement that **"the political party shall convey such withdrawal to the commission",** must co-exist before there can be a valid withdrawal of a candidate.

GROUND 36: ERROR IN LAW

The learned Justices of the Court of Appeal erred in law and contradicted themselves when, after quoting Section 137(1)(d) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) they held thus:

> *A careful examination of the above provision shows that the operative words of that paragraph of the Section are "sentence", "imprisonment or fine" and "for any offence." Black's Law Dictionary 6th Edition at page 1081 defines an "offence" as: "A felony or a misdemeanor; a breach of the criminal laws; violation of law for which penalty is prescribed. The word "offence", while sometimes used in various senses, generally implies a felony or a misdemeanor*

infringing public as distinguished from mere private rights, and punishable under the criminal laws, though it may also include the violation of a criminal statute for which the remedy is merely a civil suit to recover the penalty. An act clearly prohibited by the lawful authority of the State, providing notice through published laws." Also, the Supreme Court in the case of ***ABDULLAHI UMAR v THE STATE (2014) LPELR-23190(SC),*** *held that an offence is an act which is clearly prohibited by law and which may be a crime or a civil offence*

and after adopting the definition of the word "sentence" in the Black's Law Dictionary and the case of **Yakubu v. State (2015) LPELR-40867(CA) at page 36 paras A-F,** they held thus:

It is discernible from the above that the "fine" referred to in paragraph (d) of section 137(1) quoted above is one which emanates from a sentence for a criminal offence involving dishonesty or fraud. The words "for imprisonment or fine" also pre-supposes that the "fine" envisaged under the section is one which is imposed as an alternative to imprisonment. In other words, the provision of Section 137(1)(d) relates to sentence of death, or sentence of imprisonment or fine imposed as a result of criminal trial and conviction.

Particulars of Error:

a) The conclusion that the word "fine" and the phrase "for imprisonment or fine" contained in Section 137(1)(d) contemplates a criminal conviction contradicts the definitions of the word "offence" in the earlier part of the dictum, which is expressly stated to include a civil wrong.

b) The Court below overlooked the fact that the word "or" in the provision separates the opening phrase *"he is under a sentence of death imposed by any competent court of law or tribunal in Nigeria or a sentence of imprisonment"* from the word *"fine,"* and that the draftsman took into account that "offence" could arise, as decided by the Supreme Court in **ABDULLAHI UMAR v. STATE (supra)** from a criminal or civil conduct.

c) Imposition of a "fine" is not limited to a criminal conviction; as the word, in law includes a civil forfeiture.

d) A Court Order imposing a forfeiture of money for prohibited offence relating to drugs, is a sentence as defined by Stroud's Judicial Dictionary of Words and Phrases, 7th Edition, Volume 3 by Thompson, Sweet & Maxwell, 2006 at page 2494.

e) The interpretation given by the Court below is contrary to settled principles of interpretation and the abundant binding case law cited and commended to it on the meanings of "fine" and "forfeiture", which case law was avoided and ignored by the Court below.

a) It is settled law that a Court of law is under obligation to be consistent in its judgment or ruling; and failure by the Court below to abide by this rule has occasioned a miscarriage of justice against the Appellants.

GROUND 37: ERROR IN LAW

The learned Justices of the Court below erred in law when they held as follows:

Indeed, in considering the offence that can amount to disqualification under Section 137(1) of the Constitution, the Supreme Court had held in ***ACTION CONGRESS v INEC (2007) 12 NWLR (Pt. 1048) 220 at 259-260,*** *as follows:*

"The disqualification in Section 137(1) clearly involves a deprivation of right and presumption of guilt for embezzlement or fraud in derogation of the safeguards in Section 36(1) and (5) of the Constitution. The trial and conviction by a Court is the only constitutionally permitted way to prove guilt and therefore the only ground for the imposition of criminal punishment or penalty for the criminal offences of embezzlement or fraud. Clearly, imposition of penalty of disqualification for embezzlement or fraud solely on the basis of an indictment for those offences by an Administrative Panel of Enquiry implies a presumption of guilt, contrary to Section 36(5) of the Constitution of the Federal republic of Nigeria, 1999, whereas, conviction for offences and imposition of penalties and punishments are matters appertaining exclusively to judicial power".

