

SUPREME COURT OF NIGERIA

6th MARCH, 2012. SC. 30/2012

**CORAM:- M. MOHAMMED, C. M. CHUKWUMA-ENEH,
M. S. MUNTAKA-COOMASSIE, J. A. FABIYI,
B. RHODES-VIVOUR, JJSC**

1. SENATOR JULIUS ALIUCHA
 2. ALL NIGERIA PEOPLES PARTY APPELLANTS
AND
 1. CHIEF MARTIN NWANCHO
ELECHI
 2. PEOPLES DEMOCRATIC PARTY RESPONDENTS
 3. INDEPENDENT NATIONAL
ELECTORAL COMMISSION (INEC)
AND 1772 ORS
-

OBJECTIONS - Appeals - Preliminary objection - Arguments - Incorporated in briefs - Objective - Such step removes the need to file separate notice of preliminary objection (H1)

OBJECTIONS - Appeals - Preliminary objection - Leave - Failure to apply - Where objection is filed in briefs - Leave must be sought orally - To argue same in court - Otherwise it is deemed abandoned (H2)

COURTS - Issues - Determination of - Cookey v. Fombo - Court must consider properly raised issues - And must reflect the result of such an exercise (H3)

ELECTION PETITIONS - Non compliance - Allegation of - Standard of proof - Petitioner succeeds on strength of his case - And proof is on balance of probabilities (H4)

DOCUMENTS - Election petitions - Need to relate - Party must link document relied upon - To specific area of his petition (H5)

COURTS - Election petitions - Documents - Binding nature - Judge is restricted to case presented by parties - In order to avoid rendering

perverse judgment (H6)

ELECTION PETITIONS - Non compliance - Allegation of - Proof - Petitioner must prove that non compliance was occasioned by breach of Electoral Act - And that same substantially affected result of the election (H7)

EVIDENCE - Weight - Election petitions - Legal practitioners - Submission - Effect - Counsel's submission no matter how brilliant - Cannot take the place of legal proof (H8)

SUPREME COURT - Powers - Supreme Court Act s. 22 - The court can evaluate evidence - But has no jurisdiction to correct mistakes made by counsel (H9)

APPEALS - Concurrent findings - Supreme Court does not interfere - Save where there is substantial error - Such as miscarriage of justice (H10)

ELECTION PETITIONS - Crime - Allegation of - Standard of proof - Where petition is brought on criminal ground - Proof is beyond reasonable doubt (H11)

FACTS

1st petitioner/appellant – Senator Julius Aliucha and 1st defendant/respondent – Chief Martin Elechi were candidates of 2nd petitioner/appellant and 2nd defendant/respondent respectively that contested in the gubernatorial elections for Ebonyi State held on 26th April 2011. After the election, 3rd respondent – Independent National Electoral Commission declared 1st respondent the winner of the election. Dissatisfied, appellants filed petition at the State Governorship Election Petition Tribunal holden at Abakaliki to challenge the result of the election.

Appellants based their petition inter alia, on the ground that the election and return of 1st respondent was invalid by reason of corrupt practices and noncompliance with the provisions and principles of the Electoral Act, 2010 (as amended) and the manual for Election Officials 2011 and the Guidelines. In the course of trial, sev-

eral witnesses were called by the parties. Before the conclusion of trial, appellants abandoned their ground on corrupt practices and relied solely on the ground of non compliance. In its judgment, the tribunal dismissed the petition. Aggrieved, appellants appealed to Court of Appeal, Enugu Division. The court equally dismissed the appeal. Aggrieved further, appellants appealed to Supreme Court.

ISSUES FOR DETERMINATION

1. Whether the lower court reached a wrong decision when it failed in its judgment to consider and resolve the issue raised by the appellants that the 2nd and 3rd of 1772 respondents have conceded the appeal as their briefs were incurably defective and manifestly incompetent in law, yet countenanced the said processes and impliedly resolved the issue against the appellant.

2. Whether the lower court came to wrong decision when it refused to uphold the finding of the Honourable Tribunal that the evidence of the Respondents witnesses were worthless, thus disregarding appellants case, evidence, that their petition was made out on the basis of minimal proof.

3. Whether the lower court adopted the right approach in coming to the conclusion that the appellants did not establish their allegation of non-compliance with the Electoral Act and Manual for Election Officials 2011 in the conduct of the Ebonyi State Governorship Election in the thirteen (13) Local Government Areas in issue, as to meet the test of substantial non-compliance capable of vitiating the Election.

4. Whether the lower court should have reversed the decision of the Tribunal in discountenancing the copious and uncontroverted documentary evidence adduced by the appellants, on the reasoning that they were dumped on them and further held that same were indeed dumped on the Tribunal, notwithstanding, that each was a statutory form tendered individually, admitted as exhibits through a witness, thereafter related to the affected areas during hearing of the Petition and same witnesses cross-examined in respect thereof.

5. Was the lower court wrong, when, having resolved issues 4 and 5 raised by the appellants at the lower court in favour of same, it yet refused to grant the consequential reliefs sought therefrom.

6. Was the lower court wrong when it refused to reverse the decision of the Tribunal that the appellants failed to tender any result

sheet in proof of the tabulation in their petition and thus reached a perverse decision.

HELD (Unanimously dismissing the appeal per **RHODES-VIVOUR JSC**)

B Appeals - Preliminary objection - Arguments

1. It is clear that the learned counsel for the appellant did not move his preliminary objection. It is long settled that arguments on preliminary objection can be incorporated in briefs of argument thereby obviating the need to file separate Notice of Preliminary Objection.

C (p. 1079 H)

Appeals - Preliminary objection - Leave - Failure to apply

D 2. Where a preliminary objection is filed in the appellant's brief as in this case, he must at the hearing apply or seek leave of the court to raise and argue the objection. Where it is not moved orally in court as in this case, the objection would be treated by the court as abandoned.

E It is clear that the Record of Appeal reveals that on the 15th of January, 2011 when learned counsel for the appellant adopted his brief he did not seek leave to argue his Preliminary Objection. He simply adopted his brief and urged the Court of Appeal to allow the appeal. In such a situation the issue in the Preliminary Objection was not raised before the court, consequently the Preliminary Objection **F** was not/cannot be heard. It was abandoned and the Court of Appeal was correct to treat the Preliminary Objection as abandoned. (p. 1080 A/C)

G COURTS - Issues - Determination of

3. Dr. J. Cookey v. Fombo (2003) 15 NWLR (Pt. 947) 182 relied on by learned counsel for the appellants is authority for the point of law that a court must consider all issues properly raised and heard and the court must reflect the result of such an exercise. (p. 1080 C)

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ELECTION PETITIONS - Non compliance - Allegation of

4. The results declared by INEC are prima facie correct and the onus is on the petitioner to prove the contrary. Where a petitioner complains of non-compliance with provisions of the Electoral Act, 2010

