IN THE SUPREME COURT OF NIGERIA
HOLDEN AT ABUJA
ON FRIDAY, THE 15TH DAY OF NOVEMBER, 2019
BEFORE THEIR LORDSHIPS

IBRAHIM TANKO MUHAMMAD	CHIEF JUSTICE of NIGERIA
OLABODE RHODES-VIVOUR	JUSTICE, SUPREME COURT
OLUKAYODE ARIWOOLA	JUSTICE, SUPREME COURT
JOHN INYANG OKORO	JUSTICE, SUPREME COURT
AMIRU SANUSI	JUSTICE, SUPREME COURT
EJEMBI EKO	JUSTICE, SUPREME COURT
UWANI MUSA ABBA AJI	JUSTICE, SUPREME COURT

SC. 1211/2019

BETWEEN:

1. ATIKU ABUBAKAR
2. PEOPLES DEMOCRATIC PARTY (PDP) } APPELLANTS

AND

1. INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC)
2. MUHAMMADU BUHARI
3. ALL PROGRESSIVES CONGRESS (APC) } RESPONDENTS

REASONS FOR JUDGMENT
(Delivered by **IBRAHIM TANKO MUHAMMAD**, CJN)

On 30th October, 2019, when this appeal was argued, I pronounced judgment the same date after a conference of

the Justices to the effect that the appeal lacks merit and was accordingly dismissed. I also informed parties that reasons for dismissing the appeal would be given in due course. The reasons are now ready and I will proceed to state them.

This appeal is against the judgment of the Court of Appeal, sitting as the Presidential Election Petition court delivered on the 11th September, 2019 in Petition No. CA/PEPC/002/2019. In the said judgment, the lower court dismissed the petition of the appellants holding that the petitioners could not prove any of the grounds contained in paragraph 15 of the Petition as required by the law. The facts giving birth to this appeal are as summarized hereunder.

On 23rd February, 2019, the 1st Respondent herein conducted Election in respect of the office of President of the

Federal Republic of Nigeria. The 1st appellant, Atiku Abubakar contested the said election on the platform of the 2nd appellant. On the other hand, the 2nd respondent was sponsored by the 3rd respondent in the Election. At the close of polls, the 1st Respondent declared the 1st Respondent as the winner of the election with a total of 15,191,847 votes whilst the Appellants scored a total of 11,262,978 votes.

Dissatisfied with the outcome of the election, the appellants filed a petition before the Court of Appeal sitting as the Presidential Election Petition court on 18th March, 2019. In paragraph 409 of the said petition, the appellants prayed for the following reliefs:-

"409 Wherefore the Petitioners pray jointly and severally against the Respondents as follows:-

> ***a. That it may be determined that the 2nd Respondent was not duly elected by a majority of lawful votes cast in the said election and***

therefore the declaration and return of the 2nd Respondent by the 1st Respondent as the President of Nigeria is unlawful, undue, null, void and of no effect.

b. *That it may be determined that the 1st petitioner was duly and validly elected and ought to be returned as President of Nigeria, having polled the highest number of lawful votes cast at the election to the office of the president of Nigeria held on 23rd February, 2019 and having satisfied the constitutional requirements for the said election.*

c. *An order directing the 1st Respondent to issue Certificate of Return to the 1st Petitioner as the duly elected President of Nigeria.*

d. *That it may be determined that the 2nd Respondent was at the time of the election not qualified to contest the said election.*

e. *That it may be determined that the 2nd Respondent submitted to the Commission affidavit containing false information of a fundamental nature in aid of his qualification for the said election.*

IN THE ALTERNATIVE

f. That the election to the office of the president of Nigeria held on 23rd February, 2019 be nullified and a fresh election ordered."

The grounds of the said Petition set out in paragraph 15 are as follows:-

(i) The 2nd Respondent was not duly elected by majority of lawful votes cast at the election.

(ii) The election of 2nd Respondent is invalid by reason of corrupt practices.

(iii) The election of the 2nd Respondent is invalid by reason of non-compliance with the provisions of the Electoral Act, 2010 (as amended).

(iv) The 2nd Respondent was at the time of the election not qualified to contest the said election.

(v) The 2nd Respondent submitted to the 1st Respondent an Affidavit containing false information of a fundamental nature in aid of his qualification for the said election.

After the Respondents were duly served with the Petition, they filed their respective replies. The respondents

raised Preliminary Objections bordering on the competence of the Petition and the jurisdiction of the lower court in their respective Replies to the Petition.

At the hearing of the Petition, the Petitioners called a total of 62 witnesses and closed their case. 1st Respondent rested on the case of the Petitioners. The 2nd Respondent called seven witnesses in defence of the petition. The 3rd Respondent, like the 1st respondent, relied on the evidence led by the petitioners.

At the close of hearing, the lower court delivered its judgment on the 11th day of September, 2019 dismissing the petition and affirming the election and return of the 2nd Respondent as the duly elected President of the Federal Republic of Nigeria.

Dissatisfied with the decision of the Court of Appeal, the appellants filed Notice of Appeal on 23rd September, 2019. The said Notice of Appeal contains sixty six (66) grounds of appeal out of which the Appellants have distilled five issues for the determination of this appeal.

At the hearing of the Appeal on 30th October, 2019, Dr. Livy Uzoukwu, SAN, leading other Senior and other counsel for the appellants identified and adopted the Appellants' brief filed on 8th October, 2019. He also adopted reply briefs to the 1st, 2nd and 3rd respondents' briefs. The reply briefs were filed on 16/10/2019, 18/10/2019 and 17/10/2019 respectively.

The five issues as formulated by the learned Senior counsel for the Appellants are as follows:-

1. ***Whether the Court of Appeal was right when it held that the Appellants did not prove that the 2nd***

Respondent submitted to the 1st Respondent an affidavit containing false information of a fundamental nature in aid of his qualification to contest the election to the office of the President of the Federal Republic of Nigeria.

2. *Whether the Court of Appeal was right when it held that the 2nd Respondent was at the time of the election qualified to contest the said election.*

3. *Whether the Court of Appeal was right when it held that the Appellants did not prove that the 2nd Respondent was not duly elected by majority of lawful votes cast at the said election held on 23rd February, 2019.*

4. *Whether by virtue of the evidence adduced before the Court of Appeal, the Appellants did not establish non-compliance with the Electoral Act, 2010 (as amended) to vitiate the election and return of the 2nd Respondent by the 1st Respondent.*

5. *Whether the Court of Appeal was right in law when it relied on "overall interest of justice" to hold that the 2nd Respondent's Exhibits R1 – R26, P85 and P86 were properly admitted in evidence.*

In the brief of the 1st Respondent settled by Yunus Ustaz Usman, SAN, leading a team of counsel, including four senior

counsel, four issues are distilled for determination. The said brief was filed on 12th October, 2019 and adopted at the hearing of this appeal. The four issues are:-

1. *Whether the lower court was right in holding that the 2nd Respondent was qualified to contest the 2019 Presidential Election and that the Appellants did not prove the allegation that the 2nd Respondent submitted an affidavit containing false information of a fundamental nature in aid of his qualification.*

2. *Whether the lower court was right in holding that the Appellants did not prove by credible evidence that the 2nd Respondent was not duly elected by majority of lawful votes cast at the election.*

3. *Whether the lower court was right in holding that the Appellants failed to discharge the onus of proving that the 2019 Presidential Election conducted by the 1st Respondent was invalid by reason of corrupt practices and non-compliance with the provisions of the Electoral Act, 2010 (as amended), the Electoral Guidelines 2019 and Manuals issued for the conduct of the elections.*

4. *Whether the lower court was right when it relied on the overall interest of justice to hold that the 2nd*

Respondent's Exhibits R1 – R26, P85 and P86 were properly admitted in Evidence.

The learned Senior counsel for the 2nd Respondent, Chief Wole Olanipekun, SAN, in company with 14 other Senior Advocates and many other counsel, submitted six issues for the determination of this appeal. The issues are contained in 2nd Respondent's brief filed on 15/10/2019 and are stated thus:-

1. *In the light of the clear provisions of the constitution of the federal Republic of Nigeria, the Electoral Act and the consistent position of judicial authorities vis-a-vis the evidence led at trial, whether the lower court was not right, when it resolved the twin issues of qualification and submission of false information in aid of qualification in favour of the respondent.*

2. *In view of the unambiguous provision of the Constitution of the Federal Republic of Nigeria, the Electoral Act, and consistent judicial authorities on the subject, vis-à-vis the evidence led at trial whether the lower court was not right when it found that the appellants were unable to prove that the respondent*

was not duly elected by majority of lawful votes cast at the election.

3. *Given the express provisions of the Constitution of the Federal Republic of Nigeria, the Electoral Act, Guidelines and Manuals for the conduct of the Election and the long line of judicial authorities on the subject, was the lower court not right when it held that the appellants failed to prove allegations of corrupt practices and non-compliance with the Electoral Act as required by law.*

4. *By the totality of the proceedings before the lower court, whether the court was not right, when it held that the appellants dumped their documents before it.*

5. *Considering the proceedings at the trial, as evidenced by the records before this Honourable Court, whether the lower court was not right when it found that the 1st and 3rd respondents did elicit relevant evidence in support of their pleadings under cross examination and as such, have not abandoned their pleadings before the court.*

6. *Having regard to the judgment of the lower court as represented by the record before this Honourable Court, whether the lower court was not right by relying on the exhibits before it.*

The 3rd Respondent also formulated five issues. In its brief filed by leaned Senior counsel, L. O. Fagbemi, SAN, who also led many Senior advocates and other counsel, the issues are listed as follows:-

1. ***Whether the Court of Appeal was not right in holding that the appellants failed to prove the allegation that the 2nd Respondent had submitted to the 1st Respondent affidavit containing false information of a fundamental nature in aid of his qualification for the election of 23rd February, 2019 as Prescribed by section 138 (1)(e) of the Electoral Act, 2010 (as amended).***

2. ***Whether, having regard to the state of pleadings and evidence proffered and tendered by the parties, the Court of Appeal was not right in holding that the Appellants have not proved or established that the 2nd Respondent did not possess the educational qualification to contest the election to the office of the President of the Federal Republic of Nigeria as prescribed and stipulated under sections 131, 137 and 138 (1)(a), (b), (c), (i)(ii)(iii) and (d) of the Constitution of the Federal Republic of Nigeria 1999 (as amended).***

3. *Whether the Court of Appeal was not right when it held that Appellants did not prove that 2nd Respondent was not duly elected by majority of lawful votes cast at the election of 23rd February, 2019.*

4. *Whether having regard to the settled position of the law on the proof of allegations of corrupt practices and non-compliance with the Electoral Act, the Court of Appeal was not right on the materials placed before it, in holding that the Appellants failed to prove the allegations of corrupt practice and non-compliance as required by law.*

5. *Whether the 2nd Respondent's exhibits R1 – R26 and P86 were not rightly and properly admitted in evidence by the Court of Appeal.*

From the issues formulated by all the parties, it is clear that they are similar in all ramifications. I propose to be guided by the issues as donated by the Appellants, after all, it is their appeal. Learned Senior counsel for the Appellants argued issues one and two together. There is wisdom in it as both challenge the judgment of the court below in respect of

the qualification of the 2nd Respondent to contest the vexed election. Honestly, both issues ought to have been fused into one as done by the learned Senior counsel for the 2nd Respondent. Accordingly, I shall resolve issues one and two together.

ISSUES ONE AND TWO:-

In the main, the learned Senior counsel for the Appellants' grouse against the judgment of the lower court is that it failed to hold that the 2nd respondent submitted to the 1st respondent an affidavit containing false information of a fundamental nature in aid of his qualification to contest election to the office of the President of the Federal Republic of Nigeria and that he was not qualified to contest the said election. That although the 2nd Respondent deposed in his affidavit (Exhibit P1) that all his academic qualifications

documents as filled in his Presidential form i.e President APC/001/2015 were with the secretary of Military Board, RW1 – Major General Paul Tarfa (Rtd) who gave evidence on behalf of the 2nd Respondent told the lower court under cross examination that the Army did not collect the certificates of Military Officers. The learned Silk contended that this was an admission against interest which admission is against the 2nd Respondent. According to him, such admitted facts need no further proof, relying on ***Mba v Mba (2018) 15 NWLR (pt 1641) 177 at 189, Alhassan v Ishaku (2017) All FWLR (pt 584) 52 at 67.***_ The learned Senior counsel wondered why in spite of such admission against interest, the court below held against the Appellants on the issue of the 2nd Respondent submitting to the 1st Respondent

a false affidavit of a fundamental nature in aid of his qualification.

The Appellants further opined that apart from the admission against interest made by the 2nd Respondent's witnesses, the 2nd Respondent failed to adduce evidence that he had submitted his certificates to the Secretary of the Military Board as claimed in Form CF001 (Exhibit P1), failed to disprove the case of the Appellants by himself producing his certificates and tendering them in evidence before the lower court, failed to accompany Exhibit P1 with even a single certificate notwithstanding the unequivocal denial by the Nigerian Army of being in custody of his certificates. The learned SAN submitted further that the court below erred in law when it relied on presumptions, assumptions and "so-called common sense" to rule in favour of the 2nd

called common sense" to rule in favour of the 2nd Respondent. It is his contention that the lower court gave erroneous interpretation to sections 131, 137 and 138(1)(d) of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

It was again submitted that the lower court failed to appreciate that form CF001 not only demands the 2nd Respondent to state the schools he attended, but also mandatorily required him to attach the certificates obtained by him from the said schools. That having failed to attach those certificates, the court below was wrong to hold that he possessed them. Also that it was gratuitous and unsolicited the holding of the court below that the 2nd respondent was "eminently qualified to contest" the Presidential election.

submitted that the appellants' burden in this case is minimal. According to him, the burden upon the Appellants is to show that the requirements of the Constitution of the Federal Republic of Nigeria and the Electoral Act, 2010 (as amended) on qualification were not complied with by the 2nd Respondent who did not attach any school leaving certificate. That this was eminently done by the presentation of Form CF001 i.e Exhibit P1. He cited the case of ***Oshiomole v Airhiavbere major General (Rtd) & Ors (2013) LPELR - 19762 (SC) P. 13, B - E.***

Learned counsel drew attention to Exhibits P1, P2, P2A, P30, P31, P24 and P25 which the appellants tendered to establish the fact that the 2nd Respondent was not qualified to contest the election into the position of President of the Federal Republic of Nigeria. That the lower court failed to

state the rationale for the preference of the testimony of RW1, RW2 and RW4 over the testimony of PW62 who had Exhibits P24, P30 and P80 in support of his testimony, together with the testimonies elicited under cross – examination from RW1 to RW5 as to the qualification of the 2nd Respondent. He urged that those exhibits were the hangers upon which to assess oral evidence, referring to ***Cameroon Airlines v Otutuizu (2011) 1 SCN 70 at 84, Kindey & ors v Military Government of Gongola State (1988) 2 NWLR (pt 77) 473.***

The learned Silk contended further that the name "Mohammed" on exhibit R19 is not the same as "Muhammadu". He stressed that there is no change of name by the 2nd Respondent from "Mohammed Buhari" to "Muhammadu Buhari". Again, that the 2nd Respondent, in

search of an academic qualification to counter the Appellants' case, had copiously and extensively pleaded and given evidence of his public service, military courses and training attended as well as the 2nd Respondents' ability to read, write, understand and communicate in English language. Learned Senior counsel submitted that in so doing, the 2nd Respondent completely misconceived the relevant grounds of the petition and the case made by the appellants. According to him, before the qualifying criteria stipulated under sub – paragraphs 318 (1) (c) (i),(ii) and (iii) of the Constitution can inure to the benefit of a candidate such as the 2nd Respondent, such a candidate must first possess the Primary Six School Leaving Certificate or its equivalent referring to ***Abubakar v Yar'adua (2008) 19***

NWLR (pt 1120), Ogunyade v Oshunkeye (2007) 15 NWLR (pt 1057) 218 at 245.

With some more elaboration on the issue, the learned Senior counsel urged this court to resolve the two issues in favour of the appellants.

In response, the learned Senior counsel for the 1st Respondent Yunus Uztaz Usman, SAN, submitted on the two issues which he had made a double barrel single issue, that the 2nd Respondent met the conditions laid down in section 131 of the Constitution of the Federal Republic of Nigeria, 1999 to contest election into the office of President of the Federal Republic of Nigeria. He submitted that the words used in the section are unambiguous and therefore were rightly given their plain and ordinary meaning by the court below, relying on ***Ugwu v Ararume (2007) 31 WRN 1 at 60***

– 61, Ojokolobo v Alamu (1987) 3 NWLR (pt 61) 377 and Garba v FCSC (1988) 1 NWLR (pt 71) 449.

