

SUPREME COURT OF NIGERIA
FRIDAY 22ND SEPTEMBER, 2014. SC. 480/2014
**CORAM:- M. MOHAMMED, M. S. MUNTAKA-
COOMASSIE, B. RHODES-VIVOUR, N. S. NGWUTA,
O. ARIWOOLA, K. B. AKA'AH, J. I. OKORO, JJSC**

PEOPLES DEMOCRATIC PARTY (PDP) APPELLANT
AND

1. INDEPENDENT NATIONAL
ELECTORAL COMMISSION (INEC)

2. RESIDENT ELECTORAL
COMMISSIONER (ANAMBRA STATE)

3. THE RETURNING OFFICER (ANAMBRA
STATE GOVERNORSHIP ELECTION)

- PROF. PASTOR C.E. ONUKOGU RESPONDENTS

4. THE ELECTORAL OFFICER
(Aguata L.G.A.) & 20 ORS

25. CHIEF WILLY MADUABUCHI OBIANO

26. ALL PROGRESSIVE GRAND ALLIANCE

ELECTION PETITIONS - Appeals - Hearing - 1999 Constitution s.
285(7) - Being of sui generic nature - Election matters must be by
the rules - As any act done outside prescribed period - Is a nullity
(H1)

ELECTION PETITIONS - Appeals - Brief - Failure to file within time
- The brief having been filed in violation to para. 6 of Practice Direc-
tions - Is incompetent and is struck out (H2)

APPEALS - Grounds - Competence of - As time is of essence - Any
ground found to be incompetent - Shall be struck out along with
issue distilled from it - Without the need for motion on notice (H3)

STATUTES - Interpretation - Principle - Literal rule of interpretation
is preferable - Unless it would lead to absurdity and inconsistency -
With provisions of the statute as a whole (H4)

ELECTIONS - Pre election matters - Jurisdiction - By Electoral Act s.

3476 PDP v. INEC (2014) 9-11 KLR (pt. 353) 3475: (2014) 6

31(5)(6) - A person intending to challenge information given by candidate in election - May file suit at FHC or HC of State/FCT (H5)

ELECTIONS - Pre election matters - Filing time - Such suit must be filed before election - Since it is only then can court issue an order - Disqualifying candidate from election (H6)

ELECTIONS - Qualification - Challenge - Where a person who ought not to have contested election was allowed to do so - Remedy available to challenge him at election tribunal lies in Electoral Act s. 138(1)(a) (H7)

STATUTES - Interpretation - Expressio unis est exclusio alterius - Express mention of something is to the exclusion of all others - Which otherwise would have applied by implication (H8)

ELECTIONS - Gubernatorial - Qualification - 1999 Constitution s. 177 - A person is qualified for the election if inter alia - He is a citizen of Nigeria by birth - And has attained the age of 35 years (H9)

ELECTIONS - Multiple registrations - Appeals - Concurrent findings - Findings having been made on the issue by lower courts - SC cannot interfere save where the findings are perverse (H10)

ELECTIONS - Registration - Validity - Exhibit WO2 from INEC is to the effect that only one voter's card was issued to 25th respondent - Hence the matter should be laid to rest on that statement (H11)

ELECTIONS - Crime - Allegation of - Proof - By Evidence Act s. 135(1) - Allegation of false statement on INEC form - Must be proved beyond reasonable doubt (H12)

DOCUMENTS - Public document - Types - Evidence Act s. 102 - They are documents forming official acts - And public records kept in Nigeria of private documents (H13)

DOCUMENTS - Admissibility - Copy of the letter issued to 25th respondent was properly tendered - As there was no need for certifica-

tion - The same not being a public document (H14)

ELECTIONS - Validity of - By Electoral Act s. 139(1) - Election shall not be invalidated by non compliance - If court is of opinion that it was conducted substantially in accordance with the Act - And that non compliance did not affect substantially the result (H15)

ELECTIONS - Non compliance - Proof - Onus of - Petitioner must give evidence to the effect - That the election was not conducted substantially in accordance with the principles of the Act (H16)

ELECTIONS - Results - Regularity of - Where an election has been held - And the result declared by the election body - That result is prima facie correct (H17)

PLEADINGS - Binding nature - Parties are bound by their pleadings - And a party will not be allowed to set up new case on appeal - Other than that which was ventilated at the trial court (H18)

FACTS

Before the Anambra State Governorship Election Petition Tribunal sitting at Awka, petitioner/appellant filed this action contesting the declaration by defendant/1st respondent that 25th respondent was the duly elected governor of the State following the conduct of the gubernatorial election in the State on 16th November 2013. Among appellant's grounds for challenging the election are that 25th respondent was not qualified for the election by virtue of his multiple registration contrary to section 31(5)(6) of the Electoral Act 2010 (as amended) and that election was not conducted in line with the provisions of the Electoral Act.

Appellant had sponsored one Mr. Tony Nwoye to contest the election under its umbrella, while 25th respondent was sponsored by the All Progressive Grand Alliance. Twenty one other political parties participated in the election. At the end of the exercise and following a supplementary election, 25th respondent was duly declared as the winner. Upon the receipt of appellant's petition before the Tribunal, respondents filed their various replies. Hearing commenced in the matter and at the end of which the petition was dismissed and 25th

respondent confirmed as the winner in the election. Dissatisfied, appellant appealed to the Court of Appeal Enugu. The court upheld the decision of the Tribunal that the election was held in substantial compliance with the provisions of the Electoral Act and affirmed that 25th respondent was the winner of the election. Aggrieved further, appellant lodged appeal in Supreme Court.

ISSUES FOR DETERMINATION

1. Whether the appellant did not prove its allegation that the 25th respondent in violation of Section 31(5) and (6) of the Electoral Act 2010 (as amended) gave false information regarding his possession of multiple voter's cards and whether such allegation is a criminal allegation requiring proof beyond reasonable doubt.

2. Whether the INEC letter to the 25th respondent, Exhibit WO5, is a private document.

3. Whether the appellant proved that the acts of non-compliance with the provisions of the Electoral act substantially affected the outcome of the election.

HELD (Unanimously dismissing the appeal per **OKORO JSC**)

Appeals - Hearing

1. It has been stated in quite a number of decisions in this court that election matters are sui generis and as such must be conducted strictly in compliance with the rules guiding them. Thus by Section 285(7) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) this Court shall hear appeals from the Court of Appeal arising from election matters within sixty (60) days from the date of the delivery of the judgment appealed against. In order to regulate and manage the 60 days allotted by the constitution, the Practice Directions has prescribed time within which each party is to comply with the processes leading to the hearing of the appeal. It is thus my view that in the circumstance such as this, no party is allowed to default and then turn around to plead the Interpretation Act. The combined effect of section 285(7) of the 1999 Constitution (as amended) and paragraph 6 of the Prac-

Practice Directions is that they limit the doing of any act to the period prescribed therein. Any action done outside the period prescribed is, to say the least, a nullity. (p. 3491 A)

Appeals - Brief - Failure to file within time

2. The use of the word “shall” in paragraph 6 of the Practice Directions, makes it mandatory. No party or this Court has any discretion in the matter. The 26th respondent was served on 22nd August, 2014. Its time started to run from that same date irrespective of the fact that it was served at 4.00 pm or thereabout. Accordingly it’s time for filing its brief expired on 26th August, 2014. The subsequent filing of the brief on 27th August, 2014 was done outside the time allowed by the Practice Directions.

