

COURT OF APPEAL JOS DIVISION  
TUESDAY 31ST MARCH, 1992. CA/J/P/55/92  
CORAM:- S. S. AIKAWA, U. ABDULLAHI, A. I. KATSINA-ALU,  
G. A. OGUNTADE, O. A. OKEZIE, JJCA

ALHAJI ABBA GANA TERAB ..... APPELLANT  
AND  
1. MAINA MA'AJI LAWAN  
2. COL. SIMON O. UWAKWE (RTD.)  
(RESIDENT ELECTORAL  
COMMISSIONER, BORNO STATE) ..... RESPONDENTS  
3. NATIONAL ELECTORAL  
COMMISSION

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ELECTIONS - Accreditation - Voting - Procedure - By para.15(3) of Schedule 6 of Decree No.50 of 1991 - Once a person is accredited - He shall not leave the voting area - Until he has voted (H1)

DOCUMENTS - Pleadings - Party relying on documents must specifically - Relate each of such documents to the part of his case - The document is being tendered (H2)

DOCUMENTS - Rejection - Effect - A document which has been rejected in evidence - Cannot have any probative value (H3)

ELECTIONS - Results - Alteration of forms - Proof - To prove falsification of results - Appellant needs to tender copies of Form EC8A - For comparison with the originals tendered (H4)

### ***FACTS***

Petitioner/appellant was a candidate at the gubernatorial election conducted by 3<sup>rd</sup> respondent for Borno State. Appellant contested the election on the platform of the National Republican Convention. 1<sup>st</sup> respondent was the candidate of the Social Democratic Party at the same election, while 2<sup>nd</sup> respondent was resident electoral commissioner for the State. At the conclusion of the election, 1<sup>st</sup> respondent was declared the winner. It was certified that 1<sup>st</sup> respondent scored 285,235 votes as against appellant's 272,221 votes.

Appellant who lost at the election, in manifestation of his displeasure at the results, filed this election petition before the Governorship and Legislative Houses Election Tribunal of Borno State. Appellant inter alia, prayed for an order of the tribunal declaring that 1<sup>st</sup> respondent was not duly returned and also for an order declaring appellant as the duly returned Governor of the State. Appellant alleged alteration of Form EC8A to falsify the election results. In its judgment, the tribunal dismissed appellant's petition. Aggrieved, appellant appealed to the Court of Appeal Jos Division.

### **ISSUES FOR DETERMINATION**

*“(1) Were the grounds on which the petition is based pleaded in the petition in paragraph 5(3) as opposed to the finding of the Tribunal that they were not pleaded as asserted in the judgment at page 236 wherein it was stated thus:*

*“apart from the fact that they were not pleaded “*

*(2) Was any legal evidence given in support of all allegations for challenging the election of the 1st respondent? Vide page 237 of the Record?*

*(3) Did the petitioner adduce evidence expressly to substantiate the allegations pleaded in paragraph 5(3) (a-f) of the petition?*

*(4) Did the Petitioner admit substantial non-compliance on his part and conceded (sic) condonation of substantial irregularities.*

*(5) Can exhibit 98 the Guardian Newspaper issue be dismissed as hearsay in view of section 116 of the Evidence Act?*

*(6) Was evidence given in respect of allegations on paragraph 5(3) of the Petition?*

**HELD** (Unanimously dismissing the appeal per

**AIKAWA JCA)**

*ELECTIONS - Accreditation - Voting - Procedure*

**1. It is also important to bear in mind that the intendment of the provisions governing the election procedure is that once a person is accredited, he shall not leave the voting area until he has voted. This is borne out by paragraph 15(3) of the Schedule 6 to the Decree which makes it an offence to leave the polling zone thus:**

***“Any person who having been accredited leaves the polling zone or any other place appointed for the accreditation of persons and or mixes up with unaccredited persons shall be guilty of an offence of disorderliness under Section 92 of this Decree and shall be liable on conviction to the punishment as provided under that section.”*** (p. 660 A)

*DOCUMENTS - Pleadings*

**2. I agree that the correct view of the law is that a Party relying on documents in proof of his case must specifically relate each of such documents to that part of his case in respect of which the document is being tendered. The court cannot assume the duty of tying each of a bundle of documentary exhibits to specific aspect of the case for a Party when that Party has not himself done so. The foundation of the principle is that it is an infraction of fair hearing for the court’ to do in the recess of its chambers what a party has not himself done in advancement of his case in the open court.** (p. 666 D)

*DOCUMENTS - Rejection - Effect*

**3. Each of the counsel for the respondents inspected the above exhibits and expressed non-objection before they were received in evidence. These exhibits were clearly pleaded and none of the respondents’ counsel raised the objection that they were not pleaded. I think that the tribunal was in error to have said it was disregarding these same exhibits while at the same time saying that the exhibits had no probative value. A document which has been rejected in evidence cannot have any probative value in any case.** (p. 667 H)

*ELECTIONS - Results - Alteration of forms - Proof*

**4. While it is true that some of these Forms show that alterations and cancellations were made on them, it has not been made clear at what stage the alterations and cancellations were made. In order to prove that these alterations and cancellations were made so as to falsify the results of the elections, the appellant would need to tender the copies of the Forms EC8A given to his agents at the polling stations so that**

***this could be compared with the originals tendered. Falsification of results at the election in December, 1991 is a criminal offence which requires proof beyond reasonable doubt.***  
(p. 671 E)

**B REPRESENTATION**

Chief Sobo Sowemimo, SAN with C.T. Uba, M. Monguno and Lanre Olayinka, for the Appellant  
Chief G.O.K. Ajayi, SAN with I. Filani, S. Akinyele, O. Wadsani, A.A. Oriola, Z.D. Mustafa, M.U. Kumalia, M.T. Monguno, A. N. Kura, A.M. Monguno, B.U. Mustafa and N, Zana  
Mrs. Nggilari (A-G - Borno State) with Mrs. P.H. Ngada (Director Civil Litigation) S. Dauda, Senior State Counsel and M. Famani (State Counsel), for the Respondents

**D**

**CASES REFERRED TO**

Swem v. Dzungwe (1966) NMLR 297  
Duru v. Nwosu (1989) 4 NWLR (Pt.113) 24  
Duriminiya v. COP (1961) NNLR 70  
Queen v. Wilcox (1961) All NLR 631  
Onibudo v. Akibu (1982) 7 S.C. 60  
Nwobodo v. Onoh (1984) 1 SC 1  
Ayinla v. Adigun (1986) 3 NWLR (Pt.30) 511  
Atano v. A.G Bendel State (1988) 2 NWLR (Pt.75) 201

**F** Nneji & 3 Ors. v. Chief Nwankwo Chukwu & 7 Ors. (1988) 3 NWLR (Pt.81) 184

**STATUTES & RULES REFERRED TO**

**G** Evidence Act, s. 116  
State Government (Basic Constitutional & Transitional Provisions) Decree No.50 of 1991, paras. 25(1)(d), 28(2)(d) of Schedule 5, 50(2), 51(2) of Schedule 6, s. 92  
Constitution of the Federal Republic of Nigeria 1979, s. 227  
**H** Court of Appeal Act 1976, s. 8(2)  
Court of Appeal Rules 1981, O. 3 rr. 1, 2(1), 5

