

SUPREME COURT OF NIGERIA
TUESDAY 20TH NOVEMBER, 2012. SC. 409/2012
**CORAM:- W. S. N. ONNOGHEN, C. M. CHUKWUMA-
ENEH, S. GALADIMA, M. PETER-ODILI, O. ARIWOOLA,
M. D. MUHAMMAD, C. B. OGUNBIYI, JJSC**

ACTION CONGRESS OF NIGERIA APPELLANT
AND
1. REAL ADMIRAL MURTALA
H. NYAKO
2. BALA JAMES NGILARI
3. PEOPLES DEMOCRATIC PARTY
4. INDEPENDENT NATIONAL
ELECTORAL COMMISSION
5. RESIDENT ELECTORAL
COMMISSIONER RESPONDENTS
6. MARKUS NATINA GUNDIRI
7. ALHAJI ABDULRAZAK
SA'DA NAMDASS

ELECTION PETITIONS - Tribunal - Judgment - Appeals - By 1999 Constitution ss. 246 & 318 - The aspect of the Tribunal's judgment appellant purports to appeal against is not appealable - Since same was not its decision (H1)

ELECTION PETITIONS - Documents - Refusal to tender - Options - Appellant can move the Tribunal - To compel 5th respondent to comply with its order - Or the certified copies of the such documents can be tendered (H2)

ELECTION PETITIONS - Evidence - Evaluation - Appraisal & ascription of probative value to evidence - Is function of trial tribunal - And Supreme Court does not interfere - Save there is miscarriage of justice (H3)

ELECTION PETITIONS - Evidence - Hearsay - Weight - Statements of appellant's witnesses were rightly disregarded - Since same did not come from their personal knowledge (H4)

ELECTION PETITIONS - Civil & criminal allegations - Proof - Where such facts pleaded are intertwined - Petitioner succeeds only if - The averments are proved beyond reasonable doubt (H5)

ELECTION PETITIONS - Tribunal - Expert witness - Opinion - Where Tribunal requires to form to form opinion on a point - Opinion of persons specially skilled in the point - Are admissible (H6)

ELECTION PETITIONS - Documentary evidence - Proof - Such documents remain dormant - Unless they are activated by oral evidence - To allow court speak on them (H7)

FACTS

Following their failure at the Governorship election conducted in Adamawa State, petitioner/appellant filed this election petition at the Governorship Election Petition Tribunal, Yola. Appellant whose candidates at the election were 6th and 7th respondents, challenged the results of the election on the ground that 1st and 2nd respondents did not score the majority of lawful votes cast at the election. Appellant further contended that the election was vitiated by corrupt practices and substantial non compliance with the provisions of Electoral Act 2010. To prove its case, appellant called 66 witnesses and tendered several exhibits largely from the bar.

At the end of hearing, the Tribunal disregarded the statements of appellant's witnesses since same did not emanate from the witnesses' personal knowledge of the events that took place at the polling units. Hence, the petition was dismissed for lack of proof. Not satisfied, appellant appealed to the Court of Appeal, Yola Division. The court in its judgment upheld the decision of the trial Tribunal and equally dismissed the appeal. Aggrieved, appellant filed appeal in Supreme Court.

ISSUES FOR DETERMINATION

"1. Whether their lordships of the Court of Appeal were right when they held at pages 3955 - 3958 of Vol. VIII of the Record that the Appellant neither sought to compel the attendance of the subpoenaed witness through legal process or apply for the certification of the secondary electoral documents in order to prove their case by

tendering same through witnesses or commencing proceedings against the 5th Respondent under section 77(1) and (2) of the Electoral Act, 2010 (as amended).

2. Whether the Court of Appeal did not misdirect itself when, at pages 3916 - 3917 of Vol. VIII of the Record, it endorsed the decision of the Tribunal castigating the evidence of the Appellant's witnesses based on three particular paragraphs of their witness's statement and the inclusion of the illiterate jurat and, therefore, rejected the evidence of the said witness.

3. Whether the Court of Appeal did not err in law and occasion a miscarriage of justice when, at pages 3921 -3923 of Vol. VIII of the Record, it endorsed the Tribunal's open abdication of its responsibility to go through more than 50 paragraphs of the Petition to which its attention were directed before concluding that the civil and criminal allegations contained in the Petition were not severable and that the Appellant did not prove the criminal allegations contained in the Petition. - Grounds 4 and 5 of the Notice of Appeal

4. Whether the testimonies of the Appellant's witnesses who were ward supervisors could be regarded as hearsay simply because they did not mention the names of their polling agents and because they did not distinguish between what they saw and what their polling agents told them more so that the witnesses testified that what they saw and what their agents later related to them were one and the same thing against which evidence the Respondents did not call any evidence to challenge.

5. Whether the Court of Appeal was right when it held at pages 3937 and 3938 of Vol. VIII of the 'Record that PW66 admitted in cross-examination that he was not an expert when there was no such admission on record and concluded that the evidence of PW66 on the documents he analysed is an opinion evidence simply because PW66 did not participate in or witness the conduct of the election and that multiple voting can only be proved by biometric evidence.

6. Whether the Court of Appeal did not err in law and occasion a miscarriage of justice when, at pages 3939 -3940 of the judgment it held that PW66 was not a proper witness under Section 77 of the Evidence Act to testify in election matters and that despite the evidence of PW66, the Appellant could still be regarded as having

dumped the documents tendered on the Tribunal.

7. *Whether the Court of Appeal did not err in law and, thereby occasion a miscarriage of justice, when it failed to pronounce on the impropriety of the Tribunal's decision expunging the chart contained in the Appellant's final address by which only the lawful votes could be deducted from the unlawful votes and the Tribunal's decision refusing to attach any weight to the evidence elicited by the Appellant in cross-examination of the few witnesses called by the Respondents on the ground that the witnesses were not makers of the documents with which they were confronted.*

8. *Whether the Court of Appeal was not wrong when it failed to make a finding that the Appellant was elected and ought to have been returned as elected in the Adamawa State Governorship election held on 4 February, 2012."*

HELD (Unanimously dismissing the appeal per MUHAMMAD JSC)

Tribunal - Judgment - Appeals

1. The question to answer is whether the court below has the jurisdiction to entertain and pronounce on Appellant's complaint in respect of the foregoing aspect of the tribunal's judgment. I agree with learned counsel for the Respondents that the aspect of the tribunal's judgment the Appellant purports to appeal against in ground 1 of its Notice of Appeal and articulated in its first issue, not being the "decision" of the tribunal, by the combined operation of Sections 246 and 318 of the 1999 Constitution (as amended), is not appealable. Certainly the tribunal's dicta given at the judgment stage could not have been a recommendation as Appellant was not in the position to implement the recommendation at that late stage with proceedings having already closed. Learned counsel's reliance on the decision of this court in Buhari V Obasanjo (supra) is apposite. The lower court's determination of the issue put before it by the Appellant having proceeded in the absence of the necessary jurisdiction being a nullity cannot create a further right of appeal to this Court. (p. 3283 G)

Documents - Refusal to tender - Options

2. Learned counsel to the Respondents are equally right that were Appellant's 1st ground and the issue distilled from it to be competent, both the tribunal and the court below have correctly stated the options available to the Appellant in law, following the refusal of the 5th Respondent, in spite of the tribunal's subpoena on him, to produce the documents the Appellant relies upon to prove its case. It is for the Appellant to move the tribunal to compel the 5th Respondent to comply with the tribunal's order or, in the alternative, tender the certified copies of the very documents the 5th Respondent refused to produce. (p. 3284 C)

Evidence - Evaluation

3. The appraisal of evidence and ascription of probative value to same, the court below is right, is the primary function of the trial tribunal or the court and in the case at hand where it is the concurrent findings of fact of the two lower courts the Appellant questions, this court is always reluctant, to interfere unless the Appellant has successfully shown that the findings are perverse and have occasioned miscarriage of justice. (p. 3289 G)

Evidence - Hearsay - Weight

4. Firstly, the court is right to have affirmed the tribunal's resolve to attach little or no probative value to the statements of the witnesses and for all the right reasons articulated in the tribunal's judgment. Significantly it is logical for any tribunal to infer from the defects in the process of recording the statements of the witnesses as well as the uniformity in their content that the statements are unlikely to be the depositions of those the Appellant purports they are.

Secondly, we all know what hearsay evidence is. It is evident from the record that the account the witnesses gave the tribunal of what transpired at the various polling units under their supervision is not from their personal knowledge. Indeed, they told the tribunal that they sourced the informa-

tion from the reports the polling agents who served at the various units under their supervision on the day of the election furnished them. At least in their sworn statements which serve as the baseline for their evidence in chief, PW1 - PW65 are under obligation to disclose the source of the reports on the basis of which they made their sworn statements and also testified at the tribunal.

Failure to do this makes it impossible for any tribunal to meaningfully draw the line between what the witnesses themselves “saw”, “heard”, “perceived” or “did” from those “seen”, “heard”, “done” or “perceived” by the polling agents. And this is exactly what the tribunal held and the lower court affirmed in respect of the sworn statements as well as the evidence of PW1 - PW65 under cross-examination in the case at hand. Their evidence on matters “seen”, “heard”, “done” or “perceived” by the polling agents who briefed them and who were not led by the Appellant to establish the fact that these agents had indeed briefed the witnesses, being hearsay, has rightly been rejected by the two courts below. Both courts are not saying that the polling agents are the only persons entitled to testify in proof of appellant’s petition. No. The point being made is that only persons who personally “saw”, “heard”, “knew” or “perceived” the facts they testify to in proof of the petition are of benefit to the appellant. Where however the polling agents are the ONLY persons who “saw”, “heard”, “perceived” or “did” all the facts the appellant relies on to prove its petition, failure to have these agents testify remains fatal to the Appellant’s petition. (pp. 3290 B/3291 H)

ELECTION PETITIONS - Civil & criminal allegations - Proof
5. The attitude the tribunal that is faced with pleadings containing criminal as well as civil allegations in a petition should adopt, both sides in the appeal rightly agree, has been stated in a body of seemingly endless judicial decisions. In Nwobodo V Onoh (supra) this Court has admonished thus:-

“...If in any civil proceeding the averments alleging a crime are severable and if after such severance there still remain in the pleadings of the plaintiff or the petitioners suffi-

cient averment devoid of the criminal imputation against any parity to the proceeding and on which the plaintiff or the petitioner can succeed in his claim or petition, then the burden of proof upon the plaintiff or petitioner is to prove his case within the balance of probability. I may emphasize that the application of Section 137 (1) of the Evidence Act to a civil proceeding depends on the contents of the pleadings in a particular case. Each case should be decided on its pleadings.” ^B

It appears to me very clear from the foregoing that the case is never an authority for the dismissal of petitions purely because the petition stands overwhelmingly on criminal allegations. The decision recognizes the fact that there could be petitions which contain, apart from criminal allegations, civil allegations as well. Once the two classes of allegations in the petition can be demarcated with precision, a situation then arises where each class of allegations would require the discharge of the burden of proof which the Evidence Act requires the plaintiff or petitioner who levies the particular set of allegation, criminal or civil as the case may be, to discharge in establishing each set of allegations. Whereas outright allegations of crime in a civil proceeding must, by the provision of Section 137 (1), be proved beyond reasonable doubt, allegations which are purely of civil nature, on the other hand, are to be proved within the balance of probability. However where the civil and criminal facts pleaded are so intertwined that the one cannot be separated from the other, the petitioner succeeds only if the entire averments are proved beyond reasonable doubt. That is why this Court in *Nwobodo v Onoh* (*supra*) emphasized that “each case should be decided on its pleadings.” None of the cases on the principle is an authority that a petition should be discountenanced simply because it rests on both civil and criminal averments which are inextricably intertwined and in-severable. Rather, the petitioner in that case succeeds if he proves all the averments in the petition beyond reasonable doubt as doctrine of severance would be inapplicable. (p. 3293 D) ^C
^D
^E
^F
^G
^H

Tribunal - Expert witness - Opinion

6. By the foregoing, where a court or tribunal requires to form an opinion upon a point specified thereunder, the opinion of persons specially skilled in the areas are admissible. It is a condition precedent to the admissibility of the opinion tendered to enable the court form its own opinion that it is that of a person specially skilled in the area the court or tribunal is required to form its opinion on a point. The qualification, experience and depth of the person's learning are invariably the criteria which entitle him to tender his opinion in order to aid the court or tribunal. The person so qualified under the section is called an Expert. His opinion is necessary and so admissible because same is outside the experience and knowledge of the judge as a judge of fact. It is the court's prerogative to determine that the person being called as a witness, by his qualification and learning on the subject in which the court requires his opinion and the reasons for the opinion, is indeed specially skilled. (p. 3298 D)

E Documentary evidence - Proof

7. The principle is that documentary evidence tendered and admitted from the bar in proof of a petitioner's case remain dormant unless and until they are activated by oral evidence to allow the court speak to them. Where the petitioner dumps them on the tribunal or court without relating them to the averments in its petition, the umpire that the court is will not descend and decide what document is meant to prove which particular averment in the petition. (p. 3300 A)

NOTABLE POINT OF INTEREST

OGUNBIYI JSC

1. Court must expunge wrongly admitted evidence from its records

H The law is trite that where a document is wrongly admitted as an exhibit, the court owes it a duty to expunge same from its records in its judgment. The argument by the appellant to the effect that once a document is admitted by the court, it is under a duty to evaluate

same and give effect, is a wrong conception of the law therefore. The appellant had in other words given a wrong interpretation to paragraph 41(2) of the 1st schedule to the Electoral Act as submitted supra. (p. 3318 D)

REPRESENTATION

B

Chief Akin Olujinmi, SAN with A.K. Jingi, Olufemi Atetedaieye, Oluwole Ilori, Oluseyi Adetenmi and Ibukim Fasanmi.