On the whole, I hold that the brief of the 26th respondent filed on 27th August, 2014, having been filed in flagrant disobedience to paragraph 6 of the Practice Directions is incompetent and is hereby struck out. The preliminary objection is thus upheld. (p. 3491 E)

APPEALS - Grounds - Competence of

3. I intend to address the issues raised in the two motions along with the issues submitted for the determination of this appeal. Where any ground of appeal is found to be incompetent, it shall be struck out along with the issue distilled from it without necessarily writing a separate ruling on it. This is so because time is of essence in this appeal, the preparation of the processes having almost eaten up the 60 days allowed by the constitution for the hearing and determination of this appeal. Also, any paragraph of the 1st - 24th respondents’ brief of argument thereof which does not support the issue for determination, shall be discountenanced with or without any specific mention of same. I think it is the practice of this court to do so and does not really need a motion on notice to address it. (p. 3492 C)

STATUTES - Interpretation - Principle

4. The above provision is very clear and unambiguous. The

cardinal principle in the interpretation of statutes is that the meaning of a statute or legislation must be derived from the plain and unambiguous expressions or words used therein rather than from any notion that may be entertained as to what is just and expedient. The literal rule of interpretation is always preferable unless it would lead to absurdity and inconsistency with the provisions of the statute as a whole.
(p. 3495 F)

ELECTIONS - Pre election matters - Jurisdiction

5. Thus section 31(5) and (6) of the Electoral Act (supra) states clearly that whoever intends to challenge the information given by a candidate in an election, may file a suit at the Federal High Court, High Court of a State or of the Federal Capital Territory. It did not say that such a person should approach an Election petition Tribunal.

For me, I think Section 31(5) and (6) cannot be ventilated at an election Tribunal. The first reason is that the language of the sections and the relief to be granted points irresistibly to a pre-election action. Secondly, an Election Petition Tribunal is not mentioned in Section 31(5) of the Electoral Act 2010 (as amended) as one of the courts which such a complaint can be made. The law makers specifically mentioned the Federal High Court, the State High Court and the Federal Capital Territory High Court as the venues to ventilate such a complaint. (pp. 3496 A/3496 F)

ELECTIONS - Pre election matters - Filing time

6. My understanding of this section is that such a suit must be filed before the election. It is only then can the court issue an order disqualifying the candidate from the election. This makes sense because after the election, the court cannot issue an order disqualifying the candidate from contesting an election which he had already contested. (p. 3496 C)

ELECTIONS - Qualification - Challenge

7. It appears to me that where a person who ought not to have contested the election, was allowed to do so, the rem-

edy available to a person seeking to challenge him at the Election Tribunal lies in Section 138 (1) (a) of the Electoral Act 2010 (as amended). (p. 3496 D)

STATUTES - Interpretation

8. It is our law and practice that the express mention of something is to the exclusion of all others. The principle derives its life from the Latin maxim *expressio unis est exclusio alterius*, meaning, the express mention of one excludes any other which otherwise would have applied by implication with regards to the same issue. (p. 3496 H) B
C

ELECTIONS - Gubernatorial - Qualification

9. Section 177 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) sets out conditions a person must meet to be qualified to be governor of a state. It states: D

“177. A person shall be qualified for election to the office of Governor of a state if:

(a) He is a citizen of Nigeria by birth.

(b) He has attained the age of thirty-five years. E

(c) He is a member of a political party and is sponsored by that political party; and

(d) He has been educated up to at least school certificate level or its equivalent.”

Again, Section 182 of the said constitution provides for disqualification of candidates seeking the office of Governor. It is my view that where it is alleged that a person is or was not qualified to contest election to the office of Governor as envisaged by Section 138 (a) (i) of the Electoral Act, it is Sections 177 and 182 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) that are being contemplated. F
G
(p. 3497 E)

ELECTIONS - Multiple registrations

10. The issue of declaration of false information by the 25th respondent to Independent National Electoral Commission and possession of three voters' cards are issues of fact upon which the trial Tribunal made a definite pronouncement. It held that H

when the 25th respondent stated in the Independent National Electoral Commission form that he was not previously registered, he was referring to being previously registered in Anambra State and not Lagos State. That pronouncement was endorsed by the Court of Appeal. In this case, the appellant
B **has challenged the concurrent findings of facts made by the two courts below. It is trite that the Supreme Court does not make a practice of interfering with such findings just like that. The court can only interfere where it is shown or demonstrated**
C **that the findings were perverse. Not having shown perversity in the concurrent findings of the two courts below, the appellant has failed in its bid to have the said findings disturbed.**
(p. 3498 A)

D *ELECTIONS - Registration - Validity*

11. I agree with the submissions of the learned Senior Counsel for both the 1st - 24th respondents and the 25th that the holdings of the two lower courts on the issues find fortification in the letter from the Independent National Electoral Commission (Exhibit WO2) which was admitted in evidence, that the Commission issued only one voter card to the 25th respondent in which he stated that he never went to Otuocha to register outside the application for transfer of his earlier registration from Lagos to Anambra State. Independent National
E **Electoral Commission is the only body statutorily empowered to issue voter's cards. The same body has stated emphatically that it issued only one voter's card to the 25th respondent. The emphatic statement of Independent National Electoral**
F **Commission on the matter should lay it to rest.** (p. 3498 E)
G

ELECTIONS - Crime - Allegation of - Proof

12. By Section 24 (1) of the Electoral Act, 2010 (as amended)
"Any person who -
H **(a) Makes a false statement in any application for registration as a voter, knowing it to be false, commits an offence and is liable on conviction to a fine not exceeding N100,000.00 or imprisonment not exceeding one year or both."**
In this case, the appellant herein made allegation

against the 25th respondent that he made false statement on Independent National Electoral Commission form to the effect that he did not previously register as a voter, according to him, in Lagos State though we have held that it referred to Anambra State. This allegation, by the provision of Section 24(1) of the Electoral Act attracts imprisonment not exceeding one year or N100,000.00 fine or both. As was held by two courts below, this is an allegation of commission of crime for which by Section 135 (1) of the Evidence Act, 2011, must be proved beyond reasonable doubt. The section states that if the commission of a crime by a party to a proceeding is directly in issue in any proceedings, civil or criminal, it must be proved beyond reasonable doubt.

