

SUPREME COURT OF NIGERIA
24TH FEBRUARY, 2012. SC. 25/2012
CORAM: - **M. MOHAMMED, C. M. CHUKWUMA-ENEH,**
M. S. MUNTAKA-COOMASSIE, J. A. FABIYI,
B. RHODES-VIVOUR, JJSC

ACTION CONGRESS OF NIGERIA APPELLANT
AND
1. SULE LAMIDO
2. PEOPLES' DEMOCRATIC
PARTY
3. INDEPENDENT NATIONAL
ELECTORAL COMMISSION RESPONDENTS
4. THE PRESIDING OFFICER,
JIGAWA STATE
5. THE CHIEF ELECTORAL
COMMISSIONER, JIGAWA STATE

FAIR HEARING - Breach - Elections - Adjournments - Where opportunity to present case was granted - But appellant failed to utilize it - He cannot be heard to complain of denial of fair hearing (H1)

ELECTION PETITIONS - Fair hearing - Documents - Failure to annex - Effect - By Electoral Act 2010 (as amended) paragraphs 4(5)(c)41(8) - Such documents shall not be admitted in evidence (H2)

ELECTION PETITIONS - Non compliance - Electoral Act 2010 (as amended) para. 4(5) (c) - Effect - Findings of the courts are in order - Since appellant failed to fully comply with the provisions (H3)

ELECTION PETITIONS - Crime - Proof - Standard of - The alleged forgery must be proved beyond reasonable doubt - But appellant failed to do so (H4)

APPEALS - Issues - Formulated from abandoned ground - Fate - The issue is incompetent - And shall be ignored (H5)

ELECTION PETITIONS - Appeals - Evidence on records - Evaluation of - Appellate court rightly exercised its powers - In affirming the decision of the tribunal (H6)

ELECTION PETITIONS - Evidence - Non compliance - Allegation of - In addition to documents admitted in evidence - The allegation must be supported by oral evidence (H7)

EVIDENCE - Tainted witness - Instance - Mere employer/employee relationship - Does not make one a tainted witness - Thus the courts were right in not treating the witnesses as tainted (H8)

ELECTION PETITIONS - Format - Pleadings - Vague paragraphs - Fate - Court of Appeal rightly described averments in paragraphs 18 and 19 as imprecise - And incapable of supporting allegation of non compliance (H9)

FACTS

Petitioner/appellant filed this petition before the Governorship Election tribunal, Jigawa State, challenging the election and return of 1st defendant/respondent as the Governor of Jigawa State in the election conducted by 3rd defendant/respondent on 26th April, 2011. The basis of the complaint of appellant is that 1st respondent was, at the time of the election, not qualified to contest the Governorship Election. This is because 1st respondent presented to the Independent National Electoral Commission a forged West African Examination Council Certificate No. C3005655 and that he did not attend the then Government College Zaria now Barewa College beyond Form 3 and as such did not possess the requisite qualification required by the 1999 Constitution to contest the said election. Appellant also alleged that the said election is invalid by reason of corrupt practices and non-compliance with the provisions of the Electoral Act, 2010 and Independent National Electoral Commission Manual for Electoral Officers. The corrupt practice, complained of by appellant in the election, includes multiple thumb printing and vote rigging.

At the trial, appellant called 5 witnesses. Exhibits A - Z and 1 - 36 were tendered and admitted in evidence. On 1st September,

2011, the tribunal closed the case of appellant a day before the arrival of appellant's witness i.e. the Registrar of the West African Examination Council upon whom a subpoena had been issued to attend and give evidence. At the end of trial, the tribunal dismissed appellant's petition. Being dissatisfied, appellant filed an appeal at the Kaduna Division of the Court of Appeal. The court also dismissed the appeal and affirmed the judgment of the tribunal. Aggrieved further, appellant has appealed to Supreme Court. Appellant contend that he was not given fair hearing by the tribunal. 1st and 2nd respondents contend that the closure of appellant's case did not amount to denial of hearing. This is because appellant did not include the said WAEC official in the list of his witnesses.

ISSUES FOR DETERMINATION

"1. Whether the Court of Appeal was right when despite its findings as fact that the Appellant was only allowed to utilize nine (9) days of 14 (fourteen) days statutorily allocated to it, when on the 1st September, 2011 its case was closed and held that the Appellant was not denied its right to fair hearing.

2. Whether the Court of Appeal was right when it upheld the lower trial Tribunal decision refusing to grant the Appellant's application to summon the INEC Commissioner or his representative to tender ballot papers used in the election and held that, that did not lead to denial of fair hearing.

3. Whether the Court of Appeal was not wrong in its conclusion that the rejection of All the ballot papers sought to be tendered was wrong when they had as a fact found that the Appellant has sufficiently satisfied the second limb of the provision of paragraph 4(5)(c) of the First Schedule having listed five Local Government Areas of Birnin Kudu, Gwaram, Ringim, Taura and Gwiwa in the Appellant's Petition at the Tribunal.

4. Whether the approach adopted by the Court of Appeal leading to the conclusion that the production of Exhibit 'B' alone in evidence had shifted the burden of proving that the 1st Respondent was not educated up to at least School Certificate from the 1st Respondent, did not occasion miscarriage of justice.

5. Whether having found that Exhibit 'B' is a public document which is inadmissible under the meaning of Section 111 of the Evidence Act, the Court of Appeal could justify reliance on the Exhibit

by following the decision in *ONOBROCHERE vs. ESEGINE* (1986) 1 NWLR (Pt. 19) 799 to find in favour of the 1st Respondent's qualification to contest election into the office of Governor of Jigawa State.

B 6. Whether the Court of Appeal was not wrong in its assessment and evaluation of Exhibit 'D' vis-a-vis the evidence of PW4 as a result of which it misplaced the evidence to the case of the Appellant regarding the qualification of the 1st Respondent to contest the Governorship election of Jigawa State.

C 7. Whether the Court of Appeal was not wrong when it held that lower Tribunal did not misdirect itself when it failed to examine Exhibits 'E' - 'Z,' Exhibits 1 - 36 as enjoined by the law.

D 8. Whether the Court of Appeal was not wrong in its assessment and evaluation of evidence of DW1 and DW2 and on the weight the lower Tribunal attached to their evidence even as tainted witnesses.

9. Whether the Court of Appeal was right when it held that the averments contained in paragraphs 18 and 19 of the Appellant's petition filed at the Tribunal were not specific but nebulous."

E **HELD** (Unanimously dismissing the appeal per **MOHAMMED JSC**)

FAIR HEARING - Breach

F 1. The complaint of the Appellant in this issue that the trial Tribunal denied it its Constitutional right of fair hearing as enshrined in Section 36(1) of the 1999 Constitution of the Federal Republic of Nigeria is certainly not born out of the record of the trial Court. The Appellant which opened its case on 16th August, 2011, had its full time of 14 days prescribed under paragraph 41(10) of the 1st Schedule to the Electoral Act 2010 as amended to prosecute its case closed by the trial Tribunal on 1st September, 2011. It is quite clear from the record of appeal, as rightly found by the Court below, that the Appellant was given ample opportunity to present its case by being given several adjournments by the trial Tribunal to enable it call its witnesses, particularly the official of WAEC whose absence at the various dates shown on the record, could not be explained by the learned Counsel to the Appellant before its case was closed on 1st September, 2011. The Court below was therefore right, in my view, in finding that the trial Tribunal not only created conducive atmosphere or

environment for the Appellant to enjoy its right of fair hearing but also gave the Appellant adequate time allowed by law to prove its case at the hearing. Hence, the Appellant having failed to utilize the opportunity given by the trial Tribunal to fully enjoy its right of fair hearing in the course of prosecuting its petition, the Appellant cannot now be allowed to turn round to accuse the trial Tribunal of denying B it that right. I find support in the decision of this Court in the case of Newswatch Communication Ltd. v. Attah (2006) 12 N.W.L.R. (Pt.993) 144 at 170 - 171. Accordingly, this issue on the allegation of denial of fair hearing, must be resolved against the Appellant. (p. 636 A) C