Kanu Agabi SAN, with Mathew Ojua, John Ochogwu, Aromeh Haruna, Linus Akuaji, Peter Eerivwode, Wilkey Kehinde, Ngozi Okogbue (Mrs.) Edidiong Usungurua, Ofe Obeten, Nkereuiwem Anana, Florence Avhioboh (Miss) and Effionanwan Etim (Miss) for the 1st and 2nd Respondents

J. N. Egwuonwu, with Abdulhamid Mohammed, Magaji V. Magaji, Esq., N Sheltha (Miss) , Muktar Nasale, Esq., U. M. Jawur, Esq., B.A. Wali, Amaka Eke, Hamza Yakubu for the 3rd Respondent.

Hassan L. Liman SAN, with I.K. Bawa, M.B. Usman, I. M. Dikko, Rahima Amilu, A.D. Auta, Y.D. Dangana, A.B. Usman, Fatima Bukar, J.A. Aiytogo and Emeeyere I. Henry for 4th, 5th, & 6th Respondents

Dr. Muiz Banire with Nurudeen Ogbara, Kunle Adegoke, Mutiu Olaoye and Adaego Nosiri (Miss) for the 7th Respondents.

Chief akin olujinmi san for the 6th and 7th respondents with A. K. Jingi; A. Olujinmi; O. Atetedaieye; O. Ilori; O. Adetanmi; Ibukun Fasanmi; O. Ajagbe-Fayemi (Miss)

F

CASES REFERRED TO

Buhari v. Obasanjo (2005) ALL FWLR (273) 1

Uzoho v. Task Force, Hospitals Mgt (2004) 5 NWLR (pt. 867) 627

Salami v. Mohammed (2000) 9 NWLR (pt. 469)

Adesonoye v. Adewole (2000) 9 NWLR (pt. 671) 127

Fatumbi v. Olunloye (2004) 6 - 7 SC 68

Edokpululu & Co. Ltd v. Ohenhen (1994) 7 NWLR (pt. 358) 511

Djukpan v. Ororuyorbe (1967) 1 ALL NLR 134

Anyabunsi v. Ugwunze (1995) 6 NWLR (pt. 401) 225

FRN v. Usman (2012) 8 NWLR (part 1301) 141

Ngige v. Obi (2006) 14 NWLR (pt. 999) 233

Contract Resources Nig Ltd v. Wender (1998) 5 NWLR (pt. 549)

Lasun v. Awoyemi (2009) 16 NWLR (pt. 1168) 513

Aregbesola v. Oyinlola (2011) 9 NWLR (pt. 1253) 458

Akingboye v. Salisu (1999) 7 NWLR (pt. 611) 434

Jolayemi v. Alaoye (2004) 12 NWLR (pt. 887) 322

B STATUTES REFERRED TO

Constitution of Federal Republic of Nigeria 1999 (as amended), s. 246(1)(c)(ii)

Evidence Act 2011, ss. 67-76, 105, 115, 137(1)

C Electoral Act 2010 (as amended), s. 77(1)(2)

C Electoral Act 2012 (as amended), s. 45(1)

LEAD JUDGMENT BY MUHAMMAD JSC

Aggrieved by the return of the 1st and 2nd Respondents herein
D as the Governor and Deputy Governor of Adamawa State respectively by the 4th Respondent at the end of the Gubernatorial Election the latter conducted on the 4th of February 2012, the Appellant, whose candidates in the election were the 6th and 7th Respondents, by its petition dated 24th February, challenged the return on the grounds
E that:-

(a) The 1st and 2nd Respondents did not score the majority of lawful votes cast at the election and

(b) That the election was vitiated by corrupt practices and substantial non-compliance with the provisions of the Electoral Act
F 2010 as amended.

Respondents filed their respective replies. At the conclusion of the pre-trial conference, the Appellant hi establishing its case called Sixty Six (66) witnesses. It also tendered many Exhibits largely from
G the bar. While the 1st and 2nd Respondents called eight witnesses, the 3rd Respondent called one with the 4th and 5th Respondents calling none. At the end of trial including address of counsel, the tribunal by its judgment delivered on 25th July, 2012, dismissed Appellant's petition.

H Dissatisfied with the tribunal's judgment, the Appellant appealed to the Court of Appeal. The court, on 22nd September 2012, dismissed Appellant's appeal. The Appellant has further appealed to this court on a Notice containing sixteen grounds filed on 3rd October, 2012.

Parties have filed and exchanged their briefs of argument including the Appellant's joint reply brief. At the Hearing of the appeal, parties' respective counsel in addition to adopting and relying on these briefs also orally emphasized on the arguments contained in their briefs.

Eight issues have been distilled in the Appellant's brief as having arisen for the determination of the Appeal. The issues read:-

"1. Whether their lordships of the Court of Appeal were right when they held at pages 3955 - 3958 of Vol. VIII of the Record that the Appellant neither sought to compel the attendance of the subpoenaed witness through legal process or apply for the certification of the secondary electoral documents in order to prove their case by tendering same through witnesses or commencing proceedings against the 5th Respondent under section 77(1) and (2) of the Electoral Act, 2010 (as amended) - Ground 1 of the Notice of Appeal.

2. Whether the Court of Appeal did not misdirect itself when, at pages 3916 - 3917 of Vol. VIII of the Record, it endorsed the decision of the Tribunal castigating the evidence of the Appellant's witnesses based on three particular paragraphs of their witness's statement and the inclusion of the illiterate jurat and, therefore, rejected the evidence of the said witnesses. - Grounds 2 and 3 of the Notice of Appeal

3. Whether the Court of Appeal did not err in law and occasion a miscarriage of justice when, at pages 3921 -3923 of Vol. VIII of the Record, it endorsed the Tribunal's open abdication of its responsibility to go through more than 50 paragraphs of the Petition to which its attention were directed before concluding that the civil and criminal allegations contained in the Petition were not severable and that the Appellant did not prove the criminal allegations contained in the Petition. - Grounds 4 and 5 of the Notice of Appeal

4. Whether the testimonies of the Appellant's witnesses who were ward supervisors could be regarded as hearsay simply because they did not mention the names of their polling agents and because they did not distinguish between what they saw and what their polling agents told them more so that the witnesses testified that what they saw and what their agents later related to them were one and the same thing against which evidence the Respondents did not call any evidence to challenge. - Grounds 6 and 7 of the Notice of Ap-

peal.

5. Whether the Court of Appeal was right when it held at pages 3937 and 3938 of Vol. VIII of the 'Record that PW66 admitted in cross-examination that he was not an expert when there was no such admission on record and concluded that the evidence of PW66 on the documents he analysed is an opinion evidence simply because PW66 did not participate in or witness the conduct of the election and that multiple voting can only be proved by biometric evidence. - Grounds 8, 9, 10 and 11 of the Notice of Appeal

6. Whether the Court of Appeal did not err in law and occasion a miscarriage of justice when, at pages 3939 -3940 of the judgment it held that PW66 was not a proper witness under Section 77 of the Evidence Act to testify in election matters and that despite the evidence of PW66, the Appellant could still be regarded as having dumped the documents tendered on the Tribunal. _ Grounds 12 and 13 of the Notice of Appeal.

7. Whether the Court of Appeal did not err in law and, thereby occasion a miscarriage of justice, when it failed to pronounce on the impropriety of the Tribunal's decision expunging the chart contained in the Appellant's final address by which only the lawful votes could be deducted from the unlawful votes and the Tribunal's decision refusing to attach any weight to the evidence elicited by the Appellant in cross-examination of the few witnesses called by the Respondents on the ground that the witnesses were not makers of the documents with which they were confronted. - Grounds 14 and 15 of the Notice of Appeal.

8. Whether the Court of Appeal was not wrong when it failed to make a finding that the Appellant was elected and ought to have been returned as elected in the Adamawa State Governorship election held on 4 February, 2012. - Ground 16 of the Notice of Appeal."

The seven issues formulated in the 1st and 2nd Respondents' joint brief are as follows:-

"1. Whether their Lordships of the court below were right in upholding the decision of the Tribunal in refusing to give credence to the evidence of PW1 - PW65 on the ground that the evidence of those witnesses constituted hearsay evidence in that the witnesses failed to distinguish between what they saw themselves and what

they were told by their polling agents quite apart from the fact that some of the depositions made in Hausa language were translated into English language by unidentified persons who failed to sign the jurat to show that the makers of the depositions knew the contents thereof (ARISING FROM GROUNDS 2 AND 3 OF THE GROUNDS OF APPEAL) B

2. Whether their Lordships of the court below were right in upholding the decision of the Tribunal .that there was no duty on the Respondents to call evidence in rebuttal of what had not been established by the Appellant since the non - compliance alleged was not proved and that the petition was predicated largely on criminal allegations which were not established beyond reasonable doubt apart from the fact that both civil and criminal allegations were so intertwined in the pleadings as to make the doctrine of severance inapplicable. (ARISING FROM GROUNDS 4, 5, 6 AND 15 OF THE GROUNDS OF APPEAL) C D

3. Whether their Lordships of the court below were right when they upheld the decision of the Tribunal rejecting the evidence of PW66 and his report Exhibit 759 on the ground, amongst others, that he was not an expert, had not witnessed the election and had no expert knowledge or any knowledge superior to that of the judges of the Tribunal and that his evidence constituted inadmissible opinion evidence. (ARISING FROM GROUNDS 8, 9, 10, 11, 12 AND 14 OF THE GROUNDS OF APPEAL) E

4. Whether their Lordships of the court below were right in upholding the decision of the Tribunal that the appellant could have compelled the attendance of the subpoenaed witnesses through legal process or apply for the certification of the secondary electoral documents in order to prove their case by tendering same through witnesses as provided under section 105 of the Evidence Act, 2011 and that their failure to do so could not avail them any advantage. (ARISING FROM GROUND I OF THE GROUNDS OF APPEAL). F G

5. Whether their Lordships of the court below were right when they upheld the decision of the Tribunal to the effect that forms ECSAs, ECSBs, ECSCs, ECSDs and voters registers counsel to the Appellant had no evidential value on the ground that they -were dumped on the Tribunal not having been tied or related to the Appellant's case through witnesses. (ARISING FROM GROUND 13 H

OF THE GROUNDS OF APPEAL)

6. *Whether the learned justices of the court below erred in law when they dismissed the appeal on the ground that it was completely lacking in merit (ARISING FROM GROUND 16 OF THE GROUNDS OF APPEAL).*

B 7. *Whether the learned justices of the court below upheld without justification or due consideration the decision of the Tribunal refusing to give probative value to the evidence of PW1 - PW65 or whether they did not after and due consideration, (ARISING FROM*
C *GROUND 7 OF THE GROUNDS OF APPEAL) “*

The eight issues distilled in the 3rd Respondent’s brief for the determination of the appeal are thus:-

“1) *Whether their Lordship of the Court of Appeal were right in holding that the Applicant (sic) could have compelled the attendance of the subpoenaed witnesses through Legal process or apply for the Certification of the Secondary electoral documents in order to prove its case by tendering same through witnesses as provided under Section 10 of the Evidence Act 2011 (Ground of the Notice of Appeal.*

E 2) *Whether the written deposits (sic) filed by the appellant witnesses constituted hearsay evidence in that the Appellants witnesses did not distinguish between what they saw themselves and what they alleged they were told by the polling agents or to call them as witnesses affected the weight to be attached to the depositions as held*
F *by the learned Judges/Justices of the tribunal and the Court of Appeal respectively. (Ground 2, 3 and 7 of the Notice of Appeal).*

3) *Whether the learned Justice (sic) of the Court of Appeal were right in rejecting the Evidence of PW66 and the other electoral documents, tended (sic) from the bar by counsel to the Appellant on*
G *ground that they were dumped to the Tribunal (Ground 13).*

4) *Whether their Lordship (sic) of the Court of Appeal were right when they held that it is only when the Appellant prove the allegations made in the petition that the respondents are entitle to*
H *call evidence in rebuttal (Ground 6 of the Notice of Appeal).*

5) *Whether the learned Justices of the Court of Appeal were right when they upheld the decision of the trial court that the Evidence of irregularities or acts of non-compliance alleged in the petition and whether the exhibit PI60-711 tendered through the PW66*

are” inadmissible in Law. (Grounds 8, 9, 10, 11 and 12 of the Notice of Appeal.

