

**SUPREME COURT OF NIGERIA**  
FRIDAY 17TH FEBRUARY, 2012. SC. 6/2012  
**CORAM:- M. MOHAMMED, C. M. CHUKWUMA-ENEH,**  
**M. S. MUNTAKA-COOMASSIE, J. A. FABIYI,**  
**B. RHODES-VIVOUR, JJSC**

PEOPLES DEMOCRATIC PARTY ..... APPELLANT  
AND  
1. INDEPENDENT NATIONAL  
ELECTORAL COMMISSION  
2. ABDUL'AZIZ YARI ABUBAKAR ..... RESPONDENTS  
3. ALHAJI IBRAHIM WAKKALA  
4. ALL NIGERIA PEOPLES' PARTY

---

STATUTES - Performance of duty - Regulated by statute - Where two methods or procedures for doing a thing are provided - A party can choose any of the methods so provided (H1)

ELECTION PETITIONS - Objection - Hearing - By para. 12(5) Electoral Act 2010 - Respondent with an objection must file his reply with the objection - So as to avoid undue delay of hearing of the matter (H2)

ELECTION PETITIONS - Allegation of crime - Proof - Court of Appeal rightly held that the paragraphs relating to crimes are vague - Since particulars of fraud were not pleaded (H3)

***FACTS***

Appellant filed this election petition at the Governorship Election Petition Tribunal of Zamfara State, challenging the return of 2<sup>nd</sup> and 3<sup>rd</sup> respondents as the duly elected Governor and Deputy Governor respectively of the State in the gubernatorial election conducted in the State on 26/4/2011. Respondents filed their respective replies to the petition in which they encompassed their objections to the petition. The tribunal ordered that the objections would be heard together with the substantive petition. The petition was heard on its own merit after which the parties filed their respective written addresses.

Respondents argued the objections in their written addresses while appellant also replied. The tribunal in its judgment upheld the objections and struck out certain paragraphs of the petition. Eventually, the tribunal held that appellant has failed to prove the allegations of crime in its petition and same was dismissed. Dissatisfied, appellant unsuccessfully appealed to the Court of Appeal Sokoto Division. The court affirmed the decisions of the trial tribunal and dismissed the appeal. Being further aggrieved, appellant filed appeal in Supreme Court.

### **ISSUES FOR DETERMINATION**

*“1. Considering the clear provisions of section 140(4) of the Electoral Act, paragraphs 17(1) and (2), 47(1) and 53 of First schedule (to the Electoral Act) vis-a-vis the provision of paragraph 12(5) of the same First schedule to the Electoral Act, whether the lower court was not in grave error in holding as it did that the striking out by the trial Election Tribunal of paragraph 12, 17, 18, 19, 22, 27, 29, 30, 31, 32, 33, 34, 36, 37, 41, 42, 43, and 44 of the petition was/is justified.*

*2. Whether the lower court was not in grave error in its conclusion in relation to the joinder of issues on the struck out paragraphs by the 2<sup>nd</sup>- 4<sup>th</sup> respondents, as well as its rationalizing the basis for their being struck out.*

*3. Has the Supreme Court decision in Nwankwo v. Yar’adua (2010) 12 NWLR (Pt. 1209) 518 been abrogated or replaced by paragraph 12(5) of the First Schedule to the Electoral Act?*

*4. Whether or not compliance with the provisions of the Election Tribunal and Court practice Directions 2011 are not mandatory for the parties.*

*5. Considering the circumstances of this case, the state of pleadings and evidence adduced, including the abandonment of its pleadings by the first respondent, whether the lower court was not in error in holding that the appellant did not prove its case.*

**HELD** (Unanimously dismissing the appeal per

**MUNTAKA-COOMASSIE JSC)**

*STATUTES - Performance of duty - Regulated by statute*

**1. In my view, the provisions of the two paragraphs are clear and unambiguous, and are not subject to any interpretation and I only wish to state that where the law provides two methods or procedures for doing a thing, a party can choose any of the method so provided. The respondents in this case elected to raise their objection pursuant to paragraph 12(5) of the 1<sup>st</sup> Schedule and they are entitled to so elect.**

(p. 3704 E)

*ELECTION PETITIONS - Objection - Hearing*

**2. The paragraph is to ensure timeous determination of the petition on this point the lower court held as follows:-**

***“Paragraph 12(5) stipulated that a respondent who has an objection to the hearing of the petition shall file his reply and state the objection, which will be determined with the substantive petition. The phrase “hearing the petition” cannot be limited to only after pleadings have been exchanged. Paragraph 12(5) of the 1<sup>st</sup> Schedule is intended from its composition to reflect the sui generis nature of election matters. The Mischief obviously is to ensure objections raised do not derail the determination of the merit of a case by undue and unwarranted delays occasioned by preliminary objection.”***

**With due respect I entirely agree with this statement of law adumbrated in the judgment of the lower court.**

(p. 3704 F)

*ELECTION PETITIONS - Allegation of crime - Proof*

**3. On whether the affected paragraphs were rightly struck out, I have read the affected paragraphs and found that they relate to allegations of non-voting in several polling points, disruption of election, non-conclusion of election thumb-printing of ballot papers, falsification of election results wide spread disruption, irregularities and malpractice without providing particulars or the polling units where the alleged malpractices took place. The lower court was therefore right where it held as follows:**