Documents - Failure to annex - Effect

2. The second issue in the Appellant's brief of argument also relates the same complaint of denial of fair hearing as raised in the first issue just resolved. The only exception is that the complaint of denial of fair hearing in this second issue is tied to the alleged refusal of the trial Tribunal to grant the Appellant's application to summon the INEC commissioner or his representative to tender ballot papers used in the conduct of the election. This issue is not at all supported by the record of appeal as found by the trial Tribunal and affirmed by the E court below. This is because the failure of the Appellant to accompany its petition with copies or list of every document to be relied on at the hearing of the petition, which in this case include the said ballot papers in line with requirements of paragraphs 4(5)(c) and 41(8) of F the 1st schedule to the Electoral Act 2010, as amended, was mainly responsible for the refusal of the trial Tribunal to admit the documents in evidence. No complaint of denial of fair hearing at all shall arise from the facts revealed on the record. This second issue like the first one must also fail. (p. 636 G) G

ELECTION PETITIONS - Non compliance

3. The third issue is whether the Court of Appeal was not wrong in its conclusion that the rejection of all the ballot papers sought to be tendered was not wrong when they found as a fact that the Appellant has sufficiently satisfied the second limb of the provision of paragraph 4(5)(c) of the 1st Schedule with the listing of five Local Government Areas of Birnin Kudu, Gwaram, Ringim, Taura and Gwiwa in the Appellant's petition. The Appellant has argued on this issue H

that it had complied with sub-paragraph (5) of paragraph 4 of the 1st schedule to the Electoral Act 2010 as amended to have been entitled to the indulgence of the trial Tribunal in receiving the ballot papers in evidence.

- From the manner in which this third issue is framed in the
- B Appellant's brief where it admits of having complied with the second limb only of the provisions of paragraph 4(5) of the 1st Schedule to the Electoral Act 2010 as amended, the fact that only five Local Government Areas out of the 27 Local Government Areas of Jigawa State had been listed in the Appellant's petition thereby leaving out
- C 22 Local Government Areas from the list, the finding of the trial Tribunal affirmed by the Court of Appeal that there were no full compliance with the requirement of that provision of the Electoral Act, 2010, by the Appellant was quite in order to justify resolving this
- D issue against the Appellant without further consideration.
- (p. 637 C)

ELECTION PETITIONS - Crime - Proof - Standard of

4. In the resolution of this issue, it is necessary to examine the aver-
- E ment in the Appellant's petition where the first ground upon which the election and return of the 1st and 2nd Respondents was challenged in paragraph 10 (a) of the petition states-

"10 (a) That the 1st Respondent was at the time of the election not qualified to contest the election."

- F The particulars of this ground contained in paragraphs 11(i) and (ii), 12, 13, 14, and 15 of the petition alleged that the 1st Respondent was not validly nominated; that the 1st Respondent is not educated to at least School Certificate level and that the 1st Respond-
- G ent presented a forged West African School Certificate to the INEC. As the initial allegations that the 1st Respondent was not qualified to contest the election on the grounds stated are contained in the Appellant's petition, the burden of proving the allegation lay squarely on the Appellant in spite of the fact the 1st Respondent West African
- H School Certificate Exhibit 'B' was tendered through the Appellant's witness PW4. In particular, the allegation of presentation of a forged West African School Certificate to INEC by the 1st Respondent is a disqualification factor under Section 182(1)(j) of the 1999 Constitution which states -

“182(1) No person shall be qualified for election to the office of Governor of a state if

(j) he has presented a forged Certificate to the INEC”

The allegation of forgery being a criminal offence, must be proved beyond reasonable doubt which burden the two courts below found the Appellant had failed to discharge in its bid to prove its petition, which in my view, was rightly dismissed by the trial Tribunal and affirmed by the Court below. (p. 638 F)

APPEALS - Issues - Formulated from abandoned ground - Fate C

5. Issue 5 in the Appellant's brief is whether having found that Exhibit 'B' is a public document which is inadmissible under Section 111 of the Evidence Act, the Court of Appeal could justify reliance on the Exhibit by following the decision in Onobruhere v. Esegine (1985) 1 N.W.L.R. (Pt. 19) 799 at 808, to find in favour of the 1st Respondent's qualification to contest the election into the office of the Governor of Jigawa State. This issue having been formulated from one of the abandoned ground 8 of the grounds of appeal which had been already struck out earlier in this judgment, the issue shall have no legs to stand upon and is hereby ignored. (p. 639 D) E

Evidence on records - Evaluation of - Propriety

6. From the evidence of PW4 who was called by the Appellant to testify in support of its ground of petition that the 1st Respondent was not qualified to contest the election being challenged, confirmed from Exhibit 'D' that student No. 1528 of Barewa College Zaria is Sule Lamido the 1st Respondent. The witness further confirmed that Exhibit D contained report sheets of 1st Respondent from 1962 - 1966 and that the reports are from Forms 1 - 5. There is no doubt whatsoever that based on the evidence on record correctly assessed and evaluated, the Court below rightly exercised its powers as appellate Court in affirming the decision of the trial Tribunal that the Appellant had failed to prove one of its grounds of petition that the 1st Respondent does not possess the required educational qualification of at least up to School Certificate level as prescribed by the 1999 Constitution to contest the 26th April, 2011 election. This issue must also be resolved against the Appellant. (p. 640 D) H

ELECTION PETITIONS - Non compliance - Allegation of

7. Taking into consideration of the nature of the Appellant's allegation in its petition against the conduct of the election by the 3rd - 5th Respondents in that they acted contrary to the spirit and intendment of the Electoral Act 2010 as the election was characterized by malpractices, substantial non-compliance with mandatory statutory requirements and irregularities that substantially affected the election. The Appellant also complained in the petition of deliberate wrong entries made by the 3rd Respondent's agents or representatives at the Units, Wards, Local Government Areas and at State Level collation centres and that the results of the election of Jigawa State were jettisoned and altered. All these serious allegations in various paragraphs of the petition must be supported by oral evidence to tie the relevant documents admitted in evidenced to various acts of non-compliance or alterations complained of in the documents. It is certainly not the duty of the trial Tribunal or the Court below to place exhibits 'E' - 'Z' and 1- 36 on the table and examine them one by one in order to determine whether or not the Appellant's petition had been established to be entitled to the reliefs sought.

On this issue therefore, the Court below was far from being wrong in its decision on Exhibits 'E' - 'Z' and 1- 36 complained of by the Appellant in this issue. (p. 641 F)

EVIDENCE - Tainted witness - Instance

8. Issue No. 8 in the Appellant's brief is whether the Court of Appeal was not wrong in its assessment and evaluation of evidence of DW1 and DW2 and the weight the trial Tribunal attached to their evidence even as tainted witnesses. The complaint of the Appellant in this issue is that under cross examination, the witnesses had exhibited their respective interest in the outcome of the case suggesting that they were tainted witnesses; that the Court of Appeal was in error relying on a criminal case *Moses v. The State* (2006) 11 N.N.L.R. (Pt. 992) 458, resolving the question regarding the admissibility of the evidence of the said tainted witnesses.