6. Whether their Lordships of the Court of Appeal were right in holding that the allegations contains (sic) in the petition were Criminal in nature and are implicitly intertwined thereby holding that the doctrine of Severance is not applicable to the appellant’s petition. ^B (Grounds 4 & 5 of the Notice of Appeal)

7) Whether the alleged Failure by the learned Justices of the Court of Appeal to declare the Appellant Elected and returned in the Election occasioned a failure of Justice. (Ground 16 of the Notice of ^C Appeal).

8) Whether the alleged Failure by the learned Justices of the Court of Appeal to make pronouncement on the chart in the final Address of the Appellant and or evidence elicited during cross-examination of the respondents witness (sic) occasioned a failure of ^D justice. (Grounds 14 and 15 of the Notice of Appeal). “

Appellant’s first issue has been responded to by the 1st and 2nd Respondent under their 4th while the 3rd Respondent’s reply is under its 1st issue.

On Appellant’s first issue, its counsel Dr. Banire contends that ^E the lower court’s finding at pages 3955-3958 affirming the tribunal’s holding is wrong. It is incorrect for the tribunal and the court below to hold that the Appellant has failed to ensure that the 5th Respondent who has been subpoenaed to produce the original of the documents has so complied and that the Appellant has further failed to ^F tender the certified true copies of the electoral documents. The record available to the two clearly shows otherwise as the Appellant has tendered the said documents from the bar. The documents, Exhibits PI ^G to P773, learned counsel submits, include all the voter’s registers, Forms EC8A, ballot papers and all others in respect of which the Appellant obtained an order to inspect and which PW66 inspected and testified upon after adopting his statement in court.

Concluding, learned counsel submits that rather than wrongly ^H castigate the Appellant, the tribunal and the court below should have invoked Section 167 (d) of the Evidence Act 2011 to weigh 5th Respondent’s refusal against the Respondents. The learned counsel urges that the issue be resolved in their favour.

Responding, learned Senior Counsel to the 1st and 2nd Re-

spondents relies on Buhari Vs Obasanjo (2003) 17 NWLR (part 850) 587 at 635 and submits that Appellant's first issue as well as the ground of Appeal from which the issue arises are incompetent and same should be discountenanced. The statement of the tribunal the Appellant seeks to attack by its first issue is an orbiter which cannot be appealed against. Further relying on Buhari v. Obasanjo (2005) ALL FWLR (273) 1 at 76 and Uzoho Vs Jask Force, Hospitals Mgt (2004) 5 NWLR (part 867) 627 at 642, learned senior counsel contends that the tribunal's observation the lower court's affirmation of the observation being attacked under Appellant's first issue cannot be faulted as it correctly reflects the state of the law. Appellant's failure to take the option available to it in proving its case is evidently fatal as the tribunal and the court below rightly observed. The issue, learned senior counsel submits, does not avail the Appellant.

Similar arguments have been advanced by learned counsel to the 3rd Respondent in urging that Appellant's first issue be resolved against the Appellant.

Appellant has made a very feeble suggestion in its reply that we discountenance Respondents' argument on the competence of its first issue and the ground of Appeal from which it has arisen. It is urged that since learned Respondents' counsel have failed to demonstrate what makes the issue and the ground of Appeal from which the issue arises incompetent, their submission in that regard should be ignored. Beyond this plea, further arguments in the reply brief tend to reargue Appellant's first issue which the law does not allow.

Now, Section 246 (1) (c) (ii) of the 1999 Constitution (as amended) which creates Appellant's right of appeal and confers the court below the jurisdiction to determine the appeal provide as follows:-

"246 (1) An appeal to the Court of Appeal shall lie as of right from-

(c) Decisions of the Governorship Election Tribunals, on any question as to whether -

(ii) any person has been validly elected to the office of a Governor or Deputy Governor. "

The forgoing Section confers the Appellant the right to appeal to the court below only against the "decisions" of the tribunal in respect of issues raised in its petition. Section 318 of the same Consti-

tution defines the word “decision” “unless it is expressly provided or the context otherwise requires”, to mean in relation to a court:

“... any determination of that court and includes judgment ,decrees, Order, Conviction or recommendation “

Learned Respondents’ counsel particularly rely on a passage in *Buhari V Obasanjo* (supra) where this Court per Belgore JSC (as he then was) defines an orbiter dicta to insist that the Appellant’s first ground of Appeal and the first issue that arises from the ground are incompetent. His take is that the right of appeal against an orbiter dicta does not enure to a party.

The part of the decision of the tribunal considered by the court below at page 3955 - 3958 of Vol. VIII of the instant appeal is to be found at page 3652 - 3653 of the same volume hereunder reproduced for ease of reference:-

“We digress here to express our total sympathy with the Petitioners particularly as it relates to the conduct of the 5th Respondent, whom we subpoenaed twice to produce original electoral materials and to testify on behalf of the petitioners but who failed to turn up...

Be that as it may the Petitioners are not without a remedy as suggested by learned senior counsel to the 4th, 5th and 6th Respondent. They can compel the attendance of the subpoenaed witness through legal process or apply for the certification of the secondary electoral documents in order to prove their case by tendering same through witnesses as provided by Section 105 of the Evidence Act. Surprisingly, the Petitioners did not pursue either of the two remedies. We also note the fact that the Petitioners could have also commenced proceedings against the 5th Respondent under section 77 (1) and (2) of the Electoral Act, 2010 (as amended)...”

The question to answer is whether the court below has the jurisdiction to entertain and pronounce on Appellant’s complaint in respect of the foregoing aspect of the tribunal’s judgment. I agree with learned counsel for the Respondents that the aspect of the tribunal’s judgment the Appellant purports to appeal against in ground 1 of its Notice of Appeal and articulated in its first issue, not being the “decision” of the tribunal, by the combined operation of Sections 246 and 318 of the 1999 Constitution (as amended), is not appealable. Certainly the tribunal’s dicta given at the judgment stage could

not have been a recommendation as Appellant was not in the position to implement the recommendation at that late stage with proceedings having already closed. Learned counsel's reliance on the decision of this court in Buhari V Obasanjo (supra) is apposite. The lower court's determination of the issue put before it by the Appellant having proceeded in the absence of the necessary jurisdiction being a nullity cannot create a further right of appeal to this Court. See Salami v. Mohammed (2000) 9 NWLR (part 469) and Adesonoye V. Adewole (2000) 9 NWLR (part 671) 127.

Learned counsel to the Respondents are equally right that were Appellant's 1st ground and the issue distilled from it to be competent, both the tribunal and the court below have correctly stated the options available to the Appellant in law, following the refusal of the 5th Respondent, in spite of the tribunal's subpoena on him, to produce the documents the Appellant relies upon to prove its case. It is for the Appellant to move the tribunal to compel the 5th Respondent to comply with the tribunal's order or, in the alternative, tender the certified copies of the very documents the 5th Respondent refused to produce. See Buhari V Obasanjo (2005) ALL FWLR (part 273) 1 at 76, and Uzoho V Task Force, Hospitals Mgt (supra) at 642 - 643.

One remains at a loss what the Appellant in the instant case which asserts that it has tendered from the bar all the documents the 5th Respondent refused to produce, seeks to attain by its incompetent grudges anyway. Assuming without conceding that these grudges are competent and the Appellant has not exploited the options the tribunal and the court below rightly state are open to it, 1st and 2nd Respondents election cannot, on the authorities, be nullified on the basis of 5th Respondent's failure to produce the required documents. See Buhari V. Obasanjo (supra).

Having found Appellant's Ground 1, the issue distilled from it as well as the arguments proffered on the issue incompetent, all are hereby struck out.

I take the liberty to now consider Parties fortunes under Appellant's 2nd and 4th issues.

Appellant's grouse under its 2nd issue for the determination of the appeal is on the probative value ascribed on the statements of

PW1 - PW65, by the tribunal at page 3916 to 3917 of Vol. VIII of the record of appeal as further affirmed by the court below in its judgment at pages 3654 - 3656 of the same volume. The submissions of counsel under the issue may be summarised as follows:-

(I) that the rejection of the sworn statements of the particularly of twenty two of witnesses because of the uniformity in the content of the three paragraphs therein is enthrone-ment of technicality by the tribunal as well as the court below in a period when the emphasis is on doing substantial justice the courts placed emphasis on form rather than the substance of the depositions in rejecting them; B

(II) that the witnesses having performed the same function as Ward Supervisors of the Appellant on election day, each of them deposed to activities at the polling units under his ward and to that extent their statement would not have been the same. C

(III) that the tribunal and the Court below failed to make allowance for the fact that one person recorded the depositions of all the witnesses. D

(IV) that the tribunal and the court below misconceived the essence of a Jurat in rejecting the statements because the person who recorded the statements did not sign them as such; E

(V) that the two lower courts employed extraneous issues to conclude that the truth of the statements have been compromised.

Relying on *Fatumbi v. Olunloye* (2004) 6 - 7 SC 68. *Edokpululu and Co. Ltd v. Ohenhen* (1994) 7 NWLR (part 358) 511 at 525; *Djukpan v Ororuyorbe* (1967) 1 ALL NLR 134 at 140 and *Anyabunsi v Ugwunze* (1995) 6 NWLR (part 401) 225 at 272, learned Appellant counsel prays that this Court interferes with the lower court's wrong affirmation of the ascription of probative value on the statements of PW1 - PW65 by the tribunal. F

Particularly arguing their 4th issue, learned Appellant counsel Dr. Banire contends that the testimony of PW1 - PW65 are direct evidence of what they saw, heard or perceived in the course of supervising the polling agents at the various units where the malpractices the Appellant alleges in its petition took place. Their testimonies cannot be regarded as hearsay as defined by this Court in *FRN v. Usman* (2012) 8 NWLR (part 1301) 141 at 160. G

The fact that they are ward supervisors, counsel further contends, does not, on the authorities, disqualify them from giving evi- H

dence. The exclusion of these witnesses and the further insistence by the court below that only polling agents are helpful to the Appellant works in justice for the Appellant. Learned counsel refers to the decisions in *Ngige v Obi* (2006) 14 NWLR (part 999) 233; *Contract Resources Nig Ltd v Wender* (1998) 5 NWLR (part 549) 243; *B Omorinbola II v Mil Governor Ondo State* (1995) 9 NWLR (part 418) 201 at 221 and *Lasun v Awoyemi* (2009) 16 NWLR (part 1168) 513 at 553 and insists that PW1 -PW65 are competent witnesses and the quality of their evidence is as high as the one deposed to by polling agents can possibly be. Once the witnesses are seen to be at the scene of events their evidence does not require corroboration for it to be acted upon. Further relying on *Aregbesola v Oyinlola* (2011) 9 NWLR (part 1253) 458 at 57; *Akingboye v Salisu* (1999) 7 NWLR (part 611) 434; *Jolayemi V. Alaoye* (2004) 12 NWLR (part 887) 322, learned counsel submits that the two lower courts have erred in their findings on PW1 - PW65.