(as amended) he has a duty to prove it polling unit by polling unit, ward by ward and the standard required is proof on the balance of probabilities and not on minimal proof. He must show figures that the adverse party was credited with as a result of the non-compliance. Forms EC8A, election materials not stamped/signed by Presiding Officers. He must establish that non-compliance was substantial, that it affected the election result. It is only then that the respondents are to lead evidence in rebuttal. B

I must point out once again the standard of proof required when a petitioner brings a petition on the ground that there was non-compliance with provisions of the Electoral Act, 2010 (as amended) in the conduct of the election. By virtue of Section 137(1) and (2) of the Evidence Act 2010 the standard is on preponderance of evidence. That is to say one side position outweighs the other. The petitioner is to prove that there was non-compliance with provisions of the Electoral Act. He then has an added burden to prove that the non-compliance was substantial, that it affected the results of the election. It is then, the burden shifts to the respondent to rebut that fact. Evidence led by a petitioner outweighs that of the respondent when the petitioner is able to establish substantial non-compliance and there is only a feeble response or nothing much forthcoming from the respondent in rebuttal. On the state of the pleadings and evidence led in support a rebuttal from the respondent was not really necessary since the appellant was unable to establish that non-compliance was substantial. C D E F

Where on the other hand the ground is of a civil nature, the standard of proof is preponderance of evidence and balance of probabilities. Minimal proof can only be entertained by the court and acted on positively where the petitioner's case is unchallenged and that is unheard of in election petitions in these climes. A petitioner succeeds on the strength of his case and not on the weakness of his opponent's case. (p.1085 E/1089 A/E) G

DOCUMENTS - Election petitions - Need to relate H

5. When a party decides to rely on documents to prove his case there must be a link between the document and the specific area/s of the petition. He must relate each document to the specific area of his case for which the document was tendered. On no account must

counsel dump documents on a trial court. No court would spend precious judicial time linking documents to specific areas of a party's case. (p. 1086 E)

Election petitions - Documents - Binding nature

- B 6. A judge is to descend from his heavenly abode, no lower than the treetops, resolve earthly disputes and returns to the Supreme Lord. His duty entails examining the case as presented by the parties in accordance with standards well laid down. Where a judge abandons that duty and starts looking for irregularities in electoral documents, and investigating documents not properly before him, he would most likely be submerged in the dust of the conflict and render a perverse judgment in the process. (p. 1086 G)

ELECTION PETITIONS - Non compliance - Allegation of

- D 7. To succeed on the ground of non-compliance the petitioner has to prove:
1. that there was non-compliance occasioned by the breach of relevant sections of the Electoral Act and/or Manual.
- E 2. that the non-compliance was substantial that it affected the result of the election. (p. 1087 A)

EVIDENCE - Weight

- F 8. If the charts had been properly correlated with the figures of non-compliance in the exhibits tendered by the appellants there would not have been any justifiable reason not to follow the case of Agagu v. Mimiko (2009) 7 NWLR (Pt. 1140) 342 and use them as a guide to know who scored what votes at the questioned election. The chart contained in the appellant's final address was a brilliant idea, but it was not tested under cross-examination, and it does not show that the figures were arrived at as a result of careful examination and comparison of exhibits P95 - P111, documents that were dumped on the trial court. I must point out that a brilliant address is no substitute for evidence. Counsel submission no matter how brilliant and alluring cannot take the place of legal proof.

The chart relied on by learned counsel for the appellants are of little or no evidential value. (p. 1087 E)

SUPREME COURT - Powers

9. Section 22 of the Supreme Court Act confers full jurisdiction over this court over the whole proceedings as if the proceedings had been instituted and prosecuted in the Supreme Court as a court of first instance and may rehear the case in whole or in part or remit it to the court below for the purpose of such hearing. The powers conferred on this court by section 22 supra are much wider than the above, but the above shall suffice. On page 24 of the appellants' brief, counsel argues that non-compliance is best proved by documentary evidence. The appellants are asking this court to do what they failed to do at the trial court. They are asking this court to take out exhibits P95 - P129 and all other exhibits relevant to their case and link them to the specific areas of their case. I must point out that under Section 22 of the Supreme Court Act this court has power to evaluate evidence which a trial court failed to consider and make correct findings which the trial court failed to make. This court has no jurisdiction to correct mistakes of counsel or assist counsel to prove his case. This is not a proper case to invoke section 22 of the Supreme Court Act.(p.1088B)

APPEALS - Concurrent findings

10. This is a case of concurrent findings of fact. The Supreme Court will not interfere with the concurrent findings of fact by the trial court and the Court of Appeal where there is sufficient evidence in support of such findings and where no substantial error is apparent on the record such as miscarriage of justice or violation of some principle of law or procedure.

Concurrent findings of fact are that evidence adduced by the appellants was/are insufficient to prove substantial non-compliance with relevant provisions of the Electoral Act, 2010 (as amended). There was no error or miscarriage of justice in this case to warrant interference by this court with decisions of the courts below.(p. 1088F)

ELECTION PETITIONS - Crime - Allegation of

11. In Election Petition trials the standard of proof is proof beyond reasonable doubt where the petition is brought on grounds of a criminal nature. (p. 1089 E)

REPRESENTATION

R. Tarfa, SAN, A.J. Owonikoko, SAN, O. Jolaawo, M. Ibrahim
C. Ani, A. Okubote, B. Aduloju, P. N. Mgbebu and O. E. Maduka, for
the Appellants

B Dr. J.O. Ibik SAN, O. Okafor, SAN, Dr. A. Nwaiwu, SAN, M.V.C.
Ozioko, C.A. Nwaji, O. J. Ibik, M.S. Ali, E.A. Igwe, M.E. Igwe, B. C.
Nwokpoki, P.O. Amaefule, N. Bon-Nwakanma, C. Onyedim, B. N.
Menke, G.O. Diugwu and I. Okechukwu, for the Respondents

C **CASES REFERRED TO**

Okonji v. Njokanma (1991) 7 NWLR (Pt. 202) 155

Dr. J. Cooley v. Fombo (2003) 15 NWLR (Pt. 947) 182

SBN Ltd. v. S.I.O. Corp (2001) ANLR (Pt. 693) 194

D Ogboru v. Ibori (2005) 13 NWLR (Pt. 942) 319

Agagu v. Mimiko (2009) 7 NWLR (Pt. 1140) 342

A.G. Rivers v. Ude (2006) 7 NWLR (Pt. 1008) 436

Onochie v. Odogwu (2006) 6 NWLR (Pt. 975) 65

A.G. Rivers State v. Ude (2006) 17 NWLR (Pt. 1008) 436

E Buhari v. INEC (2008) 19 NWLR (Pt. 1120) 246

Tiza v. Begha (2005) 15 NWLR (Pt. 949) 616

Omoregbe v. Daniel Lawani (1980) 3-4 SC 108

Nwabuoku v. Ottih (1961) 2 NSCLR 232

F Abbe v. Alex (1999) 14 NWLR (Pt. 637) 161

N.S.I.T.M.B. v. Nig. Ltd. (2010) 13 NWLR (Pt. 1211) 307

Ekundayo v. Baruwa (1965) 2 ALL NLR 211

STATUTES REFERRED TO

G Electoral Act, 2010 (as amended), s. 139(1), para. 41(3) of the First
Schedule

Supreme Court Act, s. 22

Electoral Act, 2002, 135(1)

Evidence Act 2010, 137(1) (2)

H

LEAD JUDGMENT BY RHODES-VIVOUR JSC

This is an appeal from the judgment of the Court of Appeal
Enugu Division delivered on the 7th day of January, 2012 dismissing
the appellants appeal and affirming the judgment of the trial Election

Tribunal, Ebonyi State, which sat at Abakaliki and delivered its judgment on the 11th day of November, 2011. The facts are these. The 1st Petitioner (1st appellant) and the 1st respondent contested the gubernatorial elections for Ebonyi State on the 26th of April, 2011. The 3rd respondent, the regulatory body that handles elections in Nigeria declared the 1st respondent the winner. The appellant as Petitioner filed a petition to challenge the result of the election on the following grounds.