The stand of the 1st and 2nd Respondent on this issue is that the law is quite clear that merely close relationship like employer/ employee does not make a person a tainted witness. This was the decision in *Feliwa Ojo v. Dr. Gharoro & Ors.* (2006) 10 N.W.L.R.

(Pt.987) 173 at 208 - 201. 3rd, 4th and 5th Respondents are also of the view that the decision of the Court below on DW1 and DW2 is in order.

The Tribunal which was right in not treating the witnesses as tainted and the Court below was right in my view in affirming that stand of the trial Tribunal. The issue is thus resolved against the Appellant. (p. 642 C)

ELECTION PETITIONS - Format - Pleadings - Vague paragraphs

9. There is no doubt whatsoever that the effect of paragraphs 18 and 19 of the Appellant's petition in relation to the evidence adduced by the Appellant, particularly Exhibits E - Z and 1 - 36, had already been considered under issue 7 and effectively resolved. In fact, the fact that the two paragraphs in question are vague can be clearly seen from paragraph 18 which states-

"18. Your petitioner avers further that contrary to the 3rd Respondent's guideline and Electoral Act 2010, the results of the election of Jigawa State were jettisoned and altered to suit the 1st Respondent."

The way the results of the election in Jigawa State were jettisoned and altered to suit the 1st Respondent are very far from being clear from this paragraph. The Court of Appeal was therefore absolutely right, in my view, in describing the averments in paragraphs 18 and 19 of the Appellant's petition as generic, imprecise and incapable of supporting an allegation of non-compliance and can attract only general denial. Like the rest of the issues 1 - 8 earlier resolved in this judgment, the last and 9th issue for determination in this appeal must also be resolved against the Appellant. (p. 643 H)

NOTABLE POINT OF INTEREST RHODES-VIVOUR JSC

1. Fair hearing – Fundamentality of

Fair hearing is derived from the principle of natural justice. Its twin pillars are audi alteram partem and nemo iudex in causa sua. It is of general application in Nigerian courts and courts are expected at all times to adjudicate in accordance with the rules of natural justice. That is to say a judge should allow both parties to be heard and he

should listen to the point of view or the case of each side before delivering a judgment. This practice is well rooted in all civilized societies and has its roots in the Old Testament in the Bible. The Lord had overwhelming evidence that Adam had eaten the forbidden fruit, the apple, which the Lord told him never to eat, but still gave Adam
 B an oral hearing before judgment was passed.

It has been long settled that the test whether a party in a case was given a fair hearing is the impression of a reasonable person who was present at the trial or who was aware of the proceedings. From
 C his observation he would have no difficulty concluding if justice has been done in the case. (p. 650 D)

REPRESENTATION

Adamu Abubakar, with Ismaila Bala and Laminu Bala, for Appellants
 D O.E.B. Offiong SAN, with Dr. G. O. A. Ogunyomi, F. J. Osumerha, K. B. Olawoyin, C.A. Fakoya, G.O. Uzu, A. I. Enenkwa, Moses E. Agwulonu for 1st and 2nd Respondents
 Ibrahim Isyaka SAN with B. A. Oyefeso for 3rd, 4th and 5th respondents
 E

CASES REFERRED TO

Elike v. Nwankwoala (1984) 12 SC 301
 Mohammed v. Kano N.A. (1968) All NLR 411
 Unongo v. Aku (1983) 11 SC 129
 F Ariori & Ors. v. Euno & Ors (1983) 1 SCNLR
 Ndukanba v. Kolomo (2005) All FW.L.R. (Pt. 248) 1602
 Orugbo & 3 Ors v. Bulama Una (2002) 16 NWLR (Pt.792) 175
 G. Chitex Industries Ltd. v. Oceanic Bank Ltd (2005) 7 SCNJ 278
 G Onobruhere v. Esegine (1985) 1 NWLR (Pt. 19) 799
 WAEC v. Adeyanju (2008) 9 NWLR (Pt. 1092) 207
 Onibudo v. Akibu (1982) 7 SC 29
 Alao v. Alfa Issa Kano & Ors (2005) 11 NWLR (Pt. 935) 165
 Moses v. The State (2006) 11 NNLR (Pt. 992) 458
 H Buhari v. Obasanjo (2005) 13 NWLR (Pt.941) 1
 Nwobodo v. Onoh (1984) 1 SCNLR 1
 Buhari v. I.N.E.C. (2008) 19 NWLR (Pt. 1120) 246

STATUTES REFERRED TO

Constitution of Federal Republic of Nigeria 1999, ss. 36(1), 182(1)(j)
Electoral Act 2010 (as Amended), para. 4(5)(c), 41(8)(10) of 1st
Schedule

Evidence Act, s. 135 (1)

B

LEAD JUDGMENT BY MOHAMMED JSC

On Friday 10th Day of February, 2012, I delivered my judgment in this appeal in which I dismissed the Appellant's appeal and further affirmed the judgment of the Court of Appeal which affirmed the decision of the Governorship Election Petition Tribunal sitting at Dutse, Jigawa State which dismissed the Appellant's petition on 24th October, 2011. I did say on that day that I shall give my reasons for the judgment today. I now proceed to give my reasons.

The Appellant in this appeal as petitioner had challenged the election and return to the 1st Respondent as the Governor of Jigawa State in the election conducted by the 3rd Respondent on 26th April, 2011. The Governorship Election tribunal of Jigawa State, after giving the parties a full hearing, dismissed the Appellant's petition. Not satisfied with the judgment of the Tribunal, the petitioner/Appellant had appealed against that judgment at the Kaduna Division of the Court of Appeal which after hearing the Appellant and the Respondents, dismissed the appeal and affirmed the judgment of the Tribunal. Aggrieved by the decision of the Court of Appeal, the Appellant is now on a further final appeal to this Court on a Notice of appeal containing 16 grounds of appeal from which 9 issues for the determination of the appeal were formulated after abandoning grounds 7, 8 and 12 of the grounds of appeal from which no issue was formulated. Accordingly, grounds 7, 8 and 12 of the grounds of appeal having been abandoned, are hereby struck out. The issues as identified in the Appellants briefs of argument are -

"1. Whether the Court of Appeal was right when despite its findings a fact that the Appellant was only allowed to utilize nine (9) days of 14 (fourteen) days statutory allocated to it, when on the 1st September, 2011 its case was closed and held that the Appellant was not denied its right to fair hearing.

2. Whether the Court of Appeal was right when it upheld the lower trial Tribunal decision refusing to grant the Appellant's applica-

tion to summon the INEC Commissioner or his representative to tender ballot papers used in the election and held that, that did not lead to denial of fair hearing.

3. *Whether the Court of Appeal was not wrong in its conclusion that the rejection of All the ballot papers sought to be tendered was wrong when they had as a fact found that the Appellant has sufficiently satisfied the second limb of the provision of paragraph 4(5)(c) of the First Schedule having listed five Local Government Areas of Birnin Kudu, Gwaram, Ringim, Taura and Gwiwa in the Appellant's Petition at the Tribunal.*

4. *Whether the approach adopted by the Court of Appeal leading to the conclusion that the production of Exhibit 'B' alone in evidence had shifted the burden of proving that the 1st Respondent was not educated up to at least School Certificate from the 1st Respondent, did not occasion miscarriage of justice.*

5. *Whether having found that Exhibit 'B' is a public document which is inadmissible under the meaning of Section 111 of the Evidence Act, the Court of Appeal could justify reliance on the Exhibit by following the decision in ONOBRUCHERE vs. ESEGINE (1986) 1 NWLR (Pt. 19) 799 to find in favour of the 1st Respondent's qualification to contest election into the office of Governor of Jigawa State.*