Not unexpectedly, learned senior counsel Agabi for the 1st and 2nd Respondents and Egwuonwu for the 3rd Respondent have vehemently opposed Appellant counsel's contentions in their individual responses. Whereas the 1st and 2nd Respondents argued their 1st and 7th issues, the 3rd Respondent argued their 2nd and 4th issues in response to the Appellant's arguments pertaining its 2nd and 4th issues. Both counsel defend the resolve of the two courts not to ascribe any probative value to the uniform statements of PW1 - PW65 which, it is argued, were given in languages other than the one in which the statements are recorded. Some of the witnesses in adopting their statements at the tribunal, orally told the court also that though they only spoke and understood Hausa language, their statements were recorded in English language without any indication that after the recording the statements had been read to them and that they understood. Most surprisingly, even those who could read and speak English, learned counsel contend, were not allowed to record their own statements themselves. The lower courts, it is argued, giving these fundamental defects in the statements, are right in the inferences they drew from and the probative value they ascribed to the statements. The inferences cannot, on the authority of *Yusuf v Obasanjo* (2003) 6 SC (part 11) 156; *Okereke v Yar'adua* (2008) 12 NWLR (part 1100) 95 AT 118; *Ojukwu v Yar'adua* (2009) 12 NWLR (part 1154)

50 at 114, counsel submit, be faulted. Further relying on the foregoing authorities and *Adesoye v Adewole* (2006) 27 NSCQR 783 at 800-801, *Jadola v Regd Trustees of Land SCM* (2006) 4 NWLR (part 968) 159 at 168 - 169 and *Chukwuma v Nwoye* (2011) ALL FWLR (part 553) 1942 at 1947, learned Respondents counsel submit that by allowing Appellant's petition take off at all, the two lower courts have been too lenient. The statements of PW1-PW65 and indeed PW66 are defective. The electoral Act requires that the petition be filed along with valid statements. Where the Statements filed along with the petition are defective, counsel insist, the tribunal and the court below with such a pre-condition not being met would be without the necessary jurisdiction to take cognizance of the petition. B C

Finally on the issues, learned Respondents counsel submit that PW1-PW65 are ward supervisors yet Appellants Petition centres on activities at the designated polling units. PW1-PW65 were hardly at these polling units and indeed, all of them, both in their statements and under cross-examination told the courts that they got the facts they are testifying to from the various Polling Agents. The court below is right, submit counsel, in its affirmation of the tribunal's rejection of the evidence of these witnesses when the polling agents, the source of the facts the witnesses are testifying to, have neither further testified nor are the reports the agents allegedly made to the witnesses placed before the courts. Learned counsel rely on *Hasidu v Goje* (2003) 15 NWLR (pt.843) 352, *Buhari v Obasanjo* (supra) and *Agballah v Sullivan Chime* (2009) 1 NWLR (part 1122) 373 at 433 - 434 in support of their submissions. In urging that the issues be resolved against the Appellant. D E F

Now, one's immediate reaction to the arguments proffered by both sides to the appeal, for now, on Appellant's 2nd issue for the determination of the appeal, is to ask what brought about the tribunal's findings complained about and affirmed by the court below. The question the tribunal asks itself and in the bid to answer which it makes the findings the Appellant contends erroneous under the issue is at page 3654 - thus:- G H

"The question begging for answer is, has the petitioner satisfied the tribunal that the non-compliance has so affected the result of the election to 'warrant us nullify same?'"

It is in answering the forgoing, that the tribunal supposedly erred firstly thus:-

“...AH the 65 witnesses who testified on various allegations of malpractices resulting in non-compliance are ward supervisors. We noted one common feature in their entire witnesses statements on oath. That is, the 3 paragraphs that are repeated in all 65 depositions, which are: L ‘my responsibility as ward collation agents is to supervise and coordinate all the activities of the polling agents in the polling units and ward and monitor election results at the polling units and wards level during collations.’

2. The second paragraph that is the recurring decimal in the petitioners witness deposition reads:

On the aforesaid day of the election I moved from one polling unit to another to coordinate and monitor the polling units. Also, each polling unit in my ward has a polling agent who reported to me accurately.

The third paragraph “Apart from my personal knowledge of these events when I visited the polling units in the ward I also received written reports from the polling agents in all the polling units in the ward. Based on the event I personally witnessed and the reports of the polling agents forwarded to me, the election under contest in these units were not free and fair. “

And then thus:-

“Another irritatingly repetitive item most of the witnesses statement on oath of petitioners witnesses is the illiterate jurat. Even witnesses who testified before us that they deposed to their witness statement in English language their depositions contain illiterate jurat. (There are 22 of such witnesses) all the said jurat were not signed by the interpreter. Though the witnesses kept mentioning the name of one Sunday Mathew who is a lawyer. “

Regarding the effect of the foregoing inherent defects in the statements of the sixty five witnesses on the Appellant’s bid to prove its case, the tribunal states as follows:-

“This creates a distinct impression on our minds that the written deposition(s) were haphazardly mass-produced and names of witnesses, units, wards, and local government inserted.

And because of this, the tribunal concludes at pp. 3655 that the statements:-

“... *Lack the well known individuality and distinction required of a legal deposition, which affects the weight we attach to them and we so hold.*”

The court below in endorsing the forgoing states at page 3916 - 3917 as follows:-

“For a speedy trial of election petition a new innovation was introduced in the Practice Direction which require witnesses to the petition to depose to depositions under oath and adopt same before the trial election tribunals as their testimony or evidence in chief and are thereafter cross examined and re-examined on the said testimonies. The presumption is that the witnesses will depose to facts within their knowledge, these deposition are akin to civil pleadings and will remain as skeleton and will be fleshed upon their adoption, before a tribunal by the witness. The depositions under consideration were said to be made by the deponent in Hausa language and translated and written into English by unidentified persons who failed to sign, to show that the makers of the deposition knew the contents thereof.”

The implication or the conclusion to be deprived (sic) from that is that the deponent did not know the contents of what they deposed to.”

I shall come back to the issue soonest.

Appellant’s 4th issue is a further invitation to this Court to determine whether or not the lower court is right in its affirmation of the tribunal’s rejection of the evidence of PW1 - PW65 on the ground that same is hearsay.

The resolution of the two issues, Appellant’s 2nd and 4th issues, will entail the consideration of the evidence to which the findings of the tribunal as affirmed by the court below relate.

The appraisal of evidence and ascription of probative value to same, the court below is right, is the primary function of the trial tribunal or the court and in the case at hand where it is the concurrent findings of fact of the two lower courts the Appellant questions, this court is always reluctant, to interfere unless the Appellant has successfully shown that the findings are perverse and have occasioned miscarriage of justice. See Echi v Nnamani (2000) 8 NWLR (part 667) 1 at 12 and Ademora v Ajufo (1988) 3 NWLR (part 80) 1.

A sober reflection on the tribunal’s thought process in the

passages earlier reproduced in this judgment leading to the probative value the tribunal ascribed on the sworn depositions of particularly PW2, PW5, PW23, PW24, PW30, PW31, PW33, PW35, PW38, PW41, PW45, PW49, PW50, and PW52 - PW55 and the tribunal's complete rejection of the testimonies of PW1 - PW65 leaves me in no doubt that the lower court's affirmation of these findings is unassailable.

Firstly, the court is right to have affirmed the tribunal's resolve to attach little or no probative value to the statements of the witnesses and for all the right reasons articulated in the tribunal's judgment. Significantly it is logical for any tribunal to infer from the defects in the process of recording the statements of the witnesses as well as the uniformity in their content that the statements are unlikely to be the depositions of those the Appellant purports they are.

Secondly, we all know what hearsay evidence is. It is evident from the record that the account the witnesses gave the tribunal of what transpired at the various polling units under their supervision is not from their personal knowledge. Indeed, they told the tribunal that they sourced the information from the reports the polling agents who served at the various units under their supervision on the day of the election furnished them. At least in their sworn statements which serve as the baseline for their evidence in chief, PW1 - PW65 are under obligation to disclose the source of the reports on the basis of which they made their sworn statements and also testified at the tribunal.

Failure to do this makes it impossible for any tribunal to meaningfully draw the line between what the witnesses themselves "saw", "heard", "perceived" or "did" from those "seen", "heard", "done" or "perceived" by the polling agents.

I agree entirely with 1st and 2nd Respondent's learned senior counsel that the Appellant needs to be reminded that in FGN V AIC Ltd (2006) 4 NWLR (part 970) 337 at 357 this Court has particularly held as follows:-

"A person who deposes to his belief in a matter of fact and whose belief is derived from any source other than his own personal knowledge must state explicitly the facts and circumstances forming

the ground of his belief. When such belief is derived from information received from another person, the name of his informant must be stated in the affidavit, and he must state reasonable particulars of such an informant including the time, place and circumstances of the information. It is only when a deponent withholds the source of his information that such an affidavit can be termed to be hearsay and therefore inadmissible as contrary to Sections 86, 88, and 89 of the Evidence Act. “ (Emphasis supplied). See also Flour Mills of Nigeria Ltd V. R.I Osian (1968) 2 all N.L.R. 13 at 15-16.” B

In Okhwarbo v Aigbe (2002) 9 NWLR (part 771) 29 at 70, a witness (PW6) had stated in the course of his being cross-examined at the trial court thus: C

“I was not a witness to the transaction in which Uwaigwe Eharire gave the land to my father but my father told me.”

Considering an issue in relation to the above testimony of D PW6 in the course of an appeal at this Court, Kalgo JSC (as he then was) in his characteristic simplicity held: thus:-

“The words italicized definitely show that PW6 did not know what actually happened but he was told by his father the respondent. This piece of evidence is clearly within the definition of hearsay as the witness was not giving evidence of what he knew or did personally and there was no evidence by the Respondent that he told the story to PW6. This evidence though material to the pleadings of the respondent must be rejected and is hereby rejected.” E

The same principle has been restated by this Court in Doma F V. INEC (2012) ALL NWLR (part 628) 813 at 829 thus:-

“...PW 14 and PW44’s testimony that there were malpractices in polling units they admitted they never went to is evidence of what they were told or what they heard from someone else. This is second hand evidence, clear hearsay evidence and it is inadmissible to prove that there were actually malpractices in the polling units they never went to. Hearsay evidence is thus inadmissible to prove that fact.” G

And this is exactly what the tribunal held and the lower H court affirmed in respect of the sworn statements as well as the evidence of PW1 - PW65 under cross-examination in the case at hand. Their evidence on matters “seen”, “heard”, “done” or “perceived” by the polling agents who briefed them

and who were not led by the Appellant to establish the fact that these agents had indeed briefed the witnesses, being hearsay, has rightly been rejected by the two courts below. Both courts are not saying that the polling agents are the only persons entitled to testify in proof of appellant's petition. No. The point being made is that only persons who personally "saw", "heard", "knew" or "perceived" the facts they testify to in proof of the petition are of benefit to the appellant. Where however the polling agents are the ONLY persons who "saw", "heard", "perceived" or "did" all the facts the appellant relies on to prove its petition, failure to have these agents testify remains fatal to the Appellant's petition. See Hashidu v Goje (supra); Buhari v Obasanjo (supra) and Agballah v Sullivan Chime (Supra).

On the whole, I resolve appellant's 2nd and 4th issues against the Appellant. Under their 3rd issue, Appellant attacks the lower court's judgment for its failure to avoid the tribunal's mistake of dismissing its petition solely on the ground that being predicated preponderantly on criminal allegations and it has not been possible to clearly demarcate the negligible civil allegations from the overriding criminal ones. The court indeed did not consider the issue fully before affirming the tribunal's refusal of being bound by the decisions in Omoboriowo v Ajasin (1984) 1 SCNLR 108 and Fayemi v Oni (2010) 17 NWLR (part 1222) 326. Had the tribunal applied the decision correctly learned counsel argue, having been urged by Appellant's counsel at address stage the tribunal would have severed the paragraphs on criminal allegation from those containing civil allegations. The tribunal has itself found that certain paragraphs of the petition contain civil allegations but refused to conduct the severance exercise on the basis that it would be descending into the arena as it were.

The tribunal's refusal to fully hear Appellant's case and the lower court's unjust endorsement of the tribunal's failure to be fair has led to the miscarriage of justice. Counsel prays that the issue be resolved in Appellant's favour.

Responding, learned senior counsel for the 1st and 2nd Respondents submits that the Appellant does admit that civil and criminal allegations are intertwined in its petition. Once the paragraphs containing criminal allegation in the petition are struck out, it is argued, there would be little or nothing left in the petition to proceed

to trial. Appellant's application at the address stage that the tribunal severs the pleadings for it to rest purely on the civil allegations therein was belated as the Respondents would be shutout from addressing the court on the issue. In any event, the Appellant has not succeeded in proving any set of allegations averred to in the petition to warrant the tribunal's positive verdict on it. The tribunal and the court are right, conclude respondents' counsel, in declining to sever the criminal from the civil allegations in the petition as well as dismissing the petition that has not been proved. Counsel rely on PD.P v INEC (112) 7 NWLR (part 1300) 538 at 560; Nwobodo v Onoh (2004) 10 WRN 27; Falae v Obasanjo No. 1 (1999) 4 NWLR (part 599); Wall v Bafarawa (2004) 16 NWLR (part 900) 6 and Alwucha v Elechi & Ors. (2012) 3 SC (part 1) 26. In urging that the issue be resolved against the Appellant.