The argument of the learned Counsel for the appellant that because the allegation is made in a civil matter, it should not be proved beyond reasonable doubt is clearly defeated by the provision of Section 135 (1) of the Evidence Act 2011. I agree with the two courts below that this allegation by the appellant was in the realm of commission of a crime and ought to have been proved beyond reasonable doubt. This, the appellant failed to do and it remains unsubstantiated. (p. 3498 H)

DOCUMENTS - Public document - Types

13. There is no doubt that Exhibit W05 was written by Independent National Electoral Commission Commissioner and addressed to the 25th respondent who had custody of it up to the point of tendering same. Was this document of a character that ought to have been certified before tendering? Section 102 of the Evidence Act 2011 makes the following documents public documents. It says:

“The following are public documents:

(a) documents forming the official acts or records of the official acts,

(i) of the sovereign authority,

(ii) of official bodies and tribunals,

(iii) of public officers, legislative, judicial and executive, whether of Nigeria or elsewhere.

(b) Public records kept in Nigeria of private docu-

ments.”

By Section 103 of the Act, all documents other than public documents are classified as private documents.
(p. 3500 C)

B *DOCUMENTS - Admissibility*

14. Exhibit W05, the subject of this issue was the original correspondence between the 25th respondent and Independent National Electoral Commission. The said letter was in the custody of the 25th respondent and remained so up to the point it was tendered. It is my view that there was no need to certify the original copy of the letter even though it was issued to him by a public officer. It is the public officer who keeps the original of a public document who certifies a copy of it which can be tendered where the original cannot be tendered. Put differently, the only categories of public documents that are admissible are either the original document itself or, in the absence of such original, certified copies and no other.

E Exhibit W05, as I said earlier was the original correspondence addressed to the 25th respondent by Independent National Electoral Commission. I do not see how that copy with the 25th respondent which he tendered was a public document. Rather, it is the copy with Independent National Electoral Commission which is a public document. In that case, the original can be tendered through the officer who made it or a certified copy of a secondary copy can also be tendered. The copy with the 25th respondent, to my mind, was properly tendered. I also resolve this issue against the appellant. (p. 3500 G)

G *ELECTIONS - Validity of*

15. By Section 138 (1)(b) of the Electoral Act, 2010 (as amended), an election may be questioned on the ground that the election was invalid by reason of corrupt practices or non-compliance with the provisions of the Act. However, by Section 139(1) of the same Act an election shall not be liable to be invalidated by reason of non compliance with the provisions of the Act if it appears to the Election Tribunal or Court that the election was conducted substantially in accordance

with the principles of the Act and that the non compliance did not affect substantially the result of the election. By Section 139(1) of the Electoral Act, 2010 (as amended), the Tribunal or Court shall not invalidate that result if it appears to it that the election was conducted substantially in accordance with the principles of the Act and that the non compliance did not affect the result of the election. It is clear that a petitioner seeking to challenge the outcome of an election on this ground has an uphill task. (pp. 3505 E/3506 C)

ELECTIONS - Non compliance - Proof - Onus of

16. The two provisions i.e. Sections 138 (1) (b) and 139 (1) of the Electoral Act, from the way they are couched, have placed a heavy burden of proof on any petitioner seeking to challenge the result of an election on the ground that the election did not comply with the provisions or principles of the Electoral Act. This is so because, apart from showing or proving that it did not comply with the provisions of the Act, such a petitioner must prove to the Tribunal or Court that the election was not conducted substantially in accordance with the principles of the Act and that the non compliance substantially affected the result of the election.

The question is, how will the tribunal or court determine whether the election was not conducted in compliance with the provisions of the Act and that it was not substantially in compliance with the principles of the Act? The answer is that one of the parties must give evidence to that effect. That party, I must say, is the petitioner since he is the party alleging that the election was not conducted substantially in accordance with the principles of the Act.

In all, I must say that the appellant has not shown that the election was not conducted substantially in accordance with the principles of the Electoral Act 2010 (as amended).

I agree with the lower court that the tribunal was right to hold that the alleged non-compliance, if any, did not affect the result of the election. Accordingly, this issue does not avail the appellant.

On the whole, having resolved the three issues against

the appellant, it only remains to be stated that this appeal is devoid of merit and is hereby dismissed. I affirm the decision of the Court of Appeal which upheld the judgment of the trial Tribunal upholding the election and return of the 25th respondent (Chief Willy Maduabuchi Obiano) as the duly elected Governor of Anambra State. (pp. 3505 H/3506 E/3507 H)

ELECTIONS - Results - Regularity of

17. Let me further state the matter as I understand the sections. Where an election has been held and the result declared by the Election body, in this case, the Independent National Electoral Commission, that result, is, prima facie correct. See Section 168 (1) of the Evidence Act, 2011 on the presumption of regularity. (p. 3506 B)

PLEADINGS - Binding nature

18. In the instant case, it appears to me that the appellant underestimated the evidential burden placed on it by the Electoral Act. For instance, the appellant pleaded that the 1st respondent did not display the “authentic” voters register. That was his case. However, at the hearing, evidence tended to show that no register was displayed at all. As was quite efficiently argued by the learned senior counsel for the 25th respondent, the case of the appellant was taken to the realm of the validity or authenticity of the Register of voters that was displayed and not the issue of whether the register was at all displayed. That is why he pleaded that the “authentic” register was not displayed.

It is trite law that at all times, parties are bound by their pleadings. A party will not be allowed to set up a new case on appeal other than that which was ventilated at the trial court. (p. 3506 G)

REPRESENTATION

Chief A. O. Ajana, Esq., with Chief Clement Ezika, Esq., Ernest Nwoye, Esq., O. K. Akuyibo, Esq., Ikoro Emenike, Esq., S. K. Ikuesan, Esq., and Glory Ossai, (Miss), for the Appellant
Wikox Abereton, Esq., for the 1st - 24th Respondents

Dr. Onyechi Ikpeazu, OON, SAN, K.E. Mozia, SAN, A.C. Anaenugwu, SAN, with Frank Ekwunife Esq., Chudi Obieze Esq., Ben Osaka, Esq., Emeka Etiaba Esq., Emeka Okpoko, Esq., Uju Ikeazor (Mrs.), T. U. Oguji, Esq., E.N. Enemuoh (Mrs.), Vera Okonkwo (Mrs.), Ike Ogbogu Esq., F.I. Aniwkwu, Esq., Sylvester Odili Esq., M.O. Mozia (Mrs.), Onome Okorodudu Esq., C.S. Nnamani Esq., D.N. Otor Esq., Prisca B Ozoilesike (Miss), Lynda Chuba Ikpeazu (Miss), C.B. Anyigbo Esq., Tobechukwu Nweke Esq., Mavis Ekwechi (Miss), Obinna Onya Esq., Chuka Ikpeazu Esq., Obiora Aduba Esq., Julius Mba Esq. and V.I.P. Ozumba Esq., for 25th Respondent C
 P.I.N. Ikwueto, SAN; O. J. Nnadi, SAN, with Chief Ikenna Egbuna; Alex Ejezieme, Esq., C.I. Mbaeri, Esq., G.I. Ogugua, Esq., P.O. Nwankwo, Esq. C.D. Ezeh, Esq., Miss Ndiogulu and Miss A.A. Olanipekun, for the 26th Respondent