Learned Senior counsel also referred to section 318 of the said Constitution which gives the definition *"school certificate or its equivalent"* and submitted that the benchmarks for qualification are disjunctive in nature and not cumulative. According to him, a candidate is expected to fulfill only one of these pre – conditions to be qualified to contest the said election. He places reliance on *Abia State University v Anyaiba (1996) 3 NWLR (pt 439) 646 at 661, Alh. Atiku Abubakar, GCON & Ors v Alh. Umaru Musa Yar'adua & Ors (2008) 12 SC (pt 11) 1, Ambo v Aiyeleru (1993) 3 NWLR (pt 280) 126.*

Mr. Usman, SAN, further submitted that Exhibits R19 – R26 which were identified by RW2 and RW3, and adequately

demonstrated and related to the 2nd Respondent's qualification, clearly put the matter to rest. He also contended that Exhibits P80 and P84 tendered by the Appellants as the press statements by the erstwhile Director of Public Relations of the Nigerian Army, Brigadier General Olajide Olaleye confirmed that the 2nd respondent was educated up to the secondary school certificate level and that he passed the listed subjects in exhibit P1.

It is the submission of learned Silk that no provision of the Electoral Act or any other law can subvert the clear provisions of sections 131, 137 and 318 (1) (d) of the Constitution of the Federal Republic of Nigeria 1999 (as amended). He relies on ***Marwa & 7 Ors v Nyako & Ors (2012) LPELR – 7837 (SC), INEC v Musa (2003) LPELR –***

24927 (SC) and Shinkafi & anor v Yari & ors (2016) LPELR – 26050 (SC).

On the issue of failure by the 2nd Respondent to attach his certificates to Form CF001, he submitted that there is nothing in section 76 of the Electoral Act which expressly or impliedly suggest that a candidate must submit his certificates as evidence of his school Education to Independent National Electoral Commission in aid of his qualification.

On the allegation of giving false information to Independent National Electoral Commission, learned counsel submitted that this is a criminal allegation which must be proved beyond reasonable doubt but which the appellants failed woefully to do, relying on the case of ***Mahaya v Gada (2017) LPELR – 42474 (SC).*** He submitted

that the court below was right when it held that the appellants failed to prove beyond reasonable doubt that the 2nd Respondent lied about the academic and professional qualifications that he listed in Exhibit P1. That they also failed to prove that the secondary school certificates the 2nd Respondent tendered as Exhibits R19, R20 and R21 were forged and were not issued by the schools/Institutions listed as having issued them.

Learned Silk concluded on this issue by submitting that "the lower court rightly discountenanced the chicanery of the Appellants, when having failed to impeach the authenticity of Exhibit R19, they sought to harp in the name "Mohammed" as supposedly distinct from "Muhammadu." He contended that this was not part of the appellants' case in their pleadings in the petition or the evidence led by their

witnesses at the trial of the petition that 2nd Respondent was laying claims to certificates that do not belong to him or that Exhibit R19 belongs to someone else known as "Mohamed". That parties are bound by their pleadings. He urged the court to resolve this issue against the appellants.

The learned Senior counsel for the 2nd Respondent, Chief Wole Olanipekun, SAN opened his argument in his double barrel issue by stating that qualification to contest for the office of the President of the Federal Republic of Nigeria is a Constitutional issue which is sufficiently provided for by the constitution itself. That it does not accommodate conjectures, inferences or peradventures. Therefore, any claim of qualification or non – qualification must necessarily derive its root from the said Constitution as opposed to the suggestion or imagination of parties.

Learned Senior counsel referred to section 131 of the Constitution regarding qualification for election into the office of the President of the Federal Republic of Nigeria and points out that the Appellants do not complain about sub paragraphs (a) – (c) but sub paragraph (d) which they challenge the educational attainment and/or qualification of the 2nd respondent. The learned Silk also referred to section 318 of the Constitution which defines "school certificate or its equivalent" as the least educational attainment a person must have to be qualified to contest election to the office of the President of the Federal Republic of Nigeria. In respect of section 318 of the Constitution, he contended that as between each of sub paragraphs a, b and c, the word "or" is applied, rather than "and" meaning that (a), (b) and (c) are disjunctive, rather than conjunctive, each standing on its

own. That any of the requirements, being exclusive of each other would suffice for "school certificate or its equivalent" referring to ***Abubakar v Yar'adua (2008) 19 NWLR (pt 1120) 1 at 83 - 84.***

The learned SAN submitted that the attendance of secondary school up to school certificate level suffices for qualification as opposed to an actual possession of the certificate. Learned Silk cited the following cases: ***AD v Fayose (2005) 10 NWLR (pt 932) 151 at 223, Action Congress of Nigeria v Jimoh Afiz Adelowo (2012) LPELR - 19718, Bayo v Njida (2004) 8 NWLR (pt 876) 544 at 630*** etc. etc.

On the argument that the 2nd Respondent failed to attach his certificates to Form CF001, the learned Senior counsel submitted that notwithstanding the fact that the 2nd

respondent possessed the various educational qualifications and certificates, he was not mandated by any law to attach the said certificates to Form CF001. He contended that when the Constitution has made a provision for a particular subject, or on a particular point, no other statute, talk less of an administrative form designed by an institution created by the same Constitution can add to, review, modify or amend the Constitutional provision, referring to ***Attorney General of Ondo State v Attorney General of Federation (2002) 9 NWLR (pt 772) 222, Abacha v Fawehinmi (2000) 6 NWLR (pt 660) 228 etc, Kakih v PDP & ors (2014) 15 NWLR (pt 1430) 374.***

The learned SAN, further submitted that having alleged that the 2nd Respondent did not possess the requisite educational qualification to vie for the office of President of

Federal Republic of Nigeria, the appellants ought to have stated facts relating to his non – qualification. That the law relating to pleadings requires that the appellants ought to either have stated that in fact, he did not attend any of the schools/qualifications he claimed to have attended/attained, or that the said schools/qualifying particulars, were below the required minimum qualifications for an election into the office of the President of Federal Republic of Nigeria. Learned Silk refers to the case of ***Oshiomole v Awhiabere (2013) 7 NWLR (pt 1353) 376 at 396.*** He urged this court to hold that the appellants' petition had no substratum upon which the lower court could have accorded their allegation of non – qualification any seriousness.

Chief Olanipekun, SAN further drew the attention of this court to the statement of the outgone Director of Army

Public Relations, Brigadier General Olajide Olaleye which the appellants tendered as Exhibit 24. According to him, this exhibit goes a long way in buttressing the 2nd respondent's defence before the lower court which confirms the truism and authenticity of Exhibits R19, R20, R22 and R23 tendered by the 2nd Respondent through RW3, RW4 and RW5. He urged this court to agree with the decision of the lower court that the 2nd Respondent was eminently qualified to contest the election of 23rd February, 2019 into the office of President of Federal Republic of Nigeria.

On allegation of submission of false information to Independent National Electoral Commission to aid his qualification, learned Silk submitted that the appellants, apart from pleading same in paragraphs 396, 397, 398, 402, 403 and 404 of the petition, they maintained deafening

silence on this area of their allegation in spite of calling 62 witnesses. That they did not pretend to ventilate it at all, thereby translating to an abandonment of same. He urged this court to note that the allegation of submission of false information, when same was deposed to before a court of law, is a grievous criminal allegation, referring to sections 118 (1) k of the Electoral Act and section 156 of the Penal Code.

According to learned Senior counsel, by the imperatives of sections 131 and 135 of the Evidence Act, such allegation, as raised against the 2nd Respondent by the Appellants must necessarily be proved beyond reasonable doubt. He cited ***Waziri v Geidam (2016) 11 NWLR (pt 1523) 230 at 283, Udom v Umana (2016) 12 NWLR (pt 1526) 179 at 232.*** He submitted that the appellants failed in their duty, relying on

Imam v Sherriff (2005) 4 NWLR (pt 914) 43 at 196, Nsefik & ors v Muna & ors (2007) 10 NWLR (pt 1043) 502, Nduul v Wayo & 2 ors (2018) 16 NWLR (pt 1646) 548, Ogah v Ikeazu (2017) 17 NWLR (pt 1594) 299 at 348.

In conclusion, the learned SAN urged this court to observe that the evidence of RW1, RW2, RW3, RW4 and RW5, read along with Exhibits P1, P24, R19, R20, R21, R22, R24 and R25 sufficiently dispel any doubt of the 2nd Respondent's qualification. That they equally settle the point that all facts contained in 2nd respondents Form CF001 are a true and accurate reflection of his qualification. Therefore, he added, having satisfactorily demonstrated that the 2nd respondent possesses far more than the requisite qualification, the insinuation of submission of false information could only have emerged from the position of

mala fide and shear spite, relying on *Agi v PDP (2017) 17 NWLR (pt 1595) 386 at 454.* He urged the court to resolve this issue against the appellants.

In his response, the learned Senior counsel for the 3rd Respondent L. O. Fagbemi, SAN also argued issues one and two together. The learned SAN submitted that contrary to the appellants' submission in paragraphs 4.0 - 4.96 in support of the allegation against the 2nd respondent that he made false declaration in an affidavit; it is his view that the allegation in the mould of "perjury" is criminal in nature and requires proof beyond reasonable doubt. That by virtue of section 36(5) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) every person who is charged with a criminal offence shall be presumed innocent until he is proved guilty. According to him, to state otherwise is to

ask him to prove his innocence which the law prohibits. He also submitted that since he who asserts must prove, the onus was squarely on the Appellants to discharge this onerous burden. He contended that the burden of proof is not minimal as erroneously submitted by the Appellants.

On the issue of admission against interest, learned Silk submitted that for an admission against interest to be relied on and accepted by the court as proof of the matter or a fact in issue, it must be weighed along with the entire evidence on record in order to determine its correct and proper probative value. That in this case, the lower court reviewed and evaluated all the evidence, inclusive of documentary Exhibits tendered from the Bar and found sufficient evidence that the Army had knowledge of the contents of the 2nd Respondent's school certificate results. He referred to the

case of ***Emmanuel Chima Orakwe v Nnamdi Orakwe & ors (2018) LPELR – 44763 (CA).***

On sections 76 and 31 of the Electoral Act, 2010 (as amended) learned Senior counsel submitted that the construction given to them by the lower court is very correct and cannot be faulted. That section 76 relates to the relevant Forms to be used at the event of actual elections/voting and not a pre – election Form as in Form CF001 contemplated in section 31 of the Electoral Act.

On the argument that 2nd Respondent did not attach his certificates, the learned Silk submitted that attachment of evidence of educational qualifications is not a requirement of the Electoral Act and the Constitution.

Learned Senior counsel made elaborate submissions on the two issues which are in tandem with those of the 1st and

2nd Respondents' Senior counsel. I need not repeat the exercise. The learned Silk also joined to urge this court to resolve the two issues in favour of the respondents.

The Appellants filed three reply briefs in response to the arguments of the three respondents. Though the reply briefs are somewhat an expansion of the argument of the appellants, I need not say more. I shall however refer to them in the course of the judgment as the need arises.

RESOLUTION OF ISSUES ONE AND TWO

The complaints of the appellants in issues one and two are as set out above in this judgment. Issue one attacks the decision of the lower court when it held that the Appellants did not prove that the 2nd Respondent submitted to the 1st Respondent an affidavit containing false information of a

fundamental nature in aid of his qualification to contest the election to the office of President of the Federal Republic of Nigeria. The second issue relates to the aspect of the judgment which held that the 2nd Respondent was at the time of the election qualified to contest the said election. In resolving these two issues, I intend to start from the second issue, which has to do with qualification. In other words, was the court below right to hold that the 2nd Respondent was, at the time of the election alluded to above, qualified to contest the election?

Concluding on this issue, the court below, at page 6090 of the record of appeal, said as follows:-

> ***"In conclusion, after careful and calm perusal and examination of the relevant pleadings, oral and documentary evidence proffered and tendered, as well as the various submissions of Learned Senior Counsel for the parties, I have no doubt in my mind that the Petitioners have not proved or established***

that the 2nd Respondent does not possess the educational qualifications to contest the election to the office of the President of the Federal Republic of Nigeria as prescribed and stipulated under section 131, 137 and 318(1) (a), (b) (c)(i)(ii)(iii) and (d) of the Constitution of the Federal Republic of Nigeria 1999 (as amended)."

May I state categorically that issue of qualification to contest election to the office of President of the Federal Republic of Nigeria is Constitutional? And as was rightly observed by the learned Senior counsel for the 2nd Respondent, Chief Wole Olanipekun, SAN, it is not open to conjecture, inferences or peradventures. Where the Constitution or any other law has made provision or prescribed procedure for the doing of an act, it is the Constitution or Act that must be followed. Anything done outside those provisions either by way of addition, subtraction or amendment would render such act an

exercise in futility. See ***Elenu – Habeeb & anor v Attorney General of the Federation & ors (2012) 13 NWLR (pt 1318) 423.*** Thus, issue of qualification to contest election to the office of President of the Federal Republic of Nigeria being a Constitutional issue, it is the constitution we must interrogate.

A calm reading of the Constitution will reveal that qualification for election into the office of President of the Federal Republic of Nigeria is provided for in section 131 of the said constitution which states:-

> ***"131 A person shall be qualified for election to the office of President if –***
>
> ***(a) he is a Citizen of Nigeria by birth***
> ***(b) he has attained the age of forty years;***
> ***(c) he is a member of a political party and is sponsored by that political party; and***
> ***(d) he has been educated up to at least the school certificate level or its equivalent."***

As it is obvious in this appeal and from the facts of this case and judgment of the lower court, the appellants appear satisfied with conditions (a) – (c) of section 131 of the Constitution as they have not raised any issue on them. Their grouse is hinged on sub paragraph (d) which challenges the qualification of the 2nd respondent on the basis of his educational attainment. I propose therefore to consider this issue based on section 131 (d) of the Constitution.

By that sub section (d) of section 131 of the Constitution, a person shall be qualified for election to the office of President ***if "he has been educated up to at least school certificate level or its equivalent."*** The Constitution has not left anybody in doubt as to what the phrase "school

certificate or its equivalent" means. This is clearly defined in section 318 of the said Constitution as follows:-

"School Certificate or its equivalent" means:-

(a) a secondary school certificate or its equivalent or Grade 11 Teachers Certificate, the City and Guilds Certificate; or

(b) education up to Secondary school certificate level; or

(c) Primary Six School Leaving Certificate or its equivalent and –

(i) service in the public or private sector in the Federation in any capacity acceptable to the Independent National Electoral Commission for a minimum of ten years, and

(ii) attendance at courses and training in such institution as may be acceptable to the Independent National Electoral commission for periods totaling up to a minimum of one year, and

(iii) the ability to read, write, understand and communicate in English language

to the satisfaction of the Independent National Electoral Commission and

(d) any other qualification acceptable by the Independent National Electoral Commission.

In interpreting the provision of the Constitution, which is the Organic law of the land or the grundnorm, care must be taken to give it the real meaning which the people had in mind in adopting its provisions. Speaking along this line, **Musdapher**, JSC (as he then was), in ***Brigadier Marwa & ors v Admiral Nyako & ors (2012) LPELR – 7837 (SC) page 45 – 46 paragraphs B - A*** adopted with approval the dictum of Chief Justice Dickson of the Supreme Court of Canada, in ***Hunter v Southam INC (1984) 2 SCR 145 at 146*** wherein his Lordship made the following comments:-

> *"The task of expounding a Constitution is crucially different from that of construing a statute. A statute defines present rights and*

obligations ..... a constitution by contrast is drafted with an eye to the future. Its function is to provide a continuing frame work for the legitimate exercise of governmental power, ... It must therefore, be capable of growth and development over time to meet new social, political and historical realities often unimagined by its framers. The judiciary is the guardian of the Constitution and must in interpreting its provisions, bear these considerations in mind."

See also the case of *Attorney General of Bendel State v The Attorney General of the Federation (1981) 10 SC 1 and Ishola v Ajiboye (1994) 7 – 8 SCNJ (pt 1) 1.*

I am well guided. By the definition given to "School Certificate or its equivalent" in section 318 of the constitution, it unequivocally shows that attendance of secondary school up to school certificate level suffices for qualification without an actual possession of the certificate. My job is not to query the rationale behind the provision but

to interpret and pronounce upon it as I find it. As I understand the provision, it means that a person who possesses a school certificate or Grade 11 Teacher's certificate or its equivalent, the City and Guild certificate is qualified to contest election into office as President of the Federal Republic of Nigeria as in sub paragraph (a). Also qualified is a person who has been educated up to secondary school certificate level, as in sub paragraph (b). In this one, a person need not obtain a certificate. Mere attendance in a school up to secondary school certificate level will suffice.

The constitution further makes qualification simpler. In sub paragraph (c), a person who has a primary six school leaving certificate or its equivalent, and has served in the public or private sector in the Federation in any capacity acceptable to Independent National Electoral Commission

for a minimum of ten years and attendance of courses and training in such institutions as may be acceptable to the Independent National Electoral Commission for periods totaling up to a minimum of one year and ability to read, write, understand and communicate in English language to the satisfaction of the Independent National Electoral Commission, is also qualified to contest election into office of President of Nigeria.