6. *Whether the Court of Appeal was not wrong in its assessment and evaluation of Exhibit 'D' vis-a-vis the evidence of PW4 as a result of which it misplaced the evidence to the case of the Appellant regarding the qualification of the 1st Respondent to contest the Governorship election of Jigawa State.*

7. *Whether the Court of Appeal was not wrong when it held that lower Tribunal did not misdirect itself when it failed to examine Exhibits 'E' - 'Z,' Exhibits 1 - 36 as enjoined by the law.*

8. *Whether the Court of Appeal was not wrong in its assessment and evaluation of evidence of DW1 and DW2 and on the weight the lower Tribunal attached to their evidence even as tainted witnesses.*

9. *Whether the Court of Appeal was right when it held that the averments contained in paragraphs 18 and 19 of the Appellant's petition filed at the Tribunal were not specific but nebulous."*

Although in the 1st and 2nd Respondents' joint brief of argument 8, issues were identified from Appellant's grounds of appeal

while 6 issues were framed by the 3rd, 4th and 5th Respondents in their joint brief of argument from the same Appellants grounds of appeal, all the issues in the respective Respondents brief of argument have adequately captured and covered all the complaints raised by the Appellants in the 9 issues raised in the Appellant's brief of argument for the determination of this appeal. I shall therefore deal with the issues as raised in the Appellant's brief of argument which contained various fragments of complaints of the Appellant on the way and manner the trial Tribunal evaluated the evidence before it arrived at various findings culminating in its decision affirmed by the Court of Appeal that the Appellants had failed to discharge the burden of proof vested upon it by law to justify granting the reliefs sought by it in its petition. B C

The basis of the complaint of the Appellant as a petitioner at the trial Tribunal against the Respondents was that the 1st Respondent was, at the time of the election, not qualified to contest the Governorship Election conducted by the Independent National Electoral Commission on 26th April, 2011 in Jigawa State; that the 1st Respondent was not qualified to contest the election because he presented to the Independent National Electoral Commission a forged West African Examination Council Certificate No. C3005655 and that he did not attend the then Government College Zaria now Barewa College beyond Form 3 and as such did not possess the requisite qualification required by the 1999 Constitution to contest the election. It was also the case of the Appellant/Petitioner that the election of 26th April, 2011, which produced the 1st Respondent as the Governor of Jigawa State of Nigeria, was invalid by reason of corrupt practices and non-compliance with the provisions of the Electoral Act, 2010 and Independent National Electoral Commission Manual for Electoral Officers. The corrupt practice, complained of by the Appellant in the election, include multiple thumb printing and vote rigging in that the 3rd, 4th and 5th Respondents wrongfully computed majority of lawful votes counted as cast for the 1st Respondent even though the said figures were altered and inflated and were products of artificial polling units. D E F G H

At the trial of the Appellant's petition before the trial Tribunal which followed a pre-trial conference, the Appellant called 5 witnesses in the course of the trial during which Exhibits A - Z and 1 - 36 were

tendered and received in evidence. On 1st September, 2011, the trial Tribunal closed the case of the Appellant before the Appellant's witness, the Registrar of the West African Examination Council upon whom a subpoena had been issued to attend and give evidence.

The 1st and 2nd Respondents opened their case or defence
 B on the same day 1st September, 2011 and closed the same the following day 2nd September, 2011 after calling only 2 witnesses. However, the 3rd, 4th and 5th Respondents declined to call any witness at the trial at the conclusion of which the trial Tribunal came to the
 C conclusion that the Appellant had failed to prove its case to qualify for being granted the reliefs sought in its petition and accordingly dismissed the petition to give rise to the Appellants appeal to the court of appeal and ultimately to this Court.

Although the real and in fact only issue for determination in
 D this appeal is *"whether or not on the averments contained in the petition and the evidence adduced before the trial Tribunal, the Appellant succeeded in proving its case against the Respondent to be entitled to the reliefs sought by it."* I shall all the same examine the fragments of the sub-issues surrounding the required burden of proof
 E under the law in order to arrive at appropriate decision in the interest of justice.

The first issue in the Appellants brief of argument is whether by the action of closing its case on 1st September, 2011, the trial Tribunal denied the Appellant its Constitutional right of fair hearing under
 F Section 36(1) of the 1999 Constitution. It was argued for the Appellant that by closing its case one day before its vital witness could arrive from Lagos to give evidence on the 1st Respondent's West African Examination Council Certificate being disputed, on a day when
 G the Appellant had only utilized 9 days out of the 14 days allowed it by the Rules of the Court to present its case, the Court below was wrong in finding that the Appellant's right of fair hearing had not been breached by the trial Tribunal; that under the circumstances in which the Appellant's case was closed by the trial Tribunal, it cannot
 H be said that the Appellant was not denied a fair hearing which being a Constitutional right, cannot be waived by a party as held in *Elike v. Nwankwoala* (1984) 12 S.C. 301; *Mohammed v. Kano N.A.* (1968) All N.L.R. 411; *Unongo v. Aku* (1983) 11 S.C. 129 and *Ariori & Ors. v. Euno & Ors.* (1983) 1 S.C.N.L.R. Learned Counsel concluded on

this issues that the right of the Appellant to fair hearing having been breached by the trial Tribunal, the Court below erred in not setting aside that decision in the line with the decision in *Ndukanba v. Kolomo* (2005) All F.W.L.R. (Pt. 248) 1602 at 1614.

For the 1st and 2nd Respondents, it was contended that the closure of the Appellant's case on 1st September, 2011 after the refusal of the trial Tribunal to issue a subpoena on the INEC Commissioner to produce and tender ballot papers and its refusal to grant further adjournment to the Appellant to call an official of WAEC who was on a subpoena to come and give evidence for the Appellant, did not amount to denial of fair hearing as found by the Court below. Learned senior Counsel referred to the list of witnesses which accompanied the Appellant's petition which does not contain any name of WAEC official and traced the record of the hearing of the petition which opened on 16th August, 2011 and closed on 1st September, 2011, and submitted that the Court below was right in finding that the Appellant was indeed given fair hearing as the maximum of 14 days allowed by Paragraph 41(10) of the 1st Schedule to the Electoral Act 2010 (as Amended) was exhausted on 29th August, 2011 to justify closing the case of the Appellant on 1st September, 2011. Citing and relying on the cases of *Memorial Farms Ltd. Anor. v. Nigeria Agric & Co-operative Bank Ltd. & Anor.* (2008) 12 N.W.L.R. (Pt.1098) 412 at 427 and *T.M. Orugbo & 3 Ors. v. Bulama Una* (2002) 16 N.W.L.R. (Pt.792) 175 at 206, learned senior concluded that going by the record of appeal, the Court below was right in its decision that the Appellant's right of fair hearing under Section 36(1) of the 1999 Constitution had not been breached by the trial Tribunal.