CASES REFERRED TO

Nwankwo v. Yar'adua (2010) 12 NWLR (pt. 1209) 518
 Akpan v. Bob (2010) 17 NWLR (pt. 1223) 421
 Amaechi v. INEC (2008) 5 NWLR (pt. 1080) 227
 Ekpenotu v. Ofegobi (2012) 15 NWLR (pt. 1323) 276 E
 CPC v. INEC (2011) 18 NWLR (pt. 1279) 493
 Igbeke v. Emordi (2010) 11 NWLR (pt. 1204) 1
 Allied Bank Nig. Ltd v. Akabueze (1997) 6 NWLR (pt. 509) 374
 Okoya v. Santili (1994) 4 NWLR (pt. 338) 256
 Okewu v. FRN (2005) All FWLR (pt. 254) 858 F
 A.G. Abia State v. A.G. Federation (2005) All FWLR (pt. 275) 414
 A-G Ondo State v. A-G Ekiti State (2001) FWLR (pt. 79) 1431
 Ogboru v. Ibori (2005) 13 NWLR (pt. 942) 819
 ANPP v. Usman (1990) All FWLR (pt. 463) 1292 G
 Ugwu v. Ararume (2007) 12 NWLR (pt. 1048) 367
 Onashile v. Idowu (1961) 2 SCNLR 53

STATUTES REFERRED TO

Electoral Act 2010, ss. 24(1), 31(5)(6), 138(1), 139, 149 H
 Constitution of the Federal Republic of Nigeria 1999, ss. 177, 182, 285(7)
 Evidence Act, 2011, ss. 102, 103, 128, 168(1)

LEAD JUDGMENT BY OKORO JSC

This is an appeal against the judgment of the Court of Appeal, sitting at Enugu delivered on the 26th day of July, 2014 wherein the court dismissed the appeal of the appellant. The Court of Appeal upheld the decision of the Election Tribunal that the gubernatorial
B election in Anambra State on the 16th, 17th and 30th November, 2013 was held in substantial compliance with the provisions of the Electoral Act, 2010 (as amended) and affirmed that the 25th Respondent was the winner of the election. Let me briefly state the facts
C leading to this appeal.

The 1st respondent herein, the Independent National Electoral Commission (INEC) gave notice of election for the office of the Governor of Anambra State scheduled to take place on 16th November, 2013. The election was duly conducted as scheduled, save
D in Obosi Ward in Idemili North Local Government Area where the election was conducted on 17th November, 2013. Also, in 216 out of the 4,608 polling units in Anambra State, the election was postponed and was successfully concluded as supplementary election on 30th November, 2013 when the final result was declared.

The Appellant sponsored one Mr. Tony Nwoye to contest the election under its umbrella while the 25th respondent contested the said election on the platform of the All Progressive Grand Alliance while twenty one (21) other political parties fielded candidates in the said election. At the end of the election, the 25th respondent was
F declared duly elected and was returned by the 1st respondent.

Dissatisfied with the outcome, the appellant initiated an election petition at the Governorship Election Petition Tribunal sitting at Awka by a petition dated 18th December, 2013 and filed on 20th
G December, 2013. Upon receipt of the petition, the respondents filed their respective replies. At the end of hostilities, the Tribunal dismissed the appellant's case and confirmed the declaration made by the 1st respondent. On an appeal to the Court of Appeal, the lower court affirmed the decision of the Tribunal. The appellant has further
H appealed to this court. Notice of appeal was filed on the 8th of August, 2014 which contains seven (7) grounds of appeal.

From the seven grounds of appeal, the appellant has formulated three issues for the determination of this appeal. The issues are as follows:-

1. Whether the appellant did not prove its allegation that the 25th respondent in violation of Section 31(5) and (6) of the Electoral Act 2010 (as amended) gave false information regarding his possession of multiple voter's cards and whether such allegation is a criminal allegation requiring proof beyond reasonable doubt. (Encompassing Grounds 2, 3, and 5 of the grounds of appeal) B

2. Whether the INEC letter to the 25th respondent, Exhibit WO5, is a private document. (Ground 4)

3. Whether the appellant proved that the acts of non-compliance with the provisions of the Electoral act substantially affected the outcome of the election. (Based on ground 6 of the grounds of appeal) C

On page 4, paragraph 3:2 of the appellant's brief, the learned Counsel for the appellant Chief A. O. Ajana states that the appellant abandoned grounds 1 and 7 of the grounds of appeal. It is trite that where no issue is distilled from any ground of appeal, such a ground is deemed abandoned and liable to be struck out. Accordingly grounds 1 and 7 of the grounds of appeal, having been abandoned, are hereby struck out. D

In the brief of the 1st to 24th respondents, settled by Chief Adegboyega Awomolo, SAN, leading other counsel, three similar issues are distilled but couched slightly differently. E

They are:

1. Whether the Court of Appeal was right in holding that the appellant failed to prove its allegation of declaration of false information against the 25th respondent which is contrary to Section 31(5) and (6) of the Electoral Act 2010 (as amended). F

2. Whether the 1st respondent's letter to the 25th respondent, exhibit WO5, is a private document. G

3. Whether the Court of Appeal was right in holding that the appellant had not proved the allegation of substantial non-compliance alleged and pleaded in its petition which would have affected the outcome of the election?

The learned Senior Counsel for the 25th respondent, Dr. H Onyechi Ikpeazu, SAN, leading other counsel, had decoded two issues only, which are as hereunder reproduced.

1. Whether the Court of Appeal was correct in holding that the Appellant failed to establish by the requisite standard of proof

that the 25th respondent was not qualified to contest the Anambra State Governorship election.

2. Whether the Court of Appeal was correct in holding that the appellant failed to establish the effect of non-compliance on the result of the election.

B The 26th respondent filed its brief of argument through its learned Senior Counsel P.I.N. Ikwueto, SAN leading others, but that brief has been challenged by way of a preliminary objection filed on 3rd September, 2014 by the learned counsel for the appellant. In the main, the objection is to the effect that the 26th respondent's C brief of argument is incompetent and ought to be struck out having been filed out of time.

It is the contention of the learned Counsel for the appellant that appellant's brief having been filed on the 22nd August, 2014 D and served on the 26th respondent on the same date, the 26th respondent's brief filed on 27th of August, 2014 was out of time. This, according to him, is in view of the provision in paragraph 6 of the Practice Directions on election appeals to the Supreme Court which stipulates that the respondent shall file in the court, his own E brief of argument within 5 days of the service of the appellant's brief. Learned Counsel submitted that the 5th day expired on 26th August, 2014. He urged this court to strike out the brief of the 26th respondent, relying on the cases of Action Congress of Nigeria (ACN) V. Rear Admiral Murtala Nyako & Ors SC/409/2012 and Nwankwo F V Yar'adua (2010) 12 NWLR (Pt.1209) 518 at 588 paras E-G.