After the constitution made provision for specific educational qualifications, it went further to liberalize the electoral space by stating in sub section (d) as follows:-

> ***"Any other qualification accepted by the Independent National Electoral Commission."***

What this means is that a person who possesses any qualification outside those specifically mentioned in section 131 and 318 of the Constitution, which is acceptable to the

Independent National Electoral commission, is also qualified to contest election as President of the Federal Republic of Nigeria. What a liberal constitution. Both the Court of Appeal and this court have taken a firm position in relation to this matter and I may cite a few here. See ***Abubakar v Yar'adua (2008) 19 NWLR (pt 1120) 1 at 83 - 84, AD v Fayose (2005) 10 NWLR (pt 932) 151 (CA), ACN v Adelowo (2012) LPELR - 19718 (CA), Bayo v Njida (2004) 8 NWLR (pt 876) 544 at 630, Imam v Sheriff (2005) 4 NWLR (pt 914) 43 at 196.***

I need to emphasize that the Constitution does not require a person to have all the qualifications listed in section 318 of the said Constitution before he is qualified. Possession of one of these qualifications will suffice. I say so because as between sub paragraphs (a), (b) and (c) of

section 318 relating to the interpretation given to "School Certificate or its equivalent" the word "or" is used rather than "and" which means that (a), (b) and (c) are disjunctive, rather than conjunctive, each standing on its own. As was rightly submitted by all the Senior Counsel representing the three Respondents, this implies that any of the highlighted requirements, being exclusive of the other, would suffice for "school certificate or its equivalent." It is only in paragraph (c) which a person who has Primary school Leaving Certificate or its equivalent is required to have served in the public or private sector for 10 years and other requirements listed above. I tend to agree with the learned Senior counsel for the 2nd respondent that Independent National Electoral Commission, in demonstration of its acceptance of the 2nd respondent's qualification has repeatedly and consistently

cleared him to contest successive elections in 2003, 2007, 2011, 2015 and 2019.

For the avoidance of doubt, let me in this judgment set out the documents submitted by the 2nd Respondent which the lower court relied upon to hold that he was eminently qualified to contest the election. On this, I refer to the exhibits as listed on pages 5452 – 5453 of the Record of Appeal, Vol. 7 thereof:-

1. ***Cambridge Assessment International Education Grade 2 of 1961 – Exhibit R19***

2. ***Certified true copy of Confidential Result of the University of Cambridge, West African School Certificate – Exhibit R20***

3. ***Certified True copy of Confidential Result of University of Cambridge West African School Certificate for Provincial Secondary School – Exhibit R21***

4. *Group photograph of Katsina Secondary School – Exhibit R22*

5. *Print out of Elites of Nigerian Online Publication of January 22nd, 2015 in respect of Katsina Secondary School – Exhibit R23*

6. *Certificate of Compliance with the Evidence Act for the groups photograph of Katsina Secondary school – Exhibit R24*

7. *Commandant of the US Army War College Letter of Commendation for Major Buhari dated 13th June, 1980 – Exhibit R25*

8. *Copy of curriculum Vitae of the 2nd Respondent – Exhibit R26 (a)*

I am satisfied that the court below was right to rely on the above documents/certificates to hold that the 2nd Respondent was eminently qualified to contest the said Presidential election. Evidence clearly show that these exhibits were not only identified by RW2 and RW3, they were demonstrated and related to the issue of the 2nd respondent's qualification to contest the election into the office of President of Federal Republic of Nigeria. And

although the Appellants averred in their Petition that the 2nd Respondent did not possess the certificates he listed in Exhibit P1, the tendering of the Exhibits listed above crushed the Appellants' argument. After becoming aware of the documents tendered by the 2nd Respondent, they ought to have led oral and/or documentary evidence to debunk the existence of authenticity of these certificates/documents. They did not also prove that these documents/certificates were forged. Without much ado, I pitch my tent with the lower court on its findings and decision that 2nd Respondent was "eminently" qualified to contest the Presidential Election of 23rd February, 2019.

The learned Senior counsel for the appellants sought to rely on the press statement by the erstwhile Director of Public Relations of the Nigerian Army, Brigadier General Olajide Olaleye to the effect that the Army was not in possession of the certificates of the 2nd Respondent. However, Exhibits P80 and P84 tendered by the appellants

confirmed that the 2nd Respondent was educated up to the secondary school certificate level and that he passed the subjects listed in Exhibit P1. Also the admission by the Appellants' witnesses that the 2nd respondent rose to the position of Major – General in the Nigerian Army and served as Military Governor and as Military Head of State of this nation between 1983 – 1985 together with documents tendered were compelling enough in assisting the court below to reach its decision on the qualification of the 2nd Respondent. In fact Exhibits P80 and P84 were admission against the interest of the Appellants. Hence the lower court rightly attached probative value to these exhibits in proof of the fact that the 2nd Respondent not only had a "Secondary School certificate" but that he was educated up to secondary school certificate level and/or that he satisfied the

requirements under section 318(c) – (d) of the Constitution of the Federal Republic of Nigeria 1999. See ***Adeyeye & anor v Ajiboye & ors (1987) LPELR – 175 (SC), Oseni Aboyeji v Amusa Momoh (1994) 4 SCNJ (pt 2) 302, Olatunji v Adisa (1995) 2 SCNJ 90 at 102.***

On the contention by the appellants that the 2nd respondent failed to attach his certificate to form CF001, I am in agreement with the court below that neither the Constitution of the Federal Republic of Nigeria nor the Electoral Act 2010 (as amended) requires a candidate to attach his certificate to Form CF001 before the candidate can be adjudged educationally qualified to contest election. This court said this much in ***Terver Kakih v PDP & ors (2014) 15 NWLR (pt 1430) 374 at 424, Marwa v Nyako (supra).*** The Supreme Court, having taken a firm position on the issue, all

the arguments relating to section 76 and 31 of the Electoral Act 2010 are of no moment.

The court below made the following impressive conclusion on the issue of qualification of the 2nd Respondent on pages 6076 – 6077 of the record of appeal thus;-

"The question may be asked, if 2nd Respondent did not present his certificate how did the Army indicate the subjects in their Form 199A. The plausible inference was/is that he presented the certificate to the Army for documentation. See section 167 of the Evidence Act 2011 which says:-

> ***"167 The court may presume the existence of any fact which it deems likely to have happened, regard shall be had to the common course of natural events, human conduct and public and private business, in their relationship to the facts of the particular case."***

It will be incredible and repugnant to common sense and justice to hold in the face of all the pieces of evidence highlighted above that 2nd Respondent does not possess qualifications to contest the exalted office of the President of the Federal Republic of Nigeria as prescribed by section 131 and 318 of the Constitution of the Federal Republic of Nigeria or that he submitted an affidavit to the 1st Respondent containing false information of fundamental nature in aid of his qualification to contest the election.

The petitioners also tendered the C.V. of the 2nd Respondent showing his educational background, Military Service and Public Service becoming Head of State and Commander- in – Chief of the Armed Forces of Nigeria from December 1983 to 1985. All of these were confirmed by Brigadier- General Olajide Olaleye who said

2nd Respondent rose steadily to become Head of State. To my mind the C.V. contains impressive credentials to enable him contest and hold the office of the President of Nigeria even if it could be said that he has only Primary School Certificate and that is not the case here. The 2nd Respondent has more than Secondary School Certificate having attended courses in famous Military College (s) in USA, UK and India.

There is no doubt that he is eminently qualified to contest the February 23, 2019 Presidential Election."

I agree entirely. I intend to say a few words with regards to allegation that the 2nd Respondent submitted to the 1st Respondent an affidavit containing false information of a fundamental nature in aid of his qualification to contest the election to the office of the President of the Federal

Republic of Nigeria. This issue leverages on the provision of section 138(1) (e) of the Electoral Act, 2010 (as amended) which states:-

> ***"(e) that the person whose election is questioned had submitted to the Commission affidavit containing false information of a fundamental nature in aid of his qualification for the election."***

Ordinarily, I would have made a sentence and conclude this issue without much ado in view of the fact that I have already agreed with the court below that the 2nd Respondent was eminently qualified to contest the said election. However, for the sake of clarity, I shall make some comments in support of the position taken by the court below. On pages 6069 – 6070, the court below made the following findings:-

"The Petitioners in paragraph 3.43 of their Address in response to INEC Final Written Address submitted that the 2nd Respondent gave false information when he claimed in his affidavit deposed to on 24th November, 2014 and submitted to the 1st Respondent vide FORM CF001 18/10/2018 when he said all his academic qualifications documents as filled in his Presidential Form APC/EO1/2015 were with the secretary Military Board as at the time he made the affidavit.

The Petitioners claim that they have proved the false affidavit and in addition they pleaded and tendered public statements made by the secretary to the Army Board both in the electronic and print media and relied on Exhibit P80 and P24 to show that the Army emphatically denied the claim and as such onus shifts on the 2nd Respondent to disprove it.

The fact remains that the Petitioners failed to call the then Director of Army Public Relations, Brigadier General Olajide Olaleye who they pleaded in paragraph 396 of the Petition as having debunked the assertion of 2nd Respondent contained in Affidavit sworn to on 24/11/2014. The said paragraph 396 constitutes the fountain and pivot of the Petitioner's allegation of and they have bounden duty to show that the Affidavit contained false information of a fundamental nature in aid of his qualification for election.

What the Petitioners did through their learned counsel was tendering the documents from the Bar with no one to confirm the authenticity of the report contained in Exhibit P80 and P24 and with no witness to cross examine on it thereby rendering exhibits P80 and P24 of no probative value as the court cannot rely on them to found on petitioners favour."

Let me clearly state here that the allegation made against the 2nd Respondent by the Appellants that he gave false information in his affidavit to the 1st Respondent is firmly rooted in criminality which must be proved beyond reasonable doubt. It is not enough for the Appellants to make such allegation; they must go further to lead credible evidence to prove such allegation. See ***Agi v PDP (2016) LPELR – 42578 (SC), Yusuf v Obasanjo (2003) 16 NWLR (pt 847) 554, Waziri v Gadam (2016) 11 NWLR (pt 1523) 230, Udom Emmanuel v Umana (2016) 12 NWLR (pt***

1526) 179, Okechukwu v INEC (2014) 17 NWLR (pt 1436) 255.

Having read through the record of proceedings and the brief of argument filed, I agree entirely with the court below that the Appellants failed to prove the allegations of submitting false information by the 2nd Respondent to the 1st Respondent. Appellants contend that the 2nd Respondent failed to call the Military to appear in court to produce his certificate. If I may ask: whose duty was it to call the erstwhile Army Spokesman to authenticate exhibits P80 and P24? Is it not the party who made the allegation? The position of the law is that he who alleges must prove. The failure of the Appellants to have subpoenaed the secretary of the Military Board to produce the certificates was fatal to their case. They failed to discharge the burden placed on

them by law. See sections 131 and 135 of the Evidence Act 2011. The 2nd Respondent had no business calling the Army to come and prove an allegation made by the Appellants against him. That will amount to standing the law on its head.

Before I conclude on this issue, let me state that whenever documents are tendered from the Bar in election matters, the purport is to speed up the trial in view of time limitation in election matters. Such tendering is not the end itself but a means to an end. The makers of such tendered documents must be called to speak to those documents and be cross examined on the authenticity of the documents. The law is trite that a party who did not make a document is not competent to give evidence on it. It is also the tested position of the law that where the maker of the document is

not called to testify, the document would not be accorded probative value by the court. That in deed is the fate of Exhibits P80 and P24. See ***Udom Emmanuel v Umana Umana (supra), Wike v Peterside (2016) 7 NWLR (pt 1512) 452.***

Finally, on this issue, it was contended by the Appellants that the variation in the names of 2nd Respondent on Exhibit R19 and R21 makes his relationship with the two documents doubtful. Is "Mohammed" and "Muhammadu" the same name and belong to the 2nd Respondent? The court below made an elaborate discussion on the issue and concluded that RW5 gave explanation on the names and stated that they are the same. Attention was also drawn by the learned Senior lead counsel for the 2nd Respondent and others to the name of lead counsel for the Appellants whose name on the

roll of Legal Practitioners is Livinus Ifeanyi Chukwu Uzoukwu but he signed the petition and other processes as Dr. Livy Uzochukwu, SAN. The court below concluded as follows:-

> ***"I am of the solemn view that upon all the pieces of evidence given, both oral and documentary on the issue of non - qualification or allegation of affidavit containing false information tendered or proffered in the case, there is no doubt that Exhibits R19 and R21 relate to the 2nd Respondent."***

For me, as the Appellants failed to prove that any of the documents belong to another person and as nobody has come out to claim any of the two Exhibits, I do agree with the explanation given by the RW5 and the conclusions of the court below that both names "Mohammed" and "Muhammadu" as contained in Exhibits R19 and R21 belong

to the 2nd Respondent. On this note, I resolve issues one and two against the Appellants.

ISSUE THREE

In this issue, the Appellants are contending that the court below was wrong when it held that they did not prove that 2nd Respondent was not duly elected by majority of lawful votes cast at the Presidential election held on 23rd February, 2019. In the main, the learned Senior counsel for the appellants stated that at the court below, the Appellants pleaded and led evidence through PW2, PW3, PW4, PW16, PW17, PW36 and PW59 inter alia to show that the 1st Respondent has a server into which results were electronically collated and transmitted and that the results contained in the server showed clearly that 1st Appellant won the election and not the 2nd Respondent. He submitted

that the figures contained in the server result from the 35 states and the FCT showed that the 1st Appellant scored 18,356,732 valid votes while the 2nd Respondent scored 16,741,430 votes. According to him, by the showing in the server, the 1st Appellant won the election with a margin of 1,615,302 lawful votes.

The learned Silk further contended that upon a proper collation and summation of scores of candidates electronically transmitted to and contained in the 1st Respondent's server, pursuant to the provisions and directions contained in Exhibit P3 (INEC Manual on Elections Technologies (Use, Trouble shooting and Maintenance 2019), it's the 1st Appellant who indeed scored the majority of lawful votes cast. He further contended that the 1st Appellant satisfied the mandatory constitutional

threshold and spread across the Federation and ought to have been declared winner and returned as duly elected President of the Federal Republic of Nigeria.

Learned Silk submitted that the Respondents failed to lead evidence in support of their pleadings in rebuttal of the Appellants' evidence, their pleadings are deemed abandoned, relying on ***Ilodiba v Nigerian Cement Company Ltd (1997) LPELR – 1494 (SC), UBN Plc v Emole (2001) LPELR – 3392 (SC).***

Dr. Livy Uzoukwo, SAN submitted further that the Electoral (Amendment) Act, 2015 amended section 52(2) of the Electoral Act 2010 by substituting same with a new subsection (2) and that consequent upon the amendment, the prohibitive clause against electronic voting machine was removed from Nigeria's electoral jurisprudence. That

section 52(2) of the Electoral Act 2010 (as amended) now unequivocally clothes the 1st Respondent with full discretion to determine the procedure for voting during election under the Electoral Act. The learned Senior counsel submitted that the new section 52(2) of the Electoral Act 2010 (as amended) introduced vide section 9 of the Electoral (Amendment) Act, 2015 provided impetus to the 1st Respondent to introduce Exhibit P33 being Manual on Election Technologies. He submitted that Exhibits P27, P28 and P33 are subsidiary legislations which have the force of law and ought to be applied and enforced. According to him, Exhibits P27, P28 and P33 unequivocally state that card readers were not just for accreditation and authentication, but also for e – collation and transmission of result. He urged this court to hold that the lower court erred when it

held that the reliance placed by the Appellants on Exhibits P27, P28 and P33 were misplaced and have no evidential value. He also urged the court to find umbrage in the contributory judgment of **S. C. Oseji**, JCA on the issue.

Learned SAN further submitted that the evidence of PW59 and PW60 who are experts and Exhibit P87, 89 and Exhibits P90A – K relating to the existence of the 1st Respondent's server and the election results contained therein are detailed, self – explanatory and illustrative. That the expertise and evidence of PW59 and PW60 as stated in their reports and oral testimonies during their evidence – in – chief were not contradicted under cross – examination by the Respondents. He wondered why their reports should not be believed and acted upon by the lower court relying on ***M1A & Sons v FHA (1991) 8 NWLR (pt 209) SC 295 at 331, SPDC v Isaiah (1997) 6 NWLR (pt 508) 236 at 249 – 251.*** He then urged the court to resolve this issue in favour of the Appellants.

In response, the learned counsel for the 1st Respondent stated that the 1st Respondent did not electronically transmit the result of the Presidential election held on 23rd February, 2019 into any server vide Smart Card Reader as there is no such provision in the Electoral Act 2010. That election results were manually collated and declared at the various collation centres.