***“The paragraphs above in my view are too generic, vague and lacking in any particulars as they are not tied spe-***

*cifically to any particular polling unit or particular number of people who were alleged to have been disenfranchised. The fact that a party can file further particulars or deny in a reply the averment in the pleadings must not be general, it must be specific as to facts. It is settled law that a petitioner's obligation to plead particulars of fraud or falsification without which the allegation is a non-starter".*

*I have nothing to add to this statement of law as advanced above, and I adopted it as mine.* (p. 3705 G)

### **C REPRESENTATION**

Chief Wole Olanipekun, SAN, (with Kunle Kalejaiye, SAN; Dele Adesina, SAN; Yahaya Mahmoud, SAN; Ayo Adesina, Esq; K. Chukwu Azie, Esq; P.C. Okafor-Okezuonu; Abdul Majid Oniyangi, Esq; Aina Abdul; M. Salahudeen; Adetunji Muraina, Esq; for the Appellant Chief [Mrs.] V. O. Awomolo with Ayo Oguneeye Balogun; Chidi Amaeze; A.O. Giwa [Mrs.] and Wale Balogun, for the 1<sup>st</sup> Respondent Yusuf Ali, SAN with A.O. Adelodun, SAN; Dr. W.O. Egbewole; Ayo Olanrewaju, Esq; Muhammad Sani Katu; K.K. Eleja; Bello Umar; Y.D.U. Hambali; Adam O. Olori-Aje; S.A. Abdullah; Issa Abubakar and A.N. Raji, for the 2<sup>nd</sup> – 4<sup>th</sup> Respondents

### **CASES REFERRED TO**

- Abubakar v. Yar 'Adua (2008) All FWLR (Pt. 404) 1409  
 Nwankwo v. I. S. C. (1990) 2 NWLR (Pt. 136) 608  
 Kotoye v. Saraki (1994) 7 NWLR (Pt. 357) 414  
 Inakoju v. Adeleke (2007) 4 NWLR (Pt. 1025) 423  
 Buhari v. INEC (2008) 18 NWLR (Pt. 1120) 246  
 Awust v. Odili (2004) 8 NWLR (Pt. 876) 481  
 Terab v. Lawan (1992) 3 NWLR (Pt. 231) 569  
 Nkeiruka v. Joseph (2009) 5 NWLR (Pt. 1135) 505  
 Ojugbele v. Lamidi (1999) 10 NWLR (Pt. 621) 167  
 Nneji v. Chukwu (1988) 6 SCNJ 132  
 U.T.C. Nig Ltd v. Pamotei (1989) 2 NWLR (Pt. 103) 244  
 Orji v. Ugochukwu (2009) 14 NWLR (Pt. 1161) 207  
 Honika Sawmill Ltd. v. Okojie (1994) 2 SCNJ 86  
 Adun v. Osunde (2003) 16 NWLR (Pt. 847) 643

**STATUTES & RULES REFERRED TO**

Electoral Act 2010 (as amended), s. 140(4) paras. 12(5), 17(1)(2), 47(1) and 53 of 1<sup>st</sup> schedule

Supreme Court Act, s. 22

Federal High Court Rules, O. 13 r. 4(4)

B

**LEAD JUDGMENT BY MUNTAKA-COOMASSIE JSC**

The appellant challenged the return of the 2<sup>nd</sup> and 3<sup>rd</sup> respondents as the duly, elected Governor and Deputy Governor respectively of Zamfara State in the Gubernatorial election conducted on 26/4/2011. The respondents filed their respective replies to the petition in which they encompassed their objections to the petition.

C

The trial Tribunal ordered that the objection would be heard together with the substantive petition. The petition was heard on its own merit after which the parties filed their respective written addresses. The respondents argued the objections in their written addresses while the appellant also replied. The trial tribunal in its judgment upheld the objection and struck out paragraphs 12, 17, 18, 19, 22, 27, 29, 30, 31, 32, 33, 34, 36, 37, 41, 42, 43 and 44 of the petition.

E

In all, the trial Tribunal held that the petitioner has failed to prove the allegations in its petition and same was dismissed.

Dissatisfied with this decision the petitioner unsuccessfully appealed to the Court of Appeal Sokoto Division, hereinafter called the lower court. The lower court affirmed the decisions of the trial Tribunal and dismissed the appeal.

F

The lower court also considered the affected paragraphs of the petition and held as follows:

*“The paragraphs above in my view are too general, too generic and lacking in any particularity as they are not tied to any particular polling unit or particular number of people who were said to have been disenfranchised. The fact that a party can file further particulars orderly in a reply, the averments in the vague paragraphs cannot cure the defect.”*

H

*The pleadings must not be general, it must be specific as to facts. It is settled law that a petitioner is under obligation to plead particulars of fraud, or falsification without which the allegation is a non-starter.”*

Finally the lower court also held that the appellant has not proved the allegations in its petition. It is as a result of this decision that, the appellant has appealed to this Court. The appellant in its brief of argument distilled five issues for determination as follows:

B *“1. Considering the clear provisions of section 140(4) of the Electoral Act, paragraphs 17(1) and (2), 47(1) and 53 of First schedule (to the Electoral Act) vis-a-vis the provision of paragraph 12(5) of the same First schedule to the Electoral Act, whether the lower court was not in grave error in holding as it did that the striking out by the trial Election Tribunal of paragraph 12, 17, 18, 19, 22, 27, 29, 30, 31, 32, 33, 34, 36, 37, 41, 42, 43, and 44 of the petition was/is justified. (Grounds 2, 3, 4, 8, 9 and 10)*