1. That the Election and return of the 1st Respondent was invalid by reason of corrupt practices/non-compliance with the provisions and principles of the Electoral Act, 2010 (as amended) and the manual for Election Officials 2011 and the Guidelines.

2. That the 1st Respondent was not duly elected by the majority of lawful and valid votes cast at the said election.

3. That the 1st Petitioner was the person that scored the majority of lawful votes cast at the said election and ought to have been returned by the 3rd to 5th Respondents as the winner of the election.

In the course of trial the appellants called 118 witnesses and tendered 145 exhibits. The 1st Respondent called 74 witnesses and tendered 103 exhibits while the 2nd Respondent called 1 witness and tendered one exhibit. The 3rd Respondent called 20 witnesses and tendered specimen signature of witnesses. Before the conclusion of trial the appellants abandoned their ground on corrupt practices and relied solely on the ground of non compliance. In the judgment delivered on the 11th of November, 2011. The Tribunal held that:

The Petitioners have failed to lead cogent evidence to sustain all the grounds, upon which they questioned the declaration and return of the 1st Respondent as the duly elected Governor of Ebonyi State with respect to the Gubernatorial Election conducted in the State on the 26th of April, 2011. The Petitioners lodged an appeal. The Court of Appeal in a well considered judgment delivered on the 7th of January, 2012 dismissed the appeal, and in the concluding paragraph of the judgment said:

“...there is no doubt in my mind that not only did the appellant not prove the substantial non compliance, the solitary and few examples of non-compliance he elicited from the testimony of the Respondents’ witnesses are not material enough to offset the result

of the election.”

Concluding the Court of Appeal went on to say that the appeal is unmeritorious. This appeal is against that judgment. In accordance with Rules of this court briefs were duly filed and exchanged. The appellants brief was deemed duly filed and served on the 27th
B of February, 2012. The 1st respondents brief was also filed on the 7th of February, 2012. The 2nd respondents brief was filed on the 8th of February, 2012, while the 3rd to 1775 respondents’ brief was filed on the 7th of February, 2012. Learned counsel for the appel-
C lants filed a reply brief on the 10th of February, 2012 in response to the 2nd respondents brief and a composite reply brief to the 1st and 3rd to 1775th respondents’ brief on the 9th of February, 2012.

On the 28th day of November, 2011 the appellants filed a Notice of Appeal. It contained 26 grounds of appeal. Six issues were
D formulated from the 26 grounds of appeal for determination of this appeal. They are:

1. Whether the lower court reached a wrong decision when it failed in its judgment to consider and resolve the issue raised by the appellants that the 2nd and 3rd of 1772 respondents have conceded
E the appeal as their briefs were incurably defective and manifestly incompetent in law, yet countenanced the said processes and impliedly resolved the issue against the appellant.

2. Whether the lower court came to wrong decision when it refused to uphold the finding of the Honourable Tribunal that the
F evidence of the Respondents witnesses were worthless, thus disregarding appellants case, evidence, that their petition was made out on the basis of minimal proof.

3. Whether the lower court adopted the right approach in coming to the conclusion that the appellants did not establish their allegation of non-compliance with the Electoral Act and Manual for Election Officials 2011 in the conduct of the Ebonyi State Governorship Election in the thirteen (13) Local Government Areas in issue, as to meet the test of substantial non-compliance capable of vitiating the
G Election.
H

4. Whether the lower court should have reversed the decision of the Tribunal in discountenancing the copious and uncontroverted documentary evidence adduced by the appellants, on the reasoning that they were dumped on them and further held that same were

indeed dumped on the Tribunal, notwithstanding, that each was a statutory form tendered individually, admitted as exhibits through a witness, thereafter related to the affected areas during hearing of the Petition and same witnesses cross-examined in respect thereof.

5. Was the lower court wrong, when, having resolved issues 4 and 5 raised by the appellants at the lower court in favour of same, it yet refused to grant the consequential reliefs sought therefrom. B

6. Was the lower court wrong when it refused to reverse the decision of the Tribunal that the appellants failed to tender any result sheet in proof of the tabulation in their petition and thus reached a perverse decision. C

The 1st respondent also formulated six issues. They are:

1. Whether the lower court was perverse in not discountenancing the 2nd and 3rd to 1772 respondents briefs of argument as in competent. D

2. Whether the lower court was perverse in not upturning the verdict of the trial tribunal refusing to apply minimal proof in favour of the appellants in view of the discredited respondent's evidence on record.

3. Whether the lower court was perverse in upholding the verdict of the trial tribunal that the appellants failed to prove substantial non-compliance capable of vitiating the election of the 1st respondent. E

4. Whether the lower court was perverse in upholding the finding of the trial tribunal that the uncontroverted documentary evidence adduced by the appellants was dumped on the trial court. F

5. Whether the lower court was perverse in not awarding the appellants consequential reliefs flowing from issues 4 - 5 being resolved in favour of the appellants. G

6. Whether the lower court was perverse in upholding the trial tribunal's verdict that the appellant failed to tender result sheet in proof of the tabulation in their petition.

On his part learned counsel for 2nd respondent adopted issues 3, 4 and 6 in the appellants brief and formulated four other issues thereby presenting seven issues for determination they are: H

1. Whether the lower court is obliged to consider issue of incompetence of 2nd and 3rd to 1772 respondents brief raised in the appellants reply brief when no Preliminary Objection was filed to

strike out the brief.

2. Whether the appellants discharged the evidential burden of proving non-compliance with the Electoral Act, 2010 and how it substantially affected the result of the election and to shift the onus of proof on the respondents.

B 3. Whether the lower court adopted the right approach in coming to the conclusion that the appellants did not establish their allegation of non-compliance with the Electoral Act and Manual for Election Officials 2011 in the conduct of the Ebonyi State governorship election in the thirteen (13) Local Government Area in issue, as to
C meet test of substantial non-compliance capable of vitiating the election.

4. Whether the lower court should have reversed the decision of the Tribunal in discountenancing the copious and uncontroverted
D documentary evidence adduced by the appellants, on the reasoning that they were dumped on them and further held that same were indeed dumped on the Tribunal, notwithstanding that each was a statutory form tendered individually, admitted as exhibits through a witness, thereafter related to the affected areas during hearing of the
E Petition and some witnesses cross-examined in respect thereof.