The attitude the tribunal that is faced with pleadings containing criminal as well as civil allegations in a petition should adopt, both sides in the appeal rightly agree, has been stated in a body of seemingly endless judicial decisions. In Nwobodo V Onoh (supra) this Court has admonished thus:-

"...If in any civil proceeding the averments alleging a crime are severable and if after such severance there still remain in the pleadings of the plaintiff or the petitioners sufficient averment devoid of the criminal imputation against any parity to the proceeding and on which the plaintiff or the petitioner can succeed in his claim or petition, then the burden of proof upon the plaintiff or petitioner is to prove his case within the balance of probability. I may emphasize that the application of Section 137 (I) of the Evidence Act to a civil proceeding depends on the contents of the pleadings in a particular case. Each case should be decided on its pleadings."

It appears to me very clear from the foregoing that the case is never an authority for the dismissal of petitions purely because the petition stands overwhelmingly on criminal allegations. The decision recognizes the fact that there could be petitions which contain, apart from criminal allegations, civil allegations as well. Once the two classes of allegations in the petition can be demarcated with precision, a situation then arises where each class of allegations would require the dis-

charge of the burden of proof which the Evidence Act requires the plaintiff or petitioner who levies the particular set of allegation, criminal or civil as the case may be, to discharge in establishing each set of allegations. Whereas outright allegations of crime in a civil proceeding must, by the provision of
B Section 137 (1), be proved beyond reasonable doubt, allegations which are purely of civil nature, on the other hand, are to be proved within the balance of probability. However where the civil and criminal facts pleaded are so intertwined that the
C one cannot be separated from the other, the petitioner succeeds only if the entire averments are proved beyond reasonable doubt. That is why this Court in Nwobodo v. Onoh (supra) emphasized that “each case should be decided on its pleadings.” None of the cases on the principle is an authority that a
D petition should be discountenanced simply because it rests on both civil and criminal averments which are inextricably intertwined and in-severable. Rather, the petitioner in that case succeeds if he proves all the averments in the petition beyond reasonable doubt as doctrine of severance would be inapplicable.
E

At page 3656 of the record, the tribunal’s attention was drawn to over fifty paragraphs of Appellants petition which in the opinion of petitioners’ counsel are of civil nature and severable from the rest of the paragraphs in the petition. The tribunal in relation to
F counsel’s request that the particular paragraphs be severed held as follows:-

“Learned Senior Counsel to the Petitioners then referred us to paragraphs... which in his opinion are civil in nature and severable
G from the rest of the paragraphs in the petition.
We have copiously quoted paragraph 18(a)-(S) above but we now look at it with a view to determine whether the allegations contained therein are purely civil in nature, we discover that these are allegations such as:..

H *If these allegations are not criminal in nature then we are at a loss as to what constitutes criminal allegations. More over we cannot be able to descend into the arena by going through the more than 50 paragraphs cited above by learned Senior Counsel to the petitioners in an attempt to sever civil from criminal allegations, that is*

beyond the scope of this tribunal...

It is our finding that the doctrine of severance in respect to the pleadings of the petitioners in the paragraphs quoted above is not possible to execute since the civil and criminal aspects of the allegations are inextricably intertwined,”

In finding out whether or not a petition is predicated on both civil and criminal averments which are so inextricably intertwined, the tribunal must scrutinize all the paragraphs and indeed individual paragraphs inter-se constituting the petition before reaching a conclusion. It is evident from the foregoing passage that the tribunal did not in the instant case examine “the more than fifty paragraphs” which in the opinion of the petitioner’s counsel are civil in nature and severable from the rest of the paragraphs in the petition because it can only such examination if it “descends into the arena”. Not surprisingly the tribunal concluded, erroneously in my considered view, thus:-

“It is our finding that the doctrine of severance in reflect to the pleadings of the petitioners in the paragraphs quoted above is not possible to execute since the civil and Criminal aspects of the allegations are inextricably intertwined”

The lower court in endorsing the foregoing perverse finding of the tribunal is equally wrong. It is however not every slip in the judgment appealed against that is fatal. See *Alli v Alesinloye* (2000) 6 NWLR (part 660) 177 and *Ibwa Ltd v Pavex International Co. (Nig) Ltd* (2000) 7 NWLR (part 663) 243.

In the course of resolving 1st, 2nd and 4th issues the Appellant distilled for the determination of the instant appeal, I endorsed the affirmation by the court below of the tribunal’s finding that the appellant who has not lead any lawful evidence whatsoever in proof of its petition could not have discharged any type of burden of proof the law places on it be it beyond reasonable doubt and/or on the preponderance of evidence. Its third issue though resolved in Appellant’s favour, does not after all avail it in real terms.

Appellant’s 5th and 6th issues are unlikely to take much of our time. The two raise familiar questions earlier raised before and determined by this Court. The grounds of appeal from which the two issues are distilled also challenge the concurrent findings of fact by the tribunal and the court below.

Under its 5th issue for determination, learned Appellant counsel

contends that the tribunal's finding that PW66 is not an expert as affirmed by the court below is erroneous. PW 66, learned counsel argues, never called himself an expert. He told the court that he is an analyst. One does not necessarily have to be an expert, learned counsel contends, to be entitled to testify. The otherwise finding of the tribunal affirmed by the court below, learned counsel submits, has unjustly deprived the Appellant the evidence of a competent witness on multiple registration and voting contained in paragraph 19.1 of PW66's statement and Exhibit A03 attached to the statement. The two courts below, it is submitted, have applied extraneous matters in their assessment of whether or not PW66 is an expert whose opinion is admissible in the particular area he has special knowledge on. Such perverse findings are liable to be interfered with on appeal. Learned counsel relies on *Ajani V Comptroller of Customs* (1954) 14 WACA 37; *Aregbesola v Oyinlola* (2011) 9 NWLR (part 1253) 458 at 610; *Mini Lodge Ltd v Ngei* (2009) 7 NWLR (part 1173) 254 at 283 and *Archibong v Ita* (2004) 2 NWLR (part 858) 590 at 639 in urging for the reversal of the erroneous findings of the two courts.

1st and 2nd Respondents' 3rd issue relates to the Appellant's 5th issue being considered. It is 3rd Respondent's 5th issue as well.

On the issue, both counsel for the two sets of Respondents support the finding of the lower court that PW66 is not an expert. His opinion on matters before the tribunal remains inadmissible. Learned senior counsel submits that PW 66 neither witnessed the election nor made the documents he is asked to testify on. PW66 must have been called, learned senior counsel contends, when the Appellant realized the futility of their cause with the quality of the evidence of PW1 - PW65. That, learned senior counsel further contends, explains why PW66 is procured and his sworn deposition belatedly filed. In any event, PW66 on being cross examined, admitted not being an expert but an analyst. The passages in the lower courts judgments on how and why they arrived at their findings on PW66 show clearly the hard facts from which both courts made these findings. These facts are not extraneous to the point in issue to justify interference of this Court with the findings of the two courts. The decision of the Court of Appeal in *INEC v Oshiomhole* (supra), submits senior counsel, does not avail the Appellant since PW66 is neither an official of the 4th Respondent nor authorized by it to make any deposition. These sub-

missions are supported with the decision in AG Federation V Abubakar (2007) ALL FWLR (part 375) 405 and ANPP V Usman (2008) 12 NWLR (part 1100) 89 - 90 at 276.

3rd Respondent's brief contains arguments similar to that proffered on behalf of the 1st and 2nd Respondents. Both counsel urge that Appellant's 5th issue does not avail the Appellant. B

I agree with learned senior counsel for the 1st and 2nd Respondents that at this point we must all agree as to who PW66 is and for what purpose the Appellant called him. The lower court at pages 3909 -3912 has made some profound findings in this regard. The Appellant has not appealed against these findings. The implication is that the unchallenged findings subsist. See Olaniyan v University of Lagos (1985) 2 NWLR (part 9) 599. C

The court below at pages 3909 - 3910 held that PW66 told the tribunal thus: D

".... In his written deposition that he is a graduate of Economics from the Lagos State University. He was on diverse occasions a consumer Banking officer with Access Bank Plc, retail financial Analysis with Sky Bank Plc and later Financial analyst with Oceanic Bank Plc. PW66 headed the team that conducted Physical Inspection of Electoral Materials and investigation of same." E

The court also found that PW66 in his sworn statement and on his being cross-examined had told the tribunal that he:

"did not require any special skill while compiling Exhibit PI59. There is also facts that the content of the report tendered by PW66 did not indicate the methodology or tools used to compile it." F

The court further held at page 3912 thus:-

"It is clear from the records before the court that PW66 did not participate in the election that was attacked and did not also witness the conduct of the election. He had no expert knowledge or any knowledge superior to that of the judge of the tribunal" G

In view of the foregoing can it really be said that the two lower courts are wrong in rejecting PW66's report in proof of Appellant's petition? H

One is not amused by the insistence of learned Appellant counsel that, in spite of his being aware of the provisions of Sections 37 and 38 of the Evidence Act 2011, the Appellant is still entitled to tender the report of PW66, Exhibit 759, in proof of Exhibits P760 -

P771. Not being the maker of these documents, PW66's report, Exhibit P759, would certainly be hearsay except if same is saved by virtue of Section 38 of the Evidence Act which provides:-

"38 Hearsay evidence is not admissible except as provided in this part or by or under any other provision of this or any other Act."

B The Exhibit 759, PW66's report on events he did not himself witness is certainly his opinion as to the existence or otherwise of the fact in issue and by virtue of Section 67 of the Evidence Act remains inadmissible except as provided in Sections 68 to 76 of the Evidence Act. Section 68 of the Evidence Act particularly provides as follows:-

C *68. When the court has to form an opinion upon a point of foreign law, customary law or custom, or of science or art, or as to identity of handwriting or finger impressions, the opinions upon that point of persons specially skilled in such foreign law, customary law*
D *or custom, or science or art, or in questions as to identity of handwriting or finger impressions, are admissible.*

(2) Person so specially skilled as mentioned in subsection (1) of this section are called experts."

By the foregoing, where a court or tribunal requires to
E ***form an opinion upon a point specified thereunder, the opinion of persons specially skilled in the areas are admissible. It is a condition precedent to the admissibility of the opinion tendered to enable the court form its own opinion that it is***
F ***that of a person specially skilled in the area the court or tribunal is required to form its opinion on a point. The qualification, experience and depth of the person's learning are invariably the criteria which entitle him to tender his opinion in order to aid the court or tribunal. The person so qualified under***
G ***the section is called an Expert. His opinion is necessary and so admissible because same is outside the experience and knowledge of the judge as a judge of fact. It is the court's prerogative to determine that the person being called as a witness, by his qualification and learning on the subject in which***
H ***the court requires his opinion and the reasons for the opinion, is indeed specially skilled.*** See *Wambai v. Kano Native Authority* (1965) NWLR 15 AND *Egesimba v. Onuzurike* (2002) 15 NWLR (part 791) 466.