Learned Senior counsel Yunus Ustaz Usman, SAN submitted that contrary to the submission of the Appellants, the power conferred by section 52(2) of the Electoral Act on the 1st Respondent to issue Exhibits P27 and P28 for the conduct of 2019 General Election does not by any stretch of the imagination authorize the transmission of election results electronically. The learned Silk opined that there is therefore no statutory provision which authenticates the Appellants' contention that the 1st Respondent could transmit results of the election electronically vide Smart Card Readers. He submitted further that it is pursuant to section 52(2) of the Act that the 1st Respondent made and issued Guidelines for the conduct of elections. That whilst

the said Guidelines made provisions for accreditation of voters through the use of Smart Card Readers, the statutes are clear that voting cannot be done electronically. That there is no mention of collation and/or transmission of election results electronically in the Electoral Act and the Guidelines. He stressed the need for statutory provisions to be given their ordinary meaning, citing the case of ***Prof. Jerry Gana v SDP & ors (2019) 11 NWLR (pt 1684) 510 at 533.***

The learned Silk contended that the Petitioners were under a duty to prove that results of the 2019 Presidential election were electronically transmitted as he who asserts must prove, relying on section 131(1) and section 132 of the Evidence Act 2011, ***Akinbade & anor v Babatunde & ors (2017) LPELR – 43463 (SC), Ogah v Ikpeazu & ors (2017) LPELR – 42372 (SC).*** He stated that under cross examination the prosecution witness who testified in respect of the server informed the lower court that they did not know the identity or particulars of the alleged Independent National Electoral commission server into which they

allegedly transmitted results of elections. According to learned counsel, this continues to defy logic and invariably translates into the fact that no such electronic transmission took place. He contended that the court below reasonably and rightly found the testimonies of prosecution witnesses ineffectual and this includes PW59 and PW60. He concluded that Appellants' reliance on Exhibit P33 (Manual on election technologies) as proof that a server exists is baseless on the face of Exhibit P45 which is a video tendered by the 2nd Respondent through the PW40 during cross – examination wherein Independent National Electoral Commission Chairman state unequivocally that "transmission of election result via electronic transmission is not feasible or attainable." It is his view that the Appellants failed to demonstrate that Exhibit P33 was deployed for the conduct of the 2019 General Elections by the 1st Respondent.

The learned Senior counsel for 2nd Respondent, Chief Wole Olanipekun, SAN, made submission which is substantially akin to that of the 1st Respondent on the issue. He submitted in the main that the Appellants failed woefully

before the lower court to prove their allegation that the 2nd respondent did not win the highest number of lawful votes cast at the Presidential election of 23rd February, 2019. That the entirety of the witness statement of PW59 and the exhibits attached constitute a charade. That on page 4914 Vol. 7 of the record, the said witness admitted the fictitious and anonymous nature of his sources, the domain which he relied on ***www.factsdontlie-ng.com*** is not ascertainable one, that it is suspect. Learned Silk contended that the entire result put forward by the Appellants is based on manipulation, conjecture, anonymity, peradventure and guess work. In view of the learned SAN's arguments being substantially similar to that of the 1st Respondent, I propose not to repeat the exercise since they share the same interest of defending the judgment of the court below.

Learned counsel for the 3rd Respondent has also keyed into the same line of argument as the 1st and 2nd Respondents. He stated emphatically that the Appellants' reliance on the existence of server in paragraph 5.4 – 6.35 of their brief of argument is most preposterous and

inconceivable. That it was the case of the Appellants that they won the election by the content of an imaginary 1st Respondent's server, the existence of which was denied by the 1st Respondent. He submitted that by section 52(1) (b) and (2) of the Electoral Act, when read together shows that electronic voting is not allowed by the Electoral Act. Therefore, reliance on any server to transmit election results would be unlawful. That this goes to buttress the fact that the 1st Respondent had no server. All the three Senior counsel for 1st , 2nd and 3rd Respondents urge the court to resolve this issue against the Appellants.

RESOLUTION OF ISSUE THREE:

The contention of the appellants in this issue is that the 2nd respondent was not duly elected by majority of lawful votes. From all I have read in the briefs of all parties regarding this issue and the judgment of the lower court thereto, the Appellants relied heavily on a certain server they contended belonged to the 1st Respondent through which they computed their result and found that the 1st Appellant won the election by majority of lawful votes. They

were able to show the lower court through the evidence of witnesses particularly PW59 and PW60. The court below made the following findings and conclusion regarding the said server and evidence of PW59 and PW60. On page 6159 – 6163 of the record, the lower court had this to say:-

"PW59 testified on 19 – 07 – 2019 when he adopted his witness statement on oath. His evidence revealed that his Report is based on a website whose owner he did not know. The said website is www.factsdontlieng.com, according to PW59 and that the author of the website relied upon by him claimed to be a staff of the Independent National Electoral Commission. The website was created on 12/3/2019 about two weeks after the result of Presidential election was announced.

On page 6 of Exhibit 8 attached to his witness statement on oath PW59 said he copied into page 6 INEC's diagram for Training Manual and concluded on page 6 of Exhibit 8 attached to his witness statement as follows:-

"Whistleblower's Data Analysis Facts don't Lie Website www.factsdontlieng.com

The website was created on 12th of March, 2019. A look at the website will show that apart from the information on the INEC records, nothing else appeared there. It has no other basic information or navigation features as to what a regular website ought to contain such as Contact; About, etc. the author of the content of the website revealing the information on INEC server, claimed to be an INEC staff. He remained anonymous and hence, christened Whistle Blower."

In paragraph 18 and 19 of his witness statement on oath he concluded as follows:-

"18. CONCLUSION

(a) *Bearing a simplified and common understanding of the 'server' as "a computer, a device or a program that is dedicated to managing network resources such as storage, communication, security, centralized applications and database management systems"; and acknowledging the INEC's Guidelines which outlined a transparent and integrated electronic process of voters accreditation, votes collation and*

transmission; indeed, there existed a robust system of servers whose extensive use in the presidential elections is undeniable.

(b) The analysis of the data held at the whistle blowers website using standard professional data analysis tool and techniques authoritatively demonstrates Accuracy and Precision, Legitimacy and Validity, reliability and consistency, Timeliness and Relevance, Completeness and comprehensiveness, Granularity and Uniqueness of the data whose source can be nothing but INEC servers.

(c) An expertise corroboration and correlation of the technical processes, data and description of whistle blowers data herein and INEC's setups is an explicit and implicit demonstration that the server from whose data the whistle blower was drawn is INECs tallying servers.

That a report of my findings are attached and marked as Exhibit 8."

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That a report of my findings are attached and marked as Exhibit 8."

His evidence is that it is the Whistleblower's Data Analysis Facts don't Lie Website - www.factsdon'tlieng.com that report of his expertise evidence was based. He variously referred to the owner of the website as whistle blowers, Anonymous and "the author of the content of the website, claimed to be an INEC staff." PW59 could be seen in his evidence did not rely on any data gotten by him from an INEC Server. He stated that the server he relied upon for his report as an Expert was an anonymous website which to me is of doubtful and

results from INEC Servers which he PW59 said he could not access without the consent of INEC.

Under cross examination he admitted that the information in the website Whistleblower's Data Analysis Facts don't Lie Website – www.factsdon'tlieng.com could have been doctored. Under further cross examination by L. O. Fagbemi, SAN for 3rd Respondent, PW59 said as an expert, that it is possible to use scientific method to decrypt data source and tamper or alter the content or information contained therein. PW59's report and evidence is thus hanging on third party information from an undisclosed source.

PW59's evidence is no doubt caught by Section 37 of the Evidence Act which provides:-

"37. Hearsay means a statement.

(a) oral or written made otherwise than by a witness in a proceeding; or

(b) contained or recorded in a book, document or any record whatever, proof of which is not admissible under any provision of this Act, which is tendered in evidence for the purpose of proving the truth of the matter stated in it."

As can be seen the evidence of the PW59 cannot under any stretch of imagination be classified as expert opinion as it is not supported by any direct knowledge of what his report contains and it is not supported by anything he did directly with regard to the existence or otherwise of an INEC SERVER. He relied on third party information not derived from his knowledge. Worse still, his informant the author of the contents of the website relied upon by PW59 cannot be identified. Even if he could be identified, it is the alleged whistleblower or anonymous who claimed to be INEC staff that could give the evidence of anything relating to the existence of the alleged server which Petitioners heavily relied upon as containing results of elections transmitted electronically vide the Smart Card Readers. PW59's evidence is hearsay and it is unreliable."

Also on pages 6168 – 6169 of the record, the lower court continued as follows:-

"PW60 said he is an Independent Database Analyst and Designer and a graduate of Industrial Chemistry from the University of Ilorin.

The Table constructed in the Learned Senior counsel's address was lifted from the Exhibit attached to the witness statement on Oath of the PW60. A calm perusal of the Exhibit attached (Exhibits PK90A – K shows a conglomerate of examination of Forms EC8AS from Polling Units with observations by him of which Polling Units results were signed or not signed, which one shows bad votes or mutilated results and sundry other criminal allegation, malpractices and or irregularities. It is a strange attempt by the Petitioners to use PW60 as a Witness testifying in respect of all the anomalies or evidence of crimes allegedly committed at Polling Units and doctoring of results by unnamed persons. No witnesses were called to establish all the allegations made against the results of elections in Polling Units Wards and Local Government Levels.

The witness PW60 testified that he used duplicate copies (red copies) of Form EC8AS to carry out his job and that he utilized Forms EC8AS, EC8BS and EC8C series.

Under cross examination he recoiled and stated that he in fact used Certified True Copies of Forms EC8A's. He did not know Form EC8C.

All the things he did in Exhibits P90A – K, ended up in what he called an Executive Summary on his findings on votes recorded in Certified True Copies of Forms EC8As for the 11 focal States. He failed to demonstrate to this court how he came about the conclusion reached by him and upon which Petitioner Learned Senior Counsel raised the Tables reproduced.

It is my decision that PW60 cannot be regarded as an expert under any guise. As a matter of fact, he admitted under cross examination that he was not certified by any institution. His evidence like the evidence of PW59 lacks probative value and the pieces of evidence he gave are not worthy of any weight.

Consequently I hold that the Petitioner did not prove any of the complaints laid out in respect of the 11 focal States just as they failed to prove the facts in paragraph 106 of the Petition result of which they claimed was derived from votes in the server inputted through smart card readers."

Before I make any comment on the judgment of the lower court reproduced above vis – a – vis the argument of counsel in this issue, I wish to find out what a server is. This is so because the existence of a server belonging to 1st Respondent or not determines the fate of the appellants' complaint in this issue. Now what is a server? The Oxford Advance Lerner's Dictionary defines a server as:-

> *"A computer program that controls or supplies information to several computers connected in a network, the main computer on which this program is run."*

I am not unmindful of section 71 of the Electoral Act which states that:- *"The commission shall cause to be posted on its Notice board and website, a notice showing the candidates at the election and their scores; and the*

person declared as elected or returned at the election." The issue in this appeal is not whether INEC has a website or not. It is not also whether INEC posted election results in its website or not. Rather, the issue is whether the website www.factsdon'tlieng.com which the Appellants downloaded the result of the Presidential election belong to INEC; the 1st Respondent herein. I am saying this in case a server and a website are the same thing in view of the definition of Website as ***"a computer connected to the internet that maintains a series of WebPages on the World Wide Web."*** Whereas the Appellants contend that the results of the election downloaded from the website alluded to above belongs to INEC, the 1st Respondent denies owning or being associated with the website. Were the Appellants able to prove that the server belongs to the 1st Respondent?

It is an elementary principle in civil proceedings that civil cases are decided on a balance of probabilities based on preponderance of evidence. The burden of proof, which means the burden of adducing credible evidence in proof of the case rests on the party who would fail if no evidence at

all is adduced in proof of the facts in the pleadings. See ***Ibrahim Sakati v Jabule Bako & anor (2015) LPELR – 24739 (SC), Mogaji v Odofin (1978) 4 SC 91 at 94, Lewis & Peat (NRJ) Ltd v Akhimien (1976) 7 SC 157 at 169, Doodu v NNPC & ors (1998) 2 NWLR (pt 538) 355.***

Now, considering the evidence of PW59, the court below observed that PW59 obtained his data analysis of the result of the election from a website called **www.factsdon'tlieng.com** variously owned by (1) a whistleblower (2) Anonymous (3) an INEC Staff. At the risk of repetition, the court below said:-

> ***"His evidence is that it is the Whistleblower's Data Analysis Facts Don't lie Website – www.factsdon'tlieng.com that Report of his expertise evidence was based. He variously referred the owner of the website as whistle blowers, Anonymous and "the author of the content of the website claimed to be an INEC Staff". PW59 could be seen in his evidence did not rely on any data gotten by him from an INEC Server. He stated that the Server relied upon for his Report as an Expert was an anonymous website which to one is of doubtful and unreliable source by all accounts. PW59 gave his evidence and the Report he authored. Whatever***

results he claimed to have got, according to him came from server belonging to whistleblower, not INEC."

I am surprised that the Appellants whose case depended on this issue of server did not specifically appeal against the above findings of the lower court as the PW59 stated at the court below that the server belongs variously to a whistleblower, Anonymous and/or an INEC Staff. It ought to have dawned on the Appellants that their game was up because the server which the result was allegedly obtained was said by them to be that of INEC. Having not linked the said server to INEC in their evidence, it is my view that the court below was right to reject every result gotten from the anonymous server or the one from a whistle blower or the one owned by an INEC staff. The law is trite that where a party does not challenge a finding by way of an appeal, that finding stands against him. See ***Leventis Technical v Petrojessica (1999) 6 NWLR (pt 605) 45, Iseru v Catholic Bishop (1997) 3 NWLR (pt 495)517, Dabo v Adbullahi (2005) 7 NWLR (pt 923) 181.***

Without much ado, I agree entirely with the court below that the Appellants failed to prove that the server they downloaded the result belonged to INEC. Accordingly, all the results, calculations and analysis based on the said unreliable server, are of no moment.

With regards to the evidence of PW60, it is clear that he was not on the field to gather the data he used to compute the results he intended the lower court to use to enter judgment for the 1st Appellant. In the case of ***Atiku Abubakar & ors v Umaru Musa Yar'adua & ors (2008) 19 NWLR (pt 1120) 1 at 173 E – G,*** this court per **Niki Tobi,** JSC (of blessed memory) held as follows:-

> ***"A petitioner who contests the legality or lawfulness of votes cast in an election and subsequent result must tender in evidence all the necessary documents by way of forms and other documents used at the elections. He should not stop there. He must call witnesses to testify that the illegality or unlawfulness substantially affected the result of the election. The documents are among those in which the results of the votes are recorded. The witnesses are those who saw it all on the day of the election not those who picked the evidence from eye – witnesses. No, they must be***

eye – witnesses too..... It is not enough for the Petitioner to tender only the documents. It is incumbent on him to lead evidence in respect of the wrong doings or irregularities both in the conduct of the election and recording of the votes, wrong doings and irregularities which affected substantially the result of the election. (underlining mine for emphasis).

Clearly, the PW60 was not available in the 11 focal states which he sought to establish the anomalies or irregularities which the Appellants pleaded. The documents he used to analyze the results were not made or signed by him. In the process, he even contradicted himself. The court below said this much on page 6169 of the record as follows:-

> *"The witness PW60 testified that he used duplicate copies (red copies) of Form EC8As to carry out his job and that he utilized Form EC8As, EC8Bs and EC8C series. Under cross examination he recoiled and stated that he in fact used "certified True Copies of Form EC8AS. He did not know Form EC8C."*

The said PW60, apart from not being an eye – witness in respect of the areas he testified, he contradicted himself on a material issue i.e. the type of Forms he used to make

calculations. I am surprised how the said single witness was able to detect irregularities and malpractices in polling units he was not present. The court below observed that it was a strange attempt by the Petitioner to use PW60 as a witness testifying in respect of all the anomalies or evidence of crimes allegedly committed at all the polling units and doctoring of results by unnamed persons. The court below also held that no witness was called to establish all the allegations made against the result of elections in polling units, wards and local government levels. The court below lamented that PW60 failed to demonstrate to the court how he came about the conclusion reached by him, and doubted his expertise. I have no reason to disagree with the court below on this issue.

In conclusion, I am satisfied that the lower court properly held that the evidence of PW59 and PW60 lacked probative value. I also agree that the Appellants failed to prove that the 2nd Respondent did not score majority of lawful votes at the Presidential election of 23rd February, 2019. This issue is thus resolved against the Appellants.

ISSUE FOUR

This issue is challenging the decision of the Trial court which held that the Appellants failed to adduce credible evidence to establish non-compliance with the Electoral Act 2010 (as amended) substantial to vitiate the election and return of the 2nd Respondent by the 1st Respondent. In the main, the learned Senior counsel for the Appellants faulted the decision of the lower court when it merged the burden of proof in relation to non-compliance with that of corrupt practices. That while corrupt practices entail allegations of criminality requiring proof beyond reasonable doubt, allegation of non-compliance with the provisions of the Electoral Act is only expected to be established on the balance of probability. He referred to the cases of ***Ojukwu v Yar'adua (2009) 12 NWLR (pt 1154) 50 at 140, Akeredolu v Mimiko (2014) All FWLR (pt 728) 829, Omisore v Aregbesola (2015) 15 NWLR (pt 1482) 205 at 321.***

Learned Senior counsel wondered why supplementary election was not ordered in areas which elections did not

proof in relation to non-compliance with that of corrupt practices. That while corrupt practices entail allegations of criminality requiring proof beyond reasonable doubt, allegation of non-compliance with the provisions of the Electoral Act is only expected to be established on the balance of probability. He referred to the cases of ***Ojukwu v Yar'adua (2009) 12 NWLR (pt 1154) 50 at 140, Akeredolu v Mimiko (2014) All FWLR (pt 728) 829, Omisore v Aregbesola (2015) 15 NWLR (pt 1482) 205 at 321.***

Learned Senior counsel wondered why supplementary election was not ordered in areas which elections did not hold or were cancelled in the Presidential election as was done in respect of Senatorial elections. He submitted that the election ought to have been declared inconclusive based on the margin of lead according to the Appellants' calculations; citing paragraph 34 (e) of the INEC Regulations and Guidelines for conduct of 2019 Elections. The learned Silk submitted further that the Appellants adduced evidence to graphically demonstrate how the 1st Respondent and its agents deliberately and inappropriately entered wrong

On the decision of the court below that appellants merely dumped documents on the court, the learned senior counsel submitted that the lower court did not only ignore its duty, but its judgment also jettisoned trite position of law that when a public document is certified, there is no need whatsoever to call the makers of such document or those knowledgeable to testify, referring to ***Magaji v Nigerian Army (2008) 8 NWLR (pt 1089) 338.*** He urged the court to resolve this issue in favour of the Appellants.