See also on this: ***AMAECHI v INEC & ORS (2008) LPELR-446(SC) at pages 49-51, paras. E-F...****A careful perusal of Exhibit PA5 relied upon by the Petitioners shows that the Case No. 1:93-cv-04483 was in the Civil Docket of*

the US District Court, Northern District of Illinois and it was a civil forfeiture proceeding against Funds in specified Accounts with First Heritage Bank and Citibank N.A. Exhibit PA5 is actually an action in rem against the funds with First Heritage Bank and Citibank. It is not an action in personam against the 2nd Respondent.

Particulars of Error:

a) Neither the decision in **ACTION CONGRESS v. INEC (supra)** nor any of the decisions relied upon by the Court below had anything to do with civil forfeiture proceedings, which in law is the equivalent of a "fine" – the subject matter of this Appeal.

b) The fine or civil forfeiture was imposed by the US District Court as contained in **Exhibit PA5,** which Court is not an Administrative Panel of Inquiry, contrary to the decisions relied upon by the lower Court.

c) The Court below had earlier defined the word "offence," placing reliance on **ABDULLAHI UMAR v. STATE (supra),** to include a civil wrong, which fits into the factual circumstances that gave rise to the civil forfeiture orders made in Exhibit PA5.

d) The civil forfeiture proceedings and orders made in Exhibit PA5, even though against funds in specified Bank Accounts in the US, were targeted at proceeds of a criminal activity, perpetrated by the 2nd Respondent.

e) The said civil forfeiture proceeding was an action *in personam*, because it was not targeted at illicit funds at large, but those funds were traceable to the 2nd Respondent – a fact none of the Respondents denied before the Court.

f) The Court below overlooked the principles stated in the authorities commended to it that "[t]he Foundation of an action in Rem is the lien resulting from the personal liability of the owner of the res."

GROUND 38: ERROR IN LAW

The learned Justices of the Court below erred in law and contradicted themselves when they placed reliance on **JONATHAN v. FRN (2019) 10 NWLR (Pt. 1681)**

533; LA WARRI FURNITURE & BATH LTD. v. FRN (2019) 9 NWLR (Pt. 1677) 252 and **ALISON-MADUEKE v. EFCC (2021) LPELR-56922(CA) at 16-24, paras E-C,** and held as follows:

> *From the legal definitions and judicial authorities above, it is clear that the "sentence of imprisonment or fine for any offence involving dishonesty or fraud" envisaged in Section 137(1)(d) of the Constitution is one imposed upon a criminal trial and conviction. In the instant case, the Petitioners have failed to show evidence that the 2nd Respondent was indicted or charged, arraigned, tried and convicted and was sentenced to any term of imprisonment or fine for any particular offence.*

Particulars of Error:

a) The Court below avoided/neglected the earlier *dictum* in **JONATHAN v. FRN, supra,** that a *"civil forfeiture is a unique remedy which... does not require conviction or even a criminal charge against the owner...."*

b) This above earlier summation contradicts the conclusion by the same Court below that *"the Petitioners have failed to show evidence that the 2nd Respondent was indicted or charged, arraigned, tried and convicted and was sentenced to any term of imprisonment or fine for any particular offence."*

c) Section 137(1)(d), commencing from the word "or fine," contemplates a civil forfeiture order hinged on or targeted at illicit or fraudulent funds, which must per force be traced to a legal personality/existing human being – since such funds are not humans that can operate independently.

d) The present position taken by the Court below contradicts its earlier reliance on **ABDULLAHI UMAR v. STATE, supra,** wherein the Supreme Court had held that an "offence" is not limited to a crime but includes a civil wrong.

e) The Court below failed to give a broad, liberal and purposive interpretation to Section 137(1)(d) of the 1999 Constitution (as amended) as laid down and enjoined by the Supreme Court in cases too numerous to mention.

GROUND 39: ERROR IN LAW

The learned Justices of the Court below erred in law when, in sidetracking relevant decisions of the US Supreme Court and the Nigerian Supreme Court and scholarly works authored by established authors in the US, but relying on the evidence of RW2 and Exhibits RA8 and RA9, they held as follows:

> *A look at Exhibits RA8 and RA9 tendered by the 2nd and 3rd Respondents shows that upon receipt of Exhibits RA8 written by Nigeria's Inspector-General of Police to the Consular General of the US Embassy in Nigeria inquiring of the criminal record if any of the 2nd Respondent, the US Embassy had replied vide Exhibit RA9 and stated as follows:*
>
> *"In relation to your letter dated February 3, 2003, reference number SR.3000/GPSEC/ABJ/VOL.24/287, regarding Governor Bola Ahmed Tinubu, a record check of the Federal Bureau of Investigation's (FBI) National Crime Information Center (NCIC) was conducted. The results of the checks were negative for any criminal arrest records, wants, or warrants for Bola Ahmed Tinubu (DOB 29 March 1952). For information of your department, NCIC is a centralized information center that maintains the records of every criminal arrest and conviction within the United States and its territories."*

Particulars of Error:

a) It was never the case of the Appellants that the 2nd Respondent was arrested, charged and convicted by the US Court. Their case is that *"the 2nd Respondent was also at the time of the election not qualified to contest for the election to the office of President as he was fined the sum of $460,000.00...for an offence involving dishonesty, namely narcotics trafficking imposed by the United States District Court..."*

b) The interpretation by RW2 of Exhibit PA5 was/is wrong, in view of the judgments of the US Supreme Court and the Nigerian Supreme Court commended to the Court below on the meaning of a civil forfeiture.

c) The lower Court's definition of a "fine" to mean civil forfeiture agrees more with the decisions of the US Supreme Court and the Nigerian Supreme Court than with the evidence of RW2 and Exhibits RA8 and RA9.

(c) Exhibits RA8 and RA9, being mere letters written by an extra-judicial body, cannot rank superior to the court forfeiture proceedings, which was linked to the 2nd Respondent (without any of the Respondents disputing this fact) and also rank inferior to interpretation by the US Supreme Court and the Nigerian Supreme Court to the effect that a "fine" includes a civil forfeiture.

GROUND 40: ERROR IN LAW

The learned Justices of the Court below erred in law when, after placing reliance on section 249 of the Evidence Act, 2011, they held as follows:

It is instructive to observe that when cross examined by the 4th Respondent, PW1 had admitted that there was no certificate under the hand of a police officer in the United States of America where a crime was alleged to have been committed by the 2nd Respondent. It is significant to state that this Petition is a declaratory action in which the Petitioners are seeking inter alia, that this Court declare the 2nd and 3rd Respondents as unqualified to contest the election.

The Petitioners who have made the allegation have the burden to prove their allegation on the strength of their own case and not on the weakness of the Respondents. See: OKEREKE v UMAHI & ORS (2016) LPELR-40035(SC) at page 54, paras. C - C, per Kekere-Ekun, JSC; EMENIKE V PDP (2012) LPELR-7802(SC) at page 22, paras. A - D, per Fabiyi, JSC; OMISORE v AREGBESOLA (2015) 15 NWLR (Pt. 1482) 297 - 299, para. F - A, and UCHA V ELECHI (2012) LPELR-7823 (SC) at page 43, paras. B - D, per Mohammed, JSC. The Petitioners have evidently failed to establish their allegation that the 2nd Respondent is disqualified from contesting the presidential election under Section 137(1)d) of the 1999 Constitution because he was fined the sum of $460,000.00 by US District Court, Northern District of Illinois. As shown above, the order of forfeiture in Exhibit PA5 on which the Petitioners have relied does not qualify as a sentence of fine for an offence involving dishonesty or fraud within the contemplation of Section 137(1)(d) of the 1999 Constitution.

Particulars of Error:

a) The Appellants' case before the Court below, as that Court acknowledged in earlier parts of its judgment, was based on civil forfeiture, which the same Court admitted does not require a conviction by a court of law or tribunal.

b) It is on record that in proof of their case on the said civil forfeiture, the Appellants tendered in evidence Exhibit PA5 and also called oral evidence.

c) None of the Respondents disputed the fact that the illicit funds which were the subject matter of Exhibit PA5 were those of the 2nd Respondent.

d) Section 249 of the Evidence Act, 2011 does not deal with civil forfeiture, which is the equivalent of a "fine" but deals with the procedure for proving conviction in a foreign country; hence, the provision is not applicable to the facts of this Appeal.

e) The Appellants commended case and statutory laws to establish that Exhibit PA5 was/is admissible in evidence; which case and statutory laws were not applied by Court below.

f) Contrary to the findings by the Court below, the Appellants proved their case to the hilt on the issue of foreign forfeiture, which in law is the equivalent of the word "fine" contained in Section 137(1)(d) of the 1999 Constitution as amended, through both documentary and oral evidence.