PW66 on his own account has told the tribunal not only his

qualification and experience but the fact that there is nothing special about his knowledge in relation to the subject the Appellant seeks the tribunal to form an opinion. PW66 does not consider himself an expert. He does not also require any special instrument to accomplish the task the Appellant assigns to him. It is incredible that the Appellant could instruct such a person to inspect with his naked eyes and report on documents which need to be analyzed by biometric of forensic means. The tribunal has the discretion of deciding whether indeed PW66 qualifies to be a witness before it pursuant to Section 68 of the Evidence Act. I remain un-convinced by the submissions of learned Appellant counsel that the lower court is wrong in its affirmation of the tribunal's rejection of PW66 statement following the correct exercise of its discretionary powers. PW66 by qualification and learning is not an expert in the art of establishing multiple registration and voting in elections special skill in respect of which would have entitled him to assist the tribunal to form its opinion on the point. I resolve Appellant's 5th issue against the Appellant. B
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The effect of all these is that the Appellant is left without a single competent witness in proof of its petition. What it has left are the certified true copies of the voters registers and the various electoral forms, Exhibits P760 - P771, tendered from the bar. The makers of these forms have not been called to tender the forms themselves. Under Appellant's 6th issue, Banire of counsel has submitted that these forms, if evaluated by the tribunal would have sustained the petition. It is argued that a document duly pleaded, tendered and admitted is the best evidence of its content and therefore speaks for itself. Exhibits P760 - P771, learned counsel contends, should have spoken for themselves. Learned counsel cited and relied on: Governor of Ogun State v Adegboyega Adebola Coker (2008) ALL FWLR (part 406) 1900 at 1913, Davine Ideas Ltd V Ilaja Mero Umoru (2007) ALL FWLR (part 380) 1468 at 1500 and Vera Ezomo V New Nigeria Bank Plc & Anor (2007) ALL FWLR (part 368) 1032 at 1065 in urging us to set aside the lower court's affirmation of the tribunal's finding rejecting the various documentary evidence tendered and admitted in proof of Appellant's petition. E
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I agree with learned counsel for the Respondents that the principle governing Appellant's 6th issue, 1st and 2nd Respondents' 5th and 3rd Respondents 5th issue is long settled. The decisions cited in

support of their position are also apposite. ***The principle is that documentary evidence tendered and admitted from the bar in proof of a petitioner's case remain dormant unless and until they are activated by oral evidence to allow the court speak to them. Where the petitioner dumps them on the tribunal or***

B court without relating them to the averments in its petition, the umpire that the court is will not descend and decide what document is meant to prove which particular averment in the petition. Decisions of this court on this principle are numerous. In A.C.N v Lamido (2012) 8 NWLR (part 1303) 560 at 584 - 585, the court per Mohammed JSC held as follows:-

"The basic aim of tendering documents in bulk is to ensure speedy trial and hearing of election petition. But that does not exclude proper evidences to prop such dormant documents. 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 also Audu V INEC (2010) 13 NWLR (part 1212) 456 and Ucha anor V Elechi & 1774 others (2012) 3 SC (part 1) 26 at 71. I am done on Appellant's 5th issue which the Appellant also loses.

Appellant's 7th and 8th issues cease to be live issues. I decline considering them. Just a few passing words all the same. On these issues, two questions have agitated my mind. Firstly, the duty of counsel in any case is to state the law applicable to the facts established by the evidence the petitioner provides the tribunal or court. In the instant case, where are the facts established by cogent evidence on which learned counsel must necessarily hang the chart contained in his address? With the resolution of the critical issues in the appeal against the Appellant, the facts on which to rest counsel's chart evidently lacking, appellant's 7th issue ceases to be of any worth. Indeed the 8th issue as well. Being hypothetical, they are not worthy of my consideration see Ezeanya V Okeke (1995) 4 NWLR (part 388) 142 and Nwobosi V ACB Ltd (1995) 6 NWLR (part 404) 658.

I must conclude by emphasizing that the Court of Appeal could not have, in the absence of evidence in proof of Appellant's petition and, in consequence, a result contrary to the one declared by the 4th Respondent, interfere with the tribunal's decision that Ap-

pellant had not been elected and returned in the Adamawa Governorship election held on 4th February 2012. We lack the jurisdiction to do that too.

In the result, I find no merit in the Appeal and accordingly dismiss it. In upholding the judgment of the court below, I hereby further affirm the election and return of the 1st and 2nd Respondents as the Governor and Deputy Governor of Adamawa State respectively. I make no order on costs.

ONNOGHEN JSC

I have had the benefit of reading in draft the lead judgment of my learned brother MUHAMMAD, JSC just delivered.

I agree with his reasoning and conclusion that the appeal is devoid of any merit and should be dismissed.

My learned brother has extensively stated the facts relevant to the determination of the appeal in the lead judgment and I do not therefore intend to repeat them herein except as may be required to emphasis the point under consideration.

The issue relevant for the determination of the appeal which has been canvassed in the briefs of argument are primarily on the facts of the case as concurrently found by the lower courts. Learned senior counsel for the appellant has submitted nine (9) issues for the determination of the appeal, which I consider to be very generous having regards to the decision of the lower courts.

To me the starting point is appellant's issues nos. 2, 4 and 5 which are as follows:

"2. Whether the Court of Appeal did not misdirect itself when, at pages 3916 - 3917 of vol. viii of the record, it endorsed the decision of the Tribunal castigating the evidence of the appellant witnesses based on three particular paragraphs of their witness statement and the inclusion of the illiterate jurat and, therefore, rejected the evidence of the said witness(s) - Grounds 2 and 3 of the Notice of Appeal.

4. Whether the testimonies of the appellant's witness who were supervisors could be regarded as hearsay simply because they did not mention the names of their polling agents and because they did not distinguish between what they saw and what the polling agents

told them moreso that the witnesses testified that what they saw and what their agents later related to them were one and the same thing against which evidence the respondents did not call any evidence to challenge - Grounds 6 and 7 of the Notice of Appeal.

5. *Whether the Court of Appeal was right when it held at pages 3937 and 3938 of vol. viii of the record that PW66 admitted in cross examination that he was not an expert when there was no such admission on record and concluded that the evidence of PW 66 on the documents he analysed is an opinion evidence simply because PW 66 did not participate in or witnessed the conduct of the election and that multiple voting can only be proved for (by) biometric evidence - Grounds 8,9,10 and 11 of 'the Notice of Appeal'.*

Why I consider the above issues crucial for the determination of the appeal is because they lie at the foundation of the case of the appellant. The issues deal with the totality of evidence called/produced by appellant in proof of its petition.

It is settled law that facts relevant to the determination of issues in controversy between parties must be pleaded as evidence on facts not pleaded ground to no issue at all. In the instant case appellant pleaded facts which if proved ought to entitle it to the judgment of the trial tribunal. To prove the facts so pleaded legally admissible evidence must be produced at the trial to satisfy the standard of proof required by law. It is in discharge of the above duty that appellant called 66 witnesses whose testimonies as well as the documents admitted from the Bar were, at the conclusion of the trial found/held by the tribunal to be of no evidential weight as a result of which the tribunal found the case pleaded by appellant not proved and consequently dismissed the petition. The decision was affirmed by the lower court which dismissed the appeal.

The question, in a nut shell is whether the lower courts are right in so finding/holding. If the answer is in the positive that is the end of the appeal since it means that there is and skintila of evidence to support or prove the allegations whether criminal or civil, severable or intractable - made or pleaded in the petition.

It is the contention of learned senior counsel for appellant that the testimony of PW1 - PW65 are direct evidence of what they saw, heard, or perceived in the course of supervising the polling agents at the various polling units where electoral malpractices took place

and that such testimony cannot be regarded as hearsay evidence; that the exclusion of their evidence and the holding by the lower courts that only the evidence of polling agents were helpful to appellant worked injustice to the appellant.

It is however, not disputed that the witness statements of about 22 witness of appellant were made in Hausa Language – a foreign language to the Tribunal/Court but that original statement was never tendered in the proceedings. What was tendered were English versions of the statements so made in Hausa languages which contained unsigned jurat.

On the question whether the evidence of the ward supervisors is hearsay evidence there is no doubt that the account given by the witnesses of events that occurred at the various polling units which were under their supervision was not based on their personal knowledge alone, as they told the tribunal that they also got their information from reports from polling agents at the various polling units but PW1 - PW65 failed and or neglected to disclose the source of their information nor tendered any of the said reports in evidence. In the circumstance the tribunal was unable to draw any distinction between what the witnesses saw, heard, perceived or did from those seen, done or perceived by the polling agents and recorded in their said reports. With regards to whatever was seen, heard, or perceived by the polling agents they (polling agents) are the only competent witnesses to testify to those facts but in this case, they were not called. I agree with the lower courts that failure to call these agents was fatal to the case of appellant.

On PW 66, it is the contention of learned senior counsel for appellant that the lower courts erred in holding that *PW 66* is not an expert, etc.

The issue of the legal status of PW 66 and the report he produced which is Exhibit 759 which appellant regards are very crucial to the proof of the allegations in the petition are resolved by reference to the provisions of Section 68 of the Evidence Act which enacts thus:-

“When the court has to form an opinion upon a point of foreign law, customary law or custom, or of science or art, or as to identity of handwriting or finger impressions, the opinions upon that point of persons specially skilled in such foreign law, customary law

or custom, or science or art, or in questions as to identity of handwriting or finger impressions are admissible.

(2) Person so specially skilled as mentioned in subsection (1) of this section are called experts”.

B From the record PW 66 gave his qualification and experi-
ence and told the tribunal that he did not consider himself an expert
on what he did. He inspected and analysed thump print impressions
on ballot papers and wrote a report, Exhibit 759 thereon, which was
rejected, rightly in my view, by the trial tribunal and affirmed by the
C lower court. PW 66 was clearly not an expert in establishing multiple
registrations and voting. He did not even use any biometric instru-
ment in his analysis which forms the basis of his report which was
intended to establish the allegations in the petition of the appellant of
multiple registration, thump printing of multiple ballot papers etc.

D From the above, it is very clear that appellant had no legally
admissible evidence to establish its case having regards to the fate
that befall the statements of PW1 - PW66. The allegations in the
petition therefore remained mere allegations without proof. The situ-
ation remains the same whether the criminal allegations are sever-
E able from the civil allegations since the civil allegation if at all sever-
able must be established by evidence which is lacking in this case, as
demonstrated in this judgment.

F It is for the above and the more detained reasons given in
the lead judgment of my learned brother MUHAMMAD, JSC that I
too find no merit in the appeal which is accordingly dismissed by me.

I abide by the consequential orders made in the said lead
judgment including the order as to costs. Appeal dismissed.

G

CHUKWUMA-ENEH JSC

H This appeal is a sister appeal to Appeal No.409/2012 arising
from the same set of facts and- circumstances. I have had a preview
of the judgment in the instant appeal prepared and delivered by my
learned brother Muhammad, JSC, in which he has comprehensively
dealt with all the issues for determination raised in the appeal. I am in
agreement with his reasoning and conclusions therein. I must add
that my contribution in Appeal No.SC.410/2012 also delivered to-
day is hereby adopted mutatis mutandi in deciding this appeal in

which I hasten to hold as having no merits whatsoever and should be dismissed.

I too dismiss it and abide by the orders contained in the lead judgment.

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PETER-ODILI JSC

I am at one with the judgment just delivered by my learned brother, MUSA DATTIJO MUHAMMAD, JSC. I shall register my support by making some comments.

C

The appellant sponsored the 7th and 8th Respondents as Governorship and Deputy Governorship candidates in the 4th February, 2012 Governorship Election for Adamawa State. After the conclusion of the election and counting of votes which were done in keeping with the provisions the Electoral Act, etc, the 1st and 2nd Respondents were declared elected as having scored majority of lawful votes in the 21 Local Government of Adamawa State. The declaration was made by the 4th, 5th and 6th Respondents who proceeded to issue certificates of return to them.

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The Appellant and the Respondents were represented by their agents, returning officers at the polling units, collation centres, ward collation centres as well as Local Government and State collation centres which agents signed the results of the election at all levels.

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Dissatisfied with the declaration of the 1st Respondent as the winner of the election, the Appellant filed their petition before the Lower court on the 24th February, 2012 challenging the election and return of the 1st and 2nd Respondents who were sponsored by the 3rd Respondent at the election.

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On petition was hinged on two grounds as follows:-

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1. The Respondent was nor duly elected by majority of lawful votes at the election.

2. The Election in many, but not all the polling units and wards of Eleven out of twenty one Local Government Areas of Adamawa State was invalid by corrupt practices and substantial non compliance with the provisions of the Electoral Act, 2012 (as amended).

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The fuller details of the facts are well presented in the lead judgment. Suffice it to say that the Trial Tribunal after hearing the

evidence alongside the documentary evidence dismissed the appellant's petition for want of proof. The Appellant appealed to the Court of Appeal which in turn dismissed the appeal hence the appeal to this court.

B On the 5th day of November, 2012 date of hearing, learned counsel for the Appellant, Dr. Muiz Banire adopted their Brief of argument filed on 12/10/12. In the Brief were raised eight (8) issues for determination as follows:-

C 1. Whether their Lordships of the Court of Appeal were right when they held at pages 3955 - 3958 of Vol. VIM of the record that the Appellant neither sought to compel the attendance of the subpoenaed witness through legal process or apply for the certificate of the secondary electoral documents in order to prove their case by tend same through witnesses or commencing proceedings against D the 5th respondent under Section 77 (1) and (2) of the Electoral Act, 2010 (as amended). - Ground 1 of the Notice of Appeal.

E 2. Whether the Court of Appeal did not misdirect itself when, at pages 3916 - 3917 of Vol. VIII of the record, it endorsed the decision of the Tribunal castigating the evidence of the Appellant's witnesses based on three particular paragraphs of their witness's statements and the inclusion of the illiterate jurat and, therefore, rejected the evidence of the said witnesses. - Grounds 2 and 3 of the Notice of Appeal.