D *2. Whether the lower court was not in grave error in its conclusion in relation to the joinder of issues on the struck out paragraphs by the 2<sup>nd</sup>- 4<sup>th</sup> respondents, as well as its rationalizing the basis for their being struck out. (Ground 11)*

E *3. Has the Supreme Court decision in Nwankwo v. Yar’adua (2010) 12 NWLR (Pt. 1209) 518 been abrogated or replaced by paragraph 12(5) of the First Schedule to the Electoral Act? (Ground 1)*

*4. Whether or not compliance with the provisions of the Election Tribunal and Court practice Directions 2011 are not mandatory for the parties. (Ground 5)*

F *5. Considering the circumstances of this case, the state of pleadings and evidence adduced, including the abandonment of its pleadings by the first respondent, whether the lower court was not in error in holding that the appellant did not prove its case. (Grounds 6, 7, 12 & 13)”*

G The 1<sup>st</sup> respondent in its brief of argument formulated three issues for our consideration of the appeal thus:

H *“1. Whether the Justices of the Court of Appeal misconceived paragraphs 12(5), 17(1) and (2) of the 1st Schedule to the Electoral Act (as amended) and the decision in Nwankwo v. Yar’Adua (2010) 12 NWLR (Pt. 1209) 518 in affirming the 18 paragraphs of the petition struck out by the Election Tribunal. (Relates to grounds 1, 2, 3, 4, 8, 9, 11, 12, 13 of the amended notice of appeal)*

*2. Whether the Court of Appeal was right in affirming the decision of the Tribunal that the appellant failed to discharge the bur-*

*den of proving the allegations of malpractice, falsification of results and substantial non-compliance with the Electoral Act, in the Governorship Election of 26<sup>th</sup> April, 2011 in Zamfara State. (Relates to ground 7 of the amended notice of appeal).*

*3. Whether the lower courts were right in rejecting the evidence of PW34 an ‘expert’ witness, which evidence, discredited and shown to contradict the Electoral Forms EC8A and EC8B, tendered before the court, by the appellant as the source documents, used by the ‘expert’ in arriving at its report, exhibit P72. (Relates to grounds 6 of the amended notice of appeal)”*

The 2<sup>nd</sup> to 4<sup>th</sup> respondents also formulated four (4) issues for determination as follows:

*“1. Whether the lower court was not right in affirming the decision of the trial tribunal that the fact that the final written address of the 2<sup>nd</sup> - 4<sup>th</sup> respondents exceeded the stipulated forty pages by one did not lead to miscarriage of justice and in upholding its use by the trial Tribunal.*

*2. Whether the lower, court was not right in the view and interpretation it placed on the provisions of paragraphs 12(5), 17(1) and 53(5) of the 1<sup>st</sup> Schedule to the Electoral Act 2010 (as amended), the applicable provisions of the Federal High Court Rules and also in holding the decision in Nwankwo v. Yar’Adua (2010) 12 NWLR (Pt. 1209) 518 having been decided before the insertion of paragraph 12(5) of the 1<sup>st</sup> Schedule to the Electoral Act 2010 was clearly distinguishable from the facts and circumstances of this case.*

*3. Whether the lower court was not correct in upholding the striking out of paragraphs 12, 17, 18, 19, 22, 27, 29, 30, 31, 32, 33, 34, 36, 37, 41, 42, 43 and 44 of the petition and in further holding that the striking out did not lead to any miscarriage of justice having regard to the fact that the trial tribunal still considered the case of the appellant which was essentially the same even after striking out of the said paragraphs of the petition.*

*4. Whether the lower court was not right having regard to the materials at its disposal in endorsing the dismissal of the case of the appellant by the trial Tribunal on the face of lack of proof of the allegations made, therein, un-reliability of the testimony of PW34 and exhibit P72 and that there was no abandonment of the 1<sup>st</sup> respondent’s reply before the Tribunal.”*

The gist of the arguments of the Senior counsel to the appellant are to the effect that the lower court was wrong to have held that the trial Tribunal was right in striking out the affected paragraphs, when issues have been joined. The respondents denied and traversed the affected paragraphs and thus reached a point of *litis contestatio*,  
 B the case of *Eronini v. Iheuko* (1989) 2 NWLR (Pt. 101) 46 at 61; *Okowodudu v. Okoromadu* (1977) 3 SC 21; *Young Shall Grow Motors Limited v. Okonkwo* (2010) 15 NWLR (Pt. 1217) 524-551 were cited amongst others that if the said paragraphs were not clear the  
 C respondents would have applied for more particulars.

It was further contended that the lower court's reliance on paragraph 12(5) of the 1<sup>st</sup> Schedule was a misconception and that the applicable provisions are paragraph 17(1) and (2), 49(1) and 53 of the 1st Schedule while paragraph 12(5) is a general provision.

D It was further contended that the reliance placed on Order 13 rules 4(4) of the Federal High Court Rules was wrong as it was not applicable to this appeal. It was further contended that by the provisions of paragraph 47(1) all applications shall be moved during pre-hearing session except in extreme circumstances.