**LEAD JUDGMENT BY AIKAWA JCA**

The appellant was a candidate for the office of Governor of

Borno State at the election that took place in Nigeria on 14th December, 1991. He contested the election on the platform of the National Republican Convention. The 1st respondent was the candidate of the Social Democratic Party at the same election. The 2nd and 3rd respondents were the Resident Electoral Commissioner for Borno State and the National Electoral Commission respectively. B

At the conclusion of the election, the 1st respondent was declared the winner by the 2nd and 3rd respondents. It was certified that the 1st respondent scored 285,235 votes as against the appellant's 272,221 votes. The appellant who lost at the election in manifestation of his displeasure at the results announced by the 2nd and 3rd respondents presented a petition before the Governorship and Legislative Houses Election Tribunal of Borno State under the Chairmanship of Hon. Wallace Ronald Tislington Macaulay, a retired justice of this court. In the petition, the appellant prayed for the following reliefs:- C D

*"(a) A declaration that the 1st respondent was not duly elected or returned as the Governor of Borno State.*

*(b) An order setting aside the declaration of the 1st respondent as the Governor of Borno State by the 2nd and 3rd respondents.* E

*(c) An order for bye-election in all the affected polling stations, wards and local governments particularly the Barna Local Government and all the 20 wards of Maiduguri Metropolitan Council Area.* F

*(d) A declaration that the petitioner was duly returned or elected or ought to have been returned as the Governor of Borno State.*

*(e) An order, returning the petitioner as the duly elected Governor of Borno State.*

#### IN THE ALTERNATIVE

*(a) A declaration that the election of the 1st respondent as the Governor of Borno State during the election held on the 14th day of December, 1991 was null and void as the 1st respondent was a disqualified person.* G

*(b) AND/OR A declaration by numerous irregularities and corrupt practices;* H

*(c) An order that the return of the 1st respondent as the elected Governor of Borno State be set aside.*

*(d) An order for bye-election in the entire state of Borno State."*

The petitioner in another petition BO/EP/5/92 prayed for reliefs similar to those set out above on the ground stated in the petition as follows:-

B “(1) *That the purported return and/or election of the 1st respondent as the Governor of Borno State during the election held on the 14th day of December, 1991 was null and void as the 1st respondent was a disqualified person.*

**PARTICULARS**

C (a) *The 1st respondent was medically certified to be of unsound mind and treated in 1983 at the A.B.U. Teaching Hospital, Kaduna, by one Professor Mohammed Habib Ahmed of the Psychiatric Unit, as per his file Reference No.06-53-73.*

D (b) *The 1st respondent was again medically certified to be of unsound mind and treated in 1986 at the A.B.U. Teaching Hospital, Kaduna, by the same Professor Mohammed Habib Ahmed of the Psychiatric Unit as per his file Reference No.06-43-64.”*

E The two petitions were consolidated for hearing. In its judgment delivered on 12th February, 1992, the Borno State Electoral Tribunal dismissed the appellant’s petition. The appellant has come on appeal against the judgment of the Tribunal on six grounds of appeal. The grounds of appeal read as follows:-

F “(1) *The Electoral Tribunal misdirected itself on the facts and in law when it held in its judgment at page 236 of the Record as follows:*

G “*The Complaint in paragraph 5(3) stating as above that the 1st defendant was not elected by a majority of votes at the election, was covered in a block vote contained in Exh. EC 8A & EC 8B... that relevant as they may be for the purpose of an enquiry, in the absence of legal evidence being given in respect of each of them, they should not be the basis for making any computation...*” “*...For the lack of any probative value therefore we are of the view that, for the purpose of going into any “game of numbers”, the following Exhs. will be disregarded. They are Exhs. 5A-6A, 7A-7B, 8A-8B,*

H *9A-9B as they do not in fact relate to any head of the pleading... the allegation in 5(3) remain un-proven, and therefore will be disregarded as we now do.”*

**PARTICULARS OF MISDIRECTION**

(i) There are no Exhibits numbered as Exhibits EC 8A and EC

8B.

(ii) The allegation made under paragraph 5(3) (a-f) of the petition, contained in pages 3-4B of the Record were all pleaded, and each of the documents in respect of votes tendered related to the relevant sub-paragraphs.

(iii) The Exhibits relating to the votes were not tendered in block, as the witness (from the witness box), Counsel for Respondents, individual members of the Tribunal had to examine and vet each document separately, and exhibit numbers given to the documents one by one in open court after being examined by the Tribunal. C

(2) The Electoral Tribunal misdirected itself on The facts and in law when it held thus in its judgment on page 239 of the Record:

*"It is therefore not germane to the exercise to emphasize on the necessity, or even the very fact that some voters are on the queue. This appears to be the gravaman of the complaint under this heading, listed at pages 11-48. The Petitioner had a duty to show that there was an irregularity, which is not the cause of the 1st respondent."*

#### PARTICULARS OF MISDIRECTION

(i) Irregularities to void an election are normally committed by NEC Officials, (in this case the 2nd and 3rd Respondents) by themselves and/or by their servants and agents against whom both the Petitioner and the 1st Respondent have made their complaints of irregularities in the case at hand. F

(ii) It is the requirement of both Decree No. 50 of 1991 and the Statutory Form EC 8A of the said Decree No. 50 of 1991 that NEC Officials must, in the course of conducting an election, record those accredited to vote and those accredited in the queue to vote and those who actually voted. G

(3) The Election Tribunal misdirected itself on the facts and in law by not judiciously evaluating the evidence before it, when it held in its judgment at page 240 of the Record thus:

*"In his reply the 1st Respondent far from admitting any irregularity, has complained that NEC, by its dereliction of duty, had lost lawful votes won, or which should have been won by him. On the other hand. The petitioner, both on the face of his pleadings and in his testimony, has admitted substantial irregularity in an admission H*

against his own interest, if only on the ground, the 1st respondent should also be indicted with irregularity, in order to enable the petitioner attain his ambition of a bye-election. It seems dear to us that if the petitioner can blindly concede condonation of substantial irregularities, if only as a short cut to a bye-election, he cannot expect a respondent who has not made such an admission, to be nailed for an offence he has not admitted..." "page 241 ... we are satisfied that the petitioner having admitted substantial non-compliance on his part, should not seek to insist that the body, of the live baby be split in half as well, for his benefit."

#### PARTICULARS OF MISDIRECTION

(i) The petitioner did not admit substantial irregularity, and/or at all against his own interest. Neither did he concede condonation of substantial irregularities/non compliance or at all, either on the face of his pleadings or his testimony.

(ii) The substantial irregularities which the petitioner complained of were committed by the 2nd and 3rd Respondents and/or by their agents.

(4) The Election Tribunal was in error, when it held in its judgment at page 242 of the Record as follows:

"Further to his denial of any wrong doing, 1st respondent has in fact laid claim to recoup the losses foisted on him when NEC as he claimed failed to do their duty. He claims that he lost 1678 lawful votes through this lapse, whereas the petitioner himself has set sights at over 19,000 lawful votes he claimed to have and above the 1st respondent. Learned counsel Mr. Uba has admitted that he is aware of substantial irregularities scaling the commanding heights of 40,000 votes. If this is so, it seems to us that it hardly lies in his mouth to expect to do worse in a bye-election."