F 3. Whether the Court of Appeal did not err in law and occasion a miscarriage of justice when, at pages 3021 - 3023 of Vol. VIII of the Record, it endorsed the Tribunal's open abdication of its responsibility to go through more than 50 paragraphs of the Petition to which its attention were directed before concluding that the civil and G criminal allegations contained in the Petition were not severable and that the Appellant did not prove the criminal allegations contained in the Petition. - Grounds 4 and 5 of the Notice of appeal.

H 4. Whether the testimonies of the Appellant's witnesses who were ward supervisors could be regarded as hearsay simply because they did not mention the names of their polling agents and because they did not distinguish between what they saw and what their polling agents told them more so that the witnesses testified that what they saw and what their agents later related to them were one and the same thing against which evidence the Respondents did not

call any evidence to challenge. Grounds 6 and 7 of the Notice of Appeal.

5. Whether the Court of Appeal was right when it held at pages 3937 and 3938 of Vol. VIII of the Record that PW66 admitted in cross-examination that he was not an expert when there was no such admission on record and concluded that the evidence of PW66 on the documents he analysed is an opinion evidence simply because PW66 did not participate in or witness the conduct of the election and that multiple voting can only be proved by biometric evidence. - Grounds 8, 9, 10 and 11 of the Notice of Appeal.

6. Whether the court of Appeal did not err in law and occasion a miscarriage of justice when, at pages 3939-3040 of the judgment it held that PW66 was not a proper witness under Section 77 of the Evidence Act to testify in election matters and that despite the evidence of PW66, the Appellant could still be regarded as having dumped the documents tendered on the Tribunal. - Grounds 12 and 13 of the Notice of Appeal.”

7. Whether the Court of Appeal did not err in law and, thereby, occasion a miscarriage of justice, when it failed to pronounce on the impropriety of the Tribunal’s decision expunging the chart contained in the Appellant’s final address by which only the lawful votes could be deducted from the unlawful votes and the Tribunal’s decision refusing to attach any weight to the evidence elicited by the Appellant in cross-examination of the few witnesses called by the Respondents on the ground that the witnesses were not the makers of the documents with which they were confronted. - Grounds 14 and 15 of the Notice of Appeal.

8. Whether the Court of Appeal was not wrong when it failed to make a finding that the Appellant was elected and ought to have been returned as elected in the Adamawa State Governorship election held on 4 February, 2012. - Ground 16 of the Notice of Appeal.

Dr. Muiz A. Banire, learned Senior counsel for the Appellants also adopted their joint reply Brief filed on 18/10/12.

Mr. Kanu G. Agabi SAN, learned counsel for the 1st and 2nd Respondents adopted their Brief filed on 16/10/12. He crafted in that Brief seven (7) issues for determination, viz:-

1. Whether their Lordships of the court below were right in upholding the decision of the Tribunal in refusing to give credence to

the evidence of PW1-PW65 on the ground that the evidence of those witnesses constituted hearsay evidence in that the witnesses failed to distinguish between what they saw themselves and what they were told by their polling agents quite apart from the fact that some of the depositions made in Hausa language were translated into English language by unidentified who failed to sign the jurat to show that the makers of the depositions knew the contents thereof.

2. Whether their Lordships of the court below were right in upholding the decision of the Tribunal that there was no duty on the Respondents to call evidence in rebuttal of what had not been established by the Appellant since the non-compliance alleged was not proved and that the petition was predicated largely on criminal allegations which were not established beyond reasonable doubt apart from the fact that both civil and criminal allegations were so intertwined in the pleadings as to make the doctrine, of severance inapplicable.

3. Whether their Lordships of the court below were right when they upheld the decision of the Tribunal rejecting the evidence of PW66 and his report Exhibit 759 on the ground, amongst others, that he was not an expert, had not witnessed the election and had no expert knowledge or any knowledge superior to that of the judges of the Tribunal and that his evidence constituted inadmissible opinion evidence.

4. Whether their Lordships of the court below were right in upholding the decision of the Tribunal that the Appellant could have compelled the attendance of the subpoenaed witnesses through legal processes or apply for the certification of the secondary electoral documents in order to prove their case by tendering same through witnesses as provided under section 105 of the Evidence Act, 2011 and that their failure to do so could not avail them any advantage.

5. Whether their Lordships of the court below were right when they upheld the decision of the Tribunal to the effect that forms ECSAs, ECSBs, ECSCs, ECSDs and voters registers and other electoral documents tendered from the bar by counsel to the Appellant had no evidential value on the ground that they were dumped on the Tribunal not having being tied or related to the Appellant's case through witnesses.

6. Whether the learned justices of the court below erred in law

when they dismissed the appeal on the ground that it was completely lacking in merit.

7. Whether the learned justices of the court below upheld without justification or due consideration the decision of the Tribunal refusing to give probative value to the evidence of PW1 - PW65 or whether they did so after and due consideration. B

Mr. Abdulhamid Mohammed settled the brief of Argument of the 3rd Respondent filed on 16/11/12 which brief was adopted by counsel for the 3rd Respondent, Mr. Egwuonwu. In the brief were crafted eight (8) issues for determination as follows:-

1. Whether the Lordships of the Court Appeal were right in upholding that the Appellant could have compelled the attendance of the subpoenaed witnesses through Legal process or apply for the Certification of the Secondary electoral documents in order to prove its case by tendering same through witnesses as provided under Section 107 of the Evidence Act 2011. C

2. Whether the written depositions filed by the Appellant witnesses constitutes hearsay evidence in that the Appellants witnesses did not distinguish between what they saw themselves and what they alleged they were told by the polling agents or to call them as witnesses affected the weight to be attached to the depositions as held by the learned Judges/Justices of the tribunal and the Court of Appeal respectively. E

3. Whether the learned Justice of the Court of Appeal were right in rejecting the evidence of PW66 and the other electoral documents, tendered from the bar by counsel to the Appellant on ground that they were dumped on the Tribunal. F

4. Whether their Lordships of the Court of Appeal were right when they held that it is only when the Appellant, prove the allegations made in the petition, that the respondents are entitled to call evidence in rebuttal. G

5. Whether the learned Justices of the Court of Appeal were right when they upheld the decision of the trial Court that the Evidence of irregularities or acts of non-compliance alleged in the petition and whether the exhibit P760-771 tendered through the PW66 are inadmissible in Law. H

6. Whether their Lordships of the Court of Appeal were right in holding that the allegations contained in the petition were criminal

in nature and are implicitly intertwined thereby holding that the doctrine of severance is not applicable to the Appellant's petition.

7. Whether the alleged failure of the learned Justices of the Court of Appeal to declare the Appellant Elected and returned in the Election occasioned a failure of justice.

B 8. Whether the alleged failure of the learned Justices of the Court of Appeal to make pronouncement on the chart in the final Address of the Appellant and or evidence elicited during cross-examination of the respondents witness occasioned a failure of justice.

C I would like to make a few comments limited to issues 1 and 6 of the 1st and 2nd Respondents distilled issues which are:-

1. Whether their Lordships of the Court below were right in upholding the decision of the Tribunal in refusing to give credence to the evidence of PW1-PW65 on the ground that the evidence of those witnesses constituted hearsay in that the witnesses failed to distinguish between what they saw themselves and what they were told by their polling agents quite apart from the fact that some of the depositions made in Hausa language were translated into English language by unidentified persons who failed to sign the jurat to show that the makers of the depositions knew the contents thereof.

6. Whether the learned Justices of the Court below erred in law when they dismissed the appeal on the ground that it was completely lacking in merit.

F Dr. Banire, learned counsel for the Appellant submitted that it is on record that all the voters registers and forms EC8A (Exhibits PI-P773) relevant to this case were tendered by the Appellants from the Bar; that these were part of the documents in respect of which the Appellants obtained an order to conduct an inspection of all electoral materials. In the circumstance such certified true copies to public documents did not need to be tendered through witnesses contrary to the position the two Courts below held. That PW66 is the head of the team that conducted the inspection of the electoral materials on behalf of the Appellants and who by his witness's statement which he adopted in open court spoke of those documents. That the two courts below were wrong in maintaining that the Appellant did not have adopted any of the available options either compelling the attendance of subpoenaed 5th Respondent or produce certified true copies of the documents to be tendered.

He stated further for the Appellant that the original ballot papers subpoenaed to be produced were merely required for the purpose of counting in order to establish the findings of the petitioner during the inspection ordered by the Tribunal in which the petitioner found lots of irregularities in the number of ballot papers Produced by ,NEC to have been used for the election in several polling units and number of ballot papers recorded on forms EC8A to have been used to produce the result by which the 1st Respondent was declared winner. That all these findings contained in the testimonies of PW66 who gave extensive analysis of the vagaries in the results of the election as announced by INEC during inspection and in respect of which the Respondent had no explanation. B C

Dr. Banire of counsel said the refusal of the 5th Respondent to Produce the electoral form and the ballot papers should be regarded as withholding of evidence under Section 67 (d) of the Evidence Act, 2011 and should weigh against the respondents. He relied on *Ogwuru v Co-operative Bank of Nigeria ltd* (1994) 8 NWLR (pt.365) 685; *Jallcot Ltd v Owoniboy Technical service ltd* (1995) 4 NWLR (Pt. 391) 534. D

He further canvassed for the Appellants that, Appellants having Prepared a chart showing the area to be nullified and what would remain of the election if the documents tendered and admitted and the oral evidence adduced are carefully considered, it then becomes duty of the Tribunal, to look at these document, appraise the evidence and see what would remain of the results of the election if the areas challenged are nullified. That nothing prevented the Tribunal, from confirming the evidence before it and taking a decision as regards the quantum of valid votes with which a winner could be declared. He cited *Agagu v Mimiko* (2009) 7 NWLR (Pt 1140) 342; *Fayemi v Oni* (2009) 7 NWLR (Pt. 1140) 223 etc. E F G

That in the final analysis of what was on ground and before the Tribunal, it is the 1st Appellant who scored the majority of lawful votes and should have been returned instead of 1st Respondent who was wrongly declared based on computation of results. That the Court below should have set right this anomaly and they failed to do so. He cited the case of *Fagunwa v Adibi* (2004) 17 NWLR (Pt. 903) 544. H

Learned senior advocate for the 1st and 2nd Respondents, Mr. Kanu Agabi said from the record it is clear that the witnesses of the

Appellant failed to distinguish between what they saw and what they were told by their polling unit agents. That there was need to disclose the sources of the information the appellant's witnesses were deposing to and adopting in court. That it is not possible for over 60 witnesses to have had the same experience with different persons at different times. That this situation leads to the conclusion that the depositions did not stem from direct experience but hearsay. He cited *FGN v AIC Ltd* (2006) 4 NWLR (Pt. 970) 337 at 357; *Doma v INEC* (2012) ALL NWLR (Pt. 628) 813 at 829.

That the depositions of 22 witnesses came from translations which the witnesses said were made by them from Hausa in which they spoke to the English Language presented to court. That nothing was shown as to how these interpretations were effected thus bringing about the suspicion that the deponent were not the actual persons who deposed to those statements. Mr. Agabi said the inevitable conclusion is that the Petition was not accompanied by any valid deposition therefore the Petition was incompetent. He cited *Buhari v INEC* (2008) 4 NWLR (Pt. 1078) 546; *Chukwuma v Nwoye* (2011) All FWLR (Pt.553) 1942 at 1967; *Adesanoye v Adewole* (2006) 27 NSCQR 783 at 800 - 801 etc.

Learned Senior Counsel for 1st and 2nd Respondents said not a single polling unit agent was called as a witness thus bringing the presumption into effect that if they were called their evidence would have been detrimental to the Appellants. He cited *INEC v Anthony* (2011) 7 NWLR (Pt.1245) 22 - 23.

For the 1st and 2nd Respondents was contended that the Court below was right when they upheld the decision of the Tribunal to the effect that the Appellants having failed to prove all the allegations made in their petition there was no duty upon the respondents to call evidence in rebuttal as the onus of proof rests on he who assents. He cited *Buhari v Obasanjo* (2005) All FWLR (Pt.273) 1 at 48.

That the evidence of the Appellants having been well discredited under cross-examination there was no requirement for a further rebuttal and no court can grant reliefs on the basis of such discredited evidence.