In response, learned Senior Counsel for the 26th respondent, submitted that the day of occurrence of an event should not be reckoned with in computing time as statutorily provided by S.15(2)(a) G of the Interpretation Act. He cited the cases of Abubakar V Yar'adua (2008) 4 NWLR (Pt.1078) 465 at 511 - 515, Akpan V Bob (2010) 17 NWLR (Pt. 1223) 421, Amaechi V INEC (2008) 5 NWLR (Pt.1080) 227 and Ekpenotu V Ofegobi (2012) 15 NWLR (Pt. 1323) 276 in support.

H There is no doubt that the appellant's brief was served on the 26th respondent on the 22nd August 2014 and that it did not file her brief until 27th August, 2014. Paragraph 6 of the Practice Directions (Election Appeals to the Supreme Court) No. 33 of 2011 stipulates that:-

“The Respondent shall file in the court his own brief of argument within 5 days of the service of the Appellant’s brief.”

It has been stated in quite a number of decisions in this court that election matters are sui generis and as such must be conducted strictly in compliance with the rules guiding them. Thus by Section 285(7) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) this Court shall hear appeals from the Court of Appeal arising from election matters within sixty (60) days from the date of the delivery of the judgment appealed against. In order to regulate and manage the 60 days allotted by the constitution, the Practice Directions has prescribed time within which each party is to comply with the processes leading to the hearing of the appeal. It is thus my view that in the circumstance such as this, no party is allowed to default and then turn around to plead the Interpretation Act. The combined effect of section 285(7) of the 1999 Constitution (as amended) and paragraph 6 of the Practice Directions is that they limit the doing of any act to the period prescribed therein. Any action done outside the period prescribed is, to say the least, a nullity.

The use of the word “shall” in paragraph 6 of the Practice Directions, makes it mandatory. No party or this Court has any discretion in the matter. The 26th respondent was served on 22nd August, 2014. Its time started to run from that same date irrespective of the fact that it was served at 4.00 pm or thereabout. Accordingly it’s time for filing its brief expired on 26th August, 2014. The subsequent filing of the brief on 27th August, 2014 was done outside the time allowed by the Practice Directions. See CPC V INEC (2011) 18 NWLR (Pt. 1279) 493; ACN V. Nyako (supra).

On the whole, I hold that the brief of the 26th respondent filed on 27th August, 2014, having been filed in flagrant disobedience to paragraph 6 of the Practice Directions is incompetent and is hereby struck out. The preliminary objection is thus upheld.

Apart from the preliminary objection which I have just concluded, there are two other motions which ought to be sorted out before resolving the issues in this appeal. The first was filed by the

25th respondent on 25th August, 2014 seeking an order striking out particulars 1, 2, 3, 4, 5 and 6 of Ground 6 of the grounds of appeal for, according to the learned senior counsel, not being related to the complaint in the grounds of appeal.

The second motion was filed on 29th August, 2014 by the appellant praying the court to strike out certain paragraphs of the 1st - 24th respondent's brief of argument for being incompetent. The paragraphs are 4.01, 4.02, 4.03, 4.04, 4.05, 4.06, 4.07, 4.08, 4.13, 4.14, 4.15 and 4.16, 6.13, 6.14, 6.15, 6.16, 6.17, 6.18, 6.19, 6.20, 6.21, 6.22 and 6.23.

I intend to address the issues raised in the two motions along with the issues submitted for the determination of this appeal. Where any ground of appeal is found to be incompetent, it shall be struck out along with the issue distilled from it without necessarily writing a separate ruling on it. This is so because time is of essence in this appeal, the preparation of the processes having almost eaten up the 60 days allowed by the constitution for the hearing and determination of this appeal. Also, any paragraph of the 1st - 24th respondents' brief of argument thereof which does not support the issue for determination, shall be discountenanced with or without any specific mention of same. I think it is the practice of this court to do so and does not really need a motion on notice to address it. I shall now proceed to determine this appeal based on the three issues submitted by the appellant.

The first issue is whether the appellant did not prove its allegation that the 25th respondent in violation of section 31(5) and (6) of the Electoral Act, 2010 (as amended) gave false information regarding his possession of multiple voters card and whether such allegation is a criminal allegation requiring proof beyond reasonable doubt.

Arguing this issue, the learned Counsel for the appellant submitted that its case that the 25th respondent was not qualified to contest the election is founded on Section 31(5) and (6) of the Electoral Act, 2010 (as amended). That it stems from the fact that the 25th respondent supplied false information to the first respondent in his nomination documents - Exhibits PP016 and the INEC CVR form - Exhibit PP015. He contended that the 25th respondent did more

than two voters registration and obtained three voter's cards without disclosing same. He opined that the 25th respondent signed exhibit PP015 (CVR form) claiming that he had not been registered previously, whereas when he was filing that form he had registered in Lagos and had the Lagos voter's card. The appellant, according to counsel, had relied on exhibits PP015, PP016, PP017, PP018, PP020, B RRA 024 and RRA 025.

On the defence of the 25th respondent that when he claimed in exhibit PP015 (CVR Form) that he had "not been registered as a voter before", he was referring to the fact that he had not been registered in Anambra State, learned counsel submitted that by Section 128 of the Evidence Act, 2011, the 25th respondent cannot, by oral evidence, amend or add to the content of the CVR form. He cited the cases of *Igbeke V Emordi* (2010) 11 NWLR (Pt.1204) 1 at 35, *Allied Bank Nig. Ltd V Akabueze* (1997) 6 NWLR (Pt. 509) 374 and *Okoya V Santili* {1994} 4 NWLR (Pt.338) 256. C D

On the holding of the court below that allegation of giving false information to Independent National Electoral Commission is not civil but criminal in nature by virtue of Section 24(1) of the Electoral Act, 2010 (as amended). Learned counsel submitted that giving false information to Independent National Electoral Commission may occasion civil and criminal consequences. That where a wrong gives rise to both civil and criminal liabilities, a litigant can pursue the civil right of action, particularly where he is not responsible for criminal prosecution. That by coming under Section 31(5) and (6) of the Electoral Act, the appellant is not alleging the 25th respondent of any crime. E F

To further buttress his argument, learned Counsel for the appellant submitted that Section 149 of the Electoral Act which empowers an Election Tribunal to make a recommendation for the prosecution of an offence disclosed during the trial of an election petition buttresses their argument that Section 31(5) and (6) of the Electoral Act makes provision for only civil liability. He then urged this court to resolve this issue in favour of the appellant. G H

In response, the learned Senior Counsel for the 1st - 24th respondents submitted that there is nowhere in Section 31(5) and (6) of the Electoral Act, 2010 (as amended) where it is contemplated that the issue of either lying on oath or providing false information, at

the pre-election stage, will be an issue for determination before the Election Tribunal.

Learned Senior Counsel argued that the section is meant to be within the function of the State High Court, Federal High Court or the High Court of the Federal Capital Territory. That the Election
B Petition Tribunal, not being mentioned there, is excluded, relying on the cases of *Elijah Ameh Okewu V FRN* (2005) ALL FWLR (Pt. 254) 858 at 872, *A.G. Abia State V A.G. Federation* (2005) ALL FWLR (Pt. 275) 414 at 452, *A.G. Ondo State V. A.G. Ekiti State* (2001)
C FWLR (Pt.79) 1431, *Ogboru V Ibori* (2005) 13 NWLR (Pt.942) 819.