#### PARTICULARS OF ERROR

(i) The 1st respondent did not give evidence at the trial.

(ii) Mr. Uba, learned counsel for the petitioner did not give evidence during the trial, and the reference to 40,000 votes was made in his submission.

(5) The Election Tribunal misdirected itself on the facts, when it held in its judgment at page 234 of the Record as follows:

"It was never suggested at the hearing that Mallam Fuguma was also an alias of Ba'oma. I have no doubt that both PW2 and

*PW3 are invertebrate liars.*”

### *PARTICULARS OF MISDIRECTION*

(i) *The petitioner, testifying as PW5, at page 178 of the Record said:*

*“I also know him as Mallam Fuguma.” That was said after confirming knowledge of both PW2 and PW3 who all come from Bama as himself.*” <sup>B</sup>

(6) *The Election Tribunal misdirected itself in law when it held in its judgment on page 235 of the Record that the Guardian Newspaper of 30th December, 1991, which was tendered as Exhibit 98 is clearly hearsay.* <sup>C</sup>

### *PARTICULARS OF ERROR*

(i) *S.116 of the Evidence Act raises a presumption of authenticity of the contents in such document.*

(7) *The decision of the Tribunal is against the weight of evidence.* <sup>D</sup>

(8) *The trial of the petition by the Tribunal was not fair in that some members of Tribunal were continuously pulling forward leading questions to the Petitioner’s witnesses especially the 1st PW, interrupting the Petitioner’s Counsel conduct of the proceedings thereby assuming the role of an advocate.*” <sup>E</sup>

In the appellant’s brief filed the issues for determination in this appeal were stated to be the following:

*“(1) Were the grounds on which the petition is based pleaded in the petition in paragraph 5(3) as opposed to the finding of the Tribunal that they were not pleaded as asserted in the judgment at page 236 wherein it was stated thus:* <sup>F</sup>

*“apart from the fact that they were not pleaded “*

*(2) Was any legal evidence given in support of all allegations for challenging the election of the 1st respondent? Vide page 237 of the Record?* <sup>G</sup>

*(3) Did the petitioner adduce evidence expressly to substantiate the allegations pleaded in paragraph 5(3) (a-f) of the petition?*

*(4) Did the Petitioner admit substantial non-compliance on his part and conceded (sic) condonation of substantial irregularities.* <sup>H</sup>

*(5) Can exhibit 98 the Guardian Newspaper issue be dismissed as hearsay in view of section 116 of the Evidence Act?*

*(6) Was evidence given in respect of allegations on paragraph*

*5(3) of the Petition?*

The 1st respondent in his brief did not formulate issues arising for determination. But it was argued that appellant's first issue for determination did not arise from the judgment of the tribunal.

The 2nd and 3rd respondents in their brief raised their own  
B issues for determination as follows:

(i) Can it be said having regard to all the circumstances in this case that the Tribunal was in error for failing to evaluate the evidence adduced at the trial by the appellant in support of the various heads  
C of his petition particularly the allegations contained in paragraph 5(3) a-f thereof?

(ii) Whether or not it is the intendment of the provisions of paragraphs 25(1) (d) and 28(2)(d) of Schedule 5 to the State Government (Basic Constitutional and Transitional Provisions) Decree  
D 1991 that the number of Voters standing in the queue must tally with the total votes at the particular election.

(iii) Having regard to all the circumstances of this case, was the Tribunal right in coming to the conclusion that the petitioner had admitted and condoned substantial irregularities on the face of the  
E pleadings and the evidence adduced at the trial.

(iv) Whether or not the Tribunal was right in disregarding the contents of exhibit 98 (the Guardian Newspaper of 30th December 1991) as proof of the allegations contained in paragraph 5(1) of the  
F petition

(v) Can it be said that the proceedings of the Tribunal was conducted in such a way as to offend the principles of fair hearing.

So much for the issues raised by parties. Before we commenced the hearing of this appeal, Mrs. Nggilari, Learned Attorney-General  
G for Borno State who appeared for 2nd and 3rd Respondents raised a preliminary objection, a notice of which she had filed. In the notice filed and its oral elaboration, it was argued that the appeal was incompetent on the ground that it was filed in the Court of Appeal and not in the tribunal as should be the case in compliance with Order 3  
H rules 1, 2(1) and 5 of the Court of Appeal Rules, 1981. Mrs. Nggilari referred to paragraph 51(2) Schedule 6 to Decree No.50 of 1991 which provides that the practice and procedure for appeals in election appeals to this Court shall be in accordance with the Court of Appeal Rules. The implication of Mrs. Nggilari's objection is that the

Practice Direction NO.1 of 1992 issued on 6/1/92 by the President of this Court in accordance with section 227 of the Constitution of the Federal Republic of Nigeria, 1979, section 8(2) of the Court of Appeal Act, 1976 and Paragraph 51(2) of Schedule 6 to Decree No.50 of 1991 which directed that appeals from Election Tribunal be filed directly in this Court was inconsistent with paragraph 50(2) of Schedule 6 to Decree No.50 of 1991. She referred in support of her objection to *University of Lagos v. Aigoro* Vol.9 Digest of Supreme Court cases and *Sken Consult (Nig.) Ltd. v. Ukey* (1981) 1 S.C. 6. Chief G.O.K. Ajayi SAN for the 1st respondent supported the objection raised by Mrs. Nggilari.

I do not think the point raised by Mrs. Nggilari should be much belaboured. It is sufficient in my view to invite her attention to paragraph 50(2) of Schedule 6 to Decree No.50 of 1991 which provides:

*"Subject to the provisions of this Decree, any appeal to the Court of Appeal shall be determined in accordance with the practice and procedure relating to appeals in civil cases in that court."* (Italics mine)

The above provision relates to the practice and procedure to be followed in the determination of an election appeal to this Court and not to its filing. Clearly, the provision assumes that an appeal to which the practice and procedure in this Court would apply was already before the Court of Appeal. Further in *Ezekiel Nneji & 3 Ors. v. Chief Nwankwo Chukwu & 7 Ors.* (1988) 3 NWLR (Pt.81) 184 the Supreme Court expressed that a Court should be more interested in determining a case on its merits rather than cling to mere procedural technicalities. The preliminary objection fails and it is struck out.

Now to the issues. The grounds relied upon before the tribunal for seeking the reliefs earlier set out above are those in paragraph 5(3) a-f of the petition. The arguments by all the counsel to the parties in this appeal turn mainly around the question whether there was sufficient evidence before the tribunal as regards whether there were such irregularities in the election such as to lead to the conclusion that the 1st respondent was not elected by a majority of lawful votes. This complaint is epitomised by paragraph 5(3)(e)(i)-(iii) of the petition which reads thus:

*"(i) The Petitioner states that the election in various polling stations, wards and local government areas of Borno State were irregu-*

*lar due to discrepancies in figures between accredited voters in queue to vote and the total scores of both parties in the said polling stations.*

*(ii) The Petitioner further states that the election results in various polling stations in the state were characterised by irregularities due to discrepancy in the number of registered voters and the total scores of the two parties in the said polling stations. Despite the substantial irregularities the results were relied upon by the 3rd respondent at the election.*

*(iii) The Petitioner hereby states that the polling stations and results mentioned in paragraph 3(d)(i) and (ii) throughout Borno State are as follows:*

Chief Sowemimo SAN for the appellant pointed out that at the hearing of the petition before the tribunal, the appellant called oral evidence in support of the allegation that the number of voters in some of the polling stations exceeded the number of accredited voters in the said stations. He said that several documentary exhibits were tendered in support of these allegations but that the tribunal failed and or neglected to consider them. Counsel said that these documentary exhibits numbering 268 were referable to each polling unit. Counsel further said that notwithstanding that the tribunal found that there were substantial irregularities in the voting procedure it still refused to nullify the election. The tribunal according to counsel only considered the evidence of the petitioner without adverting its mind to the evidence of DW1, PW6 and PW7. The learned SAN referred to *Swem v. Dzungwe* (1966) NMLR 297 and urged us to allow the appeal. On the failure of the tribunal to consider the evidence called, counsel referred to *Duru v. Nwosu* (1989) 4 NWLR (Pt.113) 24.