E Senior counsel also submitted that it was wrong of the lower court to hold that the decision in *Nwankwo v. Yar'adua* (*supra*) is no longer a good law as the decision has not been overruled by this court or abrogated by any Act of parliament. It was also submitted  
 F that the lower court was wrong in holding that the filing of written address in excess of 40 pages mandatorily provided in the Election Tribunal and Court Practice Direction did not occasion any miscarriage of Justice; that the provision of paragraph 5(a) of the Practice Direction demands full compliance from the parties, citing *Buhari v.*

G *I.N.E.C.* (2008) 18 NWLR (Pt. 1120) 246 at 342; *Nkeiruka v. Joseph* (2009) 5 NWLR (Pt. 1135) 506 at 576. It was also the appellant's submission that the 1<sup>st</sup> respondent is deemed to have abandoned its pleading for failing to adduce evidence in support hence, the appellant's case was deemed to have been admitted and it needs no

H further proof, cites Section 123 of the Evidence Act and the case of *Ndukwe v. L.P.D.C.* (2007) 5 NWLR (Pt. 1026) 1 at 56; *A.-G., Anambra v. A-G Federation* (2005) 9 NWLR (Pt. 931) 572 at 611. It was also submitted that the trial Tribunal could not be said to have evaluated the evidence adduced at the trial having struck out the



affected paragraphs that contained the substance of the appellant's case and therefore urged this court to invoke its power under the provisions of Section 22 of the Supreme Court Act to hear this case and allow the appeal.

The learned senior counsel to the 1<sup>st</sup> respondent submitted that the trial Tribunal was right in hearing the objection with the substantive case, referring to paragraph 12(5) of the 1<sup>st</sup> Schedule to the Electoral Act. The said provision was not contained in the Electoral Act, 2006 and it was not considered in the case of *Nwankwo v. Yar'adua* (supra). It was further contended that the respondent did not ask for further and better particulars as it was needed, and that the provisions of paragraph 17(1) of the 1<sup>st</sup> Schedule is discretionary as it starts with the word "if. It was also contended that the respondents have no obligation to assist the appellant to state his case as required by law, the case of *Olawepo v. Saraki* (2009) All FWLR (Pt. 498) 256 was cited. Senior counsel pointed out that all the parties addressed the tribunal on this issue even in the appellant's awareness of its unlawfulness, thus where a party agreed to a procedure he cannot be heard to complain of prejudice by such procedure merely because he lost in the lower court. Cited *Noibi v. Fikolati* (1987) 1 NWLR (Pt. 52) 619 at 632. Learned counsel submitted that failure of the appellant to supply the particulars in the face of clear notice by the respondents forecloses from leading evidence thereon, he refers to *Nwachukwu v. Eneogwe* (1999) 4 NWLR (Pt. 600) 629 at 635.

Learned senior counsel further submitted that the allegations of the petitioner in its entirety centered on the purported misconduct on the part of agents of the 3<sup>rd</sup> and 4<sup>th</sup> respondents who allegedly colluded with agents of the 1<sup>st</sup> respondent and returned false result in the contested Local Government Areas. Thus the allegations of the appellant were centred on criminality. He refers to *Adun v. Osunde* (2003) 16 NWLR (Pt. 847) 643 at 672; Section 135 of the Evidence Act 2011, *Nwobodo v. Onoh* (1980) 1 All NLR 1 at 2; (1984) 1 SCNLR 1. However, the appellant did not call a single voter with voter's card who was prevented from voting and that the exhibits tendered were dumped in the Tribunal without demonstrating or relating it to any part of the appellant's case. He relied on the case of *Terab v. Lawan* (1992) 3 NWLR (Pt. 231) 569 at 590.

Learned senior counsel submits that the burden of proof does

not shift till the appellant has sufficiently discharged the burden placed on it by law, until then the respondents are not at liberty to call evidence in rebuttal; that the respondent cannot lead evidence to rebut nothing. The case of: Orji v. Ugochukwu (2009) 14 NWLR (Pt. 1161) 207 at 308; Honika Sawmill Ltd. v. Okojie (1994) 2 SCNJ 86 at 89 B and 97; (1994) 2 NWLR (Pt. 326) 252.

It was dually submitted that this is not a case that warrants the invocation of Section 22 of the Supreme Court Act as the appeal went through full trial at the lower court and after the proper evaluation of the evidence. See Obi v. I.N.E.C. NSE QLR Vol. 31 (2009) C 738/836; (2009) 18 NWLR (Pt. 1172) 215.

Learned senior counsel to the 2<sup>nd</sup> - 4<sup>th</sup> respondents submits that the provisions of paragraph 5(a) of the Practice Direction, 2011 gives the Tribunal the direction either to discountenance or not to D countenance any written address whose pages exceeded page 40, hence the only duty left to the tribunal was to consider, the interest of justice, in the instant case the Tribunal judicially and judiciously exercised discretion to entertain the 2<sup>nd</sup> - 4<sup>th</sup> respondents written address, citing Abubakar v. Yar 'Adua (2008) All FWLR (Pt. 404) 1409 at E 1149-1450; (2008) 4 NWLR (Pt. 1078) 465. Learned senior counsel pointed out that the trial tribunal and the lower court did not overrule the decision in Nwankwo v. Yar 'Adua (supra) but merely distinguished the case from this one as the provisions of paragraph F 12(5) which is the subject of consideration in the instant appeal was enacted after the decision in Nwankwo's case. Senior counsel referred to the grounds of objection stated in the reply and contended that they arc jurisdictional issues which can be taken at any stage of the proceedings. He referred to Nwankwo v. I. S. C. (1990) 2 NWLR (Pt. G 136) 608 at 726 - 729 and Kotoye v. Saraki (1994) 7 NWLR (Pt. 357) 414 at 466.

