

SUPREME COURT OF NIGERIA
THURSDAY 29TH AUGUST, 2013. SC. 353/2013
CORAM:- W. S. N. ONNOGHEN, I. T. MUHAMMAD,
C. M. CHUKWUMA-ENEH, J. A. FABIYI, N. S. NGWUTA,
M. U. PETER-ODILI, S. S. ALAGOA, JJSC

1. CHIEF ALEX OLUSOLA OKE
2. PEOPLES DEMOCRATIC PARTY APPELLANTS
AND
1. DR. RAHMAN OLUSEGUN MIMIKO
2. LABOUR PARTY
3. INDEPENDENT NATIONAL RESPONDENTS
ELECTORAL COMMISSION
4. RESIDENT ELECTORAL
COMMISSIONER ONDO STATE
5. THE STATE RETURNING
OFFICER FOR THE ONDO STATE
GOVERNORSHIP ELECTION

ELECTION PETITIONS - Crime - Proof - Appellants are to prove criminal acts of infraction of the Electoral Act - Based on proof beyond reasonable doubt (H1)

ELECTION PETITIONS - Electoral Act - Non compliance - Proof - Petitioner must not only prove that there was non compliance - But that the same substantially affected result of the election (H2)

ELECTION PETITIONS - Voters register - Objection to - To impugn content of the register - Court must be presented with something - To compare with what was available and in use - And what the proper register should be (H3)

APPEALS - Evidence - Evaluation - Provided appellate court took full cognizance of evaluation of evidence alongside pleadings by trial court - It must not deal line by line on judgment of tribunal (H4)

ELECTION PETITIONS - Evidence - Hearsay - Under Electoral Act s. 45(2) - PW45 is not qualified to testify to what happened in dis-

puted units - Other than the one he was physically available (H5)

ELECTION PETITIONS - Tribunal - Jurisdiction - Voters register - Trial tribunal can determine issues on the register - Since there cannot be dichotomy between the register - And what transpired at contest grounds of the election (H6)

FACTS

Before the Ondo State Governorship Election Tribunal, petitioners/appellants filed this action challenging the return of 1st defendant/1st respondent as the winner of the gubernatorial election conducted in the State. 1st appellant along with 1st respondent and other political parties' candidates contested for the said gubernatorial election. 1st respondent scored 260,197 votes as against 1st appellant who scored 155,196. At the hearing of the petition, appellants contended that the election of 1st respondent was invalid by reasons of corrupt practices, non compliance with the provisions of the Electoral Act and that 1st respondent was not duly elected by majority of lawful votes cast at the election.

Consequently, appellants sought for the declaration of 1st appellant as the winner of the election or alternatively, that the election result should be cancelled entirely and another election conducted. The parties called their various witnesses with 1st appellant testified as PW45. At the end of hearing, the tribunal dismissed the petition on the ground that appellants were unable to prove the allegations they made. Aggrieved, appellants appealed to the Court of Appeal. The court dismissed the appeal and affirmed the judgment of the trial tribunal. Further dissatisfied, appellants appealed to Supreme Court.

ISSUES FOR DETERMINATION

Main appeal

1. Whether the Lower Court was not in grave error which occasioned a miscarriage of justice when it held that the entry of additional names into the Register of voters and the non-display or publication of same as required by the Electoral Act was not a non-compliance that substantially affected the outcome of the election.

2. Whether the Lower Court's failure to consider Appellants complaints against specific adverse findings of the trial Tribunal and its findings that PW45's evidence is hearsay and that majority, if not

all the infractions against the Electoral Act enumerated by the Appellants are criminal in nature were not erroneous thereby occasioning a miscarriage of justice against the Appellants.

Cross appeal

Considering the nature of the pleadings in the Petition in respect of the register of voters, whether the allegations therein do not qualify as pre-election issues that are outside the limited jurisdiction of an Election Petition Tribunal.

HELD (Dismissing the main appeal and cross-appeals per **PETER-ODILI JSC**)

ELECTION PETITIONS - Crime - Proof

1. It was for the appellants to prove these very serious acts of infraction of the Electoral Act before the Tribunal. Clearly majority if not all the acts of infraction of the Electoral Act enumerated above were criminal in nature and therefore required a higher standard of proof, that is, proof beyond reasonable doubt. It must be clear by now that the courts are not interested in the altogether common penchant for crying wolf but insist on proof, hardnosed and concrete proof of allegations.

These legal and judicial principles taken in context of the case in hand, what the Appellants had done in proof of their allegations seem a far cry from the standard prescribed by the relevant Electoral Law.

In this instance the allegations of non-compliance with the provisions of the Electoral Act and the electoral malpractices as pleaded in the petition are so interwoven as to become impossible of severing the criminal content from the civil and so the proof has to be of the higher standard being that beyond reasonable doubt. Therefore when the petitioners/Appellants set out to establish their case and in the evidence were that comparing the unit results, the entries in the CTC and duplicate copies of the result for the same unit were the same. They were signed and most of them stamped with a few not stamped. The CTCs of form EC8 As were same in content with the duplicate copies tendered by the petitioners. They

were all signed by the presiding officers and there was clear evidence of accreditation on then. All of these findings went along what should occur in a free, fair and credible election and so the Tribunal had no difficulty in finding. The Court of Appeal could not depart from that finding obviously and this court does not seem to have a choice. The other documents dumped without evidence in support or where rendered the evidence was found not credible and then the star witness, PW45 whose evidence had to do with facts and events not within his personal knowledge and which he was not qualified to speak on with value then a claim to proof of substantial non-compliance can only reside in dreamland and not for our purpose. (pp. 4097 E/4100 C)

ELECTION PETITIONS - Electoral Act - Non compliance - Proof
2. Having those two crucial sections of the Electoral Act in focus at all time material by the two Courts below and this court being so focused it would then be said that at the risk of over repetition, a petition can only succeed on non-compliance with the provisions of the Electoral Act, the petitioner must not only prove that there was non-compliance with the provisions of the Act but that the non-compliance substantially affected the result of the election. A two pronged process which are intertwined to such an extent that none can go without the other arm. (p. 4098 F)

ELECTION PETITIONS - Voters register - Objection to
3. Worse still is the attempt by the appellants to impugn the register of Voters alleging injection of names when the disputed register was not tendered in court and the Appellants did not proffer a reason for that lapse. To impugn the content of the Register can only be done when the court has something to compare with what was available and in use and what the actual proper Voters Register should be. (p. 4101 A)

Evidence - Evaluation

4. Clearly from the excerpts captured earlier, this brief conclusion just quoted does not represent the full process of re-

view or consideration by the Court below of what the Tribunal did. Also once the appellate court has fully taken full cognizance of the evaluation of evidence alongside the pleadings by a trial court, the Court of Appeal is not obligated to deal, line by line, phrase by phrase on the judgment of the Tribunal before it can be said the Court of Appeal carried out its duty. The important thing is that in its appellate duty substantial justice was done. (p. 4107 C)

Evidence - Hearsay

5. On a revisit of the evidence of PW45 who testified on what transpired in over 1000 polling units. That witness assumed the role of a Polling Agent whose functions are defined by Section 45 of the Electoral Act. Polling Agents represent the respective political parties at the numerous polling units in obvious recognition of the enormity of the task of those monitoring the election in all the polling units of the State. Even though the 1st Appellant was at liberty to perform the duty of polling Agent for himself and his party, being human he can only be physically present at only one polling unit at a given time and so cannot perform the same task with the same title as polling agent in any or all the other polling units and so when the evidence is to be provided as to what happened in disputed units other than the one he is physically available at then he is not qualified to testify thereto. This is because section 45 (2) Electoral Act expects evidence directly from the relevant field officer at the required polling unit. Therefore when PW45 set out to testify as a State agent armed with all the evidence of what occurred throughout the State in relation to each polling unit, he did so under a misguided understanding of what the Electoral Act had prescribed.

In conclusion, the grouse of the Appellants against the Court of Appeal's going along with what the Tribunal found and decided upon cannot be sustained. Indeed the specific adverse findings of the Tribunal affirmed by the Court of Appeal being that PW 45 gave evidence which is hearsay and that majority if not all the infractions against the Electoral Act enumerated by the Appellants are criminal in nature were

not erroneous and no miscarriage of justice has occurred.
(p. 4107 E)

ELECTION PETITIONS - Tribunal - Jurisdiction - Voters register

6. Being at one with the dictum of this Court in the Abubakar v. Yar'Adua (supra) stated above, the point has to be made that the matter of complaint on the voters register though facts which predated the election cannot in this instance be left simply as a pre-election matter for which no jurisdiction would lie with an election Tribunal. In that light the cases of ANPP v. Usman (2008) 12 NWLR (Pt.1100) 55. Odedo v. INEC (2008) 17 NWLR (Pt.1117) 554 at 602, etc are of no help to the Cross-Appellants because those authorities were outside the purview of the present circumstances. In those matters dealt with in those cases cited by the Cross-appellants, they were purely, undiluted pre-election scenarios which the present situation is not. This is because, the voters register with or without the injected names was used for the election which election result is challenged for non-compliance with the Electoral Act on the basis of an improperly produced voters register with unlawful entry of names, multiple additions of names and non-display, a situation which cannot be tackled in isolation and outside the election matter. Therefore since there cannot be a dichotomy between the voters register issues being pre-election and what transpired in this instance at the contest grounds of the election, it is clear that the trial Tribunal is most suitable for the holistic determination of the questions thrown up. Therefore since the Tribunal is empowered to enter into the discourse of noncompliance with the Electoral Act whether before or on the polling day for the purpose of invalidating the election, then that jurisdiction of the Tribunal is intact. I place reliance on Section 138 (1) of the Electoral Act. (p. 4119 E)

NOTABLE POINTS OF INTEREST

PETER-ODILI JSC

1. Miscarriage of justice - Meaning

From the standpoint of the Appellants, a miscarriage of justice had

been visited on them. On what amounts to miscarriage of justice this court has in a long line of judicial authorities set out some definitions on what can in the course of adjudication be termed “*miscarriage of justice*”. Tobi JSC in *Gbadamosi v. Dairo* (2007) 3 NWLR (pt.1021) 282 at 306 treated it thus:-

“Miscarriage of justice connotes decision or outcome of legal proceedings that is prejudicial or inconsistent with the substantiated rights of the party. Miscarriage of justice means a reasonable probability of more favourable outcome of the case for the party alleging it. Miscarriage of justice is injustice done to the party alleging it”. ^B

In *Aigbobahi v. Aifuwa* (2006) 6 NWLR (pt.976) 270 at 290 - 291 this court said, “...miscarriage of justice can be said to be such a departure from the rules which permeate all judicial process as to make what happened not in the proper sense of the word judicial procedure at all. What constitutes a miscarriage of justice vary, not only in relation to particular facts, but with regard to the jurisdiction invoked by the proceedings in question. It is enough if what is done is not justice according to law”. ^C

The two definitions above say it as it is and in simple term would mean that when in the course of a proceeding the goal post is shifted to the detriment of one of the parties or where it can be said that from what had transpired from the very beginning of the judicial process or at any point during the exercise of the judicial proceedings that the scale of justice had been tilted to favour one party thus jeopardizing the equal right of the other party then a miscarriage has occurred. (p. 4103 F) ^E

2. Election - Definition

On this vexed issue, I would want to hang for support on the case of *Abubakar v. Yar’Adua* (2008) 18 NWLR (pt.1120) 1 at 70 in which “*election*” was defined thus: ^G

“Election is a process spanning a period of time and comprises a series of actions from registration of voters to polling”. (p. 4119 D) ^H

REPRESENTATION

L. O. Fagbemi, SAN with Adetokunbo Kayode, SAN; P. I. N. Ikweto, SAN; Yinka Orokoto; Chief A. O. Ajana; Dr. J. O. Olatoke; A. O. Dare; O. Oke; J. Ola-Mafo; A. O. Popoola; O. Akuiyibo; B. A. Oyon;

A. Umoru; B. Aimola; A. Nnabue; O. Bamigboye; M. A. Adelodun; L. Ademuyiwa (Miss.); Gbenga Adesioye; Supo Ijahadeniyi: Wole Akindiose; Lawrence Fagbolagun; Y. O. Ishola (Mrs); T. S. Ojo, Esq; Debo Ikuesan, Esq; C. D. Ezech. Esq., for appellant/1st and 2nd cross-respondents

B

Dr. Oladapo Olanipekun for 1st respondent/cross-appellant with Olabode Olanipekun; Kehinde Ogunwunmiju; Bamikale Aduroju; Ademola Adesina; Adedayo Adesina; P. C. Ezegamba; Idaopu Wakama; Vanessa Onyemanwa (Miss.); Thompson Akinyemi.