Referring to Section 13(1), (2) and (3) of the Electoral Act the learned Senior Counsel submitted that the 25th respondent properly applied for and transferred his registration from Lagos to Anambra.

D As regards qualification and disqualification of the 25th respondent, he submitted that there is nothing in Sections 177 and 182 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) that speaks about lying or presenting false information. He cited the case of *ANPP V. Usman* (1990) ALL FWLR (Pt. 463)
E 1292, *Ugwu V. Ararume* (2007) 12 NWLR (Pt.1048) 367 at 478.

As regards issue of allegation of declaration of false information, he submitted that the 25th respondent's statement that he was never previously registered would not likely to be referring to his
F registration at Lagos where he formerly applied to transfer his voters card to Anambra. He concluded that he never registered more than once as a voter for the purpose of the Anambra Governorship election. He urged this court to hold that the appellant failed to prove multiple registrations.

G He further submitted that any allegation of double or multiple registrations is criminal in nature punishable with fine or imprisonment or both. He submitted that it must be proved beyond reasonable doubt which the appellant failed to do. He urged this court to resolve this issue against the appellant.

H The learned senior counsel for the 25th respondent also made submissions in opposition to this issue which are akin to those made by learned Counsel for the 1st - 24th respondents. I do not intend to summarize it here except as may be referred to in the course of resolving this issue.

The appellant filed a reply brief to the 1st - 24th respondents' brief of argument. In it, learned Counsel for the appellant submitted that having not appealed against the finding by the Court of Appeal, the 1st - 24th respondents cannot raise the matters canvassed at pages 5 - 8 paragraphs 4.01 - 4.08 and pages 11 - 12 paragraphs 4.13 - 4.16. He then urged this court to strike out those paragraphs. B

From the language and manner issue No. 1 is couched, graven of it is that the 25th respondent violated Section 31(5) and (6) of the Electoral Act 2010 (as amended). In fact, in paragraph 4.4 of the appellant's brief, it is succinctly stated as follows:

"Appellants' case that the 25th Respondent was not qualified to contest the election is founded on section 31(5) and (6) of the Electoral Act 2010 (as amended)." C

Since Section 31(5) and (6) of the Electoral Act 2010 (as amended) is the engine of this issue, I shall reproduce it here for ease of reference. It states:

"31(5) - Any person who has reasonable grounds to believe that any information given by a candidate in the affidavit or any document submitted by that candidate is false may file a suit at the Federal High Court, High Court of a State or Federal Capital Territory against such person seeking a declaration that the information contained in the affidavit is false." E

6. If the court determines that any of the information contained in the affidavit or any document submitted by that candidate is false, the court shall issue an order disqualifying the candidate from contesting the election." F

The above provision is very clear and unambiguous. The cardinal principle in the interpretation of statutes is that the meaning of a statute or legislation must be derived from the plain and unambiguous expressions or words used therein rather than from any notion that may be entertained as to what is just and expedient. The literal rule of interpretation is always preferable unless it would lead to absurdity and inconsistency with the provisions of the statute as a whole. See G
Onashile V Idowu (1961) 2 SCNLR 53, Ugwu V Ararume (2007) 12 NWLR (Pt.1048) 367. Adejumo V Military Governor of Lagos State (1972) 3 SC 45; Ojokilobo V Alamu (1967) 3 NWLR (Pt.61) 377. H

Thus section 31(5) and (6) of the Electoral Act (supra)

states clearly that whoever intends to challenge the information given by a candidate in an election, may file a suit at the Federal High Court, High Court of a State or of the Federal Capital Territory. It did not say that such a person should approach an Election petition Tribunal.

B In fact sub-section 6 is couched in pre-election flavor when it says:

“6. If the court determines that any of the information contained in the affidavit or any document submitted by that candidate is false, the court shall issue an order disqualifying the candidate from contesting the election.”

C **My understanding of this section is that such a suit must be filed before the election. It is only then can the court issue an order disqualifying the candidate from the election. This makes sense because after the election, the court cannot issue an order disqualifying the candidate from contesting an election which he had already contested.**

E **It appears to me that where a person who ought not to have contested the election, was allowed to do so, the remedy available to a person seeking to challenge him at the Election Tribunal lies in Section 138 (1) (a) of the Electoral Act 2010 (as amended)], which states that:**

F *“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.”

G **For me, I think Section 31(5) and (6) cannot be ventilated at an election Tribunal. The first reason is that the language of the sections and the relief to be granted points irresistibly to a pre-election action. Secondly, an Election Petition Tribunal is not mentioned in Section 31(5) of the Electoral Act 2010 (as amended) as one of the courts which such a complaint can be made. The law makers specifically mentioned the Federal High Court, the State High Court and the Federal Capital Territory High Court as the venues to ventilate such a complaint. It is our law and practice that the express mention of something is to the exclusion of all others. The principle derives its life from the Latin maxim *expressio***

unis est exclusio alterius, meaning, the express mention of one excludes any other which otherwise would have applied by implication with regards to the same issue. See Attorney-General of Abia State v. Attorney-General of the Federation (2005) ALL FWLR (Pt.275) 414, Attorney General of Ondo State v. Attorney General of Ekiti State (2001) ALL FWLR (Pt.79) 1431. B

Apart from that, it is common knowledge that Election Tribunals are set up after the elections. So there was no tribunal which Section 31(5) and (6) of the Electoral Act could have applied before the holding of the election.

The question may be asked, could the Election Tribunal which the appellant approached under Section 31(5) and (6) of the Electoral Act, have issued an order disqualifying the 25th respondent from contesting the election which had already been concluded? This is common sense that it is not possible. C

As I mentioned earlier, a person who wishes to challenge the election on the basis that the winner was not qualified to contest the election has umbrage in Section 138(1) (a) of the Electoral Act. That is to say, where a person failed to take advantage of Section 31 (5) and (6) (supra) in the High Court, he can still approach the Election Tribunal under Section 138 (1) (a) thereof. D

Section 177 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) sets out conditions a person must meet to be qualified to be governor of a state. It states: E

“177. A person shall be qualified for election to the office of Governor of a state if: F

(a) He is a citizen of Nigeria by birth.

(b) He has attained the age of thirty-five years.

(c) He is a member of a political party and is sponsored by that political party; and G

(d) He has been educated up to at least school certificate level or its equivalent.”

Again, Section 182 of the said constitution provides for disqualification of candidates seeking the office of Governor. It is my view that where it is alleged that a person is or was not qualified to contest election to the office of Governor as envisaged by Section 138 (a) (i) of the Electoral Act, it is Sections 177 and 182 of the Constitution of the Federal Re- H

public of Nigeria 1999 (as amended) that are being contemplated.