It was further contended that the provisions of paragraph 12 (5) of the 1<sup>st</sup> Schedule was specific and as such the court should not make a round about in its interpretation, citing the case of Inakoju v. H Adeleke (2007) 4 NWLR (Pt. 1025) 423. It was therefore submitted that the lower court was not only entertaining the objection but also in striking out the offending paragraphs pursuant to paragraph 12(5) of the 1<sup>st</sup> Schedule. The fact that the offending paragraphs have been denied in the respondents reply is not a reason to cure the inherent

defect. It is further submitted that the materials facts that are significant and essential to electoral vices as misapplication of votes, acts of violence, multiple thumb-printing, falsification of results were not pleaded. It was further contended that despite the sinking out of the paragraphs of the petition, the tribunal still went ahead to consider the substratum of the petition, and the tribunal found that even after striking out the paragraphs in question, the remaining paragraphs were still germane to the determination of the petition and the finding of the Tribunal was not appealed against. It was therefore submitted that this is not a case where the Supreme Court can invoke its powers under section 22 of the Supreme Court Act to hear the petition.

Learned senior counsel further submitted that the burden of proving the petition is on the appellant and this burden does not shift until the appellant had adduced credible evidence in proof of its petition and dislodge the presumption in favour of the correctness of the result raised by section 68(1) of the Electoral Act, 2010 (as amended) and section 168(1) of the Evidence Act, 2011. He refers to *Buhari v. I.N.E.C.* (2008) 18 NWLR (Pt. 1120) 246 at 320; *Awust v. Odili* (2004) 8 NWLR (Pt. 876) 481; and *Chime v. Onyia* (2009) 2 NWLR (Pt. 1124) 1.

My lords the concurrent findings of the two lower courts which are not perverse, and the trial Tribunal to the effect that the appellant failed to discharge the burden placed on him by law has not occasioned any miscarriage of justice. It was based on the evidence placed before the court and the law. The appellant also filed a reply brief in which it further elaborated its arguments on issues already covered in its brief of argument.

The main contention of the appellant in this appeal my lords is that the lower court was wrong to affirm the decision of the Tribunal that struck out various paragraphs of the petition in its final judgment. It was its contention that the trial Tribunal wrongly relied on the provisions of paragraph 12(5) of the 1<sup>st</sup> Schedule and that by the provisions of paragraph 47(1) all motions shall be moved at the pre-hearing session except in extreme circumstances with the leave of Tribunal. Paragraph 12(5) of the 1<sup>st</sup> Schedule of the Electoral Act, 2010 provides as follows:

*“A respondent who has objection to the hearing of the petition*

*shall file his reply and state the objection thereon and the objection shall be heard along with the substantive petition”*

While paragraph 47(1) of the 1<sup>st</sup> Schedule to the Electoral Act, 2010 (as amended) provides thus:

B *“i. No motion shall be moved and all motions shall come up at the pre-hearing session except in extreme circumstances with Leave of Tribunal or Court.”* (Italics mine for emphasis)

With tremendous respect, these paragraphs of the 1<sup>st</sup> Schedule apply to the different situations and proceedings, i.e.:

C i. Where a party approaches the Tribunal with objection by way of motion, such motion shall be moved and determined during pre-hearing session except in extreme circumstances with the leave of the tribunal, that is position under the provisions of paragraph 47(1) of the 1<sup>st</sup> Schedule; and

D ii. Where the objection is embedded or stated in the reply. Such objection shall be heard along with the substantive case.

In the instant case or appeal, the respondent adopted the latter procedure by stating the objection in their reply and argued same in their final written address and the appellant also replied in its own written address.

F ***In my view, the provisions of the two paragraphs are clear and unambiguous, and are not subject to any interpretation and I only wish to state that where the law provides two methods or procedures for doing a thing, a party can choose any of the method so provided. The respondents in this case elected to raise their objection pursuant to paragraph 12(5) of the 1<sup>st</sup> Schedule and they are entitled to so elect. The paragraph is to ensure timeous determination of the petition on this point the lower court held as follows:-***

H ***“Paragraph 12(5) stipulated that a respondent who has an objection to the hearing of the petition shall file his reply and state the objection, which will be determined with the substantive petition. The phrase “hearing the petition” cannot be limited to only after pleadings have been exchanged. Paragraph 12(5) of the 1<sup>st</sup> Schedule is intended from its composition to reflect the sui generis nature of election matters. The Mischief obviously is to ensure objections raised do not derail the determination of the merit of a case by undue and un-***

***warranted delays occasioned by preliminary objection.***

***With due respect I entirely agree with this statement of law adumbrated in the judgment of the lower court.***

Learned senior counsel further submitted that the lower court was in error when it overruled the Supreme Court's decision in *Nwankwo v. Yar 'Adua* (supra). I have carefully and closely perused the decision of the lower court and I was unable to lay my hand on where the lower court overruled the decision of this court. On this point the lower court held as follows:-