GROUND 41: ERROR IN LAW

The learned Justices of the Court below erred in law when they held thus:

As regards to whether paragraph (e) of Section 137(1) should be read together with paragraph (d) of that subsection, the settled rule of interpretation of the Constitution or statute is that where the court is faced with two or more differing provisions over the same subject matter, the judicial attitude is to treat the special provision as overriding the general provision, on the principle that by enacting a separate provision for a part of the general class intends that the

said part shall not be treated the same with the general class. See: ***IWUCHUKWU & ANOR V A.G. ANAMBRA STATE & ANOR (2015) LPELR-24487(CA) at pages 62 - 64, paras. E - A, per Agim, JCA; MARTIN SCHROEDER & CO. V MAJOR & CO. NIG. LTD (1989) LPELR-1843(SC) at page 13, paras. E -A, per Wali, SC; and F.M.B.N. V OLLOH (2002) 4 S.C. (Pt. 11) 177.*** *Since in both paragraphs (d) and (e) of Section 137(1) "a sentence for the offence involving dishonesty" is mentioned but in paragraph (e) a limitation of ten years has been introduced, then it means in respect of sentence for offence of dishonesty, the two paragraphs must be read together, such that for conviction and sentence for an offence involving dishonesty, it must be within a period of less than ten years before the date of the election in order for such a conviction and sentence to be used for disqualifying a Presidential candidate from contesting the election. It is also a cardinal principle of interpretation of the Constitution that relevant provisions must be read together and not disjointly. See* ***ABEGUNDE V THE ONDO STATE HOUSE OF ASSEMBLY & ORS (2015) LPELR-24588(SC) at pages 28 - 29, paras. D - B, per Muhammad, ISC.*** *From all the foregoing, it is clear that having regard to the provisions of Section 137 of the Constitution of the Federal Republic of Nigeria, 1999 as amended and the evidence led before this Court, the 2nd Respondents was not disqualified from contesting the Presidential Election held on 25th February, 2023. In consequence, issue 1 is hereby resolved against the Petitioners and in favour of the Respondents.*

Particulars of Error:

a) The Appellants based their case solely on the provisions of Section 137(1)(d) of the 1999 Constitution (as amended) and not, directly or indirectly, on Section 137(1)(e) thereof.

b) Both parties and the court were bound by the pleadings of the Appellants and the case brought by them before the lower Court.

c) It was not competent for the Court below to make a case of its own or to formulate its own case from the pleadings and evidence before it; and thereafter, to proceed to give a decision based on the case formulated by the Court contrary to the case put forward by the Appellants.

d) The Court below overlooked that the provision of Section 137(1)(e) of the 1999 Constitution (as amended), are disjunctive from the other provisions of section 137(1) of the 1999 Constitution as amended, except if the Petitioner bases his case on more than one of the listed factors.

e) The duty of the lower Court was to interpret the provisions of the Constitution as they were and not to act as the lawmaker – by merging two differently-listed disqualifying factors together.

f) Case law in Nigeria, especially by the Supreme Court and the Court of Appeal, has always considered each of those listed factors independently, all decisions being based on the cases presented by the various Petitioners.

g) The decision of the lower Court, which foisted its opinion on the Appellants, occasioned a grave miscarriage of justice.

GROUND 42: ERROR IN LAW

The Court below erred in law when it held thus: *"From the legal definitions and judicial authorities above, it is clear that the "sentence of imprisonment or fine for any offence involving dishonesty or fraud" envisaged in Section 137 (1) (d) of the Constitution is one imposed upon a criminal trial and conviction. In the instant case, the Petitioners have failed to show evidence that the 2nd Respondent was indicted or charged, arraigned, tried and convicted and was sentenced to any term of imprisonment or fine for any particular offence."*

Particulars of Error:

a) The Appellants relied on section 137(1)(d) of the 1999 Constitution, which has five (5) disjunctive clauses; and they particularly relied on the clause that provides "he is under a sentence of...fine for an offence involving dishonesty..."

b) The US District Court, in making the order of forfeiture, stated thus: "that the funds in the amount of $460,000 in account 263226700 held by First

Heritage Bank in the name of Bola Tinubu represents the proceeds of narcotics trafficking or were involved in financial transactions in violation of 18 USA §§ 1956 and 1957."

c) One of the provisions of the USA law upon which the forfeiture Order was based is 18 USC 1956, which outlaws money laundering.