C

Yusuf O. Ali, SAN for 2nd respondent/cross-appellant with A. O. Adelodun, SAN; Prof. Wahab Egbewole; K. K. Eleja, Esq; A. O. Abdulkadir, Esq; S. O. Akangbe (Mrs.): S. A. Abdullahi, Esq; Taofiq Alubarika, Esq.; T. E. Akintunde (Mrs.); C. O. Mbam; E. I. Umunnokwe; T. U. Ekomaru.

D

Dr. Onyechi Ikpeazu, SAN for 3rd respondent/cross-appellant with him; Abdul Mohammed, Esq.; Sandy Tadaferua (Mrs.).

E

Wale Balogun, Esq.; for 4th and 5th respondent with him; Tinu Osoba (Miss.)

CASES REFERRED TO

F

Sule v. Habu (2011) 7 NWLR (pt. 1246) 339
Ndiwe v. Okocha (1992) 7 NWLR (pt. 252) 129
Bamgboye v. Olanrewaju (1991) 4 NWLR (pt. 184) 132
Labiya v. Anretiola (1992) 8 NWLR (pt. 258) 139

G

Ajuwa v. SPDC (2012) All FWLR (pt. 615) 200
Nwankwo v. Yar'Adua (2010) 12 NWLR (pt. 1209) 518
Bamaiyi v. A.G. Federation (2001) 12 NWLR (pt. 722) 468
Emordi v. Igbeke (2011) 9 NWLR (pt. 1251) 24

H

Inajoku v. Adeleke (2007) 4 NWLR (pt. 1025) 423
Gbadamosi v. Dairo (2007) 3 NWLR (pt. 1021) 282
Aigbobahi v. Aifuwa (2006) 6 NWLR (pt. 976) 270
Chami v. UBA Plc (2010) 6 NWLR (pt. 1191) 474
Igbeke v. Emordi (2010) 11 NWLR (pt. 1204) 1
Ojukwu v. Yar'Adua (2009) 12 NWLR (pt. 1154) 50

Buhari v. Obasanjo (2005) 13 NWLR (pt. 941) 1

STATUTES & RULES REFERRED TO

Electoral Act 2010, ss. 19, 20, 21, 45(2), 138(1), 139(1)

Constitution of the Federal Republic of Nigeria 1999, s. 285(2)

Supreme Court Rules, O. 6 r. 5(i)(b)

B

LEAD JUDGMENT BY PETER-ODILI JSC

This is an appeal against the judgment of the Court of Appeal sitting in Akure delivered on 1st day of July, 2013 which court affirmed the decision of the Tribunal which dismissed the petition of the Appellants.

C

Dissatisfied with the decision of the Court of appeal, the Appellants have come before the Supreme Court on appeal.

FACTS BRIEFLY STATED:

D

On the 20th day of October, 2012 the 3rd Respondent conducted the Governorship Election at which election the 1st Appellant was the candidate of the 2nd Appellant (PDP) while the 1st Respondent was the candidate sponsored by the 2nd Respondent, Labour Party (LP). Eleven other political parties fielded candidates also at the said election. At the end of the election, the 1st Respondent was declared winner with the highest number of votes of 260,197 votes as against the 1st Appellant who was declared second with a total of 155,196 votes.

E

The 1st Respondent having scored the majority of the lawful votes cast and satisfying the requirements of the Constitution, the 3rd - 5th Respondents returned and declared the 1st Respondent as the winner of the election on the 21st October, 2012.

F

The Appellants being aggrieved with the turn of events filed a Petition before the Ondo State Governorship Election Tribunal on the 10th of November, 2012. The thrust of the petition was that the election of the 1st Respondent was invalid by reasons of corrupt practices, non compliance with the provisions of the Electoral Act and that the 1st Respondent was not duly elected by majority of lawful votes cast at the election. The Appellants therefore prayed that 1st Appellant be declared and returned as the winner of the election in place of the 1st Respondent or in the alternative that the result of the election be cancelled entirely and another election ordered.

G

H

The petition was consolidated with four others which were filed by some parties but in the course of the hearing, the said petition was heard together with that of Oluwarotimi O. Akeredolu SAN along with his political party, the Action Congress of Nigeria (ACN). At the hearing, the Appellants called a total of 45 witnesses of which the 1st Appellant testified as PW 45 while the 1st Respondent called 13 witnesses. The 2nd - 5th Respondents did not call any witness but took the option of relying on the evidence both oral and documentary as proffered by the 1st Respondent together with the facts and materials derived from the petitioners' witnesses supporting the case of the Respondents 2nd-5th. Written addresses were filed and argued at the end of which the trial Tribunal delivered its judgment on 3rd May, 2013 dismissing the Petition on the main ground that the allegations of the Petitioners remained not proven as known to law.

Again dissatisfied, the Appellants went to the Court of Appeal which affirmed the decision of the Tribunal and dismissed the appeal. The Court of Appeal in its decision was of the view that the 2nd Respondent's objection to some grounds of Appeal had merit. Also that majority of the allegations contained in the petition were criminal in nature and that the Tribunal had properly weighed and evaluated the evidence led by the Appellants and there was no reason to disturb those findings of the trial Tribunal.

Being not satisfied with the decision of the Court of Appeal, the Appellants have now come before Supreme Court with seven grounds of appeal. The Respondents Cross-appealed.

On the 27th August, 2013 date of hearing, learned counsel for the Appellants, Lateef Fagbemi SAN adopted their Brief filed on 31/7/2013, Appellant's Reply Briefs filed on 7/8/13, 3/8/13, 3/8/13, 7/8/13 respectively.

In the Appellants' Brief were raised two issues for determination, viz:-

1. Whether the Lower Court was not in grave error which occasioned a miscarriage of justice when it held that the entry of additional names into the Register of voters and the non-display or publication of same as required by the Electoral Act was not a non-compliance that substantially affected the outcome of the election (Grounds 2, 3 and 6),

2. Whether the Lower Court's failure to consider Appellants

complaints against specific adverse findings of the trial Tribunal and its findings that PW45's evidence is hearsay and that majority, if not all the infractions against the Electoral Act enumerated by the Appellants are criminal in nature were not erroneous thereby occasioning a miscarriage of justice against the Appellants.

Learned counsel for the 1st Respondents, Dr. Oladapo B Olanipekun adopted their Brief of Argument filed on 5/8/13 and in it were formulated two issues for determination which are as follows:-

(i) Considering the nature of the allegation in Appellants' pleadings qua petition and evidence proffered at the trial Tribunal, whether the Court of Appeal was not right in affirming the trial Tribunal's C dismissal of the petition. (Grounds 1, 2, 2, 5, 6 and 7).

(ii) Whether the Court of Appeal properly classified the evidence of PW 45 as hearsay evidence

(Ground 4).

Yusuf Ali SAN, for the 2nd Respondent adopted their Brief of Argument filed on the 1/8/13 and in which were crafted two issues for determination stated hereunder. Viz:-

1. Whether the Court below was not right in coming to the same conclusion like the trial Tribunal, that the appellants failed woefully to prove the various allegations of noncompliance and commission of crimes made in the petition as required by law and whether the findings on PW45 was not correct and the Court of appeal breached the Appellants' right to fair hearing. E

2. Whether the Court below was not correct and on terra firma F in holding that the Appellants woefully failed to show that the alleged injection of names into the voters' registers substantially affected the outcome of the election.

For the 3rd Respondent was adopted the Brief of Argument G by Dr. Ikpeazu SAN, settled by Chief Awomolo SAN and filed on 2/8/13.

He distilled two issues for determination which are as follows:-

1. Was the Court of Appeal correct in upholding the decision of the Tribunal to the effect that the Appellants failed to establish that the acts of non-compliance with the Electoral Act alleged by them, vitiated the Governorship election in Ondo State? H

2. Was the Court of Appeal correct in upholding the decision of the Tribunal to the effect that the Appellants failed to discharge the

burden placed on them to succeed in the petition?

Wale Balogun, learned counsel for the 4th and 5th Respondents adopted their Brief of Argument filed on 2/8/13.

In the Brief of Argument, learned counsel for the 4th and 5th respondent formulated two issues for determination which are as follows:-

1. Whether the Lower court was right when it held that entry of additional names into the register of voters and the non-display or publication of the voters register did not substantially affect the outcome of the election. (Grounds 2, 3 and 6).

2. Whether the Lower court was right when it upheld the decision of the trial Tribunal that the Appellants failed to discharge the burden placed on them to succeed in the petition. (Grounds 1, 4, 5 and 7).

In the Brief of the 4th and 5th Respondents, the learned counsel on their behalf raised a Preliminary Objection which arguments were therein incorporated and must be dealt with before anything else can happen since it goes to the competence or otherwise of the appeal.

PRELIMINARY OBJECTION

The grounds upon which the objection is taken are thus:-

1. The Appellants formulated no issues for determination from Grounds 1, 4, 5 and 7 of the Notice of Appeal.

2. Issue 2 formulated for determination by the Appellants their Briefs of Argument does not relate to any ground of appeal contained in the Appellant's Notice of appeal.

Arguing, learned counsel for 4th and 5th Respondents/Objector submitted that Appellants having formulated no issues for determination from Grounds 1, 4, 5 and 7 contained in the Notice of Appeal are deemed to have abandoned the said ground and therefore the Grounds of appeal are liable to be struck out. He cited *Sule v. Habu* (2011) 7 NWLR (pt. 1246) 339 at 365; *Ndiwe v. Okocha* (1992) 7 NWLR (pt. 252) 129 at 138-139 etc.

Mr. Balogun further contended that issue 2 formulated for determination in the Appellant's Brief of Argument which is not related to any ground of appeal contained in the Appellants' Notice of appeal is incompetent and liable to be struck out. That for an issue formulated for determination in an appeal to be valid, it must derive

from at least a ground in the Notice of Appeal. That this Issue 2 did not relate to the grounds of appeal and so should be struck out. He referred to *K. T. & IND. OLC v. The Tug Boat "M/V Japaul B"* (2011) 152; *Bamgboye v. Olanrewaju* (1991) 4 NWLR (pt. 184) 132; *Labiya v. Anretiola* (1992) 8 NWLR (pt. 258) 139.

Reacting by way of Reply on points of law flowing from the Reply Brief of the Appellant filed on 7/8/13, Mr. Fagbemi SAN said that grounds of appeal can only be deemed abandoned where arguments are not canvassed on them or where the argument canvassed in the Brief do not relate to the grounds. That from the Appellants' Brief as well as that of 4th and 5th Respondents/Objector issue 2 is in the main to challenge the Lower Court's decision that the Appellants did not adduce sufficient evidence to prove their case and these are found in grounds 1, 4, 5 and 7.

Learned Senior Advocate said what the Objector is seeking is technicality of form overriding substance and the courts have moved away from such a narrow perspective in administration of law. That it is all the more so since the Respondents are not misled by the Appellants' Brief of Argument on what they are to defend. He cited *Ajuwa v. SPDC* (2012) All FWLR (pt.615) 200 at 223 and Order 6, Rule 5(i)(b) of the Rules of this Court.

This objection from what can be seen has to do with the second issue of the Appellant having been distilled but the grounds from which that distillation took place were not stated. Mr. Balogun of counsel for the 4th and 5th Respondents/Objector contends that the omission of stating the grounds of appeal vitiated the issue derived from those grounds.

Mr. Fagbemi SAN for the Appellant admits the omission which he explained as a human error or incompetence that cannot be pushed beyond the realm of technicality and would not have the effect of making incompetent the issue 2 which can be seen to be related to and being distilled from grounds 1, 4, 5 and 7. That the Issue 1 was well stated to be distilled from grounds 2, 3 and 6 and so Issue 2 which shows to be derived from the remaining grounds of a 7 ground appeal would then be anchored properly on grounds 1, 4, 5 and 7.

In view of this objection, it is necessary to recapture the grounds 1, 4, 5 and 7 aforesaid which are thus:-

GROUND 1:

The Learned Justices of the Court of Appeal erred in law and came to a perverse decision which occasioned miscarriage of justice, when they held:

B *“That Appellants’ counsel gave a litany of infractions of the Electoral Act by the Respondents in paragraphs 4, 2 of his Brief of Arguments. They include among others:*

1. *That people were allowed to vote without accreditation;*

2. *That there were multiple accreditations and voting;*

C 3. *That the number of voters recorded is not the same as the number ticked to have voted;*

4. *That the number of voters ticked to have been accredited in the voters Register differs from the number of accredited voters entered on Form EC8A (1);*

D 5. *That the number of used and unused ballot papers entered in Form EC8A (1) exceeded the number of ballot papers issued in the affected polling units;*

6. *That alterations were made on Form EC8A (1) without same being authenticated;*

E 7. *That there was swapping of Results Sheets;*

8. *That Forms EC8A (1) were not signed, stamped and dated and did not have the name of the presiding officer;*

9. *That unidentified persons and objects were accredited and voted;*

F 10. *That unknown Form EC8A (1) having no serial number were used in the election;*

11. *That Form EC8A (1) did not reflect the votes of some of the political parties that participated in the election; and*

G 12. *Failure to use the appropriate Register of voters to conduct the election.*

H *It was for the Appellants to prove these very serious acts of infractions of the Electoral Act before the Tribunal. Clearly, majority if not all the acts of infraction of the Electoral Act enumerated above were criminal in nature and therefore require a higher standard of proof, that is, proof beyond reasonable doubt”.*

PARTICULARS OF ERROR:

(i) The instances of non-compliance listed by the Appellants and reflected in the judgment of the Lower court are merely civil and

not criminal allegations.