*"What then was the decision of Nwankwo v. Yar 'Adua supra which learned senior counsel for the appellant contends, the tribunal should have relied on but neglected to do so. The Supreme Court in that case on when an objection challenging the competency of election petition shall be heard and determined immediately that defect on the face of the election petition notified and before any further steps are taken."* He continues -

*"I agree with the decision of the tribunal that as the time Nwankwo v. Yar 'Adua (supra) was determined paragraph 12(5) was not in existence and not considered. It is settled law that at the time a cause of action arose determines the action. When the petition was filed, paragraph 12(5) of the 1<sup>st</sup> Schedule had come into effect, the Tribunal rightly relied on paragraph 12(5)."*

In my view, this is a correct statement of the law. The lower court only distinguished the decision in *Nwankwo v. Yar 'Adua* supra, from the instant case and it is also correct that at the time *Nwankwo's* case was decided the provisions of paragraph 12(5) of the 1<sup>st</sup> schedule was not in existence, hence the decision cannot be an authority for the interpretation of paragraph 12(5) of the 1<sup>st</sup> Schedule to the Electoral Act, 2010 (as amended).

***On whether the affected paragraphs were rightly struck out, I have read the affected paragraphs and found that they relate to allegations of non-voting in several polling points, disruption of election, non-conclusion of election thumb-printing of ballot papers, falsification of election results wide spread disruption, irregularities and malpractice without providing particulars or the polling units where the alleged malpractices took place. The lower court was therefore right where it held as follows:***

***“The paragraphs above in my view are too generic, vague and lacking in any particulars as they are not tied specifically to any particular polling unit or particular number of people who were alleged to have been disenfranchised. The fact that a party can file further particulars or deny in a reply the averment in the pleadings must not be general, it must be specific as to facts. It is settled law that a petitioner’s obligation to plead particulars of fraud or falsification without which the allegation is a non-starter”.***

***I have nothing to add to this statement of law as advanced above, and I adopted it as mine.***

Finally, the provisions of paragraph 5 (a) of the Practice Directions is subject to the discretion of the Tribunal, after all the paragraphs were enacted to assist the Tribunal to reduce the work load, and where it exercised its discretion in countenancing a written address in excess of 40 pages, it is my view that such discretion does not occasion miscarriage of justice.

Finally, I hold that the appeal lacks merit and is accordingly dismissed. The judgment of the lower court delivered on 22/12/2011 is hereby affirmed because there are two concurrent decisions of the lower courts which are correct and never perverse. I make no order as to costs.

F

### **MOHAMMED JSC**

This appeal is against the judgment of the Court of Appeal Sokoto Division delivered on 22<sup>nd</sup> December, 2011 affirming the judgment of the governorship Election Petition Tribunal sitting at Gusau Zamfara State given on 4<sup>th</sup> November, 2011 dismissing the appellant/petitioner’s petition which challenged the election and return of the 2<sup>nd</sup> and 3<sup>rd</sup> respondents as the Governor and Deputy Governor respectively of Zamfara State following the election conducted by the 1<sup>st</sup> respondent on 26<sup>th</sup> April, 2011

Considering the circumstances of this case, having regard to the state of the relevant facts averred in the petition, the evidence adduced by the petitioner/appellant in support of its case, I entirely agree with the two courts below that the appellant/petitioner failed to prove its case to be entitled to the reliefs sought by it. This is because

it is quite clear from the record that the appellant seemed to have capitalized heavily on the failure of the 1<sup>st</sup> respondent which conducted the election, to call evidence in its defence to satisfy the contrary to the claim of the appellant/petitioner, that it conducted the election of 26<sup>th</sup> April, 2011 in accordance with the provisions of the Electoral Act, 2010 as amended. However, the appellant seemed to have lost the correct position of the law regarding the onus on it to rely on its own evidence to prove its petition taking into consideration that the nature of reliefs sought in the petition were purely declaratory. That is to say the 1<sup>st</sup> respondent was not bound to call evidence to assist the appellant in proving its case which is expected under the law to succeed exclusively on the evidence called by the appellant/petitioner. B  
C

Coming to the clear provisions of paragraph 12(5) of the 1<sup>st</sup> Schedule to the Electoral Act, 2010 as amended which is the subject of the first issue in the appellant's brief of argument, the two courts below rightly, in my view, affirmed the right of the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents to raise and argue the objection incorporated in their reply to the petition in the course of the hearing. D

In the result, the appellant having woefully failed to prove various allegations made in its petition as required by law, I completely agree with my learned brother, Muntaka-Coomassie, JSC in his judgment just delivered that this appeal lacks merit. Accordingly, I also dismiss the appeal with no order on costs. E  
F

### **CHUKWUMA-ENEH JSC**

I have had an advantage of a preview of the judgment of my learned brother Muntaka-Coomassie JSC just delivered. Having treated satisfactorily all the issues raised in the matter, I agree with him that the appeal has no merit whatsoever and should be dismissed. I accordingly dismiss the same and subscribe to the orders contained in the lead judgment. G  
H

### **FABIYI JSC**

I have had a preview of the judgment just handed out by my

learned brother, Muntaka-Coomassie, J.S.C. I agree that the appeal deserves to be dismissed.