d) Black's Law Dictionary, 11th Edition, page 1205, defines money laundering as the "act of transferring illegally obtained money through legitimate people or accounts so that its original source cannot be traced. 18 USCA §1958"; and money laundering offence encapsulates dishonesty.

e) The description of money laundering in **DAUDU v FRN (2018) LPELR-4367 (SC)** "as the washing of illegitimate money in a bid to make it appear clean or legitimate" shows that the offence involves dishonesty.

f) Forfeiture is legally defined in Nigeria as something lost by the commission of a crime, something paid for by the expatriation of the crime, or a fine.

g) Section 137(1)(d) of the 1999 Constitution (as amended), which prescribes a sentence of fine for any offence involving dishonesty, does not envisage a charge, arraignment, trial, and conviction before the imposition of forfeiture or fine on a person who committed a crime involving dishonesty within the intendment of the provision.

GROUND 43: ERROR IN LAW

The Court below erred in law when it relied on the evidence of the **RW2**, who purports to be a practicing Attorney in the United States and purports to give evidence on USA money laundering law.

Particulars of Error:

a) The RW2, who purported to be "an Attorney and Counsellor of the Supreme Court of New York Bar since 1999", admitted under cross-examination on

behalf of the Appellants that *"I have not tendered any licence to practice Law in the State of New York."*

b) RW2 tendered a membership complimentary card of the American Bar Association, a body he admitted under cross-examination is a voluntary association; and the said card, **Exhibit RA28,** was later expunged from the Court's record.

c) Having styled himself **"an Attorney in the US"** and having purported to give evidence on American money laundering law without tendering any licence to practice law in any American State, his entire evidence should have been expunged from the Court's record.

d) Under further cross-examination, he disowned part of **Exhibit RA27,** which he tendered.

e) RW2 admitted that he had *"not accessed the INEC IREV,"* but he somersaulted immediately and claimed: *"It is not correct that I cannot, therefore, determine whether or not results therein are readable."*

f) RW2 also admitted that **Exhibit RA9** made a general report on the criminal record of the 2nd Respondent.

g) RW2's evidence is an affront to reason and intelligence.

h) The effect of RW2 tendering a document and disowning part of it and the admission that he had never accessed the IReV but claimed he could determine whether the results therein are readable, shredded his credibility.

GROUND 44: ERROR IN LAW

The Court below erred in law when it held: *"When cross-examined by the Petitioners' Counsel, RW2 stated that the American Court relied on Section 981 of the American Money Laundering Law, which is civil and not Section 982 which is criminal and which the Petitioners stated in their Petition."*

Particulars of Error:

a) Based on the Court's record, what the RW2 said under cross-examination was as follows: *"The American Court relied on the American Law Section 981 dealing with civil forfeiture."*

b) There is nothing like **"Section 981"** standing alone in USA Criminal jurisprudence.

c) The reference to **"Section 981"** is vague and nebulous as the USA provision on Money Laundering is found in 18 USC §§1956 and 1957.

d) The RW2, who styled himself "an American Attorney", did not demonstrate knowledge of American Criminal jurisprudence on money laundering.

GROUND 45: ERROR IN LAW

The learned Justices of the Court below erred in law and occasioned a serious miscarriage of justice when, in the course of interpreting Section 134(2) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) and resolving Issue 4 formulated in its Judgment, it made reference to several authorities and to the Preamble to the Constitution and held as follows:

> *Equality of rights in every citizen as stated in this provision cannot by any means be read to exclude equality of the weight and value of their votes. No, it includes it. Even more so, when the issue here is the right of every such citizen to elect their votes their President (sic) whose policies are supposed to and will affect all of them equally regardless of which part of the country they reside or live. So even stopping here, the futility and hollowness in the argument of the Petitioners that the votes of the voters in the FCT, Abuja have more weight that other voters in the country, is rendered bare...*

Particulars of Error:

a) The Court below overlooked the settled principle that the Preamble in an enactment (including the Constitution) can only be resorted to in order to

"clarify any ambiguity in the words used in the enacting part"; and it does not control the plain words of the statute or document; and finally, that it "cannot be used so as to give a different meaning to the clear wording of a provision."

b) The learned Justices failed to appreciate that the Preamble to the 1999 Constitution (as amended) and Directive Principles of State Policy provided in Chapter II thereof have no relevance, whatsoever, to the interpretation of the provisions of Section 134(1)(b) of the Constitution.