Chief G.O.K. Ajayi, SAN for the 1st respondent said that the main complaint of the appellant before the tribunal was that the total number of votes cast for the two candidates at the election exceeded the number of accredited voters on the queue. Learned SAN said that the only irregularities which could lead to a nullification of result from a polling unit is where the number of votes cast for the two candidates exceeded the number of the accredited voters. According to Chief Ajayi the irregularities were not substantial and that whatever irregularities there were, were arithmetical in nature and could not in any case lead to a nullification of the whole election. Counsel said that several EC 8A forms were tendered in bulk without evi-

dence being specifically led to connect each of these with the irregularities complained of. Counsel further submitted that it was not the duty of the court to assist the petitioner by relating each documentary exhibit tendered to the polling units in question - *Duriminiya v. C.OP.* (1961) NNLR 70 at 73-74 and *Queen v. Wilcox* (1961) All NLR (New Edition) 631, (1961) SCNLR 296. Counsel submitted that the tribunal correctly decided not to consider the documentary evidence tendered in bulk. Finally, it was submitted that the tribunal correctly dismissed the petition. Chief Ajayi asked us to dismiss the appeal. B

Mrs. Ngilari for the 2nd and 3rd respondents said that the tribunal was right not to attach any probative value to the exhibits tendered by the petitioner in bulk without each being related to a polling unit. She referred to *Onibudo v. Akibu* (1982) 7 S.C. 60 at 62. Counsel finally associated herself with the submission of Chief G.O.K. D Ajayi, SAN. Chief Sowemimo SAN in reply said that the case *Duriminiya v. C.OP.* (supra) was a criminal case and therefore not applicable to the instant case. Counsel also observed that the documentary exhibits tendered were not tendered in bulk.

I propose to deal in this judgment with the issue which by the agreement of parties is the core matter in this appeal. The question is whether or not the petitioner made out sufficient case as would enable the tribunal pronounce that the 1st respondent was not duly elected by a majority of lawful votes. E

The petitioner in his pleading averred that in several polling units the total votes scored by the two parties exceeded the number of accredited voters on the queue. Several documents were tendered in proof of this. Chief Ajayi, SAN has submitted before us that that allegation even if true would have no bearing or consequence on the election since it was not the ground provided for nullification of polling results from the polling units, Before I consider the question whether the Tribunal correctly refused to consider the documentary exhibits tendered, it is necessary to determine whether those exhibits even if they were considered could by their force lead to a nullification of the results in some polling units, Paragraph 25(1)(d) which is identical with paragraph 28(1)(d) of Schedule 6 to Decree No.50 of 1991 provides: F

*"The Presiding Officer shall after counting of votes-* G H

*(d) nullify the result of any polling station where the total number of votes cast exceed the total number of people accredited to vote at the polling station. ”*

To understand the full import of paragraph 25(1)(d) reproduced above, it is necessary to relate it to the procedure for accreditation of voters and post-accreditation procedure as set out in paragraphs 15(1) and (2) (a-f), 16 and 17 of Schedule 5 to Decree No.50 of 199 I which provide:

*“15(1) The accreditation of voters shall commence the day and time stipulated pursuant to paragraph 14 of this Schedule.*

*(2) The Presiding Officer shall -*

*(a) Cross check the voters’ card of a person applying for accreditation against the register and the following questions or any of the questions shall be put to a voter by a candidate or the polling agent, that is -*

*(i) “Are you the person whose name is on the register of voters as...?”*

*(ii) Are you a person above 18 years of age?”*

*(b) not accredit any voter who answers the questions in sub-paragraph (2)(a) to this Schedule in the negative.*

*(c) mark the name of the voter in the register with biro;*

*(d) stamp and sign each voter’s card at the back with the appropriate stamp and stating the date, type of election and code number; and*

*(e) mark the right thumb of the voter between the nail and flesh with indelible ink;*

*(f) enter in Form EC 8A - Statement of Result for the number of persons registered to vote at the polling station. The number of registered voters accredited and the number of accredited voters standing in the queue at the commencement of voting. The Presiding Officer and The Polling agents shall sign Form EC 8A to authenticate the numbers thereat.*

*16. At the close of accreditation, the Presiding Officer shall -*

*(a) loudly announce the total number of accredited voters entitled to vote at Polling Station and record the same in Form EC 8A;*

*(b) explain the voting procedure to be followed;*

*(c) introduce the candidate or their posters and symbols, the*

*poll clerks and the polling agents;*

*(d) explain all atrocities which constitute election offences within the polling zone including penalties for committing each offence;*

*(e) call the roll of accredited voters;*

*(f) ensure that posters bearing photographs of candidates are well placed before the commencement of voting.* B

17. After due compliance with the provisions of paragraph 17 of the Schedule, the Presiding Officer shall -

*(a) announce the commencement of voting;*

*(b) request the accredited voters to line up in a single line in front of the candidate of their choice;* C

*(c) separate the queue between men and women if in the area of the country the culture is such that it does not permit the mingling of men and women in the same queue;*

*(d) request Security Agents or Poll Orderlies to stand at the end of the queue behind the last accredited voter and request the voters at the queue to show their voters cards duly stamped and the right thumb bearing indelible mark made by the Presiding Officer;* D

*(e) loudly count the number of accredited voters with the assistance of the Poll clerk or Teller;* E

*(f) recount the votes at the request of a polling agent provided that such request shall not be entertained after a first recount."*

In construing the provision of paragraph 25(1) of Schedule 6 Decree No.50 of 1991, it is important to bear in mind that the purpose of the same is to prevent electoral malpractices and fraud. It is obvious that a fraud would have taken place if the number of votes cast for both candidate at the election exceeded the number of accredited voters. In *Re Mayfair Property Co.* (1898) 2 Ch. 28 at 35, Hindley M.R. said: F

*"In order properly to interpret any statute it is necessary now as it was when Lord Coke reported Heydon's case, to consider how the law stood when the statute to be construed was passed, what the mischief was for which the old law did not provide and the remedy provided by the statute to cure that mischief."* G H

In the light of the procedure for voting at an election reproduced above it is clear that the accreditation of voters and later the stage of voting represent the extreme or outer beacons or outposts in the effort to prevent electoral malpractices. The whole procedure

is a continuous chain from accreditation to voting. The directive concerning the number of voters registered to vote, the number of voters accredited, the “number of voters on the queue to vote and the number of voters actually voting is to ensure that at important stages of the electoral process safeguards are in place to prevent fraud. ***It is also important to bear in mind that the intendment of the provisions governing the election procedure is that once a person is accredited, he shall not leave the voting area until he has voted. This is borne out by paragraph 15(3) of the Schedule 6 to the Decree which makes it an offence to leave the polling zone thus:***