I wish to chip in a few words of my own in support. The relevant facts in respect of the appeal have been ably stated in the lead judgment. In the same vein, the issues formulated on behalf of the parties were therein reproduced. I only desire to discuss briefly certain salient issues in this appeal.

Let me start with the issue relating to the written address of the 2<sup>nd</sup> - 4<sup>th</sup> respondents which exceeded the stipulated forty pages and not in tune with the dictate of paragraph 5 (a) of the applicable Practice Directions.

Learned senior counsel for the appellant submitted that the provisions of the Practice Directions are not directory but mandatory and as bye-laws, full compliance with them is demanded from every party. The cases of *Buhari v. I.N.E.C.* (2008) 18 NWLR (Pt.1120) 246 at 342; *Nkeiruka v. Joseph* (2009) 5 NWLR (Pt. 1135) 505 at 526; *Ojugbele v. Lamidi* (1999) 10 NWLR (Pt. 621) 167 were cited.

On behalf of the 2<sup>nd</sup> - 4<sup>th</sup> respondents, learned senior counsel submitted that the provision of paragraph 5(a) of the Practice Direction is discretionary not mandatory and that the trial tribunal exercised its discretion Judicially and judiciously as well and that the Court of Appeal was in order in affirming the stance of the trial Tribunal. Learned senior counsel referred to the case of *Abubakar v Yar'Adua* (2008) All FWLR (Pt. 404) 1409; (2008) 4 NWLR (Pt 1078) 465; *Nneji & Ors. v. Chukwu & Ors.* (1988) 6 SCNJ 132 and 143; (1988) 3 NWLR (Pt. 81) 184 and *U.T.C. (Nig.) Ltd. v. Pamotei* (1989) 2 NWLR (Pt. 103) 244 at 251.

Paragraph 5(a) of the Practice Direction, 2011 provides as follows:

*“5(a) Except where the tribunal directs otherwise, every written submission or reply to be filed at the Tribunal shall not exceed forty pages.”*

This court has consistently pronounced on adherence to rules of court. A court will prefer to do justice rather than injustice on account of slavish adherence to rules of court. Rules of court which include Practice Directions, are not intended to be ridiculously applied to a slavish point particularly if such an application will do injustice in the case. The case of *Abubakar v. Yar'Adua* (supra), *Nneji v.*



Chukwu (supra) and UTC v. Pamotei (supra) are clearly in point.

Paragraph 5 (a) of the Practice Direction reproduced above clearly starts with discretionary authority - 'Except where the Tribunal directs otherwise.' The written address under attack contains 41 pages; with the last page containing the 'List of Authorities' cited in the written address. The Tribunal employed its discretion judicially and judiciously in taking countenance of same. It would have equated with slavish adherence to rules which could lead to injustice if it had been otherwise. The Tribunal acted in the right direction in refusing to nail the written address. The Court of Appeal was in order in affirming same. I resolve the issue in favour of the respondents and against the appellant. B  
C

The next serious issue is that relating to the interpretation placed on the provisions of paragraphs 12(5), 17(1) and 53(5) of the 1<sup>st</sup> Schedule to the Electoral Act, 2010 (as amended) and the holding D that the decision in Nwankwo v. Yar 'Adua (2010) 12 NWLR (Pt. 1209) 518 decided before the insertion of paragraph 12(5) of the 1<sup>st</sup> Schedule to the Act was clearly distinguishable from the facts and circumstances of this case. This issue was keenly contested. It is not in dispute that paragraph 12(5) of the 1<sup>st</sup> Schedule to Electoral Act, 2010 (as amended) was inserted as an amendment after the decision in Nwankwo v. Yar 'Adua. The stated paragraph provides as follows: E

*"A respondent who has objection to the hearing of the petition shall file his reply and state the objection therein and the objection shall be heard along with the substantive petition."* F

Paragraph 17(1) of the First Schedule to the Electoral Act, 2010 (as amended) provides as follows:

*"If a party in an election petition wishes to have further particulars or other directions of the tribunal or court, he may, at any time after entry of appearance, but not later than ten days after the filing of the reply, apply to the tribunal or court specifying in his notice of motion the direction for which he prays and the motion shall, unless the tribunal or court otherwise orders, be set down for hearing on the first available day."* G  
H

From the above, it is clear to me that it is not mandatory that the 2<sup>nd</sup> - 4<sup>th</sup> respondents should ask for particulars. By their preliminary objection, they called the attention of the appellant to the defect in its petition. The appellant should have taken the hint and put its

house in order. The application for an order for further particulars, or the like, is merely a shield in the hand of a party, who so desires and not a sword to be used by a party whose pleading is grossly inadequate, insufficient or devoid of necessary particulars as herein. The decision in *Olawepo v. Saraki* (2009) All FWLR (Pt. 498) 256  
 B cited by learned counsel on both sides is in point. It is not the duty of a respondent to groom a petitioner on how to draft its petition.

I wish to stress the point that paragraph 12(5) of the 1<sup>st</sup> Schedule to the Electoral Act, 2010 (as amended) is an amendment designed to fast-track the hearing of election petitions which the 1999  
 C Constitution (as amended) has provided time frames for the completion of same. It props the provisions of the Constitution. It is intended in its entire ramification to compliment the provision of the Constitution emphasizing on quick dispensation of election matters in tandem  
 D with the yearning of the people.