The issue of declaration of false information by the 25th respondent to Independent National Electoral Commission and possession of three voters' cards are issues of fact upon which the trial Tribunal made a definite pronouncement. It held that when the 25th respondent stated in the Independent National Electoral Commission form that he was not previously registered, he was referring to being previously registered in Anambra State and not Lagos State. That pronouncement was endorsed by the Court of Appeal. In this case, the appellant has challenged the concurrent findings of facts made by the two courts below. It is trite that the Supreme Court does not make a practice of interfering with such findings just like that. The court can only interfere where it is shown or demonstrated that the findings were perverse. Not having shown perversity in the concurrent findings of the two courts below, the appellant has failed in its bid to have the said findings disturbed. See Igwego V Ezeugo (1992) 7 SCNJ 284, Amadi V Nwosu (1992) 6 SCNJ 59, Odojin V Ayoola (1984) 11 SC 72, Ogundipe V Awe (1988) 1 NWLR (Pt.88) 188, Oke V. Mimiko (No.2) (2014) 1 NWLR (Pt.1388) 332.

I agree with the submissions of the learned Senior Counsel for both the 1st - 24th respondents and the 25th that the holdings of the two lower courts on the issues find fortification in the letter from the Independent National Electoral Commission (Exhibit WO2) which was admitted in evidence, that the Commission issued only one voter card to the 25th respondent in which he stated that he never went to Otuocha to register outside the application for transfer of his earlier registration from Lagos to Anambra State. Independent National Electoral Commission is the only body statutorily empowered to issue voter's cards. The same body has stated emphatically that it issued only one voter's card to the 25th respondent. The emphatic statement of Independent National Electoral Commission on the matter should lay it to rest.

By Section 24 (1) of the Electoral Act, 2010 (as amended)

“Any person who -

(a) Makes a false statement in any application for registration as a voter, knowing it to be false, commits an offence and is liable on conviction to a fine not exceeding N100,000.00 or imprisonment not exceeding one year or both.”

In this case, the appellant herein made allegation against the 25th respondent that he made false statement on Independent National Electoral Commission form to the effect that he did not previously register as a voter, according to him, in Lagos State though we have held that it referred to Anambra State. This allegation, by the provision of Section 24(1) of the Electoral Act attracts imprisonment not exceeding one year or N100,000.00 fine or both. As was held by two courts below, this is an allegation of commission of crime for which by Section 135 (1) of the Evidence Act, 2011, must be proved beyond reasonable doubt. The section states that if the commission of a crime by a party to a proceeding is directly in issue in any proceedings, civil or criminal, it must be proved beyond reasonable doubt. Since the decision of this court in *Nwobodo V. Onoh* (1983) LPELR 804, *Omoboriowo V. Ajasin* (1984) LPELR 264 and *Abubakar V. Yar’adua* (2009) ALL FWLR (Pt.457) 1, the position has not changed. See also *Folami V. Cole* (1990) 2 NWLR (Pt.133) 445, *Koiki v Magnusson* (1999) 8 NWLR (Pt.615) 492.

The argument of the learned Counsel for the appellant that because the allegation is made in a civil matter, it should not be proved beyond reasonable doubt is clearly defeated by the provision of Section 135 (1) of the Evidence Act 2011. I agree with the two courts below that this allegation by the appellant was in the realm of commission of a crime and ought to have been proved beyond reasonable doubt. This, the appellant failed to do and it remains unsubstantiated.

Based on the way and manner issue 1 is couched by the appellant, I believe I have answered all the pertinent questions and issues raised therein. All that is left to be said is that this issue does not avail the appellant at all. It is accordingly resolved against it.

On the second issue which is whether the Independent National Electoral Commission letter to the 25th respondent, Exhibit

WO5, is a private document, learned Counsel for the appellant submitted that it is a public document which ought to have been certified before its admission. Having not been certified, he urged that it be expunged from the record, relying on the case of Aminu V. Hassan (2014) 5 NWLR (Pt.1400) 287 at 324 paragraphs F - G.

B The learned Senior Counsel for the 1st - 24th respondents however submitted that the letter written by Independent National Electoral Commission to the 25th respondent was properly tendered by him without the necessity of subjecting it to certification since it was in his custody. He cited and relied on the case of Ifeogu V. LPDC C (2009) 17 NWLR (pt.1171) at 684 paragraphs G - H.

There is no doubt that Exhibit W05 was written by Independent National Electoral Commission Commissioner and addressed to the 25th respondent who had custody of it up to the point of tendering same. Was this document of a character that ought to have been certified before tendering? Section 102 of the Evidence Act 2011 makes the following documents public documents. It says:

“The following are public documents:

E ***(a) documents forming the official acts or records of the official acts,***

(i) of the sovereign authority,

(ii) of official bodies and tribunals,

F ***(iii) of public officers, legislative, judicial and executive, whether of Nigeria or elsewhere.***

(b) Public records kept in Nigeria of private documents.”

G ***By Section 103 of the Act, all documents other than public documents are classified as private documents.***

H ***Exhibit WO5, the subject of this issue was the original correspondence between the 25th respondent and Independent National Electoral Commission. The said letter was in the custody of the 25th respondent and remained so up to the point it was tendered. It is my view that there was no need to certify the original copy of the letter even though it was issued to him by a public officer. It is the public officer who keeps the original of a public document who certifies a copy of it which can be tendered where the original cannot be tendered. Put***

differently, the only categories of public documents that are admissible are either the original document itself or, in the absence of such original, certified copies and no other. See Minister of Lands Western Nigeria V. Azikiwe (1969) 1 ALL NLR 49, Nzekwu V Nzekwu (1989) 2 NWLR (Pt.104) 373, Iteogu v. LPDC (2009) 17 NWLR (Pt.1171) 614 at 631 paragraphs G - H, this court per Onnoghen, JSC, held as follows:

“While it is correct to say that the only secondary evidence of a public document admissible in evidence is a certified true copy; the document in question were duly certified while those not so certified were original correspondences addressed from the Ministries of Defence and Works to the petitioner in person and were tendered by the petitioner.”

Exhibit W05, as I said earlier was the original correspondence addressed to the 25th respondent by Independent National Electoral Commission. I do not see how that copy with the 25th respondent which he tendered was a public document. Rather, it is the copy with Independent National Electoral Commission which is a public document. In that case, the original can be tendered through the officer who made it or a certified copy of a secondary copy can also be tendered. The copy with the 25th respondent, to my, mind, was properly tendered. I also resolve this issue against the appellant.

The last issue is whether the appellant proved that the acts of non-compliance with the provisions of the Electoral Act substantially affected the outcome of the election. In the main, the appellant submitted that the 1st respondent contrary to the Electoral Act, issued a corrected register of voters on 14/11/13 which was only two days to the election and that although Independent National Electoral Commission pleaded some facts by way of defence, they however, failed to lead evidence in support of their pleading to rebut appellant's claim. He urged this court to accept the appellant's case, relying on the cases of Chanic V UBA Plc (2010) 6 NWLR (Pt.1191) 474 at 496, Igbeke V Emordi (2010) 11 NWLR (Pt.1204) 1 at 49.