5. Whether the Court of Appeal was in error when it resolved issues 4 and 5 in favour of the appellants, but failed to grant them consequential reliefs connected with the issue.

F 6. Was the lower court wrong when it refused to reverse the decision of the Tribunal that the appellants failed to tender any result sheet in proof of the tabulation in their petition and thus reached a perverse decision.

G 7. Whether the votes of the Petitioners were wrongly credited to those of the 1st and 2nd respondents and whether the wrongful accreditation of one candidate's vote to another candidate is not a specie of falsification of result.

H Finally on formulation of issues for determination learned counsel for the 3rd to 1775th respondents formulated five issues for determination, and they are:

1. Did the Court of Appeal reach a wrong decision in failing to consider and resolve the issue raised by the appellants that the 2nd and 3rd to 1175th respondents have conceded the appellants appeal at the Court of Appeal, their briefs if argued being incurably

defective and incompetent in Law.

2. Whether the Court of Appeal was right in holding that the appellants failed to prove and establish the allegations of non-compliance with the provisions of the Electoral Act, 2010 (as amended).

3. Whether the Court of Appeal was right in holding that the documentary evidence adduced by the appellants witness were dumped on the tribunal notwithstanding that there was a statutory form tendered individually through a witness and some witnesses cross-examined in respect thereof. B

4. Whether the Court of Appeal was right in refusing to grant the consequential reliefs sought from issues 4 and 5 raised by the appellants at the Court of Appeal, having resolved the above stated issues 4 and 5 in favour of the appellants. C

5. Was the Court of Appeal right in refusing to rely on the appellants tabulation chart, the appellants having failed to relate any result sheet to the tabulation chart whether such result sheets were tendered or not. D

I have examined the issues formulated by all sides in this appeal, and I am satisfied that the issues formulated by the appellants would determine the real grievance in this appeal. E

At the hearing of the appeal on the 27th of February, 2012 all counsel had something to say in amplification of their briefs. Learned counsel for the appellants' Mr. R. Tarfa, SAN adopted the appellants brief deemed properly filed on the 27th of January, 2012, reply brief filed on 10th of February, 2012 and composite reply brief filed on the 9th of February, 2012. F

He observed that the appellants did not challenge elections in more than 210 units, further observing that no material document relating to the election was produced by the respondent and none of the respondents challenged the appellant's chart. Concluding he submitted that the grounds of the Petition were on corrupt practices and non-compliance, contending that the appellants were able to prove non-compliance. He urged this court to grant all the reliefs. G

Learned counsel for the 1st respondent, Dr. J.O. Ibik SAN adopted the 1st respondents brief filed on the 7th of February, 2012. He observed that the election should not be invalidated since it was conducted substantially in compliance with the Electoral Act. Reliance was placed on section 139(1) of the Electoral Act, 2010 (as H

amended). Further submitting that there are concurrent decisions of two lower courts that are not perverse. He urged this court to dismiss the appeal and affirm the decision of the court below.

Learned counsel for the 2nd respondent Mr. O. Okafor, SAN adopted the 2nd respondents brief filed on the 8th of February, 2012. He observed that in the trial court the exhibits were all received in bundles, further observing that they were dumped on the Tribunal, neither read or taken as read, submitting that it is not proper for the Court of Appeal to untie them. As regards the chart learned counsel observed that no witness led evidence to show how the chart was arrived at contending that the chart was not tested by cross-examination, further contending that since the appellant did not relate the chart the issue of over voting cannot be considered. Concluding he submitted that the election was credible and so the appeal should be dismissed with substantial costs.

Dr. A. Nwaiwu, SAN, learned counsel for the 3rd to 1775th respondents adopted the said respondents brief filed on the 7th of February, 2012. He observed that the Court of Appeal confirmed decision of the Tribunal that evidence did not prove non-compliance on preponderance of evidence and balance of probabilities, observing that instances of non-compliance were not related to documentary evidence tendered by PW115. He further observed that on the pleadings and evidence led non-compliance was not proved. He urged this court to dismiss the appeal.

I shall address issue No.1 and then take issue 2, 3, 4, 5 and 6 together. I adopt this way because all issues after issue No. 1 fall within Sections 139(1) of the Electoral Act, 2010 (as amended).

In the Court of Appeal, the appellants brief had arguments on a Preliminary Objection which questioned the competence of the 2nd and 3rd to 1775th respondent's briefs. Learned counsel for the appellants argued that the Court of Appeal was wrong not to have considered the preliminary point of objection raised by the appellants. Relying on *Okonji v. Njokanma* (1991) 7 NWLR (Pt.202) P.155, Dr. J. Cookey v. Fombo (2003) 15 NWLR (Pt.947) p. 182. He submitted that a court should deal with and determine all issues placed before it. Concluding he further submitted that all the findings by the Court of Appeal on the incompetent briefs should be discountenanced and the appeal be treated as undefended in respect of the 2nd and

3rd to 1775th respondents.

Learned counsel for the 1st respondent observed that learned counsel for the appellant abandoned the Preliminary Objection and waived his right to rely on it because on the day the appellants counsel adopted his brief he did not seek leave to argue the Preliminary Objection in limine. Relying on *SBN Ltd. v. S.I.O. Corp* 2001 ANLR Pt. 693 p. 194, *Ogboru v. Ibori* 2005 13 NWLR Pt. 942 p. 319, *Agagu v. Mimiko* 2009 7 NWLR Pt. 1140 p. 342, *A.G. Rivers v. Ude* 2006 7 NWLR Pt. 1008 p. 436. He submitted that issue No. 1 is bereft of substance. He urged that the issue is resolved against the appellants.

Learned counsel for the 2nd respondent observed that the 2nd respondent's brief filed on 19/12/11 was filed within the 5 days as required by the Court of Appeal and Election Tribunal Practice Direction, 2011. He urged this court to resolve this issue in favour of the 2nd respondent.

Learned counsel for the 3rd to 1775th respondents observed that the said respondent's brief in the Court of Appeal was filed within time, submitting that objection to the competence of the brief should be ignored as abandoned. This issue is all about the consequences of a party not moving his preliminary objection on the day he adopts his brief. It is now important that I reproduce relevant extracts from the proceedings on the day learned counsel for the appellant adopted his brief in the Court of Appeal. The Record of Appeal, page 3437 is clear that counsel adopted their briefs on the 5th day of January, 2011. Learned counsel for the appellant was Mr. R. Tarfa, SAN. This is what he said on the 5th of January, 2011.

The appellants filed the appellants brief on 21/12/11 and it was deemed filed on same day. We filed a composite reply brief dated 21/12/11 filed same date and is relevant as response and reply to the briefs filed by the 2nd respondent and the 3rd to 1775th. We filed a reply brief dated and filed on 24/12/11 to the 1st respondents amended brief. We adopt and rely on the said appellants' brief. We urge the court to allow the appeal.