(ii) Being civil allegations, they are to be proved on preponderance of evidence based on balance of probability and not beyond reasonable doubt.

(iii) The wrongful holding that majority or all of the infractions enumerated above are criminal in nature, led the Court below to its failure to hold that the infractions have been established on balance of probability. B

(iv) The enumerated infractions were all established on preponderance of evidence.

(v) The holding of the Court of Appeal that they were to be proved beyond reasonable doubt occasioned to the Appellants a miscarriage of justice. C

GROUND 4:

The Learned Justices of the Court of Appeal erred, when they held: D

“From the submission in the appellants’ Brief of Argument at P8 thereof, PW45 has to be more than a superman. According to the submission, the “comprehensive” evidence of PW 45 covered 372 polling units across 10 Local Governments; it covered 659 polling units across 7 Local Government Areas and also covered 591 polling units across the State. It is only an omnipresent being that can give first hand evidence of all that transpired in the hundreds of polling units. Mere mortals can only give second hand evidence about what happened in distant places. The evidence given by PW 45 can only be hearsay. The Tribunal was right to have so held”. E

PARTICULARS OF ERROR:

(i) PW 45’s testimonies were both oral and documentary.

(ii) PW 45 did not claim to have been at every polling unit in the State during the election. F

(iii) Appellants tendered and relied on relevant election documents (Forms EC8A - EC8E Series, Register of Voters and INEC Election Manual 2011).

(iv) Evidence based on documents tendered and admitted is not hearsay. H

(v) The decision of the Lower court with regard to the evidence of PW 45 is perverse.

GROUND 5:

The Lower Court erred in law and came to a wrong decision when it failed to consider Appellants complaint against specific adverse findings of the trial Tribunal thereby breaching Appellants, right to fair hearing.

PARTICULARS OF ERROR

B (i) Appellants’ complaint against wrongful and non-evaluation of the testimonies of PW 6, 20, 21, 29, 24, 33, 37, 39 and 41-44 were not considered.

(ii) Appellants’ complaint against the Tribunal’s finding that the voters Register were ticked to evidence accreditation was not considered

(iii) Appellants’ contention that the inclusion of unlawful registrants rendered the Register of Voters null and void, was not considered.

D GROUND 7:

The judgment is against the weight of evidence.

Those grounds inclusive of the particulars can be seen to be the foundation of the Issue 2 or that Issue 2 is distilled from those grounds and no way can any argument be led that the Respondents were misdirected or misled or did not know what they are called to defend. The Issue 2 asks the question whether the Lower court’s failure to consider Appellants, complaints against specific adverse findings of the trial Tribunal and its findings that PW 45’s evidence is hearsay and whether the infractions against the Electoral Act are Criminal in nature were not erroneous, occasioning a miscarriage of justice against appellants.

Clearly that question raised as Issue 2 flows from the grounds though not specifically stated, the appellants cannot be penalized on an inadvertence clearly a mistake that is easy for a lawyer to make.

I agree with learned senior counsel for the Appellants that the Objector is seeking a technical justice, a mode of adjudication the Court has long departed from rather insisting on substantial justice. As my learned brother Fabiyi JSC stated in Ajuwa v. SPDC (2012) All Fwlr (Pt.615) 200 at 223 -

“The days of technicalities are gone. The current vogue is the doing of substantial justice to both sides in such a way that the main appeal will be heard and determined on its merits”.

On that note, I have no difficulty in dismissing this preliminary

objection which cannot be justified. Objection is therefore dismissed.

APPEAL:

In spite of the differently formulated issues of each of the parties, the two questions each raised were basically the same though portraying the individual style of the respective counsel. It is therefore for convenience that I shall make use of the two issues as formulated by Lateef Fagbemi SAN, for the Appellants. B

ISSUE NO 1:

Whether the Lower court was not in grave error which occasioned a miscarriage of justice when it held that the entry of additional names into the Register of Voters and the non display or publication of same as required by the Electoral Act, was not a non-compliance that substantially affected the outcome of the election. C

Lateef Fagbemi SAN, learned counsel for the Appellants contended that they are questioning the holding by the Lower Court that although the entry of additional names into the register of voters and the non-display and publication of same as required by the Electoral Act constitute non-compliance, the non-compliance did not substantially affect the outcome of the election. That the register of voters used in the conduct of the election was not the one that ought to be used, in that, the entry of additional names of over E

100,000 registrants thereto was not done in compliance with the Electoral Act and the register of voters was not displayed or published as mandatorily required by the Electoral Act. Also that the register of voters compiled in breach of the mandatory provisions of the Electoral Act and used in the conduct of the election by the 3rd Respondent is illegal and thus a nullity and by extension the election based on it is a nullity. F

Learned senior advocate for the Appellants said how substantially an established non-compliance affects the outcome of an election, is an issue of fact or law or both depending on the nature of the non-compliance involved. That in the case at hand, what is in issue is the vitiating effect of the 3rd Respondent's failure to comply with the mandatory procedure prescribed by Sections 9 to 20 of the Electoral Act in producing the voters register used for the purported election. That the Lower court failed to consider that the 3rd Respondent's failure to comply with the Electoral Act in adding over 100,000 names into the register and its failure to display or publish same as required H

by the said Act had nullifying effect on the register and a fortiori, the election. That the Court of Appeal had failed to consider and pronounce on this crucial issue had to do with the legitimacy of the election itself, since it is a condition precedent to having a result under the provision of Section 138 (1) (b) of the Electoral Act. He referred
 B to *Nwankwo v. Yar'Adua* (2010) 12 NWLR (Pt.1209) 518 at 589; *Bamaiyi v. A.G. Federation* (2001) 12 NWLR (Pt.722) 468; *Emordi v. Igbeke* (2011) 9 NWLR (pt.1251) 24 at 29; *Inajoku v. Adeleke* (2007) 4 NWLR (pt.1025) 423 at 478 - 479.

C Mr. Fagbemi SAN of counsel said that the Court of Appeal having found that the non-compliance complained of with regard to the voters register occurred, it ought to hold that its substantiality on the outcome of the election lies in its vitiating effect. That this occasioned a miscarriage of justice which this Apex Court cannot ignore.
 D He cited *Gbadamosi v. Dairo* (2007) 3 NWLR (pt. 1021) p.282 at 306; *Aigbobahi v. Aifuwa* (2006) 6 NWLR (pt. 976) 270 at 290 - 291.

It was further submitted for the Appellants that the Appellants had led evidence of the non-compliance which the Court of Appeal
 E agreed was proved and having regard to the natural vitiating consequence of its occurrence on the election, it became the burden of the 3rd - 5th Respondents to show that the election could stand in spite of the non-compliance. That this failure at rebuttal evidence coupled
 F with admission on pleading strengthened the case of the Appellants and rendered the failure of the Lower courts to give judgment in Appellants' favour perverse. He relied on *Chami v. UBA Plc* (2010) 6 NWLR (Pt.1191) 474 at 496; *Igbeke v. Emordi* (2010) 11 NWLR (Pt.1204) 1 at 49; *Ojukwu v. Yar'Adua* (2009) 12 NWLR (pt.1154)
 G 50.

In response, Dr. Olanipekun for the 1st Respondent stated that the assertion of the Appellants over unlawful injections into the voters register were not substantiated and so those allegations should be discountenanced. He cited Section 139 (i) of the Electoral Act. That
 H where allegations of non-compliance are made in the pleadings generally, it is the law that the non-compliance and/or perpetration of same must be linked to the candidate returned as winner of the election before same can vitiate his return. That this burden is even higher in this instance where the petitioners have made allegations against

the 1st Respondent. He cited Buhari v. Obasanjo (2005) 13 NWLR (pt. 941) 1 at 264 - 265 etc.

Dr. Olanipekun of counsel stated further that it is all the more germane where the allegation connotes a crime against a named individual and in the case at hand, the Respondents in this appeal in relation to the roles played by each party in the alleged crime which must be proved beyond reasonable doubt no less. He referred to Section 135 (i) of the Evidence Act 2011 (as amended); Ige v. Olunloyo (1984) 1 SC NLR 158; Ajasin v. Omoboriowo (1984) 1 SCNLR 108 at 156; Nwobodo v. Onoh (1984) 1 SCNLR 1.

It was also contended for the 1st Respondent that the matter cannot be said to be proved in respect of the non-accreditation where the Register of voters at the centre of it was not tendered in evidence. Reliance was placed on the following cases: Ayodeji v. Ajibola (2013) All FWLR (pt.660) 1327 at 1370-1371; Fayemi v. Oni (2009) 1 NWLR (Pt.1140) 233.

Mallam Yusuf Ali SAN on his part for the 2nd Respondent went along the same line of thought and reasoning of the 1st Respondent's counsel and submitted that this court has no basis in upsetting the concurrent findings of the two Courts below when they found and held that the non-compliance alluded to by the Appellants remained not proven. He cited Adekeye v. Adesina (2011) All FWLR (pt.571) 1509 at 1544 etc. That what the Appellants had done at the Court of trial was to dump documents and make allegations without fresh. He cited ACN v. Nyako (2012) 11 MJSC 1 at 70.

For the 3rd Respondent, Dr. Ikpeazu SAN submitted that there are no pleadings or evidence offered by the Appellants that the Voters Register used was an "*unofficial Voters Register*". That the pleadings of the Appellants read comprehensively was that there was injection of names into the Register of 2011. That it has to be stated that, that fact did not make the register unofficial when those names in the register were used in 2011 are still embodied in the Register used for the election. That the law is trite that where there is allegation of manipulated Voters Register, the manipulation is criminal in nature and must be not only pleaded with specificity but must be proved beyond reasonable doubt which burden is upon the party alleging manipulation. Learned senior counsel said in this case no such proof was effected by the Appellants.

Dr. Ikpeazu SAN for the 3rd Respondent contended that there was no evidence of fresh registration of voters for which the issue of display or publication may arise. It therefore translated that it is not important whether or not delivery of soft copies of the Register of Voters was on display or publication. He said the matter did not arise
 B and the case cannot amount to non-compliance that will vitiate an election.

For the 4th and 5th Respondents, Mr. Balogun on their behalf contended that the Appellants by their own pleadings received, scrutinized, viewed and accessed the voters register given to them by the
 C 3rd Respondent before the election. That since parties are bound by their pleadings especially concessions made therein and so cannot change the case with which the Appellants approached the court in the first place.

To settle the question herein raised in this Issue 1 would entail a consideration of whether the Court of Appeal fell into a grave error which occasioned a miscarriage of justice when it held that the entry of additional names into the Register of voters and non-display or publication of same as required by the Electoral Act, was not a non
 D compliance that substantially affected the election, recourse has to be made to the Record of Appeal Volume v with specificity thereof and I will quote.
 E

“The issue being considered here has to do with the burden of the petitioners in respect of non-compliance with the provisions of the Electoral Act. In order to succeed, our courts have held that it must be established by the petitioner (1) that there was non-compliance with the Electoral Act; (2) that the non-compliance with the Electoral Act was substantial; and (3) that the substantial non-compliance substantially affected the result of the election. See Buhari v. Obasanjo (2005) 8 NWLR pt. 910 p. 241. It would appear, having regard to Section 139 (1) of the Electoral Act that there will also be the need for someone questioning an election to show that the election was not conducted substantially in accordance with the principles of the Act, not merely the provisions of the Act”.
 F
 G
 H

The Appellants’ counsel gave a litany of the infractions of the Electoral Act, the Respondents perpetrated in his Brief of Argument. They include among others:

- 1) That people were allowed to vote without accreditation;

- 2) That there was multiple accreditation and voting'
- 3) That the number of voters recorded is not the same as the number ticked to have voted;
- 4) That the number of voters ticked to have been accredited in the voters Register differs from the number of accredited voters entered on Form EC8A(1);
- 5) That the number of used and unused ballot papers entered in Form EC8A (1) exceeded the number of ballot papers issued in the affected polling units;
- 6) That alternations were made on some Form EC8A (1) without same being authenticated;
- 7) That there was swapping of Results Sheets;
- 8) That Forms EC8A (1) were not signed, stamped and dated and did not have the name of the presiding officer;
- 9) That unidentified persons and objects were accredited and voted;
- 10) That unknown form EC8A (1) having no serial number were used in the election;
- 11) That form EC8A (1) did not reflect the vote of some of the political parties that participated in the election; and
- 12) Failure to use the appropriate Register of voters to conduct the election.