***“Any person who having been accredited leaves the polling zone or any other place appointed for the accreditation of persons and or mixes up with unaccredited persons shall be guilty of an offence of disorderliness under Section 92 of this Decree and shall be liable on conviction to the punishment as provided under that section.”***

Nevertheless, it must be said that the directive that a record of persons accredited be made at different stages of the voting process till actual voting salutarly recognised that the number of voters accredited may not remain static until actual voting is done. Emergencies may impose the necessity for some persons to leave after accreditation. It suffices here however to point out that the intendment of the law is that nobody should leave. One thing is clear, it is that from the stage of accreditation through the queuing to actual voting, the number of voters may diminish if circumstances force them to leave before voting. But the number should never increase. In other words, more people may be accredited than are available for counting on the queue. In the same way it is remotely possible that more people are available for counting on the queue than will actually be available for voting. I have used the expression “remotely” advisedly, because the process of queuing up for counting or roll call is almost immediately to be followed by actual voting such that no time is left for anyone who has queued to depart the venue before the voting.

Before the tribunal, the 2nd respondent who testified as DW2 narrated the procedure which is normally followed at elections by NEC thus: See pages 59/194 of record of proceedings:

*“On the day of election accreditation usually take place be-*

tween 8 a.m. - 10 a.m. when their names are identified in the voters register after presenting valid voter's cards. Their Thumb prints are imprinted with indelible ink to show. After the accreditation at 10 a.m. the official officiating the election will endeavour to educate the electorate on voting procedures etc. If satisfied that the procedure is understood he would require them to line up in one single file for counting for the purpose of identifying the number of people who might have strolled away since they were accredited. At precisely 11 a.m. the voting would start. Just before this, the posters of the candidates who are to be voted for, would be displayed. Thereafter the accredited voters would be asked to line up behind the candidates of their choice or their posters. It is at that juncture that the actual voting takes place. When they have formed the lines, poll watchers are asked to stand behind the last person in the queue. Once counting has commenced, no person is expected to enter the line, whether or not they have been accredited. The counting of the polling station. The number of voters so counted is immediately recorded in the forms appropriate for the purpose. That in a nutshell is the procedure. It is not true that, as alleged by the petitioner, that the number of voters was at variance with the actual figures. Since voting is held near homes it is usual that when people are accredited, some are impatient to wait at the accreditation center from that time till the voting commences, usually at 11 a.m. They often stroll away, sometimes not returning. So that by the time people are asked to queue up for roll call, some of them who have slipped across to their homes or farms may not be present when the roll call in the queue takes place. Usually, some return just prior to the voting. These people would be allowed to cast their votes in so far as they have been properly accredited. The roll call is usually carried out after the tuition but before the actual voting. When people are ready to vote there may be that some people would arrive just in time for voting even if not formally roll called. They would be allowed to vote. In which case there would be a number of people who have voted being greater than the number for the voting in the roll call. But under no circumstances will you have the number of people who have voted to exceed the number of people accredited. Therefore, the number of people who have voted can be higher than the number of people in the queue, for roll call but it will not exceed the number of accredited people. If this

*happens, the election in that particular place will be invalidated.”*

The tribunal accepted the evidence of DW2 and in particular that part of it which conveyed that more people could vote than were on the queue for counting immediately before voting. I think that the tribunal should have noted that DW2, a witness; even if he worked for the 3rd respondent had no duty or competence to interpret to the court the meaning of provisions in a statute. Clearly DW2 was wrong and the tribunal in error to take the stand that more people could vote than were on the queue for counting before voting. That stance is a clear subversion of the statute which makes it an offence for any accredited voters to leave the polling zone after accreditations. To make it a policy to allow an accredited voter who leaves the polling zone to return thereat to vote without having taken part in the intermediate act of queuing for counting is an endorsement of an illegal practice which the law has made an offence. It is my firm view that it is impermissible for an intending voter who has not first been on the counting queue to skip that formality to vote. It seems to me that the directive in paragraph 17 of Schedule 5 that security agents or poll orderlies be placed at the end of the queue behind the last accredited voter is to prevent people joining the queue to vote after voting has commenced.

This then brings me to the pleadings of the petitioner. It is undisputed that the petitioner had pleaded that the election was irregular, “due to discrepancies in figure between accredited voters in queue to vote and the total scores of both parties in the said polling stations.” See paragraph 5(3)(e)(i) of the Petition. Am I entitled to say in this judgment that the appellant had not founded his claim on this head within the purview of paragraph 25(1)(d) of Schedule 5 to Decree No.50 of 1991 reproduced above just because instead of pleading that the total votes of both parties exceeded the number of voters accredited to vote he pleaded that there were discrepancies in figures between accredited voters in the queue to vote and the total scores of both parties? I think not. To do so would amount to unnecessary adherence to technicality at the expense of justice. This is because a situation where the votes scored by both parties at the election exceeded the number of the accredited voters on the queue is as much an electoral malpractice as the case of the total votes cast to both parties, exceeding the number of accredited voters. As I said earlier

the accreditation of voters and the actual voting are only the extreme signposts for determining whether malpractice has occurred. In between these two extreme signposts is the situation where votes cast exceed the number of accredited voters on the queue. It is my view therefore that the averment that there were discrepancies in figures between accredited voters in queue and the total number of votes B cast for both parties falls squarely within the provision of para. 25(1)(d) of Schedule 5 to Decree No.50 of 1991. A case would have been made for the nullification of results from polling units where the number of votes cast for both parties exceeded the number of accredited C voters on the queue if the petitioner succeeded in showing that that was the position in some polling units.

Now did the petitioner show this? In an attempt to prove this, several documentary exhibits were tendered but the tribunal decided to ignore them for the reasons stated thus: D

*“The complaint in paragraph 5(3) stating as above that the 1st respondent was not elected by a majority of votes at the election was covered in a block vote contained in exhibit EC 8A and Exhibit EC 8B. Those were admitted, nevertheless as it would have been virtually impossible for the witness to give evidence without being afforded E an opportunity, to, at least identify some of them. Apart from the fact that they were not pleaded, they were allowed to go in spite of Chief Ajayi’s objections, rightly taken, that relevant as they may be for the purpose of an enquiry, in the absence of legal evidence being given F in respect of each of them, they should not be the basis for making any computation. For the lack of any probative value. Therefore we are of the view that, for the purpose of going into any “game of numbers” the following exhibits will be disregarded.*

*They are exhibits 5B-a-6A-20, 7A-7B, 8A-8B, 9A-B as they G do not in fact relate to any head of the pleading. The court had to bend over backwards to accommodate the witness but having done that, cannot be required to make up for the want or insufficiency of evidence to back up each and everyone of the Forms. Since no evidence was in fact given from the witness box about each and every- H one of them, the allegations in 5(3) remain unproven and therefore will be disregarded as we now do.”*

And at pages 236-237, the tribunal said:

*“The complaint in paragraph 5(3) stating as above that the 1st*

respondent was not elected by a majority of votes at the election, was covered in a block vote contained in Exh. EC 8A & Exh EC 8B. These were admitted nevertheless as it would have been virtually impossible for the witness to give evidence without being afforded an opportunity to, at least, identify some of them. Apart from the fact that they were allowed to go in, in spite of Chief Ajayi's objections, rightly taken, that relevant as they may be for the purpose of an enquiry, in the absence of legal evidence being given in respect of each of them, they should not be the basis for making any computation. For the lack of any probative value therefore, we are of the view that, for the purpose of going into any "game of numbers" the following exhibits will be disregarded. They are exhibits 5B-a-6A-20, 7A-7B, 8A-8B, 9A, 9B as they do not in fact relate to any head of the pleading. The court had to bend over backwards to accommodate the witness but having done that, cannot be required to make up for the want or insufficiency of evidence to back up each and everyone of the farms. Since no evidence was in fact given from the witness box about each and every one of them, the allegations in 5(3) remain unproven, and therefore will be disregarded, as we now do. With regard to the prayers at 5(3)(a), we are satisfied that, under cross-examination, the petitioner himself admitted that he was in fact credited with what he now calls "substantial reductions." This head therefore fails."

And further at pages 238-239 the tribunal went on:  
 "This section, for ease of reference, charges that there were at various polling stations irregularities, due to discrepancies in figures between the accredited figures in the queue to vote and the total scores of both parties in the said polling stations.

It is possible that the import of the provisions of paragraph 25(1)(d) and paragraph 28(2)(c) and (d), may not have been clearly understood in the light of the guide-lines, and the oral testimony of the 2nd respondent in his testimony from the witness box as DW2. When may entries properly be made in the EC 8A forms? This witness has testified that the only time allowable under the decree should, or must be periods before 11am, when the actual voting is to commence, after the necessary formalities must have been observed. He has said that before and up till that time, for one reason or the other, prospective voters who have otherwise been already accredited, do

*sometimes wander away for long, or short period, or for keeps. Some just keep moving around waiting for the open sesame of 11a.m.*

*It is therefore not germane to the exercise to emphasize on the necessity, or even the very fact that some voters are on the queue. This appear to be the gravamen of the complaint under this heading, listed at pages 11-48. The petitioner has a duty to show that there was an irregularity, which is not the cause of the 1st respondent. Rather, his case is that if NEC officials had done their work as they should have done, the results contained in their list of objections, Exhs 98-117, should have entitled NEC, in compliance with paragraph 25(1)(d) and paragraph 28(2)(c) of the 5th Schedule, to get the elections involved nullified, thus, saving 1st respondent an unnecessary loss of 1678 votes, now credited to the petitioner, which should swell, rather than deplete, his total acquisition of lawful votes cast in his favour.”*

While arguing the appeal before us for the 1st respondent, Chief G.O.K Ajayi, SAN and Mrs. Ngilari, learned Attorney General strongly supported the reasoning of the tribunal in the passage reproduced above. The case of *Duriminiya v. C.O.P.* (supra) *Onibudo v. Akibu* (supra) and *Queen v. Wilcox* (supra) were cited in support of the reasoning. Now in *Duruminiyo v. C.O.P.* a criminal case, the accused had been charged before the Magistrate’s Court for false accounting and stealing. In the course of the trial some stock books were tendered in order to prove false entries. But the “false entries” alleged was not explained with reference to the stock books. The accused was convicted. He appealed. On appeal Bates, J. said at pages 73-74:

*“It will be said that the appellant’s books, which were in evidence, contain the proof of his guilt. That may be, for as his judgment shows, the learned trial magistrate examined the books and he was convicted. We think he was wrong to approach the case in that way, and we will not examine the books ourselves. The Magistrate examined the books, but apparently not in court - for the record does not show that he observed or was shown any entries in court, except the few we have mentioned - and in examining them out of court, as appears from his judgment, he observed numerous points which ought to have been brought out in Court at the hearing but were not. In doing this, the Magistrate was not trying the case, he was*

investigating it. A trial is not an investigation, and investigation is not the function of a court. A trial is the public demonstration and testing before a Court of the cases of the contending parties. The demonstration is by assertion and evidence, and the testing is by cross-examination and argument. The function of a court is to decide between the parties on the basis of what has been so demonstrated and tested. What was demonstrated in court at this trial failed to support the prosecution case, and the Magistrate should have dismissed the case. It was no part of his duty to do cloistered justice by making an inquiry into the case outside court not even by the examination of documents which were in evidence, when the documents had not been examined in Court and the Magistrate's examination disclosed things that had not been brought out and exposed to test in court, or were not things that, at least, must have been noticed in court. We will not do it ourselves; neither will we allow the respondent to demonstrate now in this court that as prosecutor he had the opportunity of demonstrating at the trial. The appeal will be allowed."

**I agree that the correct view of the law is that a Party relying on documents in proof of his case must specifically relate each of such documents to that part of his case in respect of which the document is being tendered. The court cannot assume the duty of tying each of a bundle of documentary exhibits to specific aspect of the case for a Party when that Party has not himself done so. The foundation of the principle is that it is an infraction of fair hearing for the court' to do in the recess of its chambers what a party has not himself done in advancement of his case in the open court.**

But the facts in this case are so dissimilar to those in *Duriminiya v. C.O.P.* that the principle stated in that case cannot be uprooted and planted on the facts in the instant case. In this case, there was only one occasion in the course of proceedings when the petitioner attempted to tender a batch of documents without relating each to specific polling unit. In that attempt at page 167 of the record, the petitioner had said:

*"I have got all the originals of the forms covered by the pleading at para. 5(3) (a) (b), (c), (d), (e) and (f) except for 9 sheets. I will be able to identify the forms covered by the above specify above."*

The records show that Chief Ajayi SAN for 1st respondent then

objected thus:

*“At this stage Chief Ajayi submits that unless a witness gives oral evidence specifically in respect of each document that he tenders in evidence, this Tribunal will not be entitled to examine them out of Court in chambers and base the ultimate decisions on them. The public trial of our systems involves the examination and testing of evidence in open court. It cannot be proper for a party to produce in evidence either a bundle of document in an envelope or a file containing a mass of document and expect this Tribunal to consider and write a judgment on the bunch in the absence of evidence. I must accept the blame for allowing that cause to be taken but I should be forgiven because we were all attempting to get a speedy conclusion, having regard to the evidence at this trial so far. Refers to the decision of Justice Bates Duriminiya v. C.O.P. (1961) NNLR 70 at 73-74, Aguda - Law Relating to Evidence at page 12.”*

The tribunal at page 168 of the record then ruled on the objection thus:

*“The documents now lumped together in one envelope may indeed contain matters relevant to the petitioner’s case. But it cannot be thrown in together as documents which singly or enblock the court must accept without evidence led as and when desirable. Mr. Uba will be at liberty at his option to pick any of them from time to time as he may require for use when he intends to tender them. In that event, the objection raised by learned counsel for the respondent is well founded and is sustained.”*

The subsequent proceedings of the tribunal show that the petitioner tendered the documents specifically in relation to stated polling units. And before Chief Ajayi took his objection, the exhibits tendered by the petitioner were also in respect of stated polling units. These documents are exhibits 5A and 5B for Maiduguri Metro-Kwaya Local Government - Bama Local Government Area. Exhibits 7A 1-5 and 7B 1-5 for Magomeri Local Government Area - Gubio Local Government Area; Exh. 8A I -8 II and 8B for Maiduguri Metropolitan area - Masla Local Government Area.