As for the 3rd, 4th and 5th Respondents in their joint brief of argument, their learned Counsel also took the same stand as was taken by the 1st and 2nd Respondents in their joint brief of argument. Pointing at the decision of the trial Tribunal at pages 811 to 812 of the record of the appeal, learned Counsel stressed that having regard to the opportunity given to the Appellant to call witnesses to prove its petition, the complaint of the Appellant of an alleged denial of fair hearing is not supported by the record and therefore urged this Court to resolve the issue against the Appellant particularly when the case of *Newswatch Communication Ltd. v. Attah* (2006)

12 NWLR (Pt. 993) 144 at 170 - 170, is taken into consideration.

The complaint of the Appellant in this issue that the trial Tribunal denied it its Constitutional right of fair hearing as enshrined in Section 36(1) of the 1999 Constitution of the Federal Republic of Nigeria is certainly not born out of the record of the trial Court. The Appellant which opened its case on 16th August, 2011, had its full time of 14 days prescribed under paragraph 41(10) of the 1st Schedule to the Electoral Act 2010 as amended to prosecute its case closed by the trial Tribunal on 1st September, 2011. It is quite clear from the record of appeal, as rightly found by the Court below, that the Appellant was given ample opportunity to present its case by being given several adjournments by the trial Tribunal to enable it call its witnesses, particularly the official of WAEC whose absence at the various dates shown on the record, could not be explained by the learned Counsel to the Appellant before its case was closed on 1st September, 2011. The Court below was therefore right, in my view, in finding that the trial Tribunal not only created conducive atmosphere or environment for the Appellant to enjoy its right of fair hearing but also gave the Appellant adequate time allowed by law to prove its case at the hearing. Hence, the Appellant having failed to utilize the opportunity given by the trial Tribunal to fully enjoy its right of fair hearing in the course of prosecuting its petition, the Appellant cannot now be allowed to turn round to accuse the trial Tribunal of denying it that right. I find support in the decision of this Court in the case of Newswatch Communication Ltd. v. Attah (2006) 12 N.W.L.R. (Pt.993) 144 at 170 - 171. Accordingly, this issue on the allegation of denial of fair hearing, must be resolved against the Appellant.

The second issue in the Appellant's brief of argument also relates the same complaint of denial of fair hearing as raised in the first issue just resolved. The only exception is that the complaint of denial of fair hearing in this second issue is tied to the alleged refusal of the trial Tribunal to grant the Appellant's application to summon the INEC commissioner or his representative to tender ballot papers used in the conduct of the election. This issue is not at all supported by the

record of appeal as found by the trial Tribunal and affirmed by the court below. This is because the failure of the Appellant to accompany its petition with copies or list of every document to be relied on at the hearing of the petition, which in this case include the said ballot papers in line with requirements of paragraphs 4(5)(c) and 41(8) of the 1st schedule to the Electoral Act 2010, as amended, was mainly responsible for the refusal of the trial Tribunal to admit the documents in evidence. No complaint of denial of fair hearing at all shall arise from the facts revealed on the record. This second issue like the first one must also fail.

The third issue is whether the Court of Appeal was not wrong in its conclusion that the rejection of all the ballot papers sought to be tendered was not wrong when they found as a fact that the Appellant has sufficiently satisfied the second limb of the provision of paragraph 4(5)(c) of the 1st Schedule with the listing of five Local Government Areas of Birnin Kudu, Gwaram, Ringim, Taura and Gwiwa in the Appellant's petition. The Appellant has argued on this issue that it had complied with sub-paragraph (5) of paragraph 4 of the 1st schedule to the Electoral Act 2010 as amended to have been entitled to the indulgence of the trial Tribunal in receiving the ballot papers in evidence.

From the manner in which this third issue is framed in the Appellant's brief where it admits of having complied with the second limb only of the provisions of paragraph 4(5) of the 1st Schedule to the Electoral Act 2010 as amended, the fact that only five Local Government Areas out of the 27 Local Government Areas of Jigawa State had been listed in the Appellant's petition thereby leaving out 22 Local Government Areas from the list, the finding of the trial Tribunal affirmed by the Court of Appeal that there were no full compliance with the requirement of that provision of the Electoral Act, 2010, by the Appellant was quite in order to justify resolving this issue against the Appellant without further consideration.

The fourth issue is whether the approach adopted by the Court of Appeal leading to the conclusion that the production of Exhibit 'B' alone in evidence had shifted the burden of proving that the 1st

Respondent was not educated up to at least School Certificate from the 1st Respondent did not occasion miscarriage of justice. Learned Counsel to the Appellant has submitted that the evidence of PW4 has cast doubt on the genuineness of Exhibit 'B' to have required the Respondent to lead evidence to prove the genuineness of his Certificate Exhibit 'B' the burden having shifted to him as was the case in *G. Chitex Industries Ltd. v. Oceanic Bank Ltd* (2005) 7 SCNJ 278.

As for the 1st and 2nd Respondents, their learned senior Counsel maintained that the Court below was right in affirming the decision of the trial Tribunal that the original of the West African School Certificate of the 1st Respondent produced and tendered in evidence as Exhibit 'B' was sufficient proof that the 1st Respondent was educated up to School Certificate level and cast on the Appellant the burden of proof that Exhibit 'B' was a forgery; that since it was the Appellant that alleged in its petition that the 1st Respondent was as at the date of the election of 2011 not qualified to contest the elections, the trial Tribunal and the Court of Appeal were right in saying that the initial burden of proof that the 1st Respondent was not qualified to contest the election, lay on the Appellant which failed to discharge that burden.

Learned Counsel to the 3rd, 4th and 5th Respondents on the other hand pointed out that the two Courts below were right in their decisions that the burden of proving that Exhibits 'B' was a forged document lay on the Appellant/Petitioner which was required to have proved that fact beyond reasonable doubt.

In the resolution of this issue, it is necessary to examine the averment in the Appellant's petition where the first ground upon which the election and return of the 1st and 2nd Respondents was challenged in paragraph 10 (a) of the petition states-

"10 (a) That the 1st Respondent was at the time of the election not qualified to contest the election."

The particulars of this ground contained in paragraphs 11(i) and (ii), 12, 13, 14, and 15 of the petition alleged that the 1st Respondent was not validly nominated; that the 1st Respondent is not educated to at least School Certificate level and that the 1st Respondent presented a forged West African School Certificate to the INEC. As the initial allegations that

the 1st Respondent was not qualified to contest the election on the grounds stated are contained in the Appellant's petition, the burden of proving the allegation lay squarely on the Appellant in spite of the fact the 1st Respondent West African School Certificate Exhibit 'B' was tendered through the Appellant's witness PW4. In particular, the allegation of presentation of a forged West African School Certificate to INEC by the 1st Respondent is a disqualification factor under Section 182(1)(j) of the 1999 Constitution which states -

"182(1) No person shall be qualified for election to the office of Governor of a state if

(j) he has presented a forged Certificate to the INEC"

The allegation of forgery being a criminal offence, must be proved beyond reasonable doubt which burden the two courts below found the Appellant had failed to discharge in its bid to prove its petition, which in my view, was rightly dismissed by the trial Tribunal and affirmed by the Court below.

Issue 5 in the Appellant's brief is whether having found that Exhibit 'B' is a public document which is inadmissible under Section 111 of the Evidence Act, the Court of Appeal could justify reliance on the Exhibit by following the decision in Onobruchere v. Esegine (1985) 1 N.W.L.R. (Pt. 19) 799 at 808, to find in favour of the 1st Respondent's qualification to contest the election into the office of the Governor of Jigawa State. This issue having been formulated from one of the abandoned ground 8 of the grounds of appeal which had been already struck out earlier in this judgment, the issue shall have no legs to stand upon and is hereby ignored. See WAEC v. Adeyanju (2008) 9 N.W.L.R. (Pt. 1092) 207 at 291.

In any case, the Appellant having failed to prove that the Certificate Exhibit 'B' was forged in support of its petition, the fact that whether or not the same Certificate Exhibit 'B' was inadmissible in evidence is totally irrelevant as the 1st Respondent was not required to prove for the Appellant the grounds of its petition.