It was for the appellants to prove these very serious acts of infraction of the Electoral Act before the Tribunal. Clearly majority if not all the acts of infraction of the Electoral Act enumerated above were criminal in nature and therefore required a higher standard of proof, that is, proof beyond reasonable doubt. It must be clear by now that the courts are not interested in the altogether common penchant for crying wolf but insist on proof, hardnosed and concrete proof of allegations.

The Court of Appeal in taking the position above quoted agreed with the Tribunal when that trial court held as follows:-

"From what we have stated thus far, we come to the conclusion that head or tail, the petitioners have not only failed to discharge the burden on them to establish that the Governorship Election conducted in Ondo State on October 20th, 2012 was not conducted substantially in accordance with the principles and spirit of the Elec-

toral Act but could not establish that the alleged non-compliance and/or electoral malpractices substantially affected the outcome of the election. The burden does not shift to the Respondents to prove otherwise for, the case of the Petitioners is completely lacking in merit”.

It is clear that the Tribunal and then later the Court of Appeal
 B did not lose sight of Sections 138 (1) and 139 (1) of the Electoral Act.

Those Sections provide as follows:-

“Section 138(1):

C *An election may be questioned on any of the following grounds, that is to say:*

(a) That a person whose election is questioned was at the time of the election not qualified to contest the election.

*(b) That the election was invalid by reason of corrupt practices
 D or non-compliance with the provisions of the Act.*

(c) That the respondent was not duly elected by majority of lawful votes cast at the election; or

(d) That the petitioner or its candidate was validly nominated but was unlawfully excluded from the election”.

E “Section 139(1):

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

***Having those two crucial sections of the Electoral Act in focus at all time material by the two Courts below and this court being so focused it would then be said that at the risk of
 G over repetition, a petition can only succeed on non-compliance with the provisions of the Electoral Act, the petitioner must not only prove that there was non-compliance with the provisions of the Act but that the non-compliance substantially affected the result of the election. A two pronged process which are intertwined to such an extent that none can go
 H without the other arm. See CPC v. INEC (2011) 12 SCNJ 644 at 710.***

A similar interpretation was given earlier in time to Sections of the Electoral Act in operation previously with provisions that are impari

materia to the current Sections 138 and 139 of the Electoral Act. In *Awolowo v Shagari* (1979) All NLR 120 at 161, the Supreme Court had held in relation to allegations of non-compliance thus:

“If this proposition is closely examined it will be found to be equivalent to this that the non-observance of these rules or Forms which is to render the election invalid must be so great as to amount to a concluding of the election in a manner contrary to the principle of an election by ballot and must be so great as to satisfy the tribunal that it did affect or might have affected the majority of the votes, in other words the result of the election”.

For effect, I shall cite a few more related judicial authorities, no less judgments of this Court. See *Buhari v. Obasanjo* (2005) 13 NWLR (Pt 1) 191:-

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

“In more recent times in the case of ABUBAKAR v. YAR’ADUA (2008) 19 NWLR (pt.1120) p.1, the Supreme Court said that:-

“The operative words in Section 146 (1) are “if it appears to the election tribunal or court that the election was conducted substantially in accordance with the principles of the Act. In view of the facts that the tribunal or court can only come to the conclusion in the light of the evidence before it, one of the parties must give that evidence to the contrary and the party is the one who will fail if that evidence is not given. That party in my humble view is the petitioner. He is the party who alleges that the election was not conducted substantially in accordance with the principles of Electoral Act”.

Section 135 (1) Electoral Act, 2002 and section 146(1) of the 2006 Electoral Act are now Section 139(1) of the electoral Act, 2010

(as amended).

The Supreme Court in CPC v. INEC (2011) 18 NWLR (Pt. 1279) 493 at 546 to 547 held thus:-

“The duty lies on the court to determine whether or not an election was conducted substantially in accordance with the Constitution and the Electoral Act, 2010. The court will look at circumstances of the case, including the state of pleadings, especially the credibility of the petitioner’s position and the nature and substance of the complaints of the petitioners, the attitude of the functionaries charged with the conduct of the election and whether the omissions complained of by the petitioner even if proved, affected the conduct of the election”.

These legal and judicial principles taken in context of the case in hand, what the Appellants had done in proof of their allegations seem a far cry from the standard prescribed by the relevant Electoral Law.

In this instance the allegations of non-compliance with the provisions of the Electoral Act and the electoral malpractices as pleaded in the petition are so interwoven as to become impossible of severing the criminal content from the civil and so the proof has to be of the higher standard being that beyond reasonable doubt. Therefore when the petitioners/Appellants set out to establish their case and in the evidence were that comparing the unit results, the entries in the CTC and duplicate copies of the result for the same unit were the same. They were signed and most of them stamped with a few not stamped. The CTCs of form EC8 As were same in content with the duplicate copies tendered by the petitioners. They were all signed by the presiding officers and there was clear evidence of accreditation on then. All of these findings went along what should occur in a free, fair and credible election and so the Tribunal had no difficulty in finding. The Court of Appeal could not depart from that finding obviously and this court does not seem to have a choice. The other documents dumped without evidence in support or where rendered the evidence was found not credible and then the star witness, PW45 whose evidence had to do with facts and events not within his personal knowledge and which he was not qualified

to speak on with value then a claim to proof of substantial non-compliance can only reside in dreamland and not for our purpose.

Worse still is the attempt by the appellants to impugn the register of Voters alleging injection of names when the disputed register was not tendered in court and the Appellants did not proffer a reason for that lapse. To impugn the content of the Register can only be done when the court has something to compare with what was available and in use and what the actual proper Voters Register should be.

What I am trying to say in effect is that the Appellants' proposition to prove the non-compliance which substantially affected the outcome of the election fell far short of the requirements and seeing no redeeming feature in sight, I have no difficulty in going along with the concurrent findings of the two Courts below and resolving this issue with an emphatic NO and against the Appellants.

ISSUE NO.2:

Whether the Lower Court's failure to consider appellants' complaints against specific adverse findings of the trial Tribunal and its findings that PW45's evidence is hearsay and that majority, if not all the infractions against the Electoral Act enumerated by the Appellants are criminal in nature were not erroneous thereby occasioning a miscarriage of justice against the Appellants.

Learned counsel for the Appellants stated that at the Lower Court, the Appellants made specific and clear submissions in support of each of the non-compliance allegations but that court failed to consider each of those items of non-compliance but rather lumped all the particulars of non-compliance together and in one sentence dismissed them on the erroneous ground that majority, if not all of them are criminal allegations which required proof beyond reasonable doubt.

He submitted further that an allegation of non-compliance based on non-accreditation, disparities between entries in the voters register and Form EC8A, accrediting unidentifiable persons and not using appropriate register of voters cannot by any stretch of imagination constitute criminal allegations requiring proof beyond reasonable doubt since the allegations were civil and the proof is on the preponderance of evidence. He cited *Mogaji v. Odofin* (1975) 4 SC

91.

For the Appellants, Mr. Fagbemi SAN stated that the Court of Appeal distracted itself with the nature of the non-compliance not whether it was substantial enough to invalidate the election. He cited *CPC v. INEC (2011) 12 SC (pt. V) 80 at 128*.

B For the Appellants was canvassed that the Lower Court did not consider the failure of the trial Tribunal to review of properly evaluate evidence of some of the witnesses of the Appellants. He relied on *Onogbue v. Nnubia (1972) NSCC 478*. That this failure of
C the trial Tribunal to consider the issues properly raised and the Appellate Court's equal lapse to review and evaluate the evidence which was largely documentary amount to a denial of fair hearing to the Appellants thereby calling for the intervention of this Court to do the needful. He cited *Mogaji v. Odofin (1978) SC 91*; *Duru v. Nwosu D (1989) 7 SC (pt.1) 1*; *Akintola v. Balogun (2000) 1 NWLR (pt. 642) 533*.

In response, learned counsel for the 1st Respondent, Dr. Olanipekun said there was a failure to present sufficient quality evidence throughout the entire proceedings at the Tribunal. This seems
E to emanate from the assumption of the Appellants that PW45 was competent to proffer evidence on things and events he did not witness which the court was bound to swallow without more. That Appellants admit that their agents were co-workers of the documents
F on which PW45 gave evidence but the agents were not called as witnesses.

Dr. Olanipekun of counsel said the Appellants failed to tender the original voters' register and therefore failed to prove the allegation of non-accreditation.

G Mallam Yusuf Ali SAN said for the 2nd Respondent that the evidence of PW45 was successfully discredited under cross-examination and specifically on the effect of the purported injection of names on the Voters Registers was also found by the Court below to be worthless and incredible. That these concurrent findings of the two
H courts should not be interfered with without reason.

Dr. Ikpeazu SAN for the 3rd Respondent contended that the Court of Appeal carried out its appellate function correctly after a dispassionate consideration of what the trial Tribunal did in its evaluation of the evidence before. There was no basis from what the Court

of Appeal found upon which it could re-evaluate the evidence adduced or interfere with what the court of trial had done. He referred to *Woluchem v. Gudi* (1981) 5 SC 291; *Mogaji v. Odofin* (1978) 4 SC 91; *Obisanya v. Nwoko* (1974) 6 SC 6; *Hamza v. Kure* (2010) 10 NWLR (pt.1203) 630 at 654.

Mr. Balogun, learned counsel for the 4th - 5th Respondents stated that the Appellants had a burden to call witnesses who were registered to vote and tender both their voters' cards and the voters register and compare same to show that they were not accredited on the voters Register and did not vote. That this onus does not shift until the Appellants had carried out their duty for the Respondents to proceed to rebuttal thereof. He cited *Onoyom v. Egari* (1991) 5 NWLR (Pt.603) 416 at 425; *Buhari v. Obasanjo* (2005) 13 NWLR (pt.1) 191.

The crux of the question herein raised has to do with the correctness of the Court of Appeal in dealing with the specific findings of the Tribunal inclusive of what the Tribunal held in relation to PW45's evidence. The appellants through learned Senior Counsel, Lateef Fagbemi held the view that the Court below failed to address the specific and adverse findings of the trial court. This view is not acceptable to the Respondents who contend through their respective counsel that the Court of Appeal adequately handled those specific findings properly without fault.

From the standpoint of the Appellants, a miscarriage of justice had been visited on them. On what amounts to miscarriage of justice this court has in a long line of judicial authorities set out some definitions on what can in the course of adjudication be termed "*miscarriage of justice*". Tobi JSC in *Gbadamosi v. Dairo* (2007) 3 NWLR (pt.1021) 282 at 306 treated it thus:-

"Miscarriage of justice connotes decision or outcome of legal proceedings that is prejudicial or inconsistent with the substantiated rights of the party. Miscarriage of justice means a reasonable probability of more favourable outcome of the case for the party alleging it. Miscarriage of justice is injustice done to the party alleging it".

In *Aigbobahi v. Aifuwa* (2006) 6 NWLR (pt.976) 270 at 290 - 291 this court said, *"...miscarriage of justice can be said to be such a departure from the rules which permeate all judicial process as to make what happened not in the proper sense of the word judicial*

procedure at all. What constitutes a miscarriage of justice vary, not only in relation to particular facts, but with regard to the jurisdiction invoked by the proceedings in question. It is enough if what is done is not justice according to law”.

The two definitions above say it as it is and in simple term
 B would mean that when in the course of a proceeding the goal post is shifted to the detriment of one of the parties or where it can be said that from what had transpired from the very beginning of the judicial process or at any point during the exercise of the judicial proceedings
 C that the scale of justice had been tilted to favour one party thus jeopardizing the equal right of the other party then a miscarriage has occurred.

As a follow up in this context can what the Court of Appeal did with the findings and decision of the Tribunal be taken as falling short
 D of the required appellate duty of the Lower court to review and consider what the trial court did and come to a fair and justice decision.