In response, the learned Senior counsel for the 1st Respondent submitted that where allegation of crime is made as in this Petition, the standard of proof required is beyond reasonable doubt. That several paragraphs of the Petition filed at the lower court, are replete with weighty allegations which are criminal in nature against the Respondents, some private individuals, the Nigerian Police and the Nigeria Army. That in spite of this, the said individuals were not found in the petition, relying on ***Ogundoyin & ors v Adeyemi (2001) LPELR – 2335 (SC).***

Learned SAN submitted that even the allegations of non-compliance raised by the Appellants such as alleged inflation of the 2nd and 3rd Respondents' votes in specific States and depletion of the Appellants votes in some States are fraudulent which are criminal in nature also which ought to have been proved beyond reasonable doubt. According to him, allegation of allocation vote is criminal, relying on ***Sabiya v Tukur (1983) 11 SC 109, Buhari v Obasanjo (2005) 13 NWLR (pt 941) 1.***

In respect of non-compliance, learned SAN contended that an allegation of non-compliance with the provisions of the Electoral Act shall not be enough to invalidate the election if it appears to the Election Tribunal or court that the election was conducted substantially in accordance with the provisions of the Electoral Act and that the non – compliance did not substantially affect the result of the election, placing reliance on ***Wike v Peterside (supra).*** He urged the court to resolve this issue against the Appellants.

Both the learned Senior counsel for the 2nd and 3rd Respondents have also proffered arguments which are in

tandem with that made by the learned SAN for the 1st Respondent. May I respectfully acknowledge those arguments and go ahead to resolve this issue.

RESOLUTION OF ISSUE FOUR

The law is trite that there is a presumption of correctness and regularity in favour of the results of election declared by the Independent National Electoral Commission in the conduct of an election. This means that except it is proved or rebutted that such results are not correct, they are accepted for all purpose by the Election Tribunal or court. The onus, of course is on the Petitioner to prove the contrary. See ***Buhari v Obasanjo (supra), Wike v Peterside (2016) 7 NWLR (pt 1512) 452 at 532 – 533.***

There is no doubt the task of establishing a Petition on the ground of non – compliance is a herculean and daunting one placed on the Petitioner by law. A Petitioner who desires and urges the court to set aside the result of an election on ground of non – compliance with the Electoral Act has the onerous duty of proving the alleged non – compliance by calling witnesses from each of the polling

units complained of. It has to be noted that he does not just call any witness. He must present eye – witnesses, i.e. those who were present at the various polling units across the election area. In the instant case, the entire country. It is indeed a daunting task. See ***Andrew v INEC (2018) 9 NWLR (pt 1625) 507, Edankumoh v Mutu (1999) 9 NWLR (pt 620) 633 at 653.*** This court observed this much in ***Buhari v Obasanjo (2005) 13 NWLR (pt 941) 1 at 299 paragraphs F – H*** per **Pats – Acholonu**, JSC that –

> ***"The very big obstacle that anyone who seeks to have the election of the President or Governor upturned is the very large number of witnesses he must call due to the size of the respective constituency. In a country like our own, he may have to call about 250,000 – 300,000 witnesses. By the time the court would have heard all of them with the way our present law is couched, the incumbent would have long finished and left his office and even if the petitioner finally wins, it will be an empty victory bereft of substance."***

I hasten to say that the above decision was rendered when there was no time frame for the hearing and determination of election Petitions. It is more difficult now under the

present legal regime of the Electoral Act 2010 (as amended) where the Election Tribunal or court has 180 days to hear and determine petitions. Where is the time to call such number of witnesses? I say this to demonstrate the frustration of a petitioner seeking to set aside an election on ground of non – compliance.

The court below listed the various acts of non – compliance and corrupt practices which the Appellants opined affected the outcome of the election to include:-

1. Intimidating and chasing away supporters of Petitioners and members of PDP.

2. Stuffing of Ballot Boxes with Ballot papers.

3. Assisting the members of APC and supporters of the 2nd Respondent to carry out multiple voting.

4. The Army and Police Forces connived with Respondents to carry out massive rigging in the strongholds of the Petitioners.

5. That the Election was marred in Bauchi State by irregularities, violence, harassment and intimidation of Petitioner's Agents by policemen and military men aided by Respondents and that there was unlawful cancellation of votes.

6. That no real voting or election took place in Dekina LGA of Kogi State as heavily armed thugs and fake policemen sponsored by 3rd Respondent invaded several Polling Units.

7. That Nigerian Army were used by Respondents in Zamfara State to chase away PDP supporters and that other criminal acts were committed by them.

8. That in Nassarawa State that out of 1496 Polling Units the 1st Respondent returned nil accreditation in 68 Polling Units.

9. That 2nd Respondent manipulated and used security agencies to influence the outcome of the election to favour him by retaining General Tukur Buratai, Chief Army Staff, Admiral Ibok Ekwe Ibas, Chief of Naval Staff and Air Marshal Sadique Abubakar, Chief of Air Staff with a view to using them to intimidate supporters of the opposition to prevent them from voting.
10. That in Rivers State, Oyo State, Kaduna State notable members of PDP were detained or arrested.

11. That in Rivers, Borno, Benue, Kogi, Yobe, Kebbi, Kaduna, Zamfara, Nassarawa, Plateau and practically in all States of the Federation, Military and police Officers actively informed members and supporters of Respondents to attack, terrorize and scare away 2nd Petitioners and

supporters of 1st Petitioner to prevent them from voting.

12. That soldiers invaded several LGAs in Rivers State to disrupt elections.

13. That there was massive multiple thumb printing of Ballot papers by Agents of 2nd and 3rd Respondents in connivance of the 1st Respondent.

14. That prominent members of PDP were detained in those States (11) by Security Forces at the instance and promptings of the 2nd and 3rd Respondents.

On the above inventories, the court below held that the Petitioners failed to lead evidence to establish witnesses in court as none of the party agents or polling agents of the Petitioners were called to prove the various criminal allegations made against the Respondents and members of the Nigerian Army and the Police Force. May I state once again that it is not enough for a party to file a petition no matter how beautifully and powerfully couched. Such a party must take steps to assemble credible witnesses to prove the petition. Also tendering of tons of documents from the Bar without more does not assist the case of a Petitioner.

I am surprised that in a Presidential Election where a Petitioner seeks to nullify election, only five polling agents were called as witnesses which according to the court below were PW5,PW6, PW12, PW46 PW49. On page 6221 of the record, the court below stated concerning the five Polling Agents as follows:-

> ***"However, apart from the five witnesses from Polling Units, the other witnesses are hearsay evidence of what allegedly took place at the Polling Units. That pieces of evidence either alone or taken together did not establish all or any of the facts pleaded under grounds 2 and 3 of the petition and all the criminal allegations contained in paragraphs 227, 231, 232, 234, 236, 250, 293, 299, 302, 306, 308, 309, 310, 317, 322, 328, 329, 333, 335, 373, 380, and 381 of the Petition are not proved by the evidence of the aforementioned witnesses."***

The court below had reasoned that since the infractions listed above took place at the polling units across the country, the bulk of the witness ought to have come from the polling units. As I said earlier, which is the correct position of the law, only witness who actually saw what happened at the polling units can give credible evidence of what they saw.

See ***Hashidu v Goje (2003) 15 NWLR (pt 843) 352, Oke v Mimiko (2014) 1 NWLR (pt 1388) 332 at 376, Andrew v INEC (2018) 9 NWLR (pt 1625) 507 at 563.***

One aspect of this issue which I need to emphasize has to do with over voting in an election. The court below made some findings on page 6240 of the record to the effect that the Petitioners failed to tender voters registers and that even the Forms EC8As, EC8Bs, EC8C, EC8E and other Forms tendered were not utilized or demonstrated before the court by any of the 62 witnesses called by the Petitioners.

I can state unequivocally that voters' register is the foundation of any competent election in any society. Without the voters' register, it will be difficult if not impossible to determine the actual number of voters in an election. And if the number of registered voters is not known, how can a court determine whether the numbers of votes cast at the election are more than the voters registered to vote. That is why this court said this much in ***Shinkafi v Yari (2016) 7 NWLR (pt 1511) 340*** that to prove over voting, the petitioner must tender the voters register and

Forms EC8As so as to work out the difference of excess votes easily. There is no ground of appeal faulting the decision of the lower court that Voters' Registers were not tendered. I wonder how the Appellants intended the court below to determine the issue of over voting. See also ***Ladoja v Ajimobi (2016) 10 NWLR (pt 1519) 87 at 147, Wike v Peterside (supra).***

On issue of dumping of documents on the court below, the learned counsel for the Appellants submitted that there was no need to call the makers of those documents tendered from the Bar because they were public documents duly certified. On page 37, paragraphs 7.17 of their brief, it is submitted thus:-

> ***"The Court of Appeal, based only on presumptions, held that the Appellants required to call witnesses who have knowledge on the exhibits tendered even if the said exhibits are certified true copies. We submit that the lower court did not only ignore its duty, but its judgment also jettisoned trite position of law that when a public document is duly certified, there is no need whatsoever to call the makers of such documents or those knowledgeable on it to testify. We commend the case of Magaji v***

Nigerian Army (2008) 8 NWLR (pt 1089) page 338."

The version of the law I know on the subject (i.e. if there are other versions) is that when documents are tendered from the bar, such documents have no probative value until the makers of such documents are called to testify on the document and are subjected to cross examination on them. It cannot be as argued by the learned Silk for the Appellants above. Whether it is a certified public document or any other document, the need for the maker to testify and be crossed examined on it has not yet been jettisoned by this court. I have read the case of ***Magaji v Nigeria Army (supra)*** relied upon by the Appellants. This court did not state as the Appellants want us to believe. On page 395 – 396 of the report, paragraphs H – C, this court, per **Ogbuagu**, JSC (of blessed memory) held as follows:-

> ***"Howerver, I have already stated that if the purpose of calling as a witness is just to tender a document, a trial court may dispense with the personal appearance of the person who recorded the contents of the documents such as the investigator in the instant case. Exhibit 1***

although a photocopy, is/was certified. It is now settled that photocopies of documents, must be certified. See section 111/112 of the Evidence Act. In the case of Daily Times Ltd v Williams (1986) 4 NWLR (pt 36) 526 (referred to by the court below as Iheoma v F.R.A. Williams), it was held that a photocopy of a certified document is admissible. So this authority, also puts the (sic) rest, the complaints in the appellants' brief about the admissibility of the appellants' statement or Exhibit 1. as a matter of fact, in the case of International Merchant Bank (Nig) Ltd v Dabiri & 2 ors (1998) 1 NWLR (pt 533) 284 at 297 C.A, it was held that photocopies of a certified true copy of a public document, needs no further certification under section 111(1) of the Evidence Act."

The above quotation from the case of ***Magaji v Nigerian Army (supra)*** is very clear and unambiguous. There is nothing in that judgment which suggests that whenever a certified true copy of Public Document is tendered in court, the maker need not be called to testify. That would be strange. However, if the intention is just to tender the documents, of course, it can be done without the maker as was done in this case where tons of documents

were tendered from the Bar. But if the intention is for the court to act on those documents, the makers must be called to speak to those documents and be cross examined appropriately. It is then and only then that a court can attach probative value to it. See ***Andrew v INEC & ors (supra), Ikpeazu v Otti (2016) 8 NWLR (pt1513) 38, Buhari v INEC (2008) 18 NWLR (pt 1120) 246, Gabriel Udom Emmanuel v Umana Okon Umana & ors (2016) 12 NWLR (pt 1526) 270 at 286.***

It is therefore not difficult to appreciate the court below when it held that the appellants merely dumped those documents on the court. The court is not permitted to go home and interrogate those documents privately in the inner recess of its chambers. This will amount to shopping for evidence, thus descending into the arena of the conflict. See ***Labaran Maku v Umaru Tanko Al – Makura (2016) 5 NWLR (pt 11505) 201 at 230.*** One wonders how the Appellants expected judgment to be entered in their favour when they failed to do the needful in respect of those documents which were the pivot of their petition.

Apart from issue of the documents, the monumental allegations of corrupt practices could not be proved by PW62 who said he was in the situation room. As was rendered by the court below, he had no personal knowledge of the happenings in the field (polling units). He could not have been in the Situation Room at his party's office and be at any of the polling units, wards, Local Government Areas and State level on the date of the election. I am surprised he was described as a star witness. Be that as it may, this issue does not avail the Appellants at all. It is resolved against the Appellants.

ISSUE FIVE:-

In this issue, the learned SAN for the Appellants submitted that having not been pleaded, listed and frontloaded by the 2nd Respondent, Exhibits R1 – R26, P85 and P86 ought not to have been admitted in evidence by the lower court. That Exhibits P85 and P86 were wrongly and inappropriately tendered through PW40 under cross examination as he was not the maker of the exhibits, relying on ***Buhari v INEC (2008) 19 NWLR (pt 1120).*** Learned

and State level on the date of the election. I am surprised he was described as a star witness. Be that as it may, this issue does not avail the Appellants at all. It is resolved against the Appellants.

ISSUE FIVE:-

In this issue, the learned SAN for the Appellants submitted that having not been pleaded, listed and frontloaded by the 2nd Respondent, Exhibits R1 – R26, P85 and P86 ought not to have been admitted in evidence by the lower court. That Exhibits P85 and P86 were wrongly and inappropriately tendered through PW40 under cross examination as he was not the maker of the exhibits, relying on ***Buhari v INEC (2008) 19 NWLR (pt 1120).*** Learned Senior counsel contended that the admission of Exhibits R1 – R26 and P85 and P86 under the omnibus phrase "overall interest of justice" was wrong. He urged the court to expunge, these exhibits from the record, relying on ***H. A. Willoughby v International Merchant Bank (Nig) Ltd. (1987) 1 NWLR (pt 48) 105.***

Abubakar v Yar'adua (2008) 4 NWLR (pt 1078) 465 at 512, NDIC v Gateway Paper Products Ltd & anor (2018) LPELR – 43795 (CA).

The learned Senior counsel for the 2nd Respondent submitted that the lower court rightly admitted Exhibits R1 – R26, P85 and P86. He referred to pages 2383 – 2384, Vol. 3 of the record of appeal to show that those documents were pleaded. In respect of Exhibits P85 and P86, he submitted that they were pleaded in paragraph 386 of the 2nd Respondent's reply at page 2367 Vol. 3 of the record. He opined that Exhibits P85 and P86 were relevant to the case and as such admissible.

According to the learned SAN for the 3rd Respondent, admissibility of document is guided by the Evidence Act and not the rule of court or 1st schedule of any law and there is no provision of the Evidence Act which states that a document which is not frontloaded is inadmissible relying on ***Dunahin Investment Ltd. v BGL Plc (2016) 18 NWLR (pt 1544) 262 at 340, Ogboru v Udaghen (2011) 17 NWLR (pt 1277) 727, Adamu Mohammed v INEC (2015) LPELR –***

pleaded. In respect of Exhibits P85 and P86, he submitted that they were pleaded in paragraph 386 of the 2nd Respondent's reply at page 2367 Vol. 3 of the record. He opined that Exhibits P85 and P86 were relevant to the case and as such admissible.

According to the learned SAN for the 3rd Respondent, admissibility of document is guided by the Evidence Act and not the rule of court or 1st schedule of any law and there is no provision of the Evidence Act which states that a document which is not frontloaded is inadmissible relying on ***Dunahin Investment Ltd. v BGL Plc (2016) 18 NWLR (pt 1544) 262 at 340, Ogboru v Udaghen (2011) 17 NWLR (pt 1277) 727, Adamu Mohammed v INEC (2015) LPELR - 260233***. He nonetheless submitted that the 2nd Respondent clearly pleaded relevant facts in support of Exhibits R1 - R26, P85 and P86 as contained on pages 2367 - 2369 while they were conspicuously listed on pages 2383 - 2385 of Vol. 3 of the Record.