Issue 6 in the Appellant's brief of argument on the other hand is whether the Court of Appeal was not wrong in its assessment and evaluation of Exhibit 'D' vis-a-vis the evidence of PW4 as a result of which it mis-applied the evidence to the case of the Appellant regard-

ing the qualification of the 1st Respondent to contest the Governorship election of Jigawa state. Learned Appellant's Counsel submitted that evaluation of a document is not within the exclusive preserve of the trial court as both the trial Court and the appellate court, have equal rights in evaluation of documentary evidence having regard to the decision of this Court in *Iwuoha & Ors. v. Nigeria Postal Services Ltd. & Ors.* 14 N.S.C.Q.R. (Pt. 253) 275; that although the complaint of the Appellants in its petition was that the 1st Respondent did not go beyond Form 3 at the Government College Zaria, the Court below failed to scrutinize Exhibit 'D' properly to make appropriate findings.

However, 1st and 2nd Respondent's senior Counsel is of the view that both the trial Tribunal and the Court below properly evaluated the evidence contained in Exhibit 'D' before making appropriate findings. Learned Counsel to the 3rd, 4th and 5th Respondents is also of the view that the Court of Appeal was right in affirming the decision of the trial Tribunal on the content of the file Exhibit 'D'.

From the evidence of PW4 who was called by the Appellant to testify in support of its ground of petition that the 1st Respondent was not qualified to contest the election being challenged, confirmed from Exhibit 'D' that student No. 1528 of Barewa College Zaria is Sule Lamido the 1st Respondent. The witness further confirmed that Exhibit D contained report sheets of 1st Respondent from 1962 - 1966 and that the reports are from Forms 1 - 5. There is no doubt whatsoever that based on the evidence on record correctly assessed and evaluated, the Court below rightly exercised its powers as appellate Court in affirming the decision of the trial Tribunal that the Appellant had failed to prove one of its grounds of petition that the 1st Respondent does not possess the required educational qualification of at least up to School Certificate level as prescribed by the 1999 Constitution to contest the 26th April, 2011 election. This issue must also be resolved against the Appellant.

The 7th issue in the Appellant's brief of argument is whether the Court of Appeal was not wrong when it held that the lower Tribunal did not misdirect itself when it failed to examine Exhibits 'E' - 'Z' and Exhibits 1- 36 as enjoined by the law. Learned Counsel argued

that the documents were tendered to prove facts in support of its petition in paragraphs 8, 17, 18 and 19; that even in the absence of oral evidence in support of the documents, having regard to the case of *W.A.B. Ltd v. Savannah Ventures Ltd.* (2002) 10 N.W.L.R. (Pt. 775) 401, the Court below was bound to examine the documents and make appropriate findings as the documents speak for themselves. B

For the 1st and 2nd Respondents, their stand on this issue is that the Court below was right in holding that the pleadings of the Appellant in paragraphs 18 and 19 of the petition were generic, imprecise, inexact, woolly and incapable of supporting an allegation of non compliance or attract anything more than a general denial. Replying on several cases including *Onibudo v. Akibu* (1982) 7 S.C. 29 at 30, learned Counsel submitted that the Court below was right in refusing to examine, the contents of Exhibits 'E' -'Z' and 1- 36 in order to see whether or not there was non-compliance with the Electoral Act 2010 as amended in the conduct of the Election by the 3rd Respondent. C D

Learned Counsel to the 3rd, 4th and 5th Respondents is also of the view that the Court of Appeal was right in the conclusion it reached in its judgment regarding the evaluation of evidence contained in the Exhibits mentioned in this issue, that is to say Exhibits 'E' -'Z' and 1 - 36 respectively; that the Court below was right in holding that the trial Tribunal was not bound to sort out and examine the affected documents to make out or establish the case of the Appellant in its petition. E F

Taking into consideration of the nature of the Appellant's allegation in its petition against the conduct of the election by the 3rd - 5th Respondents in that they acted contrary to the spirit and intendment of the Electoral Act 2010 as the election was characterized by malpractices, substantial non-compliance with mandatory statutory requirements and irregularities that substantially affected the election. The Appellant also complained in the petition of deliberate wrong entries made by the 3rd Respondent's agents or representatives at the Units, Wards, Local Government Areas and at State Level collation centres and that the results of the election of Jigawa State were jettisoned and altered. All these serious allegations in G H

various paragraphs of the petition must be supported by oral evidence to tie the relevant documents admitted in evidence to various acts of non-compliance or alterations complained of in the documents. It is certainly not the duty of the trial Tribunal or the Court below to place exhibits 'E' - 'Z' and 1- 36
B on the table and examine them one by one in order to determine whether or not the Appellant's petition had been established to be entitled to the reliefs sought. See *Onibudo v. Akibu* (1982) 7 S.C. 29 at 30 and *Chief Joshua Alao v. Alfa Issa Kano & Ors.* (2005) 11 N.W.L.R. (Pt. 935) 165 at 178. **C On this issue therefore, the Court below was far from being wrong in its decision on Exhibits 'E' - 'Z' and 1- 36 complained of by the Appellant in this issue.**

D Issue No. 8 in the Appellant's brief is whether the Court of Appeal was not wrong in its assessment and evaluation of evidence of DW1 and DW2 and the weight the trial Tribunal attached to their evidence even as tainted witnesses. The complaint of the Appellant in this issue is that under cross examination, the witnesses had exhibited their respective interest
E in the outcome of the case suggesting that they were tainted witnesses; that the Court of Appeal was in error relying on a criminal case *Moses v. The State* (2006) 11 N.N.L.R. (Pt. 992) 458, resolving the question regarding the admissibility of the evidence of the said tainted witnesses.

F The stand of the 1st and 2nd Respondent on this issue is that the law is quite clear that merely close relationship like employer/employee does not make a person a tainted witness. This was the decision in *Feliwa Ojo v. Dr. Gharoro & Ors*
G (2006) 10 NWLR (Pt. 987) 173 at 208 - 201. 3rd, 4th and 5th Respondents are also of the view that the decision of the Court below on DW1 and DW2 is in order.

H The Tribunal was right in not treating the witnesses as tainted and the Court below was right in my view in affirming that stand of the trial Tribunal. The issue is thus resolved against the Appellant.

The last issue and 9th issue in the Appellants brief of argument is whether the Court of Appeal was right when it held that the averments contained in paragraphs 18 and 19 of the Appellant's petition

filed at the Tribunal were not specific but nebulous. It was argued for the Appellant that even if the Court of Appeal was right in holding that the Appellant had joined issue with the Respondents in respect of the material averments as contained in paragraphs 18 and 19 of the petition, the burden of proving the averments in paragraph 19 of the petition had shifted to the Respondents because of their consistent assertion in the affirmative. B

The learned senior Counsel to 1st and 2nd Respondents on the other hand is of the strong view that the conclusion of the Court of Appeal that the pleadings in paragraphs 18 and 19 of the petition were woolly, general and vague was inevitable because the Appellant had claimed that those paragraphs were admitted by the Respondents who did not give a more specific answer to those paragraphs 3rd, 4th and 5th Respondents through their learned counsel on their part had maintained that paragraphs 18 and 19 of the petition are clearly woolly and vague as described by the Court of Appeal and therefore urged this Court to resolve this issue against the Appellant. C D

This last and 9th issue in the Appellant's brief relates exclusively to the legal effect of paragraphs 18 and 19 of the petition. It is quite plain that the Appellant's complaint in this issue had already been put forward by the Appellant and considered in the resolution of issue No. 7 at page 23 of the Appellant's brief of argument wherein the Appellant's brief of argument, the Appellant said in paragraph 4.64 of the brief thus - E

"4.65 It is well settled law that documentary evidence must relate to the parties pleading. It is submitted with respect that exhibit E-Z and 1 - 36 relate to the facts averred in paragraphs 8, 17, 18 and 19 of the petition. The fact in issue in the instant case is non compliance with Section 53 and 74 of the Electoral Act 2010 (as amended) Court of Appeal at page 1157 - 115? Volume 2 of the record acknowledged that Exhibits E - Z and 1 - 36 were tendered in relation to averment contained in paragraphs 18 and 19 of the petition. Having so acknowledged, then the issue at stake would have been whether Exhibits E - Z and 1 - 36 relate to the Appellants pleading but not whether was oral evidence to support such exhibits." F G H

There is no doubt whatsoever that the effect of paragraphs 18 and 19 of the Appellant's petition in relation to the evidence adduced by the Appellant, particularly Exhibits E - Z

and 1 - 36, had already been considered under issue 7 and effectively resolved. In fact the fact that the two paragraphs in question are vague can be clearly seen from paragraph 18 which states-

“18. Your petitioner avers further that contrary to the 3rd Respondent’s guideline and Electoral Act 2010, the results of the election of Jigawa State were jettisoned and altered to suit the 1st Respondent.”