It is clear that the learned counsel for the appellant did not move his preliminary objection. It is long settled that arguments on preliminary objection can be incorporated in briefs of argument thereby obviating the need to file separate

Notice of Preliminary Objection. *Where a preliminary objection is filed in the appellant's brief as in this case, he must at the hearing apply or seek leave of the court to raise and argue the objection. Where it is not moved orally in court as in this case, the objection would be treated by the court as abandoned.* See: Onochie v. Odogwu (2006) 6 NWLR Pt. 975 P.65, A.G. Rivers State v. Ude (2006) 17 NWLR Pt. 1008 p. 436, Magit v. University of Agric Makurdi (2005) 19 NWLR Pt. 959 p. 211, Tiza v. Begha (2005) 15 NWLR Pt. 949, p. 616, Okonji v. Njokanma (supra) and **Dr. J. Cookey v. Fombo (Supra) relied on by learned counsel for the appellants is authority for the point of law that a court must consider all issues properly raised and heard and the court must reflect the result of such an exercise.**

It is clear that the Record of Appeal reveals that on the 15th of January, 2011 when learned counsel for the appellant adopted his brief he did not seek leave to argue his Preliminary Objection. He simply adopted his brief and urged the Court of Appeal to allow the appeal. In such a situation the issue in the Preliminary Objection was not raised before the court, consequently the Preliminary Objection was not/cannot be heard. It was abandoned and the Court of Appeal was correct to treat the Preliminary Objection as abandoned.

Learned counsel for the appellants submitted that the applicable standard of proof by minimal evidence is entrenched in our jurisprudence. Reference was made to Omoregbe v. Daniel Lawani (1980) 3 - 4 SC P.108, Nwabuoku v. Ottih (1961) 2 NSCLR P. 232. He observed that the appellants in proof of the allegation of non-compliance called a total of 118 witnesses, including the 1st petitioner who also testified, gave eye-witness and direct accounts and whose evidence the Tribunal did not fault for want of credibility. He submitted that the Tribunal ought to have decided that the petitioners had made out an unanswerable case and entitled to the reliefs sought since evidence led was unchallenged. Reference was made to Abbe v. Alex 1999 14 NWLR Pt. 637 p. 161, N.S.I.T.M.B. v. Nig. Ltd. 2010 13 NWLR Pt. 1211 p. 307. He submitted that the trial Tribunal and the lower court reached a perverse judgment when upon finding rightly that the evidence of the respondents witnesses were worthless, they refused to rely on the appellants un-reproached evidence

and determine their case on the basis of minimal proof. He urged us to invoke Section 22 of the Supreme Court Act and deduct the invalid votes of 208,997 from 287,217 recorded for PDP and also deduct 21,473 from 125,248 votes recorded for ANPP and declare the appellants as the winner of the Ebonyi State Governorship election of April, 2011. He submitted that the lower court's denial of the evidential weight admitted, undisputed and relevant electoral documents tendered by the appellants occasioned a miscarriage of justice. Reliance was placed on paragraph 41(3) of the First Schedule to the Electoral Act, 2010 (as amended).

In conclusion learned counsel for the appellants observed that there was no evidence led by the respondents which rebutted the petitioners case, submitting that having regard to the spread of the acts of non-compliance proved by the appellants to have cut across all the 13 Local Government Areas, it was not correct as held by the Tribunal that same did not substantially affect the result of the election. He further submitted that if the relief is not granted, the alternative prayer No. 5 in the Petition for an order of fresh election should be ordered.

Learned counsel for the 1st respondent observed that the Reliefs sought by the appellants are declaratory in nature. He submitted that the appellant can only succeed on the strength of his case and not on the weakness of the opponents case, and minimal proof has no place in election trials. Reliance was placed on *Ekundayo v. Baruwa* 1965 2 ALL NLR P211. He observed that in *Buhari v. INEC* 2008 19 NWLR Pt. 1120 p.246. The Supreme Court restated that position of the law in election trials where non-compliance is relied upon as a ground for setting aside the result of an election. Further reference was made to an unreported decision of this court, SC.426/2011 *Congress for Progressive Change (CPC) v. INEC & Ors.* Judgment delivered on 28/12/11.

Learned counsel submitted that the evidence in chief of PW115 was adjudged as inadmissible as hearsay by the trial Tribunal and affirmed by the Court of Appeal, contending that the appellants have not succeeded in showing the perversion in the said concurrent findings. He observed that the appellants were unable to show the adverse effect non-compliance had on their electoral fortune. Learned counsel observed that it is conjectural and manifestly absurd for

learned counsel for the appellants to urge this court to invoke section 22 of the Supreme Court Act and make some deductions in the official scores of the parties. As regards the chart which the learned counsel for the appellants attached to his final address before the trial tribunal he observed that it did not specifically identify the particular
B documentary exhibits from which the entries of figures were lifted contending that the lower court was firmly justified in its judgment where it distinguished the facts in this case on appeal from the facts and chart in *Agagu v. Mimiko* 2009 7 NWLR Pt. 1140 p. 342. Further
C observing that none of the witnesses for the appellants stood by the chart nor relied on the certified true copy of the results tendered by PW115 to prove their case.

On tendering of documentary evidence, learned counsel observed that there is an important difference between tendering evidence is(sic, in) bulk and dumping evidence in court. He submitted that the distinction between the two lies in whether a competent witness was called to tie up or link each documentary evidence to the particular aspect of the case of party tendering item as exhibits, contending that it is the failure to call such a witness to provide the necessary
E nexus between the documentary evidence tendered and the particular purpose or aspect of the case of the party tendering same that makes the difference between the notion of dumping exhibits on the one hand and tendering bulk exhibits on the other hand. Reliance was placed on *Buhari v. INEC* 2008 12 SC P1.
F

Learned counsel submitted that the evidence placed before the lower court on the printed record fell far below the burden placed on the appellants relying on non-compliance, and so the burden did not shift. Concluding learned counsel submitted that the dismissal of
G the appellant's case at trial and the affirmation of the said verdict by the Court of Appeal is correct and unassailable.