I would hereunder recast a salient part of the findings of the Tribunal and situate also part of the relevant portion of what the Court of Appeal did in relation to those trial Tribunal findings. Hereunder are the findings of the Tribunal, thus:

*“We therefore find and established that while the 2011 voters Register contain 1,553,580 voters, the 2012 Register contains 1,654,205 voters. The difference between the two Registers is what
 F the petitioners call illegal or unauthorized entries or injections into 2012 Voters Register. We also find established that as at 20th of September 2012, the register of voters in soft copy was given to the Petitioners. This is the register that contains the illegal or unauthorized injections or entries. That means, about one month before the
 G election of October, 20th 2012, the petitioner were given the 2012 Register which contains the illegal and unauthorized entries or injections. That places the matter of the complaint on the contents of the register outside jurisdiction being a pre-election issue. See Amaechi v. INEC (supra); Ibrahim v. INEC (supra) and Saidu v. Abubakar (2008)
 H 12 NWLR (pt. 1100) 201 at 263.*

A distinction must be made between the contents of the 2012 voters Register and the use to which the 3rd - 5th Respondents put it at the governorship election of October 20th 2012. While the contents of the Register will be pre-election matter to be adjudicated on

at the Ondo State or Federal High Court, the impact of that Register on the over-all election is the matter that is within our jurisdiction. The impact will be in the form of the injected or illegal voters voting at the election.

No evidence has been placed before us to establish that the injected voters voted. Establishment of finger print impression which we held earlier is not a condition precedent to a valid vote or ticking to the left or right of the Register will not do. In any case, only very few instances of these were shown compared to the over-all result and it has not been established that the 1st Respondent is implicated in the unlawful injection into 2012 Voters Register. See Anazodo v. Audu (supra).

The 2011 Register of Voters which the petitioners accept contains 1,553,580 registrants, PW45 answered under cross-examination that the total number of votes cast which he termed "Legal and Illegal" valid and invalids" were 624,659? See Exhibit PP18A, Form EC8D. He also answered that this number is far less than the number of registrants in the 2011 Register of Voters. How many of these were illegal or unauthorized insertions, he did not say. The impact of the invalid registrants on the overall election is therefore not proved.

After all, these injections into the Register if indeed they are is a fraud proof of which must be beyond reasonable doubt, See Wali v. Bafarawa (supra). We find no proof of this.

The complaint about failure to display the list of voters is neither here nor there. The supplementary voters list ought to be published or displayed 30 days before the general election. See Section 20 of the Electoral Act and by Section 21 (1) of the same Act, the commission shall appoint a Revision Officer. Apart from the fact that even this complaint is a pre-election matter the objections are to be made to the Revision Officer not the Tribunal"

The Court of Appeal stated as follows:-

"Issue 2 is whether the Tribunal was right to have refused to consider the matter of the injection of new names in the Voters Register on the ground that it lacked jurisdiction, the same being a pre-election matter.

On the issue of whether the trial Tribunal was not correct in holding that a the allegations about injection of names into voters Register of 2012 was not proved and that the allegations were a pre-

election matter which the Tribunal had no jurisdiction over, I think that since the Register of Voters was used in the election as part of the election process and therefore a material in the election and since the tribunal has jurisdiction to deal with matters arising from the election, it had jurisdiction to deal with the complaint of whether the Register used was the proper register used to the extent that additional names has been introduced or injected into it”.

The Court of Appeal on the evidence of PW45 held thus:-

“The complaint of the appellants was that the entry of the additional names was not done in compliance with the Act and that the register used was not displayed or published as required by the electoral Act. In the case of OJUKWU v. YAR’ADUA & ORS (2009) 12 NWLR PART 1154 P.50, the election was questioned on the ground among others, that the voters Register was not displayed or published in accordance with the Electoral Act. It is noteworthy that the petition was entertained and determined. The court did not decline jurisdiction in the matter. Even though the Tribunal had jurisdiction, it does not appeal to me that the entry of the additional names and the non-displayed or publication of the voters register as required by the Electoral Act was a non-compliance that substantially affected the outcome of the election”.

What remains is to consider the correctness of the holding of the tribunal with regard to the evidence of PW 45. This is what the tribunal held concerning his evidence.

“PW 45 cannot give evidence of events that took place in all the other polling units in the State. PW 45 said he was going to rely on the report of experts but he did not call any expert and answered that he himself is not an expert. We therefore agree with the submission of Learned Senior Counsel for the 1st respondent at paragraph 4.72 at P.35 of his final address and indeed of all the other respondents that the statement on oath of PW45 is a bundle of primary and secondary hearsay.

From the submission in the appellants Brief of Argument, PW 45 has to be more than a superman, According to the submission, the “comprehensive” evidence of PW 45 covered 372 polling units across 10 Local Governments, it covered 659 polling units across 7 Local Government Areas and also covered 591 polling units across the State. It is only an omnipresent being that can give first hand

evidence of all that transpired in the hundreds of polling units. Mere mortals can only give second hand evidence about what happened in distant places. The evidence given by PW45 can only be hearsay. The Tribunal was right to have so held”.

Learned counsel for the Appellants had said for the findings of the Tribunal all the Court of Appeal did is the following:- B

“Having been satisfied, the Tribunal properly weighed and evaluated the evidence led by the Appellants, I find no reason to disturb the findings of the Tribunal”.

Clearly from the excerpts captured earlier, this brief conclusion just quoted does not represent the full process of review or consideration by the Court below of what the Tribunal did. Also once the appellate court has fully taken full cognizance of the evaluation of evidence alongside the pleadings by a trial court, the Court of Appeal is not obligated to deal, line by line, phrase by phrase on the judgment of the Tribunal before it can be said the Court of Appeal carried out its duty. The important thing is that in its appellate duty substantial justice was done. C D

On a revisit of the evidence of PW45 who testified on what transpired in over 1000 polling units. That witness assumed the role of a Polling Agent whose functions are defined by Section 45 of the Electoral Act. Polling Agents represent the respective political parties at the numerous polling units in obvious recognition of the enormity of the task of those monitoring the election in all the polling units of the State. Even though the 1st Appellant was at liberty to perform the duty of polling Agent for himself and his party, being human he can only be physically present at only one polling unit at a given time and so cannot perform the same task with the same title as polling agent in any or all the other polling units and so when the evidence is to be provided as to what happened in disputed units other than the one he is physically available at then he is not qualified to testify thereto. This is because section 45 (2) Electoral Act expects evidence directly from the relevant field officer at the required polling unit. Therefore when PW45 set out to testify as a State agent armed with all the evidence of what occurred throughout the State in rela- E F G H

tion to each polling unit, he did so under a misguided understanding of what the Electoral Act had prescribed. I place reliance on *Buhari v. Obasanjo* (2005) 13 NWLR (Pt.941) 1 at 315; *ACN v. Nyako* (2012) 11 MJSC 1.

In conclusion, the grouse of the Appellants against the Court of Appeal's going along with what the Tribunal found and decided upon cannot be sustained. Indeed the specific adverse findings of the Tribunal affirmed by the Court of Appeal being that PW 45 gave evidence which is hearsay and that majority if not all the infractions against the Electoral Act enumerated by the Appellants are criminal in nature were not erroneous and no miscarriage of justice has occurred.

Indeed, I see no basis for departing from those concurrent findings of the two Courts below and nothing upon which any of those findings could be upset and so this Issue 2 is also resolved against the Appellants and in favour of the Respondents. The two issues now resolved against the Appellants this appeal is dismissed for lacking in merit. Parties are to bear their own costs.

CROSS-APPEAL:

This Cross-Appeal by Dr. Rahman Olusegun Mimiko, the 1st Respondent in the main appeal is predicated on the findings of the Court of Appeal in respect of the nature of the allegation of injection of voters register which Cross-Appellant contends is a pre-election matter outside the jurisdiction domain of the Tribunal. That this fact ought to have been decided by the Court of Appeal. In the quest to push the question on this jurisdictional issue of the Tribunal to deal with the matter of the injection of names into the Voters Register as a pre-election matter thus with the result of an ousting of the jurisdiction of the Tribunal to enter into the discourse, the Cross-Appellant in the Brief of Argument filed on 26/7/13 raised a single issue as follows:-

Considering the nature of the pleadings in the Petition in respect of the register of voters, whether the allegations therein do not qualify as pre-election issues that are outside the limited jurisdiction of an Election Petition Tribunal.

The Labour Party (LP) as 2nd Respondent in the main appeal also cross-appealed. The Brief of Argument was incorporated in the Brief of argument for the 2nd Respondent in the main appeal filed

on 1/8/13 and adopted by Yusuf Ali SAN, counsel on their behalf. He formulated a sole issue for determination thus:-

Whether the Court below was right in setting aside the findings of the Tribunal that declined jurisdiction to entertain the allegation of injection of names into the Voters Register when, factually and legally, it is a pre-election matter. B

The 1st and 2nd Cross-Respondents had the Brief of Argument settled by Lateef Fagbemi SAN and filed on 6/8/13. In that Brief was also raised a single issue, viz:-

Whether the Lower Court was not right to have held that the trial Tribunal has jurisdiction to entertain complaint as to whether or not the voters register used in the conduct of the October 20, 2012 election was the proper register. C

However the 1st and 2nd Respondents had raised a Preliminary Objection as to the competence of the ground of appeal and flowing therefore the competence of the issue thereby derived since the particulars were not related to the ground or issue. D

It is now trite to say that this Preliminary Objection must be handled and determined firstly before anything else.

PRELIMINARY OBJECTION: E

In arguing the Objection, learned counsel for the objector, Lateef Fagbemi SAN said the grievance of the Cross-Appellant must be demonstrated in the particulars showing or seeking to show that the factual assertions in the text are not correct. That a careful examination and analysis of the particulars in support of the sole ground of appeal would reveal that most of them are totally unrelated and constitute no challenge to any of the assertions in the passage of the judgment rather they mostly constitute independent complaint from the ground of appeal and not in any way ancillary to it. F G

He further stated that the Lower court made findings against the cross appellant when it held that the Tribunal had jurisdiction and that there was entry of additional names into the register and no display of the register made. On the other hand, the Court of Appeal made findings against the 1st and 2nd Cross-Respondents that those findings constitute non-compliance which did not substantially affect the outcome of the election. That what followed is that while the Cross-Respondents appealed against the adverse finding the cross-Appellants failed to appeal the findings they were aggrieved over. H

Therefore, the Cross-Appellants having not appealed against the Lower court's findings with regard to non-display or publication are deemed to have accepted same and cannot be seen to be doing so through particulars in support of a ground of appeal, raising issues other than non-display and publication. The implication being that the ground of appeal infested by incompetent particulars is incurably bad and therefore incompetent and should along with the Notice of Appeal be struck out. He cited SCC Nig. Ltd v. Anya (2012) 9 NWLR (Pt. 1305) 213 at 222; Olaniyan v. University of Lagos (1995) 2 NWLR (Pt. 599).

The grouse for which the Cross-Respondents have raised the Preliminary Objection is that the particulars in the sole ground of the Cross-Appeal are unrelated to that Ground thereby rendering that Ground and the Cross-appeal incompetent and liable to be struck out.

I shall lay out the ground of appeal made and the particulars as framed for ease of understanding and that stated hereunder, viz:-

“GROUNDS OF APPEAL

GROUND ONE:

The Lower Court erred in law and came to a wrong decision when it held:-

“I think that since the Register of Voters was used in the election as part of the election process and therefore a material in the election and since the Tribunal has jurisdiction to deal with the matters arising from the election, it had jurisdiction to deal with the complaint of whether the Register used was the proper register used to the extent that additional names had been introduced or injected into it.

The complaint of the appellants was that the entry of the additional names was not done in compliance with the Act and that the Register used was not displayed or published as required by the Electoral Act”.

PARTICULARS OF ERROR:

“i) Sections 19 and 20 of the Electoral Act, 2010 (as amended) deal extensively with the issues of voters’ Register and Supplementary Voters’ Register.

ii) By Section 19 (1) of the Electoral Act 2010 (as amended), it is the main Voters’ Register that has to be displayed for a period of

not less than five (5) days and not exceeding fourteen (14) days.

iii) Section 19 and 20 of the Electoral Act 2010 (as amended) do not provide for the display of the Supplementary Voters' Register.

iv) Both the display of the Voters' Register and compilation of the supplementary Voters' Register are matters that come long before the holding of the election. B

v) Further to (iv) supra, both the display of the Voters' Register and compilation of the Supplementary Voters' Register are not contemporaneous with the holding of an election.

vi) There is no cogent evidence presented before the trial Tribunal that any of the persons whose names were allegedly injected into the Voters' Register voted in the election. C

vii) That facts grounding the petitioners' complaints were known/available to them one (1) month before the holding of the election.

viii) It was not the case of the petitioners that a different or D separate Voters' Register was used during the election.

ix) The trial Tribunal gave sufficient reasons, backed up by binding decisions of appellate courts, before coming to the conclusion that the complaint of the Petitioner on this subject is a pre-election matter on which it has no jurisdiction. E

x) Section 285 (2) of the 1999 Constitution of the Federal Republic of Nigeria (as amended) restricts the jurisdiction of the trial Tribunal to determining whether any person has been validly elected to the office of Governor or Deputy Governor.

xi) Section 21 of the Electoral Act 2010 (as amended) creates a medium forum for complaints in respect of any issue arising out of the Voters' Register. F

xii) The Lower court wrongly set aside the decision of the trial Tribunal on this issue". G

Mr. Lateef Fagbemi SAN for the Objector is of the view that the particulars seem independent of the ground of appeal and that not allowed. I set out the ground of Cross-Appeal inclusive of the excerpt from the Court below in its judgment which I see as self explanatory. I cannot see what makes it difficult to be taken as particulars showing the error which necessitated the cross-appeal. I do not see a disconnection between the particulars and the ground of cross-appeal. Therefore the cross-appeal ground and particulars are within what the case of *Globe Fishing Industries Ltd v. Folarin Coker* (1990) H

NWLR (pt. 162) 264 at 300 stated to be the position of the law. This court had in that case held thus:-

“The particulars and nature of the error or misdirection alleged in a ground of appeal which are required by Order 8, Rule 2 (2) of the Supreme Court Rules 1985 are the specific reasoning, finding or observation in the judgment or ruling relating to or projecting the error or misdirection complained of. They should also not be independent complaint from the ground of appeal itself but ancillary to it”.