The way the results of the election in Jigawa State were jettisoned and altered to suit the 1st Respondent are very far from being clear from this paragraph. The Court of Appeal was therefore absolutely right, in my view, in describing the averments in paragraphs 18 and 19 of the Appellant’s petition as generic, imprecise and incapable of supporting an allegation of non-compliance and can attract only general denial. Like the rest of the issues 1 - 8 earlier resolved in this judgment, the last and 9th issue for determination in this appeal must also be resolved against the Appellant.

In the final result, the Appellant having failed to prove its petition as required by law, the trial Tribunal was right in dismissing the petition while the Court of Appeal was equally right in law in dismissing the Appellant’s appeal. These are therefore my reasons for dismissing the Appellant’s appeal and affirming the judgments of two Courts below on 10th February, 2012 without any order on costs.

MUNTAKA-COOMASSIE JSC

On 10/2/2012 I delivered my Judgment in which I dismissed the appeal and affirmed the judgment of the Governorship Election Tribunal Jigawa State. I did promise that I shall state my reasons for the dismissal today 24th February, 2012. I now set to give the reasons thus:

The Appellant herein, Action congress of Nigeria, was a petitioner before the Jigawa Governorship Election Tribunal. The petitioner was not happy with the return of the 1st Respondent, by the 3rd Respondent, as the duly elected Governor of Jigawa State in the election held on 26/4/2011. The Tribunal dismissed the petition. The appellant was aggrieved and unsuccessfully appealed to the Court of

Appeal Kaduna Division. The Court of Appeal on Page 1174 of the record held that *“the Tribunal was right in over-ruling the cross-appellant’s objection to the address..... I hold that there is no spot of merit in it, consequently, I dismiss the cross appeal”*.

The Court of Appeal now lower Court, unanimously dismissed the appeal. Not satisfied with the above judgment the appellant lodged an appeal to the Supreme Court on a Notice of appeal containing sixteen grounds of appeal. B

Nine issues were formulated out of the 16 grounds of appeal. They are reproduced here under:

1. Whether the Court of Appeal was right when despite its findings as a fact that the Appellant was only allowed to utilize nine (9) days out of 14 (fourteen) days statutory allocated to it when on the 1/9/2011 its case was closed and held that the Appellant was not denied its right to fair hearing. C

2. Whether the Court of Appeal was right when it upheld the lower trial Tribunal decision refusing to grant the Appellant’s application to summon the INEC Commissioner or his representative to tender ballot papers used in the election and that, that did not lead to denial of fair hearing. D

3. Whether the Court of Appeal was not wrong in its conclusion that the rejection of ALL the ballot papers sought to be tendered was not wrong when they had as a fact found that the Appellant has sufficiently satisfied the second limb of the provision of paragraph 4(5)(c) of the First Schedule haven listed five Local Government Areas of Birnin Kudu, Gwaram, Ringim, Taura and Gwawa in the Appellant’s petition at the Tribunal. E

4. Whether the approach adopted by the Court of Appeal leading to the conclusion that the production of the Exhibit “B” alone in evidence had shifted the burden of proving that the 1st Respondent was not educated up to at least School certificate from the 1st Respondent did not occasioned miscarriage of Justice. F

5. Whether having found that Exhibit “B” is a public document which is inadmissible under the meaning of section 111 of the Evidence Act, the Court of Appeal could justify reliance on the Exhibit by following the decision in ONOBRUCHERE VS. ESEGINE (1986) NWLR (Pt. 19) 799 to find in favour of the 1st Respondent’s qualification to contest election into the office of Governor of Jigawa H

State.

6. Whether the Court of Appeal was not wrong in its assessment and evaluation of Exhibit “D” vis-a-vis the evidence of PW4 as a result of which it mis-applied the evidence to the case of the Appellant regarding the qualification of the 1st Respondent to contest the Governorship election of Jigawa State.

7. Whether the Court of Appeal was wrong when it held that the lower tribunal did not misdirect itself when it failed to examine Exhibits “E” - “Z”, Exhibits 1 - 36 as enjoined by the law.

8. Whether the Court of Appeal was not wrong in its assessment and evaluation of evidence of DW1 and DW2 and on the weight the lower tribunal attached to their evidence even as tainted witnesses.

9. Whether the Court of Appeal was right when it held that the averments contained in paragraphs 18 and 19 of the Appellant’s petition filed at the tribunal were not specific but nebulous. Grounds 7, 8 and 12 are hereby abandoned and we urge this Court to strike out same.

Before us (3) grounds were abandoned. No issues were formulated and same were struck out. The issues which are germane and relevant are as produced earlier on.

The joint Brief of the Respondents contained 6 issues covered by the 9 issues formulated and presented by the Appellant.

I shall in my treatment of the issues as raised in the Appellants brief which contained various complaints of the Appellant the way the trial tribunal considered the evidence before it before the tribunal arrived at a decision which was affirmed by the lower Court.

That is to say, that the appellant had consistently failed to discharge the burden of proof placed upon it by law to be entitled to the grant of the reliefs claimed in its petition.

The grouses of the appellant as a petitioner at the Tribunal are as follows:-

(a) That the 1st respondent was, at the time of the election not qualified to contest the governorship election conducted by the INEC on 26/4/11 in Jigawa State of Nigeria.

(b) The 1st respondent, Sule Lamido, was not qualified to contest the election for the reason that he presented to the Independent National Electoral Commission (INEC) a forged West African Exami-

nation Council Certificate No. C3005655 and that he did not attend the then Government College Zaria, now Barewa College beyond form 3 and as such did not possess the requisite qualification required by the 1999 Constitution as amended to contest election.

(c) that the election of 26th April, 2011 in which Sule Lamido emerged as the Governor, was invalid by reason of corrupt practices and non compliance with the provisions of the Electoral Act 2010 and Independent National Electoral Commission Manual for electoral officers. B

(d) The corrupt practices complained of by the appellant in the election, include multiple thumb printing and votes rigging in that the 3rd, 4th and 5th Respondents wrongfully computed majority lawful votes counted as cast for the 1st Respondent even though the said figures were altered and inflated and were also the products of artificial polling units. C D

After the closure of the case of the prosecution the trial Tribunal dismissed the petition of the Appellant on the ground that the Appellant had failed to prove its case.