In this matter Exhibits R1 - R26 relate to documents tending to show the educational qualification of the 2nd Respondent which was a major thrust in this Petition. Exhibits P85 and P86 show the INEC Chairman's preparation for the election. After a careful perusal of pages 2383 - 2384 and pages 2367 and 2383 of the record of appeal Vol. 3, I am satisfied that the 2nd Respondent, not only pleaded facts relevant to those exhibits but also listed them in his reply to

By the rules of pleadings, every pleading shall contain statement of all material facts on which the party pleading relies, but not the evidence by which they are to be proved. Provided there is a pleading which a document tends to prove, such document is relevant and is accordingly admissible. See ***Magaji v Nigerian Army (supra), MCC Ltd. v Azubuike (1990) 3 NWLR (pt 136) 74; Oviawe v Integrated Rubber Products Nig. Ltd. & anor (1997) 3 NWLR (pt492) 126.*** Even, paragraph 41(8) of the 1st schedule to the Electoral Act 2010 (as amended) requires documents to be either listed or filed before it can be received in evidence. The 2nd Respondent properly listed the exhibits alluded to above and as such I do not see any reason why the court below could not have admitted them in evidence especially as they were and are still relevant. I agree with the court below that those documents were admitted in the interest of justice and nothing more. I resolve this issue against the Appellants.

Having resolved the five issues against the Appellants, I hold that this appeal lacks merit and is hereby dismissed as I

did on 30th October, 2019 when this appeal was argued. I affirm the judgment of the Court of Appeal delivered on 11th September, 2019 which upheld the election and return of the 2nd Respondent as the duly elected President of the Federal Republic of Nigeria. Parties shall bear their respective costs. Appeal Dismissed.

IBRAHIM TANKO MUHAMMAD
CHIEF JUSTICE OF NIGERIA

APPEARANCES:-

Dr. Livy Uzoukwu, SAN, Chief Chris Uche SAN, Pius Akubo, SAN, Adebayo O. Adelodun, SAN and Saka Abimbola Isau, SAN for Appellants.

Yunus Ustaz Usman SAN for the 1st Respondent
O. A. Omonuwa SAN, Prof. Fabian Ayogwu SAN, Sam Tomi Ologunorisa SAN, T. M. Inuwa SAN with him.

Wole Olanipekun SAN, Yusuf Ali SAN, Dr. Alex Izyon SAN, A. B. Mahmoud SAN, and Prof. Osipitan SAN for 2nd Resonent.

L. O. Fagbemi SAN, Akin Olujinmi, SAN, Chief Charles Edosomwan and Chief Adeniji Akintola and Nicholas Akintade Ladapo Esq for 3rd Respondent.

IN THE SUPREME COURT OF NIGERIA
HOLDEN AT ABUJA
ON FRIDAY, THE 15TH DAY OF NOVEMBER, 2019
BEFORE THEIR LORDSHIPS

IBRAHIM TANKO MUHAMMAD	CHIEF JUSTICE of NIGERIA
OLABODE RHODES-VIVOUR	JUSTICE, SUPREME COURT
OLUKAYODE ARIWOOLA	JUSTICE, SUPREME COURT
JOHN INYANG OKORO	JUSTICE, SUPREME COURT
AMIRU SANUSI	JUSTICE, SUPREME COURT
EJEMBI EKO	JUSTICE, SUPREME COURT
UWANI MUSA ABBA AJI	JUSTICE, SUPREME COURT

SC. 1211/2019

BETWEEN:-

1. ATIKU ABUBAKAR
2. PEOPLES DEMOCRATIC PARTY (PDP) } APPELLANTS

AND

1. INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC)
2. MUHAMMADU BUHARI
3. ALL PROGRESSIVES CONGRESS (APC) } RESPONDENTS

REASONS FOR JUDGMENT
(Delivered by **JOHN INYANG OKORO**, JSC)

When this appeal was argued on 30th October, 2019, I agreed that this appeal be dismissed for lacking in merit. I

also stated that I shall give reasons for dismissing the appeal on a date to be communicated to the parties.

I have had the privilege of reading in draft the reasons for judgment just rendered by my learned brother, **Ibrahim Tank Muhammad**, CJN. I am in agreement with him that these are the reasons which informed us to dismiss the appeal. I hereby adopt those reasons in the lead judgment as mine. I also make no order as to costs.

JOHN INYANG OKORO
JUSTICE, SUPREME COURT

APPEARANCES

Dr. Livy Uzoukwu, SAN, Chief Chris Uche SAN, Pius Akubo, SAN, Adebayo O. Adelodun, SAN and Saka Abimbola Isau, SAN for the Appellants.

Yunus Ustaz Usman SAN for the 1st Respondent
O. A. Omonuwa SAN, Prof. Fabian Ayogwu SAN, Sam Tomi Ologunorisa SAN, T. M. Inuwa SAN with him.

Wole Olanipekun SAN, Yusuf Ali SAN, Dr. Alex Izyon SAN, A. B. Mahmoud SAN, and Prof. Osipitan SAN for 2nd Respondent.

L. O. Fagbemi SAN, Akin Olujinmi SAN, Chief Charles Edosomwan and Chief Adeniji Akintola and Nicholas Akintade Ladapo Esq for 3rd Respondent.

IN THE SUPREME COURT OF NIGERIA
HOLDEN IN ABUJA
ON FRIDAY 15 NOVEMBER 2019
BEFORE THEIR LORDSHIPS

IBRAHIM TANKO MUHAMMAD	JUSTICE, SUPREME COURT
OLABODE RHODES-VIVOUR	JUSTICE, SUPREME COURT
OLUKAYODE ARIWOOLA	JUSTICE, SUPREME COURT
JOHN INYANG OKORO	JUSTICE, SUPREME COURT
AMIRU SANUSI	JUSTICE, SUPREME COURT
EJEMBI EKO	JUSTICE, SUPREME COURT
UWANI MUSA ABBA AJI	JUSTICE, SUPREME COURT

SC1211/2019

BEWTEEN:

1. ATIKU ABUBAKAR
2. PEOPLES DEMOCRATIC PARTY (PDP) — APPELLANNTS

AND

1. INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC)
2. MUHAMMADU BUHARI
3. ALL PROGRESSIVES CONGRESS (APC) — RESPONDENTS

JUDGMENT
(Delivered by Olabode Rhodes-Vivour, JSC)

At the hearing of this appeal on 30 October 2019, this court dismissed the Appeal and stated that

reasons for doing so would be given on a date to be announced.

My learned brother, I.T. Muhammad, the Chief Justice of Nigeria has given those reasons in the leading judgment which I was privileged to read in draft.

I am in agreement with his lordships reasoning and conclusions.

Rhodes-Vivour

OLABODE RHODES-VIVOUR
JUSTICE SUPREME COURT

APPEARANCES

DR. LIVY UZOUKWU, SAN, Chief Chris Uche SAN, Pius Akubo SAN, Adebayo O. Adelodun SAN and Saka Abimbola Iasu SAN for the Appellants.

YUNUS U. USMAN SAN for the 1st Respondent
O. A. Omonuwa SAN, Prof Fabian Ayogwu SAN, Sam Tomi Ologunorisa SAN, T.M. Inuwa SAN, with him.

WOLE OLANIPEKUN SAN, Yusuf Ali SAN, Dr. Alex Izyon SAN, A.B. Mahmoud SAN and Prof Osipitan SAN for the 2nd Respondent.

L.O. FAGBEMI SAN, Akin Olujinmi, SAN, Chief Charles Edosomwan, Chief Adeniji Akintola and Nicholas Akintade Ladapo for the 3rd Respondent.

IN THE SUPREME COURT OF NIGERIA
HOLDEN AT ABUJA
ON 15TH NOVEMBER, 2019
BEFORE THEIR LORDSHIPS

IBRAHIM TANKO MUHAMMAD	**CHIEF JUSTICE OF NIGERIA**
OLABODE RHODES-VIVOUR	**JUSTICE, SUPREME COURT**
OLUKAYODE ARIWOOLA	**JUSTICE, SUPREME COURT**
JOHN INYANG OKORO	**JUSTICE, SUPREME COURT**
AMIRU SANUSI	**JUSTICE, SUPREME COURT**
EJEMBI EKO	**JUSTICE, SUPREME COURT**
UWANI MUSA ABBA AJI	**JUSTICE, SUPREME COURT**

SC.1211/2019

BETWEEN:

1. ATIKU ABUBAKAR
2. PEOPLES DEMOCRATIC PARTY

.. .. APPELLANT

AND

1. INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC)
2. MUHAMMADU BUHARI
3. ALL PROGRESSIVES CONGRESS (APC)

.. RESPONDENTS

JUDGMENT

DELIVERED BY **EJEMBI EKO**, JSC

On 30th October, 2019 this Court unanimously dismissed this appeal. I was on that panel. I then indicated that I would give reasons for my decision later. These now are my reasons.

On 23rd February 2019, INEC, the 1st Respondent conducted the Presidential Election throughout the Federation. The 1st Appellant contested the election on the platform of the 2nd Appellant. The 2nd Respondent also contested the election, but on the platform of the 3rd Respondent. On 27th February, 2019, the 1st Respondent declared and returned the 2nd Respondent the winner of the election with a total of 15,191,847 votes as against the total votes of 11,262,978 ascribed to the Appellants.

Dissatisfied with the return of the 2nd Respondent the Appellants brought their election petition to the Court of Appeal (the lower Court), as the Presidential Election

(d.) That it may be determined that the 2nd Respondent was at the time of the election not qualified to contest the said election.

(e.) That it may be determined that the 2nd Respondent submitted to the Commission affidavit containing false information of a fundamental nature in aid of his qualification for the said election.

IN THE ALTLERNATIVE

(f.) That the election to the office of the President of Nigeria held on 23rd February, 2019 be nullified and a fresh election ordered.

The lower Court in its considered judgment, after evidence and addresses of Counsel for respective parties, dismissed the petition on 11th September, 2019; hence this appeal. The issues in this appeal centre round the questions –

1. Whether the 2nd Respondent was qualified and/or disqualified to contest the election; and

2. **As between the Appellants and the 2nd Respondent, who won the election with the majority of lawful votes cast at the election?**

The issue of qualification or disqualification to contest the election was fought on two sub-heads. That is –

i. **Section 131 read together with Section 318 of the Constitution of the Federal Republic of Nigeria, as amended (hereinafter referred to as "the Constitution"); and**

ii. **Section 137(1)(j) of the Constitution.**

The contention under Section 131 of the Constitution is that the 2nd Respondent, at the time of the election, did not possess the basic qualification set out therein in the said Section 131 to contest the election. It is therefore necessary that the salient provisions of Sections 131 and 318 of the Constitution be set out. Section 131 of the Constitution provides –

131. A person shall be qualified for election to the office of President if -

(a) he is a citizen of Nigeria by birth;

(b) he has attained the age of forty years

(c) he is a member of a political party and is sponsored by that political party; and

(d) he has been educated up to at least School Certificate level or its equivalent

Section 318 of the Constitution defining what "School Certificate or its equivalent" means, sets out the following –

(a) a Secondary School Certificate or its equivalent, or Grade II Teacher's Certificate, the City and Guilds Certificate
(b) education up to Secondary School Certificate level; or
(c) Primary School Leaving Certificate or its equivalent and –

(i) service in the public or private sector in the Federation in any capacity acceptable to the

Independent National Electoral Commission for a minimum of ten years; and

(ii) attendance at courses and training in such institutions as may be acceptable to the Independent National Electoral Commission for periods totalling to a minimum of one year, and

(iii) the ability to read, write, understand and communicate in the English language to the satisfaction of the Independent National Electoral Commission; and

(d) any other qualification acceptable by the Independent National Electoral Commission;

One would notice, upon careful perusal of paragraph (d) the omnibus "any other qualification acceptable by the Independent National Electoral Commission". INEC in this regard seems to have been vested an enormous discretion to accept any other qualification. I notice from the Appellants Brief that no serious effort, if any, was made to

attack the exercise by INEC of its discretion to accept any other qualification presented by the 2nd Respondent INEC had infact accepted that he was qualified to contest the presidential election and had placed him on the ballot for the said election.

Still under Section 318 of the Constitution the 'Public Service of the Federation' includes 'the armed forces of the Federation or the Nigeria Police Force or other government security agencies established by law'. There is no dispute that the 2nd Respondent joined the Nigerian Army from Katsina College, and was in the Army and rose to the rank of Major-General – the post he held as a Military Head of State. The 2nd Respondent, indubitably attended primary school, secondary school and various post – secondary school military institutions. The military service that was the undoubted career of the 2nd Respondent, is of course, service

in the "Public Service of the Federation" under Section 318 of the Constitution, Reading together Sections 131 and 318 of the Constitution, purposefully and without a gloss or mask-tape, I am of the firm view that any Nigerian with Primary School Leaving Certificate or its equivalent who

i. **Had been in the public service (including Military service/or private Sector in the Federation in any capacity acceptable to the Independent National Electoral Commission for a minimum of ten years, and**

ii. **had attended courses and training in such institution as may be acceptable to the Independent National Electoral Commission for periods totalling up to minimum of a year, and**

iii. **has demonstrable "ability to read, write, understand and communicate in the English Language to the satisfaction of**

the Independent National Electoral Commission

is qualified to contest election for the office of the President of the Federal Republic of Nigeria. I have no doubt about this in me. The Constitution, in Sections 131 and 318 thereof, is so clear and without any ambiguity on this.

This Court in **RABIU v. THE STATE (1980) 8 – 11 SC 130 and ONYEMA v. OPUTA (1987) 6 SC 362 at 371** had re-stated the principle that the Constitution should be given a broad and liberal construction to promote its purpose; and that a narrow and conservative construction should be avoided. Generally, a statute must not be construed to deny parties relying on it a right unless the statute so states: **AGWUNA v. A.G., FEDERATION (1995) 5 SCNJ 66 at 72.**

All through the whole gamut of the proceedings at the lower Court there was no proof, nor was there any attempt to prove, that the educational qualification of the 2nd Respondent to contest for the office of the President of the

Federal Republic of Nigeria was either not acceptable to INEC, the 1st Respondent; or that INEC was not satisfied thereby. As I stated earlier INEC was vested enormous discretion in this regard. I therefore have no hesitation dismissing the contention that the 2nd Respondent, by virtue of Sections 131 and 318 of the Constitution, was not qualified to contest for the office of the President of the Federal Republic of Nigeria.

The 2nd Respondent was alleged to have presented forged certificate to INEC and therefore disqualified by virtue of Section 137(1)(j) of the Constitution. For this the Appellants posited that the facts the 2nd Respondent deposed to in his Form CF001 presented to INEC are false. They rely on **MODIBO v. MUSTAPHA USMAN & ORS: SC.790/2019 of 30th July, 2019** and other pieces of evidence they extracted from Respondent's witnesses to urge that it be declared that

the 2nd Respondent was disqualified for the election to the office of the President having "presented a forged certificate to the Independent National Electoral Commission". The MODIBO case (supra) was a pre-election matter. The Plaintiff in that case proceeded under Section 31(1), (2), (3) & (6) of the Electoral Act, 2010, as amended, and Section 66(1)(j) of the Constitution. Section 66(1)(j) and 137(1)(j) of the Constitution are in substance in pari materia. The issue appears to be pre-election matter for the statutory procedure for its determination is prescribed in Section 31(1) – (6) of the Electoral Act, 2010, as amended, thus –

> **31(1)** **Every political party shall not later than 60 days before the date appointed for a general election under the provisions of this Act, submit to the Commission, in the prescribed forms, the list of the candidates the Party proposes to sponsor at the elections, provided that the Commission**

shall not reject or disqualify candidate(s) for any reason whatsoever.

(2) The list or information submitted by each candidate shall be accompanied by an affidavit sworn to by the candidate at the Federal High Court, High Court of a State or Federal Capital Territory, indicating that he has fulfilled all the constitutional requirements for election into that office.

(3) The Commission shall, within 7 days of the receipt of the personal particulars of the candidate, publish same in the constituency where the candidate intends to contest the election.

(4) Any person may apply to the Commission for a copy of nomination from, affidavit and any other document submitted by a candidate at an election and the Commission shall, upon payment of a prescribed fee, issue such person with a certified copy of document within 14 days."

(5) **Any person who has reasonable grounds to believe that any information given by a candidate in the affidavit or any document submitted by that candidate is false may file a suit at the Federal High Court, High Court if a State or FCT against such person seeking a declaration that the information contained in the affidavit is false.**

(6) **If the Court determines that any of the information contained in the affidavit or any document submitted by that candidate is false, the Court shall issue an order disqualifying the candidate from contesting the election.**

The National Assembly, in its wisdom, has in subsection(6) of Section 31 of the Electoral Act vested jurisdiction in the High Court to "issue an order disqualifying the candidate from contesting the election" if it is satisfied that the information or the personal particulars of the candidate in his Form CF001 are false. Significantly, INEC

does not share that power or jurisdiction with the High Court even though in Section 318 of the Constitution there appears enormous powers or discretion vested in INEC to be satisfied with some basic facts of educational qualification which are acceptable to it. In order to curb these enormous powers vested in INEC the National Assembly had enacted in Section 31 of the Electoral Act the special procedure for the review of the powers of INEC, in this regard. By virtue of Section 31 of the Electoral Act the general public is empowered to screen the candidate whose personal particulars are in Form CF001 published by INEC pursuant to Section 31(1) of the said Act by way of objection. There is no evidence that Appellants ever challenged, under Section 31(5) of the Electoral Act all or any of the 2nd Respondent's averments in his Form CF001 published by INEC pursuant to sub-section (3) of the said Section 31. I should think the law is settled now on the point

that – where a special procedure for seeking a redress is by statute provided the party seeking such redress must follow such special procedure.