From the ground of appeal as stated earlier, the part of the judgment complained of and the particulars of error are not out of line. They may have been crafted in a way different from what learned counsel for the cross-respondent would have done. That does not qualify the particulars as incompetent and thereby rendering incompetent the ground of cross-appeal or the issues deriving therefrom. That is a matter of style, a technical point which does not detract from the substance and the other party not misled on account of that unique mode of drafting. It is neither here nor there and since it cannot be correctly interpreted as extraneous or unrelated to the ground of appeal but rather clearly shows the reason behind the need to cross-appeal, at least to have a grievance put across, considered and determined one way or the other. The cross-appellant ought not to be shackled in letting out what grieves him. Therefore, the cases cited by the cross-respondent such as *Olaniyan v. University of Lagos* (1995) 2 NWLR (pt.1305) 213 at 222; 326 do not apply here to enhance the position of the Cross-Respondent/Objector. The Objection lacking in merit is therefore dismissed.

CROSS-APPEAL ARGUMENTS,

Dr. Olanipekun, learned counsel for the Cross-Appellants stated that it is the pleadings as presented in the Claim of the petitioners that will determine if the case falls within the limited jurisdiction of an Election Petition Tribunal or not. That with that in mind a perusal of the pleadings in this case show that the petitioners had unequivocally stated that the irregularity in the register was already concluded over a month before the election and so without doubt the case of the petitioners is a pre-election issue to which the Tribunal had no jurisdiction. He relied on *Ibrahim v. INEC* (1999) 8 NWLR (Pt.614) 344 at 351; *Odedo v. INEC* (2008) 17 NWLR (pt.1119) 554 at 502.

That the matter of the register juxtaposed in the jurisdictional arena had been covered by Section 21 of the Electoral Act 2010 which provided for the Revision Officer of the 3rd Respondent/INEC to hear and determine the claim for and objection to any entry in or omission from the preliminary list of voters and Section 21 (2) of the Act providing for a further right of appeal from the decision of the Revision Officer to the Resident Electoral Commissioner before a process before the proper forum which would be the State High Court or Federal High Court. He cited *Saude v. Abdullahi* (1989) 4 NWLR (Pt.116) 387 at 422; *Nigercare Dev. Co. Ltd v. A.S.A.B.* (2008) 9 NWLR (Pt.1093) 398 at 527. B
C

Learned Senior Advocate, Yusuf Ali for the 2nd Respondent Cross-Appellant arguing along the same lines as Dr. Olanipekun and submitted that registration of voters are not within the purview of an election. That the meaning of election can only accommodate the process of voting starting from accreditation of voters up till announcement of results. Therefore those complaints against the Voters Register are for the regulars while whatever transpires at the election is within the narrow limited jurisdiction of the Election Tribunal. D

Reacting against these views of the Cross-Appellants, Mr. Lateef Fagbemi SAN for the Cross-Respondent disagreed stating that once non-compliance is pleaded as a ground for questioning an election, the jurisdiction of the Tribunal is activated. That in the case such as the one at hand where the non-compliance with regard to the use of an improper register, the cause of action (non-compliance) became vested in the Cross-Respondent at the point when the invalid register of voters was put to use as a material in the election process during poling. He cited Section 138 (1)(b) of the Electoral Act, *Abubakar v. Yar'Adua* (2008) 18 NWLR (Pt.1120) 1 at 70. E
F
G

For the Cross-Respondents was submitted that Sections 19 and 20 of the Electoral Act must be read together when the infraction of the Electoral Body in failing to display the voters register and when that is done, the public scrutiny, claims and objections made would be published. That the law is settled that when a procedure has been prescribed for doing a thing, only that prescribed procedure and no other is permissible and any other method is excluded. He placed reliance on the case of *Ogulaji v. A.G. Rivers State* (1997) 7 NWLR (Pt.508) 209 at 234 - 235. H

These two cross-appeals and the arguments in favour are anchored on the position of the cross-appellants that from the state of pleadings and the findings of the Tribunal after due consideration of the facts, circumstances and evidence led by the parties that the issue of injection of names alleged by the Appellants in the Voters Register was a pre-election matter occurring before the election and which the Appellants in the main appeal became aware of about a month before the conduct of the Governorship election in Ondo State for which the ventilation of the grievance arising from the Voters Register was a pre-election matter which could only be addressed in the State or Federal High Court and not the Tribunal.

The grouse of the Cross-Appellants was not ended by the mere findings of the Tribunal above stated but the matter of the Tribunal in spite of those findings going ahead to consider the evidence led and the totality of the case and arrived at the conclusion that the matter of injections was a criminal allegation which criminal content was not proved as required by law on the prescribed standard which is proof beyond reasonable doubt.

In arguing the sole issue which each of the two cross-appellants crafted and that of the cross-respondents being the same thinking differently couched being whether the Court of Appeal was right in setting aside that finding of the Tribunal declined jurisdiction to entertain the allegation of injection of names into the voters Register when factually and legally it is a pre-election matter.

For a clearer view of what the contest is, I shall have recourse to Section 285(2) of the Constitution which provides thus:-

“There shall be established in each state of the Federation an election tribunal to be known as the Governorship Election Tribunal which shall, to the exclusion of any Court or Tribunal have original jurisdiction to hear and determine petition as to whether any person has been validly elected to the office of the Governor or Deputy Governor of a State”.

It needs be stated that what happens where a grievance arises in relation to the Voters Register production thereof, display and publication albeit before the election as without dispute the voters Register was made aware to the parties at least a month to the election. The cross-appellants say that brought it within the ambit of a pre-action matter which justiciability or ventilation of a grievance is for

the State or Federal High court being a pre-election scenario to the cross-respondents who are of the view that the voters register, whether altered or had names injected before the election cannot be a matter treated in isolation, since the voters register is what would be used during the election which by implication is a continuous exercise and leaves no room for a surgical operation removing the disagreement over the contents of the voters register as different from the election proper which dichotomy would lead to the first part on the voters register being handled by the State or Federal High Court while the issue of accreditation, election processes taken at the Tribunal without either of those two situations entering into the forum of the other. ^B ^C

On this matter of Voters Registration concerns, it is necessary to see what the Electoral Act has provided and in that regard, I shall quote Sections 19, 20 and 21 thereof which are stated hereunder.

“19 (1): Subject to the provisions of 9 (5) of this Act, the commission shall, by notice, appoint a period of not less than 5 days and not exceeding 14 days, during which a copy of the voters’ register for each local government, area council or ward shall be displayed for public scrutiny and during which period any objection or complaint in relation to the names omitted or included in the voters register or in relation to any necessary correction or in relation to any necessary correction, shall be raised or filed.” ^E

“(2) During the period of the display of the voters’ list under this Act, any person may -

(a) Raise an objection on the form prescribed by the commission against the inclusion in the supplementary voters’ register of the names of a person on grounds that the person is not qualified to be registered as a voters in the state, local government or area council, was or registration or that the name of the deceased person is included in the register; or ^F ^G

(b) Make a claim on the form prescribed by the commission that the name of a person registered to vote has been omitted.”

“(3) Any objection or claim under subsection (2) of this section shall be addressed to the resident electoral commissioner through the electoral officer in charge of the local government or council”. ^H

“20. The supplementary voters’ list shall be integrated with the voters, register and published not later than 30 day before a general election”.

“21(1) The commission may appoint as a revision officer any person to hear and determine claims for and objection to any entry in or omission from the persons as it deems necessary to assist the revision officer”.

B *(2) Any person dissatisfied with the determination by a revision officer or person or persons assisting revision of his claims or objection as mentioned in subsection (1) of this section, shall within seven days, appeal against the decision to the resident electoral commissioner in charge of that state whose decision shall be final”.*

C In regard to the matter of the voters register whether properly brought in at the Election Tribunal thereby bringing into question the jurisdiction of the Tribunal to consider the validity or otherwise of the Voters Register in relation to the validity of the election and return of the 1st Cross-Appellant, I would refer to the relevant part of the judgment of the Court of Appeal to that issue and that is,

D *“I think that since the Register of Voters was used in the election as part of the election process and therefore a material in the election and since the Tribunal has jurisdictions to deal with matters arising from election, it had jurisdiction to deal with the complaint of whether the Register used was proper Register used to the extent that additional names had been introduced or injected into it.”*

E I shall quote hereunder relevant portions of the petition to clear the air of what is at stake. Of mention are paragraphs 72, 73, 74, 75 and 76 thereof:-

F *“72: Your Petitioners state that a registration exercise by INEC, once decided upon, is widely publicized in designated places/centres with her equipment and officials prominently identifiable by all.*

G *Names and particulars of person can only be integrated into the voters register during such open registration or by way of transfer of registration. Any name on the voters register other than as prescribed is unlawful”*

H *“73: Your Petitioners state that before the conduct of the 20th October, 2012 Governorship Election in Ondo State, the 3rd and 4th Respondents did not give notice of the time to display the Voters’ Registers as prescribed by law but save out soft participated in the election including the Peoples Democratic Party (PDP).*

“74: Your Petitioners state that during the election, it became revealed that persons whose names and particulars were not in the

2011 official voters' registers used for the governorship election by the 3rd and 4th Respondents or their agents.

"75: Your Petitioners state that a total 97,533 illegal or unauthorized entries of names were secretly imputed into the various Voters' Registers in the wards and in all the local governments in the States. This could be known before the election as the 3rd respondent failed to give public Notice of any appointed date for the public display of the Voters' Registers for the election and did not display the voters Registers for the said election.

"76: Your Petitioners state that the details of the illegal/unauthorized insertions into the Voter's Registers used for the election, subject matter of this petition are set out in the schedule to this petition. The petitioner will at the trial contend that the unauthorized/illegal Voters Register by agents of the 3rd respondent was done in collaboration with the agents of 1st and 2nd Respondents and their agents and goes to the root of the election".

How the trial Tribunal saw those pleadings are necessary to be recast below:-

"We therefore find and established that while the 2011 voters Register contain 1,553,590 voters, the 2012 Register contains 1,654,205 voters. The difference between the two Register is what the petitioners call illegal or unauthorized entries or injections into 2012 voters Register. We also find established that as at 20th of September 2012, the Register of voters in soft copy was given to the Petitioners. This is the register that contains the illegal or unauthorized injections or entries. That means, about one month before the election of October, 20th 2012, the petitioner were given the 2012 Register which contains the illegal and unauthorized entries or injections. That places the matter of the complaint on the contents of the Register outside our jurisdiction being a pre-election issue. See Amaechi v. INEC (supra), Ibrahim v. INEC (supra) and Saidu v. Abubakar (2008) 12 NWLR (Pt.1100) 201 at 263.

A distinction must be made between the contents of the 2012 voters registers and the use to which the 3rd - 5th Respondents put it at the Governorship Election of October 20th 2012. While the contents of the Register will be pre-election matter to be adjudicated on at the Ondo State or Federal High Court, the impact of that Register on the over-all election is the matter that is within out jurisdiction.

The impact will be in the form of the injected or illegal voters voting at the election. No evidence has been placed before us to establish that the injected voters voted. Establishment of finger print impression which we held earlier is not a condition precedent to a valid vote or ticking to the left or right of the register will not do. In any case only very few instances of these were shown compared to the overall result and it has not been established that the 1st Respondent is implicated in the unlawful injections into 2012 Voters Register. See Anazodo v. Audu (supra).