c) The provisions of Section 134(2)(b) of the 1999 Constitution (as amended) are unambiguous and ought to be given their ordinary literal meaning.

d) The Appellants' interpretation of Section 134(2)(b) does not raise or attack the quality of our people at all; the issue before the Court was not whether or not every citizen of Nigeria has the equality of vote or whether or not *"the right of every such citizen to elect their President whose policies are supposed to and will affect all of them equally regardless of which part of the country they reside or live"*, as erroneously invented by the Court below.

e) The issue before the Court below was not whether the Federal Capital Territory, Abuja, has a "special status" than other States of the Federation; and it was not whether Section 134(2)(b) of the Constitution created any superior vote whatsoever coming from the FCT.

f) There is nothing in the Petitioners' case contesting the weight and value of votes of residents of the FCT; and nothing in the Petitioners' case attacks or whittles down the right of any citizen to elect with their votes, their President whose policies are supposed to and will affect all of them equally regardless of which part of the country they reside or live.

g) The Court below introduced and relied on extraneous matters/considerations in its interpretation of Section 134(2) of the 1999 Constitution (as amended) which is clear and unambiguous, contrary to the principles in **UWAIFO v. A.G BENDEL STATE (1982) LPELR-3445 (SC) at 46,** per Idigbe, JSC.

h) The Court deviated from the clear, ordinary, literal and plain meaning of the word 'and' in Section 134(2) of the Constitution contrary to settled case law.

i) The ordinary meaning of the word 'and' did not lead to some result contrary to the intention of the legislature so as to warrant the deviation.

GROUND 46: ERROR IN LAW

The learned Justices of the Court of Appeal erred in law when they held: *"It is quite clear that a calm reading of Section 134(2)(b) of the Constitution will leave no one in doubt that the use of the word 'and' by the framers, between the words "all the States in the Federation" and "the Federal Capital Territory, Abuja" indicates nothing more than the framers' understandable desire for consistency in referring to the Federal Capital Territory by that name, as it is done all through the Constitution whenever reference is made to the Federal Capital Territory. The word 'and' and 'Federal Capital Territory, Abuja' do not by any means imply the meaning imputed to it by the Petitioners."*

Particulars of Error:

a) Part II of the 1999 Constitution (as amended), which is a totally different Part of the Constitution, defines and makes special and distinct provisions regarding everything about the Federal Capital Territory, Abuja; while Section 4 of the said Constitution provides that the FCT, Abuja, shall be as defined in Part II of the First Schedule to the Constitution, which is totally different from Part 1 where the States were listed.

b) The Court below overlooked that Section 3(5) of the 1999 Constitution (as amended) states that: "The provisions of this Constitution in Part 1 of Chapter VIII shall, in relation to the Federal Capital Territory, Abuja, have effect in the manner set out thereunder".

c) The Court below overlooked that Section 3(1) which comes under Part 1, Chapter 1 of the 1999 Constitution (as amended) details out all the States of the Federation.

d) The Court below overlooked that Section 299 of the Constitution, which is also in Part 1, Chapter (VIII) thereof, only deals with allocation of legislative and executive powers for the internal administration of the FCT; in other words, that Section 299 seeks merely to demarcate the FCT administration with the Federal Government.

e) The Court below also overlooked that, on the other hand, Section 134(2)(b) of the Constitution which is in Chapter (VI) thereof is not controlled by Sections 3(5) and Section 299 of the Constitution.

GROUND 47: ERROR IN LAW

The learned Justices of the Court of Appeal erred in law when they held:

> *In any event, Section 299 of the Constitution dispels any lingering doubt that may still be existing in anyone's mind by stating clearly that: "The provisions of this Constitution shall apply to the Federal Capital Territory, Abuja, as if it were one of the States of the Federation; and accordingly...This provision states most unequivocally that the entire provisions of the Constitution shall apply to the Federal Capital Territory as if it were one of the States of the Federation. It is noteworthy that the punctuation mark employed by the framers immediately after the part of that provision ending with "Federation" emphasized by me, is a semicolon whose function in a sentence is to separate independent clauses of a compound sentence: See* ***MERIAM WEBSTER'S ONLINE DICTIONARY*** *which defines 'semicolon' as "a punctuation mark used chiefly in a coordinating function between major sentence elements (such as independent clauses of a compound sentence)." WIKIPEDIA also explains its use thus: "In the English Language, a semicolon is most commonly used to link two independent clauses that are closely related in thought, such as when restating the preceding idea with a different expression.*