I think, and do hold that, disqualification of a candidate on grounds of false information in his Form CF001 is pre-election matter by dint of Section 285(14)(c) of the Constitution. The procedure for ventilating any grievance on this is statutorily provided in Section 31 of the Electoral Act, 2010, as amended. That is to say that any party aggrieved that a candidate, in consequence of any false information in his Form CF001 published by INEC, has been wrongly placed on the ballot by INEC should first and foremost avail himself the procedure under Section 31 of the Electoral Act by inviting the High Court to issue 'an order disqualifying the candidate from contesting the election' pursuant to subsection (6) of Section 31 of the Electoral Act. Whereas

the procedure under Section 31 followed in MODIBO's case (supra); in the instant case it was not. I therefore have my doubt if proper procedure was followed at the lower Court, as an election tribunal on the issue of the alleged false information in the 2nd Respondent's Form CF001 and the disqualifying effect of the same.

The basic original jurisdiction of the lower Court is provided for in Section 239(1) of the Constitution. That is

> **239(1) subject to the provisions of this Constitution, the Court of Appeal shall, to the exclusion of any other Court in Nigeria, have original jurisdiction to hear and determine any question as to whether –**
>
> **(a) any person has been validly elected to office or President or Vice-President under this Constitution; or**
>
> **(b) the office of the President or Vice-President has ceased or**

(c) the office of President or Vice-President has become vacant.

In the instant case Section 239(1)(a) above is more apposite. The phrase "validly elected" may be so elastic (though it may not be stretched) to include whether the person allegedly "validly elected" was disqualified or not qualified in the first place to even contest the election let alone "validly elected". It is only in Section 138(1)(a) of the Electoral Act that one finds –

> **An election may be questioned on the – ground that a person whose election is questioned was, at the time of the election, not qualified to contest the election".**

Even if it appears the lower Court and the High Court, respectively by dint of Sections 138 and 31 of the Electoral Act, share concurrent jurisdiction on whether a candidate by his alleged false declaration in his Form CF001 'shall be

disqualified for the election';the jurisdiction vested in the High Court by Section 31 of the Electoral Act is a special jurisdiction. The jurisdiction vested in the lower Court by Section 138(1) of the same Act is largely a general one. By common judicial convention (which in some Rules of Procedure e.g. Order 6 Rule 4 of the Court of Appeal Rules 2016) where two Courts have concurrent jurisdiction over a matter, unless special circumstances exist, redress over such matter shall first sought in the inferior Court – in this case the High Court.

In **KURIGA v. YOHAMA (1989) 2 NEPLR 78 at 83** it was held that the lis in the election is not the election perse, but the declaration of the election results that precipitates the election petition; and that naturally the lis cannot pre-date the announcement of the election results. In otherwords, that a lis can only come into existence after the release of the

election results. It is only then or thereafter that appropriate procedural steps are taken to question or contest the election results. The definition of 'pre-election matter' in Section 285(14) of the Constitution accords with KURIGA v. YOHAMA (supra) as to the lis in pre-election matter and the lis in post election matter the subject of election petition.

I have said or shown enough why the Appellants' issue on the disqualification of the 2nd Respondent by the operation of Section 137(1)(j) of the Constitution should have been ventilated at the High Court, as a pre-election matter by virtue Section 285(9) of the Constitution and pursuant to Section 31 of the Electoral Act.

The salient portions of Section 31 of the Electoral germane to what I am saying had earlier been reproduced. I will now reproduce the limitation provisions of Section 285(9) of the Constitution, to wit –

Notwithstanding anything to the contrary in this Constitution, <u>every pre-election matter shall be filed not later than 14 days from the date of the occurrence of the event, decision or action complaint of</u>.

The combined reading of Section 285(9) of the Constitution and Section 31(1),(2),(3),(4),(5) & (6) of the Electoral Act leads me to conclusion that whoever complains, as the Appellants do, that a candidate at an election had made false declarations on oath in his Form CF001 published by INEC pursuant to Section 31(1) of the Electoral Act, shall timeously, before the general election and within 14 days from the date of the publication by INEC of the allegedly false declarations in Form CF001 submitted by the candidate, file a suit at the High Court against such candidate 'seeking a declaration that the information contained' in the said Form CF001 is false. And if the High Court determines, pursuant to

subsection (6) of Section 31 of the Act, that any information contained in Form CF001 is false, the Court 'shall issue an order disqualifying the candidate from contesting the election'. The effect of such person, complaining that the information contained in the candidate's Form CF001 is false, not filing the suit within 14 days from the date of the publication by INEC of the said Form CF001 pursuant to Section 285(9) of the Constitution, is that the right to the cause of action arising or accruing to such person, on the grounds of any false information contained in Form CF001, is extinguished the cause of action having become statute barred.

Accordingly, once the right to the cause of action accruing or arising from the fact of submitting Form CF001 that contains false particulars or information about the candidate to INEC, has become statute barred by dint of

Section 285(9) of the Constitution, it remains statute barred and the right thereto extinguished. The issue or cause of action that has become statute barred and the right to enforce the same having become extinguished can no longer, and will no longer, be available to the Appellants herein to subsequently litigate on in their election petition. In MODIBO v. UMAR (supra) the issue of the candidate making false declarations in his Form CF001, duly certified on solemn oath, was raised timeously and determined at the High Court before the appeal on it subsequently came to this Court. It was a pre-election issue. That is what distinguishes that case from the instant in which the Appellants avoided the forum proper and brought it up as a post election dispute. MODIBO v. UMAR (supra) is only an authority for what it decided.

Proceedings in election litigations are sui generis in that they are unique and of their own kind or class. The Courts

have always insisted that the proceedings must strictly comply with the law. On this both the judicature and the legislature are in unison. Section 139(1) of the Electoral Act provides inter alia that the results of the election shall not be disturbed unless the alleged non-compliance with the provisions of the Act did substantially affect the result of the election. Accordingly, where a candidate at the election had been declared and returned as the winner from the election such declaration or return should only be disturbed on firm and substantial grounds and on proved allegations and not on any fanciful or flimsy grounds: **IMIERE v. SALAMI (1989) 2 NEPLR 131.**

The Appellants pleaded that the 1st Appellant scored a total of 18,356,732 valid votes while the 2nd Respondent polled on 16,741,430 votes. In paragraphs 5.4 & 5.6 of the Appellant's Brief it is contended that these figures were

allegedly extracted from the 1st Respondent's "server into which results were electronically collated and transmitted and that the results contained in the server showed clearly that the 1st Appellant won the election and not the 2nd Respondent". These results are allegedly from 35 States and the Federal Capital Territory. Issues were joined on the existence or non-existence of this server.

INEC, the 1st Respondent, denied the existence of this server. The denial appears preposterous in view of Sections 34 and 71 of the Electoral Act which respectively direct INEC the 1st Respondent, to post statutory notices and results of the election "showing the candidates at the election and their scores; and the person declared as elected or retuned at the election" on its website. I agree, on this point, with S.C. Oseji, JCA (who sat on the Panel of the Lower Court) that

the posting of results must be on the notice board and website. The word "and" is conjunctive which means that the result must not only be posted on the notice board, but also on the website. A website is defined by the English Dictionary as "a computer connected to the internet that maintains a series of webpages on the world wide web". It also defines a server as "a digital computer that provides workstations on a network with controlled access to shared resources". In the light of the above clarifications, it will be out of place to emphasise that as a fact duly proved as earlier indicated and by law, as per Section 71 of the Electoral Act, 2010 (as amended), there exists a website managed and controlled by the 1st Respondent –

(underlinings supplied)

The law maker is presumed to know the state of facts existing at the time legislation on such fact was enacted. If, therefore, no website existed that was managed and controlled by INEC, the 1st Respondent, the National

Assembly should not, reasonably, have enacted Sections 34 and 71 of the Electoral Act. The President of the Federal Republic of Nigeria could also not have assented to such an absurdity.

However, it is not enough that the INEC website existed as a fact. The question material and germane to this appeal is: whether the Appellants derived the facts on which they pleaded and called evidence that the 1st Appellant polled 18,356,732 lawful votes against the 2nd Respondent's 16,741,430 votes from a lawful and legitimate source; that is, INEC official website?

By way of an admission against interest: the PW.59, under cross-examination, admitted that the Appellants derived those facts from an undisclosed whistle-blower's site – www.factdontlie.com, which is not a legitimate or official INEC website. This website – www.factsdontlie.com, is

nothing but a rumour peddling site. On this the lower Court made the very adverse finding of fact at page 6161 of the Record, in discrediting and disbelieving the PW.59, thus –

> **His evidence is that the whistleblower's Data Analysis – Facts don't lie website – www.factsdontlie.com that the report of his expertise (sic-expert) evidence was based. He variously referred to the owner of website as the whistleblowers, anonymous and "the author of the content of the website, claimed to be an INEC staff. The PW.59 – (as) could be seen in his evidence did not rely on any data gotten by him from an INEC server.**

The 1st Respondent submits correctly on this that this adverse, albeit fundamental, finding of fact was not appealed. An adverse finding of fact not appealed subsists between the parties. It remains binding on the parties and it is deemed acceptable to them: **ANYANWU v. OGUNEWE (2014) 8 NWLR (pt. 1410) 437 at 470.** This adverse finding of

fact appears to me to have punctured the Appellants' balloon and had it wholly deflated. The Appellants clung to that deflated artifice to make their contention that they won the election by the majority of lawful votes cast at the election. The floating air castle wherein the Appellants sought this refuge has thus crashed miserably. The failure of this issue is fundamental. It transcends all claims of the Appellants to having won the election with the majority of lawful votes cast at the election.

In the determination of his civil rights and obligations a party is entitled to fair hearing within a reasonable time by a court or tribunal established by law, but only upon legal or lawful evidence that is credible. The INEC's unpatriotic denial of the existence of its official website entitled the Appellants to call secondary evidence; but not hearsay or illegal evidence. Election disputes and proceedings being special or

suigeneris require the proof of facts on which they are premised to be proved on the credible evidence other than mere rumour mongery peddled by witnesses who cannot even vouch for the authenticity of the source of the very facts they testified on like www.facgsdontlie.com.

Three key witnesses called by the Appellants to establish that they won the presidential election with majority of lawful votes were discredited for their, either, not being experts so called or that they came to peddle only hearsay evidence. The PW.60 was found to have contradicted and discredited himself and his evidence. The PW.62 admitted under cross-examination that his entire evidence was hearsay. This apart the lower Court, at page 6235 of the Record, found his evidence incredible for his fantastically outrageous claim to omnipresence at some of the spots or places that malpractices were allegedly committed.

For the alleged inflation of votes; the Appellants predicated their case largely on the discredited PW.59, PW.60 and PW.62. The allegations, being criminal in nature, require proof beyond reasonable doubt by virtue of Section 135 of the Evidence Act. See also **NWOBODO v. ONOH (1984) SCNLR 1; OMOBORIOWO v. AJASIN (1984) SCNLR 108.** Hearsay evidence, aninadmissible evidence, cannot discharge the onus of proof beyond reasonable doubt cast on the Appellants.

The Appellants pleaded against some individuals and organisations (including the Police and Army) who were not made parties to the petition, as respondents, allegations of corrupt practices and illegal interference with the conduct of the election. These are not INEC officials or staff. The settled principle of law, particularly in the area of fair hearing jurisprudence and criminal responsibility, is that: there is no

vicarious liability in the realm of criminal law. Criminal liabilities are borne personally by culprits and/or other participes criminis. Since criminal liabilities operate on the individual on the basis of his mens rea, criminal responsibility is personal and not vicarious: **BUHARI v. OBASANJO (2005) FLWR (pt. 186) 709 at 726; AKPA v. THE STATE (2008) 14 NWLR (pt. 1106) 72; DINA v. DANIEL (2010) 11 NWLR (pt. 1204) 137 at 158.** Accordingly, a person (other than INEC staff or officials) against whom allegations of criminal nature are made in an election petition must be given an opportunity to be heard and to defend himself: Section 36(1) & (6) of the Constitution: **YUSUF v. OBASANJO (2005) 18 NWLR (pt. 956) 96; WAZIRI v. GEIDAM (2015) LPELR – 2604 (CA).** The foregoing underscores why the non-joinder to the petition persons (other than INEC staff or officials) against

whom serious allegations of criminal nature and corrupt practices were made in petition fatal to the petition.

On the footing of my foregoing stance I hold the firm view that the lower Court properly dismissed the petition. I find no good cause to disturb the decision of the lower Court. The appeal lacking in substance is, accordingly, dismissed.

Parties shall bear their respective costs.

EJEMBI EKO
JUSTICE, SUPREME COURT

Appearances:

Dr. Livy Uzoukwu, SAN; Chief Chris Uche, SAN; Pius Akubo, SAN, Adebayo O. Adelodun, SAN, with Ebenezer Obeya, Esq. for the Appellants

Yunus Ustaz Usman, SAN; A. O. Omonuwa, SAN; Prof. Fabian Ajogwu, SAN; Sam Ologunorisa, SAN with Abdulrahaman Ibrahim Tola Esq. for the 1st Respondent

Chief 'Wole Olanipeku, SAN; Yusuf Ali, SAN; Dr. Alex A. Izinyon, SAN; A. B. Mahmoud, SAN; Prof. Taiwo Osipitan, SAN with Akintola MakindeEsq. for the 2nd Respondent

L. O. Fagbemi, SAN; Chief Akin Olujinmi, SAN; Chief Charles Edoswan, SAN; Adeniyi Akintola, SAN with Nicholas Akintola OladapoEsq. for the 3rd Respondent

IN THE SUPREME COURT OF NIGERIA
HOLDEN AT ABUJA
ON FRIDAY, THE 15TH DAY OF NOVEMBER, 2019
BEFORE THEIR LORDSHIPS

IBRAHIM TANKO MUHAMMAD	CHIEF JUSTICE OF NIGERIA
OLABODE RHODES-VIVOUR	JUSTICE, SUPREME COURT
OLUKAYODE ARIWOOLA	JUSTICE, SUPREME COURT
JOHN INYANG OKORO	JUSTICE, SUPREME COURT
AMIRU SANUSI	JUSTICE, SUPREME COURT
EJEMBI EKO	JUSTICE, SUPREME COURT
UWANI MUSA ABBA AJI	JUSTICE, SUPREME COURT

SC. 1211/2019

BETWEEN:

1. ATIKU ABUBAKAR
2. PEOPLES DEMOCRATIC PARTY (PDP) ..... APPELLANTS

AND

1. INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC)
2. MUHAMMADU BUHARI
3. ALL PROGRESSIVES CONGRESS

} RESPONDENTS

JUDGMENT
(DELIVERED BY UWANI MUSA ABBA AJI, JSC

This appeal was argued on the 30th October, 2019. The court unanimously dismissed the appeal as lacking in merit. These are my reasons for dismissing the appeal:-

The Appellants as Petitioners filed their petition on 18/3/2019 seeking the following reliefs:

i. *That it may be determined that the 2nd Respondent was not duly elected by a majority of lawful votes cast in the said election and therefore the declaration and return of the 2nd Respondent by the 1st Respondent as the President of Nigeria is unlawful, undue, null, void and of no effect.*

ii. *That it may be determined that the 1st Petitioner was duly and validly elected and ought to be returned as President of Nigeria, having polled the highest number of lawful votes cast at the election to the office of the President of Nigeria held on 23rd February 2019 and having satisfied the constitutional requirements for the said election.*

iii. *An order directing the 1st Respondent to issue Certificate of Return to the 1st Petitioner as the duly elected President of Nigeria.*

iv. *That it may be determined that the 2nd Respondent was at the time of the election not qualified to contest the said election.*

v. *That it may be determined that the 2nd Respondent submitted to the Commission affidavit containing false information of a fundamental nature in aid of his qualification for the said election.*

IN THE ALTERNATIVE

vi. *That the election to the office of the President of Nigeria held on 23rd February 2019 be nullified and a fresh election conducted.*

The 1st Respondent conducted the presidential election on 23/2/2019, wherein the 2nd Respondent polled 15,191,847 while the 1st Appellant trailed behind him with polled votes of 11,262,978. Accordingly, the 2nd Respondent was declared winner and returned as the President of Nigeria. Dissatisfied, the Appellants petitioned the Respondents at the Presidential Election Petition Tribunal on 18/3/2013. After the hearing, the Tribunal gave judgment in favour of the Respondents, hence this appeal before this Honourable Court.