Learned counsel for the 2nd respondent observed that although the voters Register and Form EC8A, exhibits P95 to P109 were tendered in evidence there was not a single evidence as to their
H contents, further observing that there was no comparison of those who registered and those who voted, contending that allegation of non-accreditation and over-voting were not proved. Relying on *Awuse v. Odili* 2005 10 NWLR Pt. 952 p. 416 he submitted that non accreditation and over-voting were not proved. As regards Form EC8A

not stamped and signed by Presiding Officers learned counsel observed that the petitioners never led evidence to show the polling units affected and the number of such forms not singled(sic) and stamped, contending that in the absence of such evidence the petitioners failed to satisfy the provisions of Section 139(1) of the Electoral Act, 2010 (as amended). Reference was made to Buhari & Anor v. Obasanjo 2005 13 NWLR Pt. 741 P.1. He submitted that the burden of proof is on the appellants and the nature of proof required is on preponderance of evidence and not on the basis of minimal proof. Learned counsel observed that the appellants failed to link oral evidence with relevant documentary evidence contending that documentary evidence was dumped on the Tribunal. Relying on Audu v. INEC 2010 13 NWLR Pt.1212 p.456. He observed that there was no need for this court to invoke Section 22 of the Supreme Court Act, and reevaluate evidence properly. Learned counsel observed that there are 13 Local Governments in Ebonyi State divided into 171 electoral wards and 1785 polling units, contending that the complaint of the appellants affected only about 210 polling units. He submitted that if the appellants proved non-compliance in the 210 polling units out of 1785 polling units this would not amount to substantial non-compliance with the provisions of the Electoral Act, 2010 (as amended). As regards the appellants chart, learned counsel observed that apart from drawing up a chart of election results, it ought to have been linked with alleged anomalies in the said chart to exhibits tendered in proof of same. He submitted that the chart was of no use as the contents of exhibits P95 to P111 were not linked to the figures in the chart, further submitting that PW115 (the 1st appellants) evidence in court was documentary hearsay. Finally learned counsel urged that the appeal should be dismissed and the judgment of the Court of Appeal affirmed.

Learned counsel for the 3rd to 1775th respondents observed that the appellants failed to prove allegations of irregularities and non-compliance substantial enough to invalidate the results in the affected Local governments. He submitted that the standard of proof required is preponderance of evidence and not minimal proof. He observed that the appellants failed to relate instances of non-compliance to the documentary exhibits tendered contending that both courts below were correct to conclude that documentary evidence was dumped

on the tribunal. Reliance was placed on *Buhari v. INEC* 2008 19 NWLR Pt.1120 P.246.

Learned counsel further observed that the burden of proof did not shift to the respondents as the appellants did not discharge the burden and so there was nothing to rebut. He observed that this is not a case for the Supreme Court to invoke its power under Section 22 of the Supreme Court Act. As regards the chart learned counsel observed that the appellants failed to demonstrate or graphically establish in court by credible evidence how the appellants arrived at the tabulations. He submitted that since the contents charts were not tested in cross-examination it was not the business of the court to speculate how the figures were arrived at. He urged us to affirm the decision of the Court of Appeal, Enugu Division.

The appellants founded their petition on alleged corrupt practices and non-compliance. They abandoned corrupt practices and relied solely on the ground of non-compliance. Section 139(1) of the Electoral Act, 2010 (as amended) states that:

“(i) An Election shall not be liable to be invalidated by reason of non-compliance with the provisions of this Act if it appears to the Election Tribunal or court that the election was conducted substantially in accordance with the principles of this Act and that the non-compliance did not affect substantially the result of the election.”

Interpreting Section 135(1) of the Electoral Act, 2002 which is ipsissima verba with section 139(1) of the Electoral Act, 2010 (as amended) Belgore, JSC said:

“It is manifest that an election by virtue of section 135(1) of the Act shall not be invalidated by mere reason that it was not conducted substantially in accordance with the provisions of the Act. It must be shown clearly by evidence that the non-compliance has affected the result of the election. Election and its victory is like soccer and goals scored. The petitioner must not only show substantial non-compliance but also the figures, to votes that the non-compliance attracted or omitted. The elementary evidential burden of the ‘person asserting must prove’ has not been derogated from by section 135(1). The petitioners must not only assert but must satisfy the court that the non-compliance has so affected the election result to justify nullification.”

There are 13 Local Government in Ebonyi State. 171 elec-

toral Wards and 1785 polling units. The appellants allege non-compliance in 531 polling units. The allegations are:

1. Recording of votes for parties, even when no voters were on queue at the time of commencing balloting.

2. Ascribing voters the candidate where there had been no accreditation of voters at all. B

3. Ascribing valid votes to candidates based as results that were not authenticated by presiding officers with the presiding officer's signature and official stamps in some cases with no signature.

4. Ascribing valid votes to candidate based on results that were authenticated by person purporting to be presiding officers other than the officially designated presiding officers in INEC staff list provided to the parties before the date of the election. C

5. Ascribing votes arbitrarily to the 1st respondent in such that the numbers of accredited voters were less than the numbers of the people who voted. D

6. Ascribing valid votes to the 1st respondent in polling booths where there was not voting at all.

7. Multiple voting

8. Arbitrary locking of ballot of papers to cover up for the arbitrary recording of valid votes for the 1st respondent. E

The results declared by INEC are prima facie correct and the onus is on the petitioner to prove the contrary. Where a petitioner complains of non-compliance with provisions of the Electoral Act, 2010 (as amended) he has a duty to prove it polling unit by polling unit, ward by ward and the standard required is proof on the balance of probabilities and not on minimal proof. He must show figures that the adverse party was credited with as a result of the non-compliance. Forms EC8A, election materials not stamped/signed by Presiding Officers. He must establish that non-compliance was substantial, that it affected the election result. It is only then that the respondents are to lead evidence in rebuttal. See: Buhari v. Obasanjo 2005 13 NWLR Pt. 941 p.1, Awolowo v. Shagari 1979 6 - 9 SC P.51, Akinfosile v. Ijose 1960 SCNLR P.447. F G H

The appellants as petitioners called 117 witnesses and tendered 145 exhibits. All the 117 witnesses had little or nothing to say about irregularities at the election. They tendered their voter's card, INEC

ID Cards and appointment letter. PW117, Ahmed A. Ibrahim, a finger print expert/analyst tendered in evidence exhibit P.141. His letter of instruction Exhibit P.142 his resume exhibit P.143 and P.144 certified true copies of ballot papers used at the elections. Exhibit P.143 was rejected by the trial court and confirmed by the Court of Appeal.

B PW115, the 1st petitioner/appellant. It was he that tendered all the election documents relevant in this case, to wit: forms EC8A, EC8B, EC8C, EC8D, EC8E. Exhibits P.95 - P.139. He dumped them on the Tribunal and did not tie his evidence to the pages and paragraphs he wanted the Tribunal to use in evaluating his evidence.

C It must be noted that PW115 said on oath that “....all the information was from an agent.”

This is what the Court of Appeal said on dumping of documentary evidence on the Tribunal.

D “I have always been skeptical of allegation of dumping of documents by Trial Tribunal and have most times seen it as a way to avoid proper evaluation of documentary evidence proffered by a party. However, let us look at the circumstances of this case. Before the exhibits were tendered, 114 witnesses had testified on behalf of the
E appellant and none of them made reference to or was questioned in relation to the said exhibits.”

I cannot agree more with the above. **When a party decides to rely on documents to prove his case there must be a link between the document and the specific area/s of the petition. He must relate each document to the specific area of his case for which the document was tendered. On no account must counsel dump documents on a trial court. No court would spend precious judicial time linking documents to specific
F areas of a party's case.** See: ANPP v. INEC 2010 13 NWLR Pt.1212 p.549.
G

**A judge is to descend from his heavenly abode, no lower than the treetops, resolve earthly disputes and returns to the Supreme Lord. His duty entails examining the case as presented by the parties in accordance with standards well laid down. Where a judge abandons that duty and starts looking for irregularities in electoral documents, and investigating documents not properly before him, he would most likely be
H submerged in the dust of the conflict and render a perverse**

judgment in the process.