I have considered the reasons adduced in the lead judgment of my learned brother Mahmud Mohammed, of which I was opportuned to read before now, I entirely agreed with the reasons and based on them I too will dismiss the appeal. I hold that the Appellant had woefully failed to produce cogent and reliable evidence to prove its complaints in the petition filed. The petition accordingly lacks substance same is accordingly dismissed by me. E F

I think therefore I fulfilled my promise by adducing my reasons for the dismissal of the Appellant's appeal on 10th of February, 2012. I also affirmed the decision of the trial Tribunal. I must confess that I find it difficult to disturb the two correct decisions of the lower courts which were not prove to be perverse. I too make no order as to costs. G

FABIYI JSC

On 10th February, 2012 I delivered my judgment in this appeal. Therein, I dismissed the appellant's appeal and indicated that I shall give my reasons for the judgment today. I now advance my reasons here below. H

In the election to the office of Governor conducted in Jigawa State on 26th April, 2011, the 3rd respondent returned the 1st respondent as the winner. The appellant challenged the election and return of the 1st respondent at the trial Tribunal. The petition was heard and dismissed by the Tribunal. The appellant appealed to the
 B Court of Appeal, Kaduna Division which heard the appeal and dismissed it. This is a further appeal to this court.

Let me at this point take the issue touching on allegation of forged certificate put by the appellant against the 1st respondent. It
 C was the appellant who asserted same and in tandem with the provision of section 135(1) of Evidence Act as applicable at the time the petition was filed, the appellant had the burden of proof to establish same. For, it is the appellant which will fail if no evidence is adduced on both sides.

D Apart from the above, allegation of forgery is a criminal offence. Section 138(1) of the Evidence Act requires that same must be proved beyond reasonable doubt. See: *Buhari v. Obasanjo* (2005) 13 NWLR (Pt.941) 1 at 295; *Nwobodo v. Onoh* (1984) 1 SCNLR 1 at 27.

E The appellant, in a bid to prove its allegation of forgery of the 1st respondent's Certificate, tried to no avail to call West African Examination Council official. The appellant failed to prove his allegation of forgery - a criminal offence beyond reasonable doubt. The
 F trial Tribunal resolved the issue against the appellant and same was rightly affirmed by the Court of Appeal.

The other serious issue raised by the appellant is in respect of Exhibits E - Z and 1 -36 which are Independent National Electoral Commission's Forms put in to substantiate various allegations of non-compliance with the Electoral Act 2010 (as amended). The Exhibits
 G were put in without any witness who testified in the open court to demonstrate their purport and worth.

H The appellant felt that since the Exhibits were tendered, the trial Tribunal had a duty to consider them and not treat them as being dormant.

The respondents, on their own part maintained that since the contents of the documents were not demonstrated in court, they remain dormant for all times as no oral evidence to explain their purpose was adduced. They cited a host of authorities in support.

It is not in doubt that the stated Exhibits were not demonstrated in the open court. They were the type of documents which this court affirmed as rightly expunged by the Court of Appeal in *Buhari v. I.N.E.C.* (2008) 19 NWLR (Pt. 1120) 246 at 414. This is so as there is a dichotomy between admissibility of documents and the probative value to be placed on them. While admissibility is based on relevance, probative value depends not only on relevance but also on proof. Evidence has probative value if it tends to prove an issue. B

The basic aim of tendering documents in bulk was to ensure speedy trial and hearing of election petition. But that does not exclude proper evidence to prop such dormant documents. C

It is not the duty of a court or Tribunal to embark upon cloistered justice by making enquiry into the case outside the open court not even by examination of documents which were in evidence but not examined in the open court. A judge is an adjudicator; not an investigator. See: *Duriminiya v. Commissioner of Police* (1961) NRNLR 70; *Queen v. Wilcox* (1961) 1 SCNLR 296; (1961) All NLR 633; *Dennis Ivienagbor v. Henry Osato Bazuaye* (1999) 6 SCNJ 235; *Onibudo v. Akibu* (1952) 7 SC 60.

The issue is resolved against the appellant and in favour of the respondents. The Court of Appeal was in order in affirming the position taken by the trial Tribunal. E

On 10th of February 2012, I expressed the view that the trial Tribunal and the Court of Appeal made concurrent findings in many respects. Findings by the Tribunal and Court of Appeal in respect of the above discussed issues are relevant in this regard. This court will not interfere with same as they have not been shown to be perverse. See: *Anaeze v. Anyaso* (1993) 5 NWLR (Pt. 291) 1. F

For the above reasons and the detailed ones adumbrated in the reasons adduced by my learned brother - Mahmud Mohamed, JSC which I hereby adopt, I dismissed the appeal on 10th February, 2012 and affirmed the judgments of the trial Tribunal and the Court of Appeal. G

H

RHODES-VIVOUR JSC

On the 10th day of February, 2012, this court dismissed the appellants' appeal, thereby confirming concurrent findings of the

courts below that the 1st respondent was properly elected as the Governor of Jigawa State. Reasons for the judgments were adjourned for the 24th of February, 2012. I read in draft the reasons for the judgment prepared and delivered by my learned brother, Mohammed, JSC. I am in complete agreement with his lordships reasoning and conclusion. I intend to make a few comments of my own.

The appellant made heavy weather of the fact that the learned trial judge closed this case on the 1st of September, 2011, thereby denying him a fair hearing under section 36(1) of the constitution. Section 36(1) of the constitution reads:

“36(1) In the determination of his civil rights and obligation, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality.”

Fair hearing is derived from the principle of natural justice. Its twin pillars are audi alteram partem and nemo judex in causa sua. It is of general application in Nigerian courts and courts are expected at all times to adjudicate in accordance with the rules of natural justice. That is to say a judge should allow both parties to be heard and he should listen to the point of view or the case of each side before delivering a judgment. This practice is well rooted in all civilized societies and has its roots in the Old Testament in the Bible. The Lord had overwhelming evidence that Adam had eaten the forbidden fruit, the apple, which the Lord told him never to eat, but still gave Adam an oral hearing before judgment was passed.

It has been long settled that the test whether a party in a case was given a fair hearing is the impression of a reasonable person who was present at the trial or who was aware of the proceedings. From his observation he would have no difficulty concluding if justice has been done in the case. See I. Mohammed v. Kano N.A. (1968) 1 ALL NLR p. 43, Akeredolu v. Akinremi (1986) 2 NWLR Pt.25 p.710, F.C.S.C. v. Laoye (1989) 2 NWLR Pt. 106 p.652 Salu v. Egibon (1994) 6 NWLR Pt.348 p. 34.

The appellant argued that he was denied fair hearing because the learned trial judge closed his case on the 1st of September 2011, thereby denying him the opportunity to call further evidence to es-

tablish his case to his satisfaction.

Paragraph 41(10) of the first schedule to the Electoral Act 2010 reads:

“The petitioner in proving his case shall have not more than 14 days to do so and each of the respondents shall have no more than 10 days to present its defence.”

The appellant opened his case on the 16th of August 2011. At the time the tribunal closed his case on the 1st of September, 2011 he had exhausted the 14 days allowed. The Record of Appeal shows that there was strict compliance by the learned trial judge with paragraph 41(10) of the first schedule to the Electoral Act, 2010. Since both sides were heard before a decision was given, and the appellant exhausted the 14 days given him by paragraph 41(10) of the 1st schedule to present his case, he was given a fair hearing. He cannot be heard to say that he was denied fair hearing.

It is long settled that concurrent findings of fact would rarely be disturbed by this court, but this court would be compelled to interfere if the findings are perverse, or cannot be supported by the evidence before the court or there is/was a miscarriage of justice or violation of some principle of law or procedure. See *Cameroun Airlines v. Otutuizu* (2011) 1 - 2 SC Pt.111 p.200.

Concurrent findings of the courts below are not limited to the following:

1. That the 1st respondent won the election conducted by INEC for the office of Governor of Jigawa State.
2. The 1st respondent was qualified to contest the Gubernatorial elections since the appellant was unable to prove the contrary.

The above are true and they would not be disturbed by this court.

For the reasons given above and more particularly those given by my learned brother, Mohammed, JSC I dismiss the appeal and confirm the judgments of the two courts below.