***Each of the counsel for the respondents inspected the above exhibits and expressed non-objection before they were received in evidence. These exhibits were clearly pleaded and none of the respondents’ counsel raised the objection that***

**they were not pleaded. I think that the tribunal was in error to have said it was disregarding these same exhibits while at the same time saying that the exhibits had no probative value. A document which has been rejected in evidence cannot have any probative value in any case.**

B For the same reason, the tribunal rejected exhibits 9A 1-A93 and 9Ba-B 12. Where these were tendered, the petitioner testified thus:

C *"Irregularities due to discrepancy in the number of registered voters and/or the total scores of the two parties at the various polling units.*

*Witness identifies the forms involved Court Shown to counsel who said*

*Chief Ajayi - No Objection*

D *Mrs. Ngilari - No Objection*

*The A Form admitted and marked ex.9A 1 - A93*

*The B Form admitted and marked ex.9B1 - B12."*

On a first look, it would seem that the petitioner in his evidence above did not mention the polling stations in respect of which he tendered exhs. 9A and 9B above. But one has to bear in mind the nature of forms EC 8A and EC 8B as exposed in Decree No.50 of 1991. The two forms are to show the polling station, the code number, the ward and the Local government area they relate to. They are statutory forms and when tendered give full and conclusive information needed for a polling unit. A petitioner who tendered them in proceedings has by so tendering them given all the relevant evidence which is discoverable from the forms. Is it reasonable for a tribunal to expect that when a Form EC8A or EC8B is tendered the party tendering either will have to read the contents of each form to the court as further evidence? I think not. The forms themselves carry bold information to the polling units to which they relate. They can therefore be easily linked with particular areas and facts pleaded. It is a misapplication of the principle in *Duriminiya v. C.O.P. (Supra)* to expect the petitioner to come and read afresh to the court the same evidence already contained in the exhibits which were tendered and received without objection. The tribunal erred seriously by failing to see that forms EC 8A and EC 8B are statutory forms complete on their own as to their source and purport and which cannot therefore

be equated with ordinary documentary exhibits.

I am firmly of the view that exhibits 5 to 9 ought to have been fully considered by the tribunal since the facts to which they relate were pleaded by the petitioner. I shall now consider each of these forms. Exhibit 5A is EC8A Form No.145016 while Exhibit 5B is EC8B Form No.007361. I have closely read both and there is no visible link between them. It is difficult to understand why the appellant tendered these two exhibits which patently do not advance his case. B

In tendering exhibits 6A 1-19 and 6B 1-7, the appellant testified thus:

*“Petitioner’s lawful votes not recorded by 2nd and 3rd respondents.”* C

*Basket - items 5(3) (b)- p.4 of petition. I can also recognise those documents dealing with the votes concerned here. They cover Biu Local Government - Barna Local Government.”* D

These exhibits were likely to have confused the tribunal than advance the case of the petitioner. One would have expected that the petitioner would allow the link between exhibits 6A1-19 (i.e. the EC8A Forms) and Exhibits 6B, 1-7 the EC 8B Forms. I have compared the two sets of exhibits and found it generally unhelpful arising from the fact that in most of them the wards shown in exhibits 6 B1-7 do not relate to those in exhibits 6A1-19. Assuming however that the votes shown as scored by the petitioner in exhibits 6 A1-19 were in truth not credited to him, the number of votes that would have been so lost to him was 1187. I shall make further comments later in this judgment about this figure. E F

In order to prove wrongful addition and/or wrongful inflation, the appellant tendered exhibits 7 A1-5 and 7 B1-5. To be able to prove this through the exhibits tendered, the appellant ought to have shown the votes scored by each of the parties in any of the polling units covered by exhibits 7A 1-5 which were incorrectly recorded in any of exhibits 7B 1-5. However, I have by doing arithmetical calculation discovered that the addition of the votes scored by the SDP on exhibit 7B Form EC 8B No.0081 58 should be 229 and not 274 as indicated on the Form. G H

This has unduly added 45 votes to the number scored by SDP. I shall refer to this figure later in this judgment. In tendering exhibits 8A 1-8 11 and Exhibit 8B, all the evidence given by the appellant

goes thus:

*“Basket 5(3)(d) Bottom p8 - middle p11. I also see the forms relating to Maiduguri Metropolitan Area - Masta Local Government Area p11.”*

It is difficult to know what the appellant wanted to make of exhibits 8A1-811 and 8B. Exhibit 8B is Form EC 8B in which some primary results have been transcribed. But the polling stations stated in Exhibit 8B do not tally with any of those shown in exhibits 8A1-11. The exhibits were therefore unhelpful to the tribunal for the purpose for which they were tendered. The appellant tendered exhibits 9A 1-93 and 9B 1-12, For the purpose of showing that in the polling stations to which exhibits 9A 1-93 relate more persons voted than were accredited to vote and or accredited voters on the queue. The E appellant substantially succeeded in showing that in several polling D units more people voted than were accredited to vote and or the accredited voters on the queue. The relevant table is as shown in the Schedule A attached to the judgment. As shown in the schedule the votes scored by each of the parties in the polling stations concerned ought to be nullified in accordance with paras. 25(1) (d) and 28(1) E (d) of Schedule 6 to Decree No. 50 of 1991. This is because the total number of votes cast exceeded the number of accredited voters on the queue. The National Republican Convention in consequence must lose 696 votes while the Social Democratic Party must lose 2,254 F votes. I shall discuss what impact this situation will have on the overall results later in this judgment.

The appellant tendered as exhibits 13, 14, 15 documents to show that less votes were recorded for him than he actually scored. I have closely examined these exhibits. They do not at all bear out the G allegation of the appellant. Exhibits 16, 17, 18, 19A and 20A were tendered in support of the allegations that the lawful votes for the appellant were not recorded as they should be. Strangely, however, exhibits 17 and 18 (which are EC 8A Forms) relate to Budawalb Chira and Budluwa Bula Chira wards respectively in Barna Local H Government Areas while exhibits 19 and 20 (both Forms EC 8B) relate to Kirawa (ashigashiya) and Shani Town Wards both respectively in Gwoza and Shani Local Government Areas. The result is that the exhibits were again worthless for the purpose for which they were produced. Exhibits 21, 21A, 22 and 23 were tendered for the

purpose of showing that the votes scored by the 1st respondent in Gubio Local Government Area were inflated. Surprisingly however all the exhibits tendered were Forms EC8B and no Forms EC8A relative to them were tendered to enable the Tribunal consider and determine whether or not the votes scored by the 1st respondent in Gubio Local Government Area were inflated. B

Exhibits 24, 25, 26, 27 and 28 were tendered to show that at certain polling stations where elections were not conducted, election results were nevertheless announced. All the exhibits tendered are FORMS EC8A. They were worthless for the purpose of proving that elections were not conducted in the polling units to which they relate. C If elections were not conducted, how did primary result FORMS EC 8A signed by agents of both parties come into existence? It is almost laughable to think that the appellant who was contending that elections were not conducted in the voting units concerned himself tendered exhibits 24 to 28 signed by his agents. Exhibits 31 to 97 were D tendered by the appellant to show that there were material alterations in the Forms EC8A used during the elections. The Forms EC8A tendered were the originals.