For the 3rd Respondent was contended that the depositions all contained jurat all of which were unsigned. That the onus was upon the Appellants to explain why the depositions were in English

language when many of the witnesses stated under cross-examination that they made their deposition in Hausa language. He cited Section 45 (1) of the Electoral Act, 2012 (as amended). That the Appellants failed to call the agents at the various polling units and so the presumption under Section 149 (d) of the Evidence Act applied. He referred to *Hashindu v Goje* (2003) 15 NWLR (Pt. 843) 352 at 393; Section 115 of the Evidence Act. B

For the 3rd Respondent was contended that the Appellants did not attain the high standard of proof of allegation of crime to entitle them to reliefs sought and even where the allegations were civil in nature the Appellants still fell short of the requirement based on the preponderance of evidence. That in fact there was nothing in proof of substantial non-compliance which would vitiate the election of the 1st and 2nd respondents upon which the Appellants could be the duly elected persons in their stead. He referred to *Ucha v Elechi* (2012) 3 SC (Pt. 1)26. C

On the quality of the evidence of the witnesses of the Appellants, the Tribunal stated:-

“Unfortunately, they failed to distinguish between what they saw and what they were told by their polling unit agents. They also failed to disclose single name of their agents who not only told them what happened at their units but submitted to them a report. None of the reports by the polling agents was tendered in evidence even if to corroborate the testimonies of these wards supervisors..... this Tribunal has no choice than to treat their entire evidence as hearsay evidence also.” E

In the matter of the taking of evidence be they oral or written or as in the case in hand, the depositions of witnesses part of the Petition, the law of Evidence cannot be swept aside or ignored or waived. Therefore where the deponent has averred to an information not from his personal knowledge or eye witness account, it is mandatory that he discloses the source of that information, otherwise he infracts the relevant provisions of the Evidence act (as amended) such as Sections 86, 88 and 89. This is in keeping with the legal principle that on the face of it, hearsay evidence is inadmissible and so to be taken seriously such evidence needs its source be put on display including the name of the informant, and the circumstances. See *FGN v A1C Ltd* (2006) 4 NWLR (Pt 970) 337 at 357; *Doma v* F

INEC (2012) All FWLR (Pt. 628) 813 at 829.

The status of those depositions in the witness statements are all the more diminished when viewed from the fact of their having been taken down in English language while it is not disputed that the witnesses made available their statements in Hausa language. No explanation was proffered as to how the translations were made and the jurats not signed to clear the issue of interpretation from Hausa to English and the other way round. A clear infraction of a fundamental nature leading to the conclusion that the Petition was not accompanied by valid depositions affecting the competence of the Petition. Where as in this case there is incompetent Petition the Tribunal lacked the jurisdiction to adjudicate since the petition before it was invalid. I rely on Buhari v INEC (2008) 4 NWLR (Pt. 1978) 546; Chukwuma v. Nwoye (2011) All FWNLR (Pt. 553) 1942; Okereke v Yar'Adua (2008) 12 NWLR (Pt.1100) 95 at 118.

Assuming the Petition was in order, the next issue that crops up is the evidence and to state what transpired at the arena of battle which is what an election is, must be offered by those who were present.

In an election the crucial place to be x-rayed is the polling unit and a situation as the case in hand where the Appellants failed to call the polling agents at those units who saw, heard or took part in the transaction on which such a witness is testifying has no substitute if the Appellant is serious about establishing substantial non-compliance or irregularities or malpractices. Such direct testimonies are essential and failure could be interpreted that the Appellants case would have been jeopardized if such witnesses testified or that the allegations which the Appellants are handing on did not take place. I rely on Hashidu v Goje (2003) 15 NWLR (Pt. 843) 352; Agballah v Chime (2009) 1 NWLR (Pt.1122) 373 at 433 - 434; Ucha v Elechi (2012) 3 SC (Pt. 1) 26 at 71.

The situation is even all the more curious in the light of the party agents who authenticated the results were not called to testify. Therefore the Tribunal and affirmed by the Court of Appeal that the results in the documents reflected the true results from the field. See Okoya v Santilli (1994) 4 NWLR (Pt.338) 280; Mark v Abubakar (2009) 2 NWLR (Pt. 1124) 79 at 183 - 184.

That Appellants position is that they established their assertions in proof of their petition. This was vigorously attacked by the

Respondents who say the Court of Appeal was right to have upheld the tribunal decision to the effect that the Appellants failed to prove all the allegations made in their petitions and the respondents owed no duty in rebuttal. I am on same ground with the respondents in the position above in that it is only when the party asserting as has been done by the Appellants of the existence of facts, discharges the legal and evidential burden of proof that the adverse party can enter to dislodge such proofs. In this instance the Appellants set out allegations which were no more than were assertions leaving them unattended, to such an extent that the assertions could very well be termed speculative, the respondents in the circumstance had nothing to do in rebuttal. The Respondent in the situation prevailing had no obligation to call any witness since that absence of respondents witnesses would not convert incredible evidence of the Appellants to credible. This goes along the well settled principle that a plaintiff succeeds on the strength of his case and not because the defence or respondents case is weak. *Buhari v Obasanjo* (2005) All FWLR (Pt. 273) 1; *M.I.N. Ltd v M.F.K.W.A. Ltd* (2005) 10 NWLR (Pt. 934); *Konwei v IGP* (2007) All FWLR 1699; *Daggash v Bulama* (2003) 3 LREC 193.

From the foregoing and the better and fuller reasonings in the lead judgment I too dismiss the appeal and abide by the consequential orders of my learned brother, M. D. Muhammad, JSC.

OGUNBIYI JSC

I have read in draft the lead judgment just delivered by my brother Musa Dattijo Muhammad, JSC and I agree that the appeal is lacking in merit and should be dismissed.

However and for purpose of adding a few words of mine, I will wish to comment on the legal effect of documents tendered from the bar by counsel. The issue which arose from ground 13 of the grounds of appeal read as follows:-

“Whether their Lordships of the court below were right when they upheld the decision of the Tribunal to the effect that forms ECSAs, ECSBs, ECSCs, ECSDs and voters registers and other electoral documents tendered from the bar by counsel to the Appellant had no evidential value on the ground that they were dumped on the Tribunal not having been tied or related to the Appellant’s case through

witnesses.”

At page 3667 of the record of appeal, the learned Tribunal judges held and said:

“with due respect to the learned senior counsel the petition in the possession of law as it pertains documents tendered from the bar without their being demonstrated in the open court by a witness is to expunge such documents from the record of the court.”

Also at page 3668 of the record the tribunal further proceeded and said:-

“Upon considering the above holding of the apex court in our nation, we are left with no choice but to disregard and expunge all the forms ECSAs, ECSBs, ECSCs, EC8Ds and voters register tendered from the bar by the learned senior counsel for the petitioners. This is because all documents were dumped on the Tribunal without any witness who testified in open court to demonstrate their purport and worth.”

The above decision was upheld by the lower court in the following terms at page 3914 of the record wherein it said:-

“It is settled that a party who wants a court or a Tribunal to ascribe probative value to its documents must tie or relate its documents to the aspect of his case through witnesses. The tendering of the documents by a party to litigation and the purport for which they are tendered cannot be left to be subject of speculation.”

Submitting on this issue, the learned appellant’s counsel related copiously to paragraph 41(2) of the 1 schedule to the Electoral Act, 2010 (as amended) wherein it states:-

“Documents which parties consented to at the pre-hearing session or other exhibits shall be tendered from the Bar...” That the forms EC8A and voters’ registers and which were tendered by the petitioners were never objected to by the Respondents. The deduction, counsel argued meant that they were consented to as certified true copies of INEC forms which the 4th Respondent issued to the petitioner upon payment of the appropriate fees. Counsel also related to the evidence of P.W. 66 who gave evidence of all the irregularities observed on the pages of the Electoral forms. That the witness P.W 66 had fully complied with the requirement of paragraph 41(3) of the 1 schedule to the Act which

“There shall be no oral examination of a witness during his

evidence in chief except to lead the witness to adopt his written deposition and tender in evidence all disputed documents or other exhibits referred to in the deposition.”

That the law is trite that a document duly pleaded and tendered, once admitted, is the best evidence of its contents and therefore speaks for itself. The counsel to buttress his submission states thus:- cited the cases of Governor of Ogun State v. Mr. Adegboyega Adebola Coker (2008) all FWLR (Pt. 406) 1900 at 1913; Divine ideas Limited v. Ilaja Mero Umoru (2007) All FWLR (Pt. 380) 1468 at 1500; and Vera Ezomo v. New Nigeria Bank Plc and Anor. (2007) All FWLR (Pt. 368) 1032 at 1065.

That all the exhibits tendered by the appellant were certified true copies of public documents. That the documents were analyzed and testified upon by PW 66.

It is trite law and well settled that documents tendered in court must demonstrate their purport and worth through a witness. It is pertinent to point out that the documents subject of contention were neither tied to nor related to the appellant's case through witnesses, and hence the reason why the tribunal refused to give them any evidential value on the ground that the documents were merely dumped on the Tribunal. This court in the case of Ucha v. Elechi (2012) All FWLR (Pt. 625) P 237 at 259 on the issue of dumping documents on trial said thus:-

“when a party decides to rely on documents to prove his case there must be a link between the documents 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 the trial court. No court would spend precious judicial time linking documents to specific areas of a party's case. See ANPP v. INEC 2010 13 NWLR Pt. 1212 P.549. A Judge is to descend from his heavenly abode no lower than the free tops, resolve earthly disputes and return to the Supreme Lords. 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”.

The court below and certainly the trial tribunal had no option but to have followed the directive laid down by this court on principle of precedents. The said two lower courts could not therefore be held guilty of judicial indiscipline as sought to portray by the learned appellant's counsel. By mere dumping the documents which were tendered through counsel, there still remain questions or issues needing resolutions. In other words, the nature of the documents that were tendered needed to be explained and related to the reason why they are produced; the identity of the witnesses through whom the documents were tendered was relevant; there was also the necessity that the documents be linked to specific areas or issues. By mere tendering them from the bar did not afford linking them to any specific areas or issues in the petition. The failure to identify the witnesses and specifically linking them to each of the documents was detrimental to the appellant's case. The law is trite that where a document is wrongly admitted as an exhibit, the court owes it a duty to expunge same from its records in its judgment. The argument by the appellant to the effect that once a document is admitted by the court, it is under a duty to evaluate same and give effect, is a wrong conception of the law therefore. The appellant had in other words given a wrong interpretation to paragraph 41(2) of the 1st schedule to the Electoral Act as submitted supra.

It is the failure of the appellant to call a witness to provide the necessary 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. See the case of Buhari v. INEC (2008) 12 SC 1. Contrary to the submission by the learned appellant's counsel, in the instant case at hand, none of the documents tendered was linked to the oral evidence as rightly submitted by the 1st and respondents' learned counsel. The appellant owed it a duty to have related instances of non-compliance to the documentary evidence tendered. This they had failed to do. The case of Audu v. INEC (2010) 13 NWLR (Pt 1212) 456 is relevant in point. There is nothing in the depositions of the witnesses tying the documents with the allegations made in the petition. None of the witnesses also mentioned any of the documents dumped on the tribunal.

It is not also the duty of the tribunal to sort out any document on its own for purpose of linking same to the evidence before it to ensure that the credibility and reliability of the evidence is ascertained and applied towards the just determination of the case.

A judge as rightly held, is an adjudicator and not an investigator and is therefore not permitted to undertake the kind of examination urged upon the Tribunal by the appellant.. This position was given judicial support by this court in the case of A.C. IV v. Lamido (2012) 8 NWLR (Pt 1303) 584 - 585 at 592 wherein Fabiyi JSC said thus amongst others:-

“The basic aim of tendering documents in bulk is to ensure speedy trial and hearing of election petition. But that does not exclude proper evidence to prop such dormant documents. It is not the duty of a court or Tribunal to embark upon cloistered justice by making enquiring 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.”

The appellant, other than tendering those documents, did not endeavour through its witnesses to link them up with the specific areas of the petition. Needless to restate that it was not the duty of trial tribunal judges to undertake that assignment in the comfort of their chambers. The law is trite that the tendering of a document by a party and the purport for which it is tendered cannot be left a subject of speculation. As rightly submitted on behalf of the 4th and 5th respondents, the duty of the court is to evaluate documents and not investigate it. See the case of Tarab vs. Lawal (1992) 3 NWLR (pt. 569) 590.

The learned justices of the Court of Appeal cannot therefore be faulted in affirming the judgment of the trial tribunal which I hereby also endorse and dismiss the appeal as lacking in merit.

My learned brother M. D. Muhammad had adequately and comprehensively dealt with all the issues raised in this appeal. I agree in total that same is devoid of any merit and it is also hereby dismissed by me in the same terms as the lead judgment inclusive of the order made as to costs.