The Appellants' appeal before this Court vide a Notice of Appeal, formulated 5 issues for the determination of this appeal thus:

1. **Whether the Court of Appeal was right when it held that the Appellants did not prove that the 2nd Respondent submitted to the 1st Respondent an affidavit containing false information of a fundamental nature in aid of his qualification to contest the election to the office of the President of the Federal Republic of Nigeria.**

2. **Whether the Court of Appeal was right when it held that the 2nd Respondent was not at the time of the election qualified to contest the said election.**

3. **Whether the Court of Appeal was right when it held that the Appellants did not prove that the 2nd Respondent was not duly elected by majority of lawful votes cast at the said election held on 23rd February, 2019.**

4. **Whether by virtue of the evidence adduced before the Court of Appeal, the Appellants did not establish non-compliance with the Electoral Act, 2010 (as amended) substantial to vitiate the election and return of the 2nd Respondent by the 1st Respondent.**

5. **Whether the Court of Appeal was right in law when it relied on "overall interest of justice" to hold that the 2nd Respondent's Exhibits R1-R26, P85 and P86 were properly admitted in evidence.**

Issues 1 and 2 basically border on the academic and relevant qualification of the 2nd Respondent as at the time of the contestedpresidential election of 23/2/2019. One of the gravamen of the Appellants is on Exhibit P1 wherein the 2nd Respondent deposed "*That all my academic qualification documents as filled in my presidential Form, President APC/001/2015 are currently with the Secretary Military Board as at the time of this affidavit.*" To the Appellants, this affidavit runs foul to section 138(1)(e) of the Electoral Act, 2010 (as amended), which invariably reveals the falsehood in the deposition of the 2nd Respondent.

The issue of qualification to contest a presidential election is clearly spelt out by the Constitution of Nigeria. Section 131 of the 1999 Constitution (as amended) provides:

> ***"A person shall be qualified for election to the office of the President if...(d) he has been educated up to at-least School Certificate level or its equivalent."***

What amounts to "*School Certificate level or its equivalent*" was not left unturned by the said Constitution, when in section 318, the meaning was dilated as follows:

> ***"A Secondary School certificate or its equivalent or Grade II teacher certificate or its equivalent, the City and Guild Certificate; or (b) Education up to Secondary School Certificate level; or (c) Primary Six School leaving certificate or its equivalent, and (i) service in the public or private sector in the Federation in any capacity acceptable to the Independent National Electoral Commission for a minimum of ten years, and (ii) attendance at courses and training in such institutions as may be acceptable to the Independent National Electoral Commission for periods totaling up to a minimum of one year, and (iii) the ability to read, write, understand and communicate in the English language to the satisfaction of the Independent National Electoral Commission, and (d) any other qualification accepted by the Independent National Electoral Commission."***

In towing this constitutional requirement, the 2nd Respondent in proof supplied and tendered Exhibits R19-R26 encompassing his least

qualification to contest the presidential election, as listed under section 318 of the Constitution.

He who asserts must prove has become a bedrock of our law of evidence. Although the case of the Appellants herein does not seem to me to be that of disqualification as I have observed but seems to be on the false information on qualification supplied.

However, I have keenly observed the constitutional provision that made the minimum benchmark of educational qualification not to be only on non-presentation or non-submission of certificates (which is not and cannot be the basis for disquali ication), but whether the candidate has possessed other qualifications to make him qualified. In clarity, the constitution has unfortunately to my mind, made it that even where the person does not possess a Secondary School Certificate, he can be qualified by the combined effect of sections 131 and 318 of the Constitution, if, he is "*educated up to at least School Certificate level or its equivalent*". The Constitution goes further to define what the equivalent of a Secondary certificate can mean in section 318, which includes:

> ***"the City and Guild Certificate; or (b) Education up to Secondary School Certificate level; or (c) Primary Six School leaving certificate or its equivalent, and***

(i) service in the public or private sector in the Federation in any capacity acceptable to the Independent National Electoral Commission for a minimum of ten years, and (ii) attendance at courses and training in such institutions as may be acceptable to the Independent National Electoral Commission for periods totaling up to a minimum of one year, and (iii) the ability to read, write, understand and communicate in the English language to the satisfaction of the Independent National Electoral Commission, and (d) any other qualification accepted by the Independent National Electoral Commission."Further, the Constitution again sadly makes the academic and relevant qualification of a candidate to election into the office of President to be requisite and added qualification on attendance of courses and training and subject to the "acceptance or satisfaction of the Independent National Electoral Commission".

The Constitution in the above provisions gave a litany of academic and other relevant qualifications that are not conjunctive but disjunctive. The use of the word "or" three times and "and" severally that follows after means that the certificate required must not only be that secondary school

certificate but even *Grade II teacher certificate..., the City and Guild Certificate; or (b) Education up to Secondary School Certificate level; or (c) Primary Six School leaving certificate'*In addition to other relevant experience and/or training and courses that will be considered in the acceptance and/or satisfaction of INEC to make the candidate qualified to contest and become the President of Nigeria.

Thus, by virtue of the deposition of the 2nd Respondent in Exhibits R19-R26, he can be qualified even in the absence of the contested secondary school certificate since Exhibit R19 (Grade II Certificate of 1961) is one of the minimum requirement for his qualification, and no fuss was made on that by the Appellants.

As touching the falsehood deposed in his affidavit, where a lie or falsehood is exposed to a particular thing, the defect is against that which is affected. The falsehood deposed to has not affected all the depositions in Exhibits R19-R26 since the case of the Appellants have abundantly been on the secondary school certificate. Per Kekere-Ekun, JSC, in **MAIHAJA V. GAIDA (2017) LPELR-42474(SC)**, sternly held that:

> ***"My understanding of Subsection (5) of Section 31 is that the false information complained of must relate to the Constitutional requirements***

for election into the office in dispute, in this case the requirements of Section 177 (b) & (c) of the Constitution."

The law that you cannot put something on nothing and expect it to stand applies where the stratum or foundation is completely destroyed. As earlier pointed out, the 2nd Respondent has another foundation, Exhibit R19 (Grade II Certificate of 1961), wherein his qualification can stand, even if the other is destroyed. What I imply here is that the Secondary school certificate and Grade II certificate are of the same coordinate foundation and qualification, as so defined by the Constitution.

Another arm here is that the 2nd Respondent is known as Muhammadu Buhari and not Mohamed Buhari as borne in his certificate, which makes the certificate or the 2nd Respondent dubious or that the certificate is forged or contrived and concocted. I still insist that the law is sacrosanct that he who asserts must prove. To any ordinary Nigerian and to the mind of the law, this mistake can easily be committed either by the owner of the name or the inscribers of the name. As to the etymology of either "Mohamed" or "Muhammadu", only the Appellants can prove this since they want to assert that it is not the same name or meaning. But the point here is whether the name refers to the same person as the 2nd

Respondent in this case or not. I have not seen anywhere that the Appellants proved otherwise that the name belongs to another person that is now borne by the 2nd Respondent. This is not even in the category of errors or ground that can qualify to disqualify a candidate to the office of a President. It is simply remediable by affidavit at the instance of the 2nd Respondent where it is contested with regard to his real identification and true person. If, however, the case of the Appellants is that the name is also forged, I stand to declare that it is also not a ground for disqualification. Any difference as pointed out by the Appellants in the name of the 2nd Respondent must impact directly on his requisite qualification to contest the presidential election. This similarly played out when Per KUDIRAT MOTONMORI OLATOKUNBO KEKERE-EKUN, JSC in **MAIHAJA V. GAIDA (2017) LPELR-42474(SC)**, held thus:

> ***"If there is any discrepancy in the age of a candidate, it must have a bearing on the Constitutional requirement before it can have the effect of disqualifying him...It was also held in this case that there must be evidence of an intention by the candidate to circumvent the provisions of the Constitution. There was none established in this case."***

For all I have laboured to present in the foregoing submissions and sundry, this court has settled this matter before now. The Appellants should rather base their case on substance and not on technical strings. Per CLARA BATA OGUNBIYI, JSC, in **AGI V. PDP & ORS (2016) LPELR-42578(SC),** loudly and elaborately held concerning this:

> ***"The support for the foregoing conclusion, is as rightly submitted by the learned counsel for the 2nd respondent, because a person who is qualified to contest an election by virtue of the Constitution of the Federal Republic of Nigeria 1999 (as amended) cannot be disqualified by the operation of any other law in force in Nigeria. The Constitution takes precedence over all other laws. Therefore, where there is a matter of alleged falsification of a document or rendering of a false statement as alleged in this case, it must relate to a qualifying or disqualifying factor by virtue of the Constitution of the Federal Republic of Nigeria. The office of Governor of a State was created by virtue of Section 176(1) of the 1999 Constitution and the qualification to hold that office was established by Section 177 thus: "177 person shall be disqualified for election to the office of Governor of a State if- (c) he is a citizen***

of Nigeria by birth: (d) he has attained the age of thirty-five years; (e) he is a member of a political party and is sponsored by that political party; and (f) he has been educated up to at least school certificate level or its equivalent." It is pertinent to state in a strong term that the appellant did not allege an infraction of any of the Subsections enumerated under Section 177 of the Constitution (supra); I seek to restate also that the use of word "shall" prescribes the factor which "shall" qualify a candidate to occupy the office of a Governor of a State. Any attempt by another law to alter the provision except by the Constitution itself shall be rendered of no-effect. See the cases of INEC v. Musa (2003) 3 NWLR (Pt. 806) 72 at 205 and ANPP v. Usman (2008) 12 NWLR (Pt. 1100) 1 at 54-55. Section 31 of the Electoral Act did not by any stretch of imagination create new grounds of disqualification or non-qualification."

The end of what I mean is that the 2nd Respondent has not supplied anything false in aid that directly or otherwise affects his qualification to contest the office of the President in the election of 23/2/2019 and

therefore was qualified to contest the said election. This issue is resolved against the Appellants.

The remaining three issues shall be considered together as to whether there was substantial non-compliance to declare the Appellants the winner or order a fresh election.

It is the case of the Appellants that by the figures in the 1st Respondent's server from the results of elections covering the 35 States and the FCT, the Appellant scored 18,356,732 valid votes against the scores by the 2nd Respondent of 16,741,430 votes, with a margin of 1,615,302 votes. This was allegedly and purportedly proved through PW2, PW3, PW4, PW16, PW17, PW36 and PW59, demonstrating that the 1st Respondent has a server into which results were electronically collated and transmitted. On the other hand, the Respondents' case is that the 2nd Respondent won the presidential election of 23/2/2019 with total votes of 15,191,847 ahead of the Appellants who scored 11,262,978, gapping him with about 3,818,869 votes.

I am fully in support of the fact that electronic voting or electronic transmission of election results is and ought to be part and parcel of our voting system and the means of proving same. Documents produced by

computers are an increasingly common feature of all businesses and spheres of life, and more and more people are becoming familiar with their uses and operation. Computers vary immensely in their complexity and in the operations they perform. The nature of the evidence to discharge the burden of showing that there has been no improper use of the computer and that it was operating properly will inevitably vary from case to case. The evidence must be tailored to suit the needs of the case. I suspect that it will very rarely be necessary to call an expert and that in the vast majority of cases it will be possible to discharge the burden by calling a witness who is familiar with the operation of the computer in the sense of knowing what the computer is required to do and who can say that it is doing it properly. In actual fact, Section 84 of the Evidence Act, consecrates two methods of proof, either by oral evidence under Section 84(1) and (2) or by a certificate under Section 84(4). In either case, the conditions stipulated in Section 84(2) must be satisfied. However, this is subject to the power of the Judge to require oral evidence in addition to the certificate. Proof that the computer is reliable can be provided in two ways: either by calling oral evidence or by tendering a written certificate subject to the power of the Judge to require oral evidence. It is

understandable that if a certificate is to be relied upon, it should show on its face that it is signed by a person who from his joo description can confidently be expected to be a person to give reliable evidence about the operation of the computer. This enables the defendant to decide whether to accept at its face value or to ask the Judge to require oral evidence which can be challenged in cross examination. See Per N'VEZE, JSC in **DICKSON V. SYLVA & ORS (2016) LPELR-41257(SC).**

The use of computer and computer-generated evidence is inescapably indispensable in this age we are in. For as much as it is very advantageous, it can be very disadvantageous, since garbage in, garbage out, is always the result. When falsehood is garbaged into it, it gives out falsehood, and when truth is garbaged into it, it gives out truth. Hence, the caution as warned by Nweze, JSC, above in proving computer-generated evidence.

The case of the Appellants appears very cogent and believing since almost everything done and generated by the computer is based on "seeing is believing", and reasoning and logic or even jurisprudence may be thrown overboard.He who pays the piper dictates the tune of the music. We have seen how the computer has been used these days to spread

believable and credible stories which by inquisitions turned out to be lies and false! In the absence of the checks and balances provided by the Evidence Act above, any party can hire any computer expert to play out its case to the belief of the public.Nevertheless, the law courts or the legal sphere is not a place for such display since every fact must be proved by provable and best evidence.

The case here as in all civil matters must be based on the preponderance of evidence adduced by either of the parties for substantial compliance or otherwise to be proved. It must therefore be noted that the law of evidence requires a party to prove its case by calling the best evidence available. This is what is referred to as the Best Evidence Rule. See Onu, JSC in **EZEMBA V. IBENEME & ANOR 2004) LPELR-1205(SC).** To be repetitive, the general rules of evidence contain the best evidence rule by which it is said that the best evidence must be given and that no evidence will be given in substitution of the best evidence unless strictly under some laid exceptions. Ordinarily, the opposing party is at a disadvantage in having evidence of a witness received against him whom he cannot see and cannot question in the current proceedings even though he had the opportunity of cross-examining the witness in the earlier

proceedings. It is not, therefore, asking too much for the law to require the party who is taking the advantage of the evidence of his witness being received as true without the witness appearing physically to testify, to strictly comply with the provisions of the section of the law bestowing upon him that advantage. See Per UWAIFO, JSC in **SHANU V. AFRIBANK (NIG) PLC (2002) LPELR-3036(SC).**

In the case played out here, the Appellants paraded PW2, PW3, PW4, PW16, PW17, PW36 and PW59, to give the 'best' evidence to prove the pleadings and assertion that the Appellants scored the majority of votes in the said presidential election. The evidence each gave is to basically establish the evidence of PW59 to prove the existence of the 1st Respondent's Server wherein all the collated results were electronically fed into the server. Nevertheless, none of the witnesses who ought to be expert or vital witnesses qualified as such or gave any direct evidence to establish substantial compliance or non-compliance as the case may be. Besides, the oral evidence given went contrary to the depositions made by each of them or amounted to hearsay.

It is therefore elementary law that oral evidence must be consistent with the pleadings, whether it is the statement of claim or the statement of

defence or the witness statement on oath. This is because the case of the parties is erected by the pleadings and parties do not have the freedom to move out of the pleadings in search of a better case. Evidence which is at variance with the pleadings will go to no issue. See Per TOBI, JSC in **OKOKO V. DAKOLO (2006) LPELR-2461(SC).**

The evidence of PW59 concerning the Server, on which all other evidence confluenced to, crashed and crumbled when he evinced that the website *www.factsdontlieng.com* has no ascertainable domain, anonymous, and does not have the features of a regular and authentic website. The evidence of PW60, an expert statistician, also went awry.

By the analysis done by the Appellants in their brief from page 30-32, it shows that the Appellants ought to be leading the 2nd and 3rdRespondents with about 222,332 votes. This is the case of the Appellants. The Respondents' case however is that the margin is 3,818,869 votes. When this two margins or differences are ascertained, can it be said that there was substantial non-compliance to invalidate the election or order a fresh election? The doctrine of substantial compliance is that its consideration will only arise where the petitioners have succeeded in establishing substantial non-compliance with the principles of the Electoral

Yunus Ustaz Usman, SAN with him: O. A. Omonuwa, SAN, Prof. Fabian Ayogwu SAN, Sam Tomi Ologunorisa SAN, and T. M. Inuwa, SAN for the **1st Respondent.**

Wole Olanipekun SAN, Yusuf Ali SAN, Dr. Alex Iziyon SAN, A. B. Mahmoud SAN, and Prof. Osipitan SAN for the **2nd Respondent.**

L. O. Fagbemi SAN, Akin Olujimi SAN, Chief Charles Edosomwan, Chief Adeniji Akintola and Nicholas Akintade Ladapo Esq. for the **3rd Respondent.**

Act,etc. or, in the alternative, substantial effect on the election result of any infraction of the said Act, etc. no matter how minuscule the transgression may be. See Per NWEZE, JSC in **OMISORE & ANOR V. AREGBESOLA & ORS (2015) LPELR-24803(SC).** Of a truth, the Appellants have not proved their petition to warrant voiding the election or ordering a fresh election. This issue is resolved against the Appellants.

Having read in draft the leading judgment of my learned brother, **Ibrahim Tanko Muhammad, CJN**, I support his reasoning and conclusions that this appeal lacks merit and should be dismissed.

This appeal is hereby dismissed in its entirety and I equally abide as to order of costs made by my learned brother.

UWANI MUSA ABBA AJI
JUSTICE, SUPREME COURT

APPEARANCES:

Dr. Livy Uzoukkwu , SAN, Chief Chris Uche SAN, Pius Akubo, SAN, Adebayo O. Adelodun, SAN and Saka Abimbola Isau, SAN for **Appellants.**