***While it is true that some of these Forms show that alterations and cancellations were made on them, it has not been made clear at what stage the alterations and cancellations were made. In order to prove that these alterations and cancellations were made so as to falsify the results of the elections, the appellant would need to tender the copies of the Forms EC8A given to his agents at the polling stations so that this could be compared with the originals tendered. Falsification of results at the election in December, 1991 is a criminal offence which requires proof beyond reasonable doubt.*** See Gwobodo v. Onoh (1984) 1 SC 1 at 118-119, (1984) 1 SCNLR. E

In the issues Formulated by the appellant an issue as to whether or not the contents of exhibit 98 the Guardian Newspaper could be dismissed as hearsay was raised. However, no arguments were canvassed in appellant's brief concerning the issue raised. I must deem this issue as abandoned. See Ayinla v. Adigun (1986) 3 NWLR (Pt.30) 511 CA; Atano v. Attorney-General, Bendel State (1988) 2 NWLR (Pt.75) 201. Section 91 (1) of Decree No.50 of 1991 provides: H

*"91 (1) An election may be questioned on the following grounds*

(a) that the person whose election was questioned was at the time of the election not qualified or was disqualified from being elected to the office of Governor or a member of a Legislative House.

Provided that the power of the Chief Electoral Officer of the Federation or any officer delegated by him in that behalf as to the validity of nominations under paragraph 5(3) of Schedule 5 to this Decree shall not be ground for such election petition:

(b) that the election was invalid by reason of corrupt practices or offences against this Decree; or

(c) that the respondent was not duly elected by a majority of lawful votes at the election.”

In relation to the issues raised before us in this appeal, only ground (c) above could be applicable to the appeal by the appellant.

In relation to what ground, I must observe that at the elections the 1st respondent was declared to have scored 285,235 votes as against appellant's 272,221 votes. The results gave the 1st respondent a majority of 13,014 votes over the appellant. I stated earlier in this judgment that same election results the details of which are shown in Schedule A here attached ought to be cancelled. The cancellation will reduce 1st respondent's votes by 2254 from 285,234 to 282,981 while the same will reduce petitioner's votes by 696 from 272,221 to 271,525. This will still leave the 1st respondent with a majority of 11,456 votes.

With respect to exhibits 6A 1-191 said earlier in this judgment that even if the votes shown on these exhibits could out of generosity be considered as being lost to the petitioner, he would thereby have suffered a diminution of 1187 votes. With respect to exhibits 7A1-5 and 7B1-5, I observed that votes totaling 45 were through an arithmetical error credited to the 1st respondent. When 1187 votes are added to the votes scored by the petitioner as stated above and 45 votes are deducted from the votes of the 1st respondent as stated above the over-all results will be: 1st Respondent (Social Democratic Party) - 282,936

Petitioner (National Republican Convention) - 272,712

This still gives a majority of 10,224 votes to the 1st respondent. The result is that this appeal must fail.

It is not out of place to observe that the case of the petitioner at

the Tribunal and before this court has been much bedeviled by poor presentation. Exhibits were not properly tendered and linked together. Arguments were mainly left hanging in the air unriveted to the facts relied upon. The result was that the more one looked at the case of the appellant, the less one saw of its merits if any.

This appeal fails and is dismissed with N500.00 costs in favour of the 1st respondent and N350.00 costs in favour of the 2nd and 3rd respondents.

# SCHEDULE A

AREAS WHERE RESULTS MUST BE NULLIFIED ARISING FROM NON-COMPLIANCE WITH PARAGRAPH 25(1) OF SCHEDULE 6 TO DECREE NO.50 OF 1991

Relevant Votes	Polling Station	Local Govt. Area	Accredited Voters or S.D.P. Voters on Parties	Total Votes cast for both Queue Parties	Votes cast for N.R.C.	Votes cast for S.D.P.	Votes cast for M.M.C.	Votes cast for Other Parties
9A1	Y.J. Bwala	Hawul	41	71	9	62		
9A5	Bandarawa	Magumeri	18	19	1	18		
9A6	Magumeri Pri. Sch.	Magumeri	116	130	14	116		
9A12	Golgi Kura	Damboa	72	84	12	72		
9A15	Kaw B. Maji	Damboa	107	114	27	87		
9A17	B. Kasukgla	Damboa	134	140	39	101		
9A18	Garjang	Damboa	302	316	126	190		
9A19	Maina Raba	Kwajakusau	7	38	2	36		
9A30	Yamakumi Pri. Sch.	Biu	24	27	3	24		
9A32	P.Yara	Biu	42	53	10	43		
9A34	Tarfa. Pri. Sch.	Biu	134	141	35	106		
9A35	Marka	Biu	91	101	47	54		
9A36	District H.							
Office	Biu	36	53	17	36			
9A39	Div. Office	Biu	79	81	25	56		
9A63	Goni Modu	M.M.C.	82	88	38	50		
9A64	Alh. Koto	M.M.C.	105	115	51	64		
9A71	Sheuri South	250	267	29	238			
9A73	M-Gana	-	79	101	44	57		
9A77	Monguno	92	94	34	60			
9A78	ARASA	Mintar	91	93	1	92		

	9A79 Moyo	Monguno	55	57	2	55	
	9A83 Dasuri	Monguno	70	72	2	70	
	9A43 Gizza Kura	Monguno	30	37	0	37	
	9A44 Sufa	Monguno	42	43	1	42	
	9A46 Ml. Aminar	Monar	43	48	0	48	
B	9A48 Falalari II	Damasak	-	1	46	0	46
	9A51 Gora	Shani	80	96	32	64	
	9A53 Bulawa	-	103	104	1	103	
	9A56 Saula Pr. Sch.	Monte	42	43	12	31	
C	9A59 Burti	Nganzan	Not stated	25	0	25	
	9A60 Goni Bunu	Goniri	M.M.C.	95	102	17	85
	9A85	-	92	108	44	64	
	9A-9 Kawuri Pri.						
	Sch. Kononga	40	43	21	22		
D	N.R.C.	S.D.P.					
	Total Votes scored by parties in the polling Stations Concerned						
	696	2254					

E **ABDULLAHI JCA**

I have had the benefit of reading in draft the judgment of my learned brother Aikawa, J.C.A. I agree with the reasons given and the conclusion reached. I adopt them as mine. I agree that in the circumstance of this case, the appeal must fail. I abide by the consequential orders made, including order as to costs.

G **KATSINA-ALU JCA**

I have read before now the judgment which has just been delivered by my learned brother Aikawa, J.C.A. I entirely agree with his reasoning and conclusion. I also dismiss the appeal with costs as ordered in the lead judgment.

H **OGUNTADE JCA**

I agree with the lead judgment of my learned brother Aikawa, J.C.A. I would also dismiss the appeal with costs as ordered in the lead judgment.

**OKEZIE JCA**

I have had the privilege of reading in advance the judgment of my learned brother Aikawa, J.C.A. just delivered and I am in total agreement with his reasoning and conclusion. Accordingly, I also dismiss the appeal with costs as ordered by Aikawa, J.C.A. Appeal dismissed.

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