The provision of paragraph 12(5) of the First Schedule is a new introduction which is unique and made for the purpose earlier stated by me. To my mind, the decision in *Nwankwo v. Yar 'Adua* (supra) is distinguishable from the peculiar facts and circumstance of  
 E this case. I am of the opinion that the trial tribunal and the Court of Appeal were right in the stance taken by them. The issue is resolved in favour of the respondents.

The last point which I want to comment on is in respect of the treatment of the evidence of PW34 and exhibit P72. It is extant in the  
 F record that PW34 referred to by the appellant as its 'expert witness' confirmed that he was contracted 'for a fee' to carry out the assignment after the petition was filed. He was not in Zamfara State on the day of election. The report prepared by him is exhibit P72. He was  
 G cross-examined on his witness statement and on exhibit P72.

The trial Tribunal found that PW34 was not an expert and that his evidence was not credible as he misrepresented figures contained in the Independent National Electoral Commission's documents which he claimed to inspect. It found that there is no correlation at all be-  
 H tween the testimony of PW34 and his report - Exhibit P72 on the one hand and the testimonies of other petitioner's witnesses to wit: PW1-33 which attempted in any way to establish any of the allegations made by the petitioner against the respondents in respect of criminal allegations and non-compliance with the law.

The Court of Appeal affirmed the findings of the trial tribunal. It is clear that the report - Exhibit P72 put up by PW34 'for a fee' was designed to 'steal' the show'; as it were. It is not safe to rely on the evidence of PW34 and his report in Exhibit P72. See: the case of *Seismograph Services v. Akporuovo* (1976) 6 SC 119 at 136.

The trial tribunal and the Court of Appeal have made concurrent findings on material points. They have not been shown to be perverse. This court does not make it a practice to interfere in such situations. I shall not interfere. See: *Kale v. Coker* (1982) 12 SC 252. B

For the above reasons and more especially, those adumbrated in the lead judgment, I too, feel that the appeal should be dismissed. I order accordingly and endorse all consequential orders in the lead judgment; that relating to costs inclusive. C

---

### **RHODES-VIVOUR JSC**

I have had the advantage of reading in draft the leading judgment of my learned brother, Muntaka-Coomassie, JSC. I agree with it, and for the reasons he gives, I would dismiss the appeal. I shall add a few words of my own. D

There are 14 Local Government in Zamfara State. The Petition from which this appeal arose concerns the conduct of the gubernatorial elections in 6 of those Local Governments. At the tribunal eighteen paragraphs of the petition were struck out. They are paragraphs 12, 17, 18, 19, 22, 27, 29, 30 - 34, 36, 37, 41, 42, 43 and 44. They were struck out because they failed woefully to meet me standards expected for averments in pleadings. E

Pleadings are averred facts in numbered paragraphs which parties rely on to present their case so that the adverse party is not taken by surprise. The facts in the pleadings must be concise and unambiguous. See *Salami v. Oke* (1987) 4 NWLR (Pt. 63) p.1; *Sodipo v. Lemminkainen OY* (No.1) (1985) 2 NWLR (Pt. 8) p. 547, section 138(1) of the Evidence Act. Without proof, as was the case in the Tribunal the respondents are/were not expected to lead evidence in defence or rebuttal. F

The Court of Appeal has no difficulty confirming the decision of the Tribunal. This is a case of concurrent finding of fact. Concurrent findings of fact are very rarely interfered with by this court, but G

this court would quickly interfere and state the correct position if satisfied that there has been exceptional circumstances such as:

(a) the findings cannot be supported by evidence or are perverse; or

(b) that there was miscarriage of justice; or

B (c) the court overlooked some principle of law or procedure.

See: *Shipcare (Nig.) Ltd. v. The Owners of the "M/V Fortunato" & Anor* (2011) 2-3 SC (Pt. 11) p.l.; (2011) 7 NWLR (Pt. 1246) 205; *Cameroon Airlines v. Otutuizu* (2011) 1-2 SC (Pt. 111) 200; (2011) 4 NWLR (Pt. 1238) 512. Concurrent findings of fact are that the

C Tribunal was correct to strike out offending paragraphs of the Petition, and the appellant failed to prove allegations in its petition. Consequently the return by the 1<sup>st</sup> respondent (INEC) of the 2<sup>nd</sup> and 3<sup>rd</sup> respondents as duly elected Governor and Deputy Governor respectively in the gubernatorial elections in Zamfara State on the 26<sup>th</sup> of April, 2011 was correct.

Before I conclude I must comment on paragraph 5 (a) and (c) of the Practice Directions, 2011. It limits the written address of counsel to forty pages. Failure to comply with this directive, the secretary of the Tribunal shall not accept the process for filing. Mr. Yusuf Ali, E SAN learned counsel for the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents' written address was forty-one pages. It exceeded the directives by one page. This observation or objection ought to have been raised very early and by motion and not orally at the address stage.

F My lords, justice is all about fairness. Courts are set up to ensure that substantial justice is not only done but seen to have been done between the parties and in achieving that aim rules of court must at all time be interpreted in a way that the ends of justice are G met. Since the Secretary of Tribunal failed to see that the respondents address exceeded 40 pages, it is too late and it would be unnecessarily harsh to deny the respondents' counsel the use of his written address. For this and the reasons given in the leading judgment I, too would dismiss this appeal. Appeal dismissed.

H