Particulars of Error:

a) The Court below failed to appreciate that the provisions of Section 3(5) of the 1999 Constitution (as amended) states that the provision of the

Constitution in Part I of Chapter (VIII) thereof shall in relation to the FCT, have effect in the manner set out thereunder.

b) There is nothing in Section 299 which states "this provision states most unequivocally that the entire provision of the Constitution shall apply to the FCT as if it were one of the states of the federation".

c) Section 299 is very clear on its provision and scope, and the Court below overlooked the established principle laid down by the Supreme Court that the use of punctuation in the construction of the provisions of an enactment even under the Interpretation Act "does not (as at common law) necessarily have a decisive effect on the interpretation thereof" and punctuations cannot be used to defeat the true intention of the Legislature "as manifest in the provisions under consideration."

d) The Court below failed to understand that a fuller implication of the statement "as if" it were one of the states of the Federation with reference to the FCT, Abuja, will come to bare on the correct and proper reading of Section 301 of the 1999 Constitution (as amended).

e) The FCT, Abuja, only has one Senator and has no Governor, unlike the States that have Governors and three (3) Senators each.

GROUND 48: ERROR IN LAW

The learned Justices of the Court of Appeal erred in law when they held:

"The point being made here is that, contrary to the position of the petitioners, by the express provisions of section 299 above, the provisions of the entire Constitution shall apply to the Federal Capital Territory as if it were one of the States of the Federation. This means that section 134(2)(b) of the same Constitution, requiring a presidential candidate to poll at least one quarter of the votes cast in two-thirds of the States of the Federation in order to be returned elected, means nothing more than that the Federal Capital Territory shall be taken into account in calculating the said two-thirds of the States of the Federation. In other words, the FCT is no more than one of the States of the

Federation for the purpose of that calculation. Nothing more than that can be implied or inferable from section 134(2)(b) of the Constitution. If anything, this position is confirmed in the cases of BAKARI v. OGUNDIPE (2021) 5 NWLR (Pt. 1768) 1 at 38, where it was said by the Apex Court that "By virtue of the provisions of the section 299 of the Constitution it is so clear that the Federal Capital of Nigeria (sic) has the same status of a State; it is as if it is one of the States of the Federation."; and IBORI v. OGBORU (2009) 6 NWLR (Pt. 920) 102 at 138, where it was confirmed by this Court that "The Federal Capital Territory, Abuja is to be treated like a State by virtue of section 299 of the 1999 Constitution... If the Federal Capital Territory, Abuja is to be treated like any other State, then it is not superior to or inferior to any other State in Nigeria."

Particulars of Error

a) The authorities of **BAKARI v. OGUNDIPE (supra)** as well as **IBORI v. OGBORU (supra)** were not election petition cases relating to or concerned with the calculation of 25% of votes cast in the territory.

b) The Court below overlooked that under the doctrine of *stare decisis*, every case is decided upon the facts pleaded for its determination.

c) The interpretation placed on Section 299 of the 1999 Constitution (as amended) by the Court below is flawed as that provision is not applicable to the interpretation of Section 134(2)(b) thereof.

d) The Court below failed to appreciate that the First Schedule, Part I of the 1999 Constitution (as amended) contains and delineates all the States of the Federation, while the FCT, Abuja, is moved to Part II thereof.

e) The Court failed to appreciate that if the makers of the Constitution intended it, they would have also listed FCT, Abuja under the same Part I; and that the listing of the FCT, Abuja, in Part II is a deliberate legislative exercise distinguishing it from the States.

GROUND 49: ERROR IN LAW

The learned Justices of the Court below erred in law when they held as follows: *"In conclusion, I hold, without any equivocation, that in a Presidential election,*

polling one quarter or 25% of total votes cast in the Federal Capital Territory of Abuja is not a separate precondition for a candidate to be deemed as duly elected under section 134 of the Constitution."