The 2011 Register of Voters which the petitioners accept contains 1,553,580 registrants. PW 45 answered under cross-examination that the total number of votes cast which he termed "Legal and Illegal" Valid and Invalids" were 624,659? See Exhibit PP18A, Form EC8D. He also answered that this number is far less than the number of registrants in the 2011 Register of Voters. How many of these were illegal or unauthorized insertions, he did not say. The impact of the invalid registrants on the overall election is therefore not proved.

After all, these injections into the Register if indeed they are a fraud proof of which must be beyond reasonable doubt. See Wali v. Bafarawa (supra). We find no proof of this.

The Complaint about failure to display the list of voters is neither here nor there. The supplementary voters list ought to be published not displayed 30 days before the general election. See Section 20 of the Electoral Act and by Section 21(1) of the same Act, the commission shall appoint a Revision Officer. Apart from the fact that even this complaint is a pre-election matter the objections are to be made to the Revision Officer not the Tribunal".

The reaction by the Court of Appeal is restated below thus:-

"Issue 2 is whether the Tribunal was right to have refused to consider the matter of the injection of new names in the Voters Register on the ground that it lacked jurisdiction, the same being a pre-election matter. On the issue of whether the trial Tribunal was not correct in holding that all the allegation about injection of names into voters Register of 2012 was not proved and that the allegations were a pre-election matter which the Tribunal had no jurisdiction over, I think that since the Register of Voters was used in the election as part of the election process and therefore a material in the election and since the tribunal has jurisdiction to deal with matters arising from the

election, it had jurisdiction to deal with the complaint of whether the Register used was the proper Register used to the extent that additional names has been introduced or injected into it.

The complaint of the appellants was that the entry of the additional names was not done in compliance with the Act and that the register used was not displayed or published as required by the Electoral Act. In the case of OJUKWU v. YAR'ADUA & ORS (2009) 12 NWLR (pt.1154) P.50, the election was questioned on the ground among others, that the Voters Register was not displayed or published in accordance with the Electoral Act. It is noteworthy that the petition was entertained and determined. The court did not decline jurisdiction in the matter. Even though the Tribunal had jurisdiction, it does not appear to me that the entry of the additional names and the non-displayed or publication of the voters register as required by the Electoral Act was a non-compliance that substantially affected the outcome of the election".

On this vexed issue, I would want to hang for support on the case of Abubakar v. Yar'Adua (2008) 18 NWLR (pt.1120) 1 at 70 in which "election" was defined thus:

"Election is a process spanning a period of time and comprises a series of actions from registration of voters to polling".

Being at one with the dictum of this Court in the Abubakar v. Yar'Adua (supra) stated above, the point has to be made that the matter of complaint on the voters register though facts which predated the election cannot in this instance be left simply as a pre-election matter for which no jurisdiction would lie with an election Tribunal. In that light the cases of ANPP v. Usman (2008) 12 NWLR (Pt.1100) 55. Odedo v. INEC (2008) 17 NWLR (Pt.1117) 554 at 602, Dingiyadi v. INEC (2001) All FWLR (Pt.581) 1426 at 1463; Ibrahim v. INEC (1999) 8 NWLR (Pt.614) 344 at 351 etc are of no help to the Cross-Appellants because those authorities were outside the purview of the present circumstances. In those matters dealt with in those cases cited by the Cross-appellants, they were purely, undiluted pre-election scenarios which the present situation is not. This is because, the voters register with or without the injected names was used for the election which election result is challenged for non-compliance with the Electoral Act on the basis

of an improperly produced voters register with unlawful entry of names, multiple additions of names and non-display, a situation which cannot be tackled in isolation and outside the election matter. Therefore since there cannot be a dichotomy between the voters register issues being pre-election and what transpired in this instance at the contest grounds of the election, it is clear that the trial Tribunal is most suitable for the holistic determination of the questions thrown up. Therefore since the Tribunal is empowered to enter into the discourse of noncompliance with the Electoral Act whether before or on the polling day for the purpose of invalidating the election, then that jurisdiction of the Tribunal is intact. I place reliance on Section 138 (1) of the Electoral Act.

For a fuller effect therefore, I would say that the thread of bifurcation, dichotomy or a possible surgical excision of a pre-election process as against an election process or post election having been broken these cross-appeals have no leg to stand and so agreeing completely with what the Court of Appeal decided in that regard, these two cross-appeals are dismissed for lacking in merit.

Parties are to bear their own costs.

ONNOGHEN JSC

I have had the benefit of reading in draft, the lead judgment of my learned brother, Mary Peter-Odili, JSC, just delivered and I agree with his reasoning and conclusion that the appeals lack merit and should be dismissed.

The facts of the case are straight forward and have been stated in detail in the lead judgment making it unnecessary for me to repeat same in this judgment except as may be needed to emphasize the point being made.

Learned senior counsel for appellants L. O. Fagbemi, SAN leading others, submitted two issues for the determination of the appeal in the appellants brief filed on 31st July, 2013. These are as follows:-

“1. Whether the lower court was not in grave error which occasioned a miscarriage of justice when it held that the entry of additional names into the register votes and the non-display or publication of same as required by the Electoral Act, was not a non-compli-

ance that substantial by affected the outcome of the election? Dis-
tilled from the Grounds 2, 3 and 6.

2. *Whether the lower court's failure to consider appellant's complaints against specific adverse findings of the trial tribunal and findings that PW 45's evidence is hearsay and that majority, if not all the infractions against the Electoral Act enumerated by the appellants, are criminal in nature were not erroneous thereby occasioning a miscarriage of justice against the appellants"*

On issue 1, it is the case of appellants that the register of voters used in the conduct of the election was not the one that ought to be used in that the entry of additional names of over 100,000 thereto was not done in compliance with the Electoral Act and that the said register of voters was not displayed or published as mandatorily required by the Electoral Act. The lower court held that although the entry of additional names into the register of voters and the non-display and publication of the said register as required by the Electoral Act constitute non-compliance, the non-compliance so found did not substantially affect the outcome of the election.

It is however, the contention of the appellants that the register of voters compiled in breach of the mandatory provisions of the Electoral Act and used in the conduct of the election by the 3rd respondent is illegal, and thus a nullity which also nullified the election conducted with it. It is also the contention of appellant that the nature of the non-compliance involved in this case has to do with the vitiating effect of the non-compliance on the election process in that the failure of the 3rd respondent to comply with the mandatory procedure prescribed in the Electoral Act in producing the voters register used in the election had a nullifying effect on the register and consequently the election.

It is not in dispute that one of the grounds relied upon by appellants in challenging the election of 1st respondent is that of non-compliance with the provisions of the Electoral Act, 2010, as amended, as provided for in section 138(1)(b) of the said Electoral Act, 2010, as amended. The section provides, inter alia, as follows:-

"138(1): An election may be questioned on any of the following grounds that is to say:

(b) That the election was invalid by reason of corrupt practice or non-compliance with the provisions of the Act".

It is settled law that for a petitioner who relies on the above ground to succeed, he has the duty to prove the non-compliance alleged as it is trite law that he who asserts must prove.

However, it is not sufficient for the petitioner to prove the non-compliance as alleged. The petitioner must, in addition comply with the requirements of Section 139(1) of the Electoral Act, 2010, as amended which enacts thus:

“139(1) An election shall not be liable to be invalidated by reason of non-compliance with the provisions of this Act if it appears to the Election Tribunal or Court that the election was conducted substantially in accordance with the principles of Act and that the non-compliance did not affect substantially the result of the election”.

In other words, a petitioner after establishing the non-compliance complained of has the additional duty to satisfy the court that the election in question was not conducted in substantial compliance with the principle of the Electoral Act and that the non-compliance alleged did substantially affect the result of the election.

I should not be misunderstood as saying that the duty above stated is solely that of the petitioner after establishing the non-compliance complained of, as it equally applies to the respondent whose return is being challenged. He is to satisfy the court, after the petitioner has proved non-compliance, that the election in issue was conducted substantially in accordance with the principles of the Electoral Act and that the non-compliance complained of by the petitioner did not affect substantially the result of the election. In fact the duty under Section 139(1) of the Electoral Act, 2010, as amended is more of the respondents than the petitioner but as I had stated in an earlier judgment, it is more in the interest of the petitioner to meet the requirements of Section 139(1) of the Electoral Act, 2010, as amended, if he wants to succeed. It is a duty imposed by expediency and it is very strategic.

Turning now to the facts of the case and the decision on appeal can it be said that the non-compliance complained of is of the nature that makes the provisions of Section 139(1) inapplicable, as contended by the appellants? I do not think so.

The attention of this court has been drawn to my opinion expressed in the judgment in the case of *Ojukwu v. Yar'Adua* (2009) 12 NWLR (Pt. 1154) 50 in which I stated thus:-

“There are certain non-compliances that go the root of an election in that they are absolute in the sense that once established the purported election is invalid and as such there will be no result to be substantially affected by the non-compliance. For instance, where an election is conducted with an invalid voters register can there be a result of an election to be substantially affected by the non-compliance? Obviously none as the purported election is null and void ab initio”.

I must state that I still stand by that opinion, which was, in any event an obiter dictum, as there has been no reason for me to change my position. Secondly that view is completely in accord with my dissenting judgment in the *Buhari v. Yar'Adua*’s case dealing with the consequences of a presidential election conducted with non-serialized ‘ballot papers’, which election I held to be void ab initio for non-compliance with the provisions of the Electoral Act, as the said non-compliance is very substantial as to affects adversely, the result of the election.

The question has, however been asked as to whether the present non-compliance is one that does not call for the operation of Section 139(1) of the Electoral Act, 2010, as amended which I answered in the negative. The reasons include the fact that there is the need for the tribunal or court to determine the effect of the Injected names in the voters register on the result of the election which can only be done if there is evidence of participation of those people who were illegally included in the register in the voting exercise in the election in question; if they participated whether a deduction of their number from the total votes of the winner will tilt the scale in favour of the petitioner etc, etc.

In the instant case, even the register in question is not in evidence before the court!

It is for the above reasons that I hold the view that to accept the contention of appellants that the fact of non-compliance simpliciter is sufficient to nullify the election in the circumstance of this case would cause injustice to a respondent who was declared the winner of the election by majority of lawful votes. The issue is therefore resolved against appellants. It is for the above reasons and the more detailed reasons contained in the lead judgment of my learned brother that I too find no merit in the appeal and cross appeals and conse-

quently dismiss same.

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

B

MUHAMMAD JSC

I had a preview of the judgment just delivered by my learned brother, Odili, JSC. I am in agreement with him that all the objections raised are unmeritorious. They are accordingly dismissed.

C

Both the main appeal and the cross-appeals have been adequately covered by my learned brother who found them to be unmeritorious and dismissed same. I too, came to same conclusion and I dismiss same as having no merit at all. Parties in both the main and the cross-appeals should bear their own costs.

D

CHUKWUMA-ENEH JSC

This appeal is against the judgment of the Court of Appeal that has affirmed the decision of the Tribunal dismissing the petitioners/
E appellants' petition in this matter.

The facts and statement of the cases of the parties to this appeal have been ably set out in all their respective detail in the lead judgment of my Noble Lord Peter-Odili JSC that I see no need to repeat them here save to say that I stand them as having been adopted
F as mine for this short contribution.

I must also state that this appeal has arisen from the said Tribunal's consolidated decision with appeal No. SC. 352/2013.

The appellants in their joint brief of argument have raised two
G issues to wit:-

(1) Whether the lower court was not in grave error which occasioned a miscarriage of justice when it held that the entry of additional names into the Register of voters and the non-display or publication of same as required by the Electoral Act was not a non-compliance that substantially affected the outcome of the election
H (Grounds 2,3, and 6).

(2) Whether the lower court's failure to consider Appellants complaints against specific adverse findings that PW45's evidence is hearsay and that majority, if not all the infractions against the Elec-

toral Act enumerated by the Appellants are criminal in nature were not erroneous thereby occasioning a miscarriage of justice against the Appellants.