To succeed on the ground of non-compliance the petitioner has to prove:

1. that there was non-compliance occasioned by the breach of relevant sections of the Electoral Act and/or Manual.

2. that the non-compliance was substantial that it affected the result of the election.

Evidence led by the appellants fell short of proof required. They did not establish non-accreditation, over voting, neither were they able to show the polling units affected and the number of unsigned unstamped Forms. They also fail to show votes that the non-compliance attracted or omitted. The appellants failed woefully to prove that non-compliance was substantial. They have not shown the votes that non-compliance attracted or omitted. There was a chart contained in the appellant's written address. The Court of Appeal had this to say

"...In the circumstances of this case the appellant had the burden in my humble view of specifically relating or linking each of the documents to specific parts of their case..."

If the charts had been properly correlated with the figures of non-compliance in the exhibits tendered by the appellants there would not have been any justifiable reason not to follow the case of Agagu v. Mimiko (supra) and use them as a guide to know who scored what votes at the questioned election. The chart contained in the appellant's final address was a brilliant idea, but it was not tested under cross-examination, and it does not show that the figures were arrived at as a result of careful examination and comparison of exhibits P.95 - P.111, documents that were dumped on the trial court. I must point out that a brilliant address is no substitute for evidence. Counsel submission no matter how brilliant and alluring cannot take the place of legal proof. See Ishola v. Ajoboye 1998 1 NWLR Pt.532 P.74, Chukujekwu v. Olarere 1992 2 NWLR Pt.221 P. 86. The chart relied on by learned counsel for the appellants are of little or no evidential value.

Learned counsel for the appellants asked us to invoke section 22 of the Supreme Court Act and deduct the invalid votes of 208,997

from 287,217 recorded for PDP and also deduct 21,473 from 125,248 votes recorded for ANPP and thus, declare the appellants as the winners of the Ebonyi State Governorship Election of April, 2011, having scored 103,775 votes the highest lawful votes in the Election as against 78,220 lawful votes for PDP.

B Section 22 of the Supreme Court Act confers full jurisdiction over this court over the whole proceedings as if the proceedings had been instituted and prosecuted in the Supreme Court as a court of first instance and may rehear the case in whole or in part or remit it to the court below for the purpose of such hearing. The powers conferred on this court by section 22 supra are much wider than the above, but the above shall suffice. On page 24 of the appellants' brief, counsel argues that non-compliance is best proved by documentary evidence. The appellants are asking this court to do what they failed to do at the trial court. They are asking this court to take out exhibits P.95 - P.129 and all other exhibits relevant to their case and link them to the specific areas of their case. I must point out that under Section 22 of the Supreme Court Act this court has power to evaluate evidence which a trial court failed to consider and make correct findings which the trial court failed to make. This court has no jurisdiction to correct mistakes of counsel or assist counsel to prove his case. This is not a proper case to invoke section 22 of the Supreme Court Act.

G This is a case of concurrent findings of fact. The Supreme Court will not interfere with the concurrent findings of fact by the trial court and the Court of Appeal where there is sufficient evidence in support of such findings and where no substantial error is apparent on the record such as miscarriage of justice or violation of some principle of law or procedure. See Ogunbiyi v. Adewunmi 1988 5 NWLR Pt. 93 P.215, Shipcare Nig. Ltd. v. The Owners of the M/V Fortumato & Anor (2011) 2 - 3 SC Pt. 11 P.1, Ezeonwu v. Onyechi 1996 3 NWLR Pt. 438 P. 499. Concurrent findings of fact are that evidence adduced by the appellants was/are insufficient to prove substantial non-compliance with relevant provisions of the Electoral Act, 2010 (as amended). There was no error or miscarriage of justice in

this case to warrant interference by this court with decisions of the courts below.

I must point out once again the standard of proof required when a petitioner brings a petition on the ground that there was non-compliance with provisions of the Electoral Act, 2010 (as amended) in the conduct of the election. By virtue of Section 137(1) and (2) of the Evidence Act 2010 the standard is on preponderance of evidence. That is to say one side position outweighs the other. The petitioner is to prove that there was non-compliance with provisions of the Electoral Act. He then has an added burden to prove that the non-compliance was substantial, that it affected the results of the election. It is then, the burden shifts to the respondent to rebut that fact. Evidence led by a petitioner outweighs that of the respondent when the petitioner is able to establish substantial non-compliance and there is only a feeble response or nothing much forthcoming from the respondent in rebuttal. On the state of the pleadings and evidence led in support a rebuttal from the respondent was not really necessary since the appellant was unable to establish that non-compliance was substantial.

In Election Petition trials the standard of proof is proof beyond reasonable doubt where the petition is brought on grounds of a criminal nature. Where on the other hand the ground is of a civil nature, the standard of proof is preponderance of evidence and balance of probabilities. Minimal proof can only be entertained by the court and acted on positively where the petitioner's case is unchallenged and that is unheard of in election petitions in these climes. A petitioner succeeds on the strength of his case and not on the weakness of his opponent's case. In Sorunke v. Odeunmi 5 FSL OR 1960 SCNLR P. 44. There were 138 polling booths but the election was conducted in 86 polling booths. The Federal Supreme Court had this to say:

"In the present case the fact that the election was conducted in 86 of the 138 polling booths of the constituency in question was not found wanting prima facie shows that there was substantial compliance... in the majority of the polling booths where the election took place in the constituency. The burden was therefore on the appellant

to show that the non-compliance which applied to 52 polling booths, as found by the learned trial judge actually vitiated the election in the constituency as a whole that he failed to do."

In the instant case there are 1785 polling units and elections were conducted in all of them. The appellants allege non-compliance in about 531 polling units. The fact that election were not found wanting in 1254 polling units prima facie shows there was substantial compliance. The burden was on the appellant to show that the non-compliance which he alleges occurred in 531 polling units was substantial to affect the conduct of the election. That burden was not discharged by the petitioners/appellants. There is no merit in this appeal. It is hereby dismissed. No order on costs.

MOHAMMED JSC

The judgment of my learned brother Rhodes-Vivour, JSC which he has just delivered was read by me in draft before today. I am fully with him in the reasoning and the conclusion he finally arrived at in dismissing this appeal.

Of the issues 6 issues identified by the Appellants in their brief of argument, I wish to throw more light on the first and main issue for the determination of this appeal which states-

"Whether the lower Court reached a wrong decision when it failed in its judgment to consider and resolve the issue raised by the Appellants that the 2nd and 3rd - 1772nd Respondents have conceded the appeal as their briefs were incurably defective and manifestly incompetent in law, yet countenanced the said processes and impliedly resolved the issue against Appellant."