Particulars of Error:

a) Section 134 of the 1999 Constitution (as amended) is a condition of its own which must be fulfilled before a person can be declared elected.

b) Sub-sections 134(2)(a) and (b) of the 1999 Constitution (as amended) are to be read together with Section 14(2)(a) and (c) in Chapter II thereof which the Court below failed to take into cognizance.

c) The Court overlooked that the fuller purport of Section 299 will be more glaring on a calm examination of Section 301 of the Constitution which provides thus: "... this Constitution shall be construed as if- (a) ...references to the Governor...where references to the President". In effect, the whole purport of the provisions of Section 301(a) is obviously that the President is the Governor of Abuja.

d) The Court below failed to appreciate that for the President to assume the office or position of the Governor of Abuja, he is also under a mandate to secure 25% of the votes cast in the FCT.

GROUND 50: ERROR IN LAW

The learned trial Justices of the Court below erred in law when they held that since **Exhibit X2** was a copy of the European Union Election Observation Mission Nigeria 2023 Final Report certified by the Registry of the Court of Appeal and not by the European Union Election Observation Mission, *"which is the custodian of the original copy of the document,"* it was inadmissible in evidence.

Particulars of Error:

a) Since the original of the Report in question formed the record of the Registry of the Court of Appeal, certification thereof by the Registrar of

that Court satisfied the requirements stipulated by the Evidence Act 2011 in that regard.

b) Section 104(1) of the Evidence Act, 2011 relied upon by the Court below does not prohibit the making of many originals of public documents and depositing of some of the said original copies with more than one public office or officer, as in this case.

c) The Registrar of the Court of Appeal, who certified Exhibit X2, qualified as a public officer who had custody of the original thereof.

d) Exhibit X2 was/is admissible as a certified public document.

GROUND 51:

The Judgment of the Court below is against the weight of evidence.

14. RELIEFS SOUGHT FROM THE SUPREME COURT

The Appellants respectfully pray the Supreme Court to:

a. To allow this Appeal.

b. To set aside the perverse Judgment of the Court below.

c. Grant the Reliefs sought in the Petition, either in the main or in the alternative.

15. NAMES AND ADDRESSES OF THE PERSONS DIRECTLY AFFECTED BY THIS APPEAL.

NAMES:	ADDRESSES:
1. The Appellants MR. PETER GREGORY OBI LABOUR PARTY	C/o Their Counsel DR. LIVY UZOUKWU, OON, SAN AWA KALU, SAN

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2. **The 1st Respondent**
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ELECTORAL COMMISSION

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Maitama, FCT, Abuja

3. **The 2nd Respondent**
SENATOR AHMED BOLA TINUBU

Whose Official Residence is:
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Three Arms Zone, FCT Abuja

OR: His Permanent Residence
No. 26 Bourdillon Road
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CERTIFIED TRUE COPY

4. **The 3rd Respondent**
SENATOR SHETTIMA KASHIM

Whose Official Residence is:
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OR: His Permanent Residence
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OR: **C/o: 2nd and 3rd Respondents' Counsel**

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5. **The 4th Respondent**
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DATED THIS 18TH DAY OF SEPTEMBER, 2023

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CHINEDU EZEH, ESQ.
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FOR SERVICE ON:

1. **The 1st Respondent**
   INEC Headquarters
   Plot 436 Zambezi Crescent
   Maitama, Abuja.

2. **The 2nd Respondent**
   SENATOR BOLA AHMED TINUBU
   Whose Official Residence is:
   Presidential Villa, Aso Rock
   Three Arms Zone, FCT Abuja
   08062629779/08060749219

   OR: His Permanent Residence
   No. 26 Bourdillon Road
   Ikoyi, Lagos.

   OR: **C/o: 2nd and 3rd Respondents' Counsel**

   Chief Wole Olanipekun, CFR, SAN, FCIArb.
   Chief Akin Olujinmi, CON, SAN
   Yusuf Ali, SAN, *et al.*
   C/o Wole Olanipekun SAN & Co.
   God's Grace House
   No. 6 Oshakiti Close
   Off Constantine Street
   Wuse Zone 4, Abuja
   08062629779/08060749219

3. **The 3rd Respondent**
   SENATOR SHETTIMA KASHIM

Whose Official Residence is:
Presidential Villa, Aso Rock
Three Arms Zone, FCT Abuja

OR: His Permanent Residence
New GRA, Maiduguri
Borno State.

4. **The 4th Respondent**
APC National Headquarters
No. 40 Blantyre Street
Off Adetokunbo Ademola Crescent
Wuse 2, FCT, Abuja.

CERTIFIED TRUE COPY
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SECRETARY
PRESIDENTIAL ELECTION PETITION
COURT 2023

J.J EKPEROBE Es