The respondents' issues for determination in this appeal have been predicated on the foregoing appellants' issues for determination excepting that they are differently worded; again, I see no need setting them out here, after all, it is the appellants' issues for determination as raised in the court below that have been the grounds relied upon by that court in determining this matter before it. In this regard, I must also add that the central complaint arising from issue one for determination is that the instant register of voters have been complied in breach of the mandatory provisions of the Electoral Act 2010 (as amended) and that the use of the same in the conduct of the instant election by the 3rd respondent in spite of the nullifying effect of the enumerated infractions of non-compliance is therefore illegal, thus by extension, the said election has also been rendered a nullity. And that against this natural consequence on the said election that as a matter of requirement of the law that the burden of proof has fallen on the respondents to show that the instant election can stand in spite of the alleged non-compliance in this appeal. These issues are coterminous with the issues raised and decided by this court and as per my contribution in the Appeal No. SC 352/2013 already delivered. I adopt my reasoning and findings in the said contribution thereto mutatis mutandis in deciding this appeal. However, the pronouncements of this court in construing of the instant provisions of Sections 138(1) (b), and 139(1) of the Electoral Act 2010 as amended or similar provisions in election matters have remained constant as stated in the case of Awolowo v. Shagari NSCC (Vol. 12) 87 at 123 - wherefore this court in the respectful opinion of Obaseki JSC on the position of the law in England as per Morgan v. Simpson (1975) QB. 157 and Woodward v. Sarsons 10 CP. 733 as referred to in Sorunke v. Odebunmi (1960) 5 FSC. 175 at 177 -178 has approved and followed the decision in the latter cited case of Woodward v. Sarsons precisely on the question of non-compliance in circumstances as here and has culled from the said cited case as follows:

"If this proposition is closely examined it will be found to be equivalent to this that the non-observation of these rules or forms which is to render the election invalid must be so great as to amount

to a concluding of the election in a manner contrary to the principle of an election by ballot and must be so great as to satisfy the tribunal that it did affect or might have affected the majority of the votes, in other words the result of the election”.

This court in deciding Awolowo’s case has followed with approval the foregoing principle as per the above abstract as propounded in Woodward v. Sarsons (supra), again, precisely, If I may respectfully repeat, on what constitutes substantial non-compliance capable of nullifying an election construing a similar provision as here. As I have said in Appeal No.352/2013 this court has rightly approved and followed the views so expressed in Woodward’s case as expounded in Awolowo v. Shagari (supra). And I see no reason to disagree.

It is noteworthy that this court has followed the said principle in a number of cases decided by this court including Buhari v. Obasanjo (2005) 13 NWLR (Pt. 1) 191, Abubakar v. Yar’adua (2008) 19 NWLR (Pt. 1120) 1 and as lately as in the case of CPC v. INEC (2011) 18 NWLR (Pt. 1279) 493 at 546 to 547. And so, the construction of non-compliance in the context of Sections 138(1)(b) and 139(1) of the Electoral Act 2010 as amended cannot now bean easy pushover as the appellants have appeared to suggest in their submissions on this issue thus without advertng to the binding effect of these cited cases in this appeal. This court on the basis of the doctrine of stare decisis is bound by the above cited cases which have earlier on construed the provisions of these sections.

I therefore have to rely on these cited cases, even then on their backdrop in construing the provisions of Section 139(1) accordingly and in holding that the two limbs of the said provisions of the Section 139(1) read with other provisions of the said Electoral Act 2010 as amended dealing with the same subject matter do not admit of being read disjunctively as submitted by the appellants to the effect as per the first limb of the said provisions of Section 139(1) (supra) that an election may be automatically nullified without more where the conduct of the election is not in accordance with “substantial compliance” with the instant Electoral Act or as per the second limb of the said provisions that the non-compliance substantially has affected the outcome of the election. To hold to this view i.e. of construing the provisions of Section 139(1) (supra) disjunctively clearly runs counter to this court’s position in the above cited cases and will tantamount to

a gross misconception of the import and purport of the provisions of Section 139(1) (supra). Furthermore this view of the said provisions cannot be a true intention of the lawmaker as gathered from construing them on the backdrop of the Act as whole as that will produce incongruous results.

In sum, what I am saying here is that the two limbs of the said section have to be read conjunctively and must be satisfied by a petitioner alleging non-compliance as the appellants in the instant appeal in order to nullify an election (as the instant election). The two limbs of the said section, again I must emphasise on the authorities cannot be construed disjunctively.

Flowing from the foregoing it is clear that the said provisions have placed the onus of proving the acts of non-compliance as alleged in an election petition squarely on the party who is so asserting them as that party stands to fail where no evidence is called in proof of the same as the appellants in this matter. See Sections 135(1) and 137 of the Evidence Act (on the onus of proof). The appellants therefore have apparently misconceived the standard of proof duly placed on them by virtue of Section 137 of the Evidence Act i.e. to prove their case of non-compliance before the Tribunal.

Finally, there is a concurrent finding of facts and law by the two lower courts in this matter which the appellants have grossly failed to disprove. In that event, there is no miscarriage of justice to dislodge their decisions in this matter.

For the above reasons and more solid reasons contained in the lead judgment of my Noble Lord Peter-Odili, JSC, I have no hesitation in holding the appellants' appeal in this matter as lacking in merit and should be dismissed. I too dismiss the same and abide by orders contained therein.

Appeal and cross Appeals dismissed.

FABIYI JSC

I have had a preview of the judgment just delivered by my learned brother Peter-Odili, JSC. I completely agree with, and adopt the reasons therein advanced to arrive at the conclusions that the main appeal and the cross-appeals should be dismissed. I order accordingly.

NGWUTA JSC

I read in advance the lead judgment delivered by my learned brother, M. U. Peter-Odili, JSC. I have considered the exhaustive reason advanced in respect of the preliminary objection, the main appeal and the cross-appeal and I entirely agree with same and the conclusions reached.

I desire to add only a few brief observations on the two issues addressed in the main appeal.

The two issues are issues of fact upon each of which the trial Tribunal made a definite pronouncement which product was endorsed by the Court below. In an appeal against a finding of fact by a trial Court or Tribunal, the appellant must show that the Court made improper use of the opportunity it had of seeing and hearing the witnesses, or did not appraise the evidence and ascribe probative value to it or has drawn conclusions from proved or accepted facts leading to a miscarriage of justice. See *Abba v. Ogodo* (1984) 1 SCNLR 372; *Lawan Alli v. Alesinloye & Ors* (2000) 4 SCNJ 264.

The appellant failed to discharge the burden he assumed by asking an appellate Court to disturb a finding of fact made by the trial Tribunal, The Court of Appeal rightly decline to disturb the findings of the trial Tribunal.

Before us is a concurrent finding of facts made by the two Courts below. This Court does not make a practice of interfering with such findings just for the asking. The Court will not interfere in absence of a demonstration that the findings are perverse. See *Ibodo v. Enarofia* (1980) 5 - 7 SC 42; *Chikwendu v. Mbamali* (1980) 3-4 SC 31; *Kponuglo v. Kodadja* (1933) 2 WACA 24.

Not having shown perversity in the concurrent findings of fact of the two Courts below, the appellants have failed in their bid to have the said findings disturbed by this Court.

For the above and the fuller reasons in the lead judgment, I also dismiss the appeal and order that parties bear their respective costs.

ALAGOA JSC

This is an appeal against the judgment of the Court of Appeal

Akure Division (hereinafter simply referred to as the lower court or the Court below) which affirmed the judgment of the Governorship Election Tribunal sitting in Akure dismissing the petition filed, by the Petitioners Chief Alex Olusola Oke and the Peoples Democratic Party (PDP) which party sponsored him to run as its candidate at the said election. In contention at the said election which was conducted by the 3rd Respondent the Independent National Electoral Commission (INEC) on the 20th October, 2012 in Ondo State was the Governorship seat for Ondo State which was keenly contested not only by the present parties to this appeal but also by other candidates sponsored by their various political parties. The 1st Respondent Dr. Rahaman Olusegun Mimiko who was sponsored by the 2nd Respondent, the Labour Party was declared duly elected having been adjudged by the 3rd Respondent (INEC) as having scored a majority of lawful votes cast at the said election. Aggrieved at having failed to overturn the result of the election to his favour at the Governorship Election Tribunal, the Appellants appealed to the Court below which dismissed their appeal and upheld the decision of the Tribunal. Further aggrieved, they as appellants, appealed to the Supreme Court on a number of grounds out of which the following issues were distilled by the Appellants in their Brief of Argument filed on the 31st July, 2013 by Senior Counsel Lateef O. Fagbemi, for determination by this court.

“1. Whether the lower court was not in grave error which occasioned a miscarriage of justice when it held that the entry of additional names into the register of votes and the non display or publication of same as required by the Election Act was not a non compliance that substantially affected the outcome of the election?” Distilled from Grounds 2, 3 and 6.

2. Whether the lower court’s failure to consider Appellants’ complaints against specific adverse findings of the Tribunal and its findings that PW45’s evidence is hearsay and that majority if not all the infractions against the Electoral Act enumerated by the Appellants are criminal in nature were not erroneous thereby occasioning a miscarriage of justice against the Appellants.”

Issues have been formulated by the Respondents. However, I am of the firm view that the above distilled issues by the Appellants are appropriate enough to adequately dispose of this appeal and I intend to adopt them.

On issue 1, heavy weather has been made by the Appellants of the lower court's holding that additional names had been injected into the register of voters and the non display and publication of the said register of voters as required by the Electoral Act as amended. This, the Appellants reasoned should have had the effect of vitiating the election. The lower court's position was that while these lapses may have amounted to non-compliance substantial non-compliance had not been established by evidence by the Appellants. A clearer picture emerges when one considers side by side the provisions of Sections 138(1) and 139(1) of the Electoral Act 2010 as amended. They are reproduced hereunder as follows:

138(1) An election may be questioned on any of the following grounds, that is to say

(b) that the election was invalidated by reason of corrupt practices or non-compliance with the provisions of the Act 5 139(1) An election shall not be liable to be invalidated by reason of non compliance with the provisions of this Act if it appears to the Election Tribunal or Court that the election was conducted substantially in accordance with the principles of this Act and that the non compliance did not affect substantially the result of the election. - See Yusuf v. Obasanjo (2005) 18 NWLR (Pt 956) 96; Ojukwu v. Yar'Adua (2009) 12 NWLR (Pt. 1154) 50 at page 140; Buhari v. Obasanjo (2005) 13 NWLR (Pt. 941) 1 at 80; Buhari v. INEC (2008) 19 NWLR (Pt. 1120) 246 at 435.

Section 138(1)(b) dovetails into Section 139(1) of the Act and what emerges is the following breakdown:

i. Proof of non-compliance with the provisions of the Electoral Act 2010 as amended. The non compliance must be substantial.
iii. The substantial non compliance must affect the result of the election.

With respect to this, what for example is the effect of the injected names in the voters register on the result of the election? Here there is need for evidence which was not forthcoming.

With respect to issue 2, the evidence of PW45 comes into sharp focus. Of the evidence of this witness (PW45) the trial tribunal had held as follows-

"PW45 cannot give evidence of events that took place in all the other polling units in the State. PW45 said he was going to rely

on the report of experts but he did not call any expert and answered that he himself is not an expert. We therefore agree with the submission of learned Senior Counsel for the 1st Respondent at paragraphs 4.72 at P. 30 of his final address and indeed of all the other Respondents that the statement on oath by PW45 is a bundle of primary and secondary hearsay.” B

The learned Justices of the Court below could not agree more. It is apposite to reproduce what they held in the lead judgment signed by all five of them. It is as follows-

“From the submission in the Appellants’ Brief of Argument at page 8 thereof, PW45 has to be more than a superman. C

According to the submission, the “comprehension” evidence of PW45 covered 372 polling units across 10 local governments. It covered 659 polling units across 7 Local Government Areas and also covered 591 polling units across the state. It is only an omni-present being that can give first hand evidence of all that transpired in the hundreds of polling units. Mere mortals can only give second hand evidence about what happened in distant place. The evidence given by PW45 can only be hearsay. The tribunal was right to have so held”. (See page 3508 of the Records). D E

I cannot agree more with the findings of the court below. PW45 could not possibly have visited all the polling units spread throughout the state and his evidence of what transpired in each and every one of them could not have been first hand but hearsay. F

The attitude of the Supreme Court to concurrent findings of fact by two lower courts is not to interfere with such findings except there is established miscarriage of justice or some violation of some principles of law or procedure or the findings are perverse.

The authorities on this important legal principle are legion. See G however the following:- Abiodun Famuroti v. Madam S. Agbeke (1991) 5 NWLR (Pt. 189) 1; Nigerian Bottling Co. Ltd v. Constance Neonadi (1985) 1 NWLR (Pt. 4) 737; Ogbechie v. Onochie (1988) 1 NWLR (Pt. 20) 370/390 Oyibo Iri & Ors v. Eseroraye Erhurhobara & Anor. (1991) 2 NWLR (Pt. 173) 252; Woluchem v. Gudi (1981) H 5 SC 291.

The findings of fact by the trial tribunal and the court below are not bedeviled by any of these lapse or shortcomings and I see no need to interfere with the said findings.

It is for these reasons and the fuller reasons contained in the incisive and comprehensive lead judgment of my learned brother, Mary Ukaego Peter-Odili, JSC, which I had the privilege to read in draft before now and with which I entirely agree, that I too find no merit in this appeal.

B I also dismiss same while abiding by all order/s in the said lead judgment including the order on costs.

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