The basis of the Appellants' complaint on this issue is that on 21st December, 2011 the Court below granted the Appellants application to amend the Appellants' brief and to deem same as properly filed. The Respondents were then given 5 days to file their amended Respondents briefs while the Appellants were given 1 day thereafter to file their reply brief if any, that the 1st Respondent whose brief was filed on 23rd December, 2011 was quite within time but that the 2nd and 3rd - 1772nd Respondents, failed to file any amended brief and for that reason, the Appellants have argued, that the Court below was in error in countenancing their briefs in the determination of the

appeal when the Respondents affected, ought to have been deemed to have abandoned their briefs and conceded the appeal. What is significant in the arguments of the Appellants in support of this issue however, is that there is no complaint whatsoever that the alleged error on the part of the Court below had resulted in any miscarriage of justice to the case of the appellants. Neither are the Appellants complaining that the error committed by this Court below rendered its decision in the determination of the entire appeal, perverse to justify its being set aside on the grounds of denial of fair hearing. In any case, taking into consideration the provisions of Section 15 of the Interpretation Act CAP 125 Vol. 8 of the laws of the Federation of Nigeria 2004, at least the 2nd Respondent's brief was filed within time of the 5 days given since the Appellants brief was served on the 2nd Respondent on 13th December, 2011 and the brief of the 2nd Respondents was filed on 19th December, 2011. Furthermore, the law does not compel the Respondents to file amended Respondents brief of argument in response to the Appellants' amended brief of argument. The Respondent could still rely on their earlier briefs of argument filed before the Appellants amended brief was filed. This issue therefore does not in the least, assist the Appellants most especially when the judgment of the Court below could still be sustained as the appeal was heard not only on the Appellants brief alone but also on the 1st Respondent's brief on which the Appellants are not complaining.

The Appellants have also laid a lot of emphasis on the requirement of minimal proof of their petition because of the failure of the Respondents to call relevant evidence in support of their case as found by trial Tribunal. The Appellants seemed to have forgotten that having regard to the nature of the reliefs sought by them in their petition which are declaratory in nature, the law is indeed well settled that in such claims for declaratory reliefs which are in fact the backbone in all election petition, the onus remains on the petitioners to prove and establish their claims on their own evidence without relying on the weakness of the case of the Respondents. In other word the petitioners must satisfy the Election Petition Tribunal upon enough credible and cogent evidence which ought reasonably be believed and which, if found established, entitles the petitioners to the declaration sought. See *Nwokidu v. Okanu* (2010) 3 NWLR (Pt.1181) 362; *Ekundayo v.*

Baruwa (1965) 2 All NLR 211 and Dantata v. Mohammed (2000) 7 NWLR (Pt.664) 176. On this requirement of the law, it is quite clear from the record of appeal that both the trial Tribunal and the Court below are concurrent on their findings that the Appellants have failed to satisfy these requirements of the law in the prosecution of their
B petition and the appeal to qualify for the grant qualify for the grant of the reliefs sought by them in their petition. I do not see any compelling reasons in the present appeal to disturb these concurrent findings of the Governorship Election Petition Tribunal and the Court of Appeal. I shall therefore join my learned brother Rhodes-Vivour, JSC,
C in his leading judgment in dismissing this appeal and affirming the judgments of the trial Tribunal and the Court of Appeal. Accordingly, the appeal is hereby dismissed. I abide by the orders made in the leading judgment including the order on costs.

D

CHUKWUMA-ENEH JSC

I have had the advantage of a preview of the judgment prepared and just delivered by my learned brother Rhodes-Vivour, JSC
E and I agree with him that the appeal is unmeritorious and should be dismissed. I subscribe to all the orders contained in the lead judgment.

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MUNTAKA-COOMASSIE JSC

Both the 1st appellant and 1st Respondent contested the gubernatorial election for Ebonyi State conducted on the 26/04/2011. After the election, Independent National Electoral Commission (INEC)
G declared the 1st Respondent, Chief Martin Nwancho Elechi the winner. The appellant, Senator Julius Aliucha, as petitioner before the Election Tribunal Ebonyi State, filed a petition challenging the result of the election as announced by INEC. The grounds of appeal are as follows:

H 1. That Election and return of the 1st Respondent was invalid by reason of corrupt practices/non-compliance with the provisions of the Electoral Act, 2010 (as amended) and the manual for Election Officials 2011 and the Guidelines.

2. That the 1st Respondent was not duly elected by the major-

ity of lawful and valid votes cast at the said election.

3. That the 1st Petitioner was the person that scored the majority of lawful votes cast at the said election and ought to have been returned by 3rd to 5th Respondents as the winner of the election.

The appellant and his party ALL NIGERIA PEOPLES PARTY (ANPP) called one hundred and eighteen (118) witnesses and tendered one hundred and forty five (145) exhibits. The 1st respondent in turn called seventy four (74) witnesses and tendered 103 exhibits. While the third respondent called 20 witnesses and tendered specimen signatures of witnesses. The appellants announced that they are abandoning their ground on corrupt practices and relied heavily on the ground of non-compliance. The Trial Tribunal considered almost everything and delivered its judgment in favour of the 1st respondent that was on the 11th day of November, 2011. The petitioner unsuccessfully appealed to the court of appeal, Enugu Division. The court of appeal held that the appeal by the petitioner was unmeritorious and dismissed same on the 7th day of January, 2012 and affirmed the judgment of the Election Tribunal. The petitioner now appellant, being dissatisfied with decision of the court of appeal Enugu-Division hereafter called lower court, lodged an appeal to this court. The appellants filed their grounds of appeal. The briefs of argument were also filed by the parties.

I was privileged to have read before now the illuminating lead judgment of my learned brother Rhodes-Vivour JSC. I entirely agree with his reasons and conclusions. In fact I adopt them, with respect also find that the appeal lacks merit. I dismiss same. There is no order as to costs.

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FABIYI JSC

I have had a preview of the judgment delivered by my learned brother - Rhodes-Vivour, JSC. I agree with the reasons therein advanced to arrive at the conclusion that the appeal should be dismissed.

Let me make a few points and I shall be done. The appellants as petitioners at the trial Tribunal alleged non-compliance with the provisions of the Electoral Act, 2010 (as amended). To prove same

they dumped tied exhibits before the Tribunal. They were not untied and demonstrated before the Tribunal. It was not the duty of the Tribunal to untie the exhibits in chambers and asses them. It was not the duty of the Tribunal to embark upon cloistered justice by making enquiry into the case in chambers by examination of documents which were in evidence but not demonstrated by witnesses before the Tribunal. A judge is an adjudicator; not an investigator. See: Durininiya v. Commissioner of Police (1961) NRNLR 70; Onibudo v. Akibu (1982) 7 SC 60; Dennis Ivienagbor v. Henry Osato Bazuaye (1999) 6 SCNJ 235 at 243.

The appellants as petitioners failed to substantiate their allegation of non-compliance with provisions of the Electoral Act, 2010 (as amended). The court below was right in it's conclusion in this respect. The findings of the trial Tribunal and the Court of Appeal in respect of the above issue are concurrent. This court will not interfere with same as they have not been shown to be perverse or run against the current or flow of evidence adduced. See: Kale v. Coker (1982) 12 SC 252.

For the above reasons and the fuller ones set out in the lead judgment, I hereby dismiss the appeal for want of merit. I make no order on costs.

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