It is his contention that Independent National Electoral Commission, having failed to display the register, there cannot be any presumption of regularity at all. Also, that since they pleaded that the register was displayed, it was their responsibility to lead evidence to

prove same, relying on the case of *Agagu V Mimiko* (2009) 7 NWLR (Pt.1140) 342 at 431.

Learned Counsel argued that two days to the election i.e. 14/11/13, the 1st Respondent (Independent National Electoral Commission) wrote exhibit P01 inviting the appellant amongst other political parties to collect corrected version of the register of voters. The letter, according to him, is a clear breach of Section 9(5) of the Electoral Act which requires registration of voters, updating and revision of the register of voters to stop not less than 60 days to the election as well as Section 19 which provides for display of the register for at least five (5) days but not more than 14 days. Referring to Section 138(1)(b) of the Electoral Act 2010 (as amended), he submitted that an election can be invalidated by reason of non-compliance, relying on the case of *Buhari V Obasanjo* (2005) 2 NWLR (pt. 910) 241 at 391.

According to learned Counsel, the Independent National Electoral Commission had no discretion on the issue of display of register as the section is couched in mandatoriness, the word “shall” having been used. He refers to the cases of *Nwankwo V. Yar’adua* (2010) 12 NWLR (Pt.1209) 518 at 589, *Bamaiyi V. Attorney General of the Federation* (2001) 12 NWLR (Pt. 722) 468, *Inakoju V. Adeleke* (2007) 4 NWLR (Pt.1025) 423 at 478.

The learned Counsel contended that in determining whether the non-compliance complained about has substantially affected the result of the election, it must be determined whether the statute enabling the election itself has been complied with, referring to the case of *Buhari V INEC* (2008) 19 NWLR (Pt.1120) 246. According to him, the effect of failure to display the voters’ register permeates and invalidates the entire votes cast at the election.

It was further submitted by learned Counsel that evidence was led on the creation of 1,900 polling units (for which the 1st–24th respondents called polling points) and that notice to it was given just before the election and this did not give room for the appellant to appoint agents for those polling points. This, according to him, substantially affected the conduct and outcome of the election. He urged this court to resolve this issue in favour of the appellant.

In response, the learned Senior Counsel for the 1st - 24th respondents submitted that the burden of proof in an election peti-

tion never shifts until credible, lawful and reliable evidence are established before the tribunal, referring to *Obun V. Ebu* (2006) ALL FWLR (Pt.237) 419 at 450. That the appellant in his pleadings unreservedly alleged weighty evidence of several irregularities ranging from multiple registration of voters, omission of names of voters who have registered from the voters register used for the conduct of the election, voting by persons who were allegedly dead before the conduct of the election, non display of voters registers and that many voters were deliberately disenfranchised by the 1st respondent and its agents. It is his view that the burden to prove those allegations rested on the appellant. B
C

He further submitted that where the party that alleges has not led credible evidence to prove his allegation, the law will not expect that the facts in pleadings have been proved, thus demanding denial, contradiction or confrontation by the opposing party, placing reliance on the case of *CPC V INEC* (2011) 18 NWLR (Pt.1279) 493 at 567. D

He argued also that mere tendering of documents without more, does not satisfy the requirement of proof at the trial. That the law requires that oral evidence must be led to show and demonstrate the relevant places where there were over-voting. He opined that although this petition was consolidated with two other petitions, they are not one and the same; citing the cases of *Kalu V. Chima* (supra), *Orji V. Ugochukwu* (2009) 14 NWLR (pt. 1161) 201 at 303 - 304. E
F

Learned Senior Counsel submitted that in the process, the appellant dumped the exhibits to wit: forms EC8A, EC8B, ECBC, voters register used at the election and all other documents adopted by them from the consolidated petition No. EPT/AN/GOV/02 /2013 on the trial tribunal and by extension now on this court. He submitted that the duty of the court is to evaluate documents and not to investigate them, citing the cases of *W.A.B. Ltd V. Savannah Ventures* (2002) 10 NWLR (pt. 775) 401 at 426; *Alhaji Abba Gana Terab V Ma'aji Lawan* (1992) 3 NWLR (pt. 231) 569, *Oyegun V. Igbiniedion* (1992) 2 NWLR (pt. 226) 747 at 761. G
H

On non display of voters' register, he submitted that the appellant did not bring people to give evidence of not finding their names from at least all the local government areas to prove that INEC did not publish the voters register. Learned Senior Counsel submit-

ted that the evidence of four witnesses who testified cannot cover the entire state, citing and relying on the case of *Oke V. Mimiko* No. 2 (2014) 1 NWLR (pt. 1388) 332. He stated that the averment by the 1st - 24th respondents that the register was displayed was never further denied which was a subtle way of accepting that the appellant was wrong.

On the submission concerning non display of authentic register and an e-copy given to the appellant, he submitted that the fact that there was a corrected copy simply pre-supposes that there was an original which after display was corrected by patriotic citizens who noted their observations during the display.

On the creation of 1,900 polling points, the learned Senior Counsel submitted that the appellant by this allegation, owes a duty and carries the burden of proving that the polling points are indeed polling units and that results emanating from the polling points affected the result of the election.

As regards the submission that Independent National Electoral Commission abandoned its case by not calling witnesses, learned Senior Counsel submitted that there is a world of difference between not calling evidence and not calling witnesses. By tendering documents and cross examining witnesses, he opined, independent National Electoral Commission did not abandon its case. He referred to the case of *Orji V. Ugochukwu* (2009) 14 NWLR (pt. 1161) 207 at 508. He then urged this court to resolve this issue against the appellant.

On his part, the learned Senior Counsel for the 25th respondent, who made this issue his second, started by asking three questions as follows:

1. Whether the Court of Appeal was correct in its determination that appellant showed only 7,000 as votes affected by the alleged non-compliance.

2. Whether there was proof that the register of voters was not displayed and if so will it prima facie vitiate the result of the election.

3. Whether there was proof that 1,900 polling points were created out of 4,608 polling units and if so, was the effect proved?

On the first question, the learned Senior Counsel submitted that the burden of proving the effect of the alleged 7,000 votes on

the result of the election rested on the appellant which he failed to do. He referred to the case of *Akeredolu V. Mimiko* (2014) 1 NWLR (pt. 1388) 402 where the issue also turned on the defect of the voters register and the position of the Supreme Court on it.

On the issue of non display of voters register, learned Senior Counsel submitted that the appellant's pleadings was to the effect that no "authentic register of voters" was displayed. That with emphasis on "authentic", the matter is taken to the realm of the validity or authenticity of the register of voters that was displayed and not on the issue as to whether the register was at all displayed.

Learned Senior Counsel also submitted on the alleged creation of voting points that what the appellant seeks to achieve is to attempt to take advantage of its own error or mis-description of the term "voting point" which was variously described as "polling point" and "Polling Units". According to learned senior counsel, the appellant failed to lead evidence to prove the creation of any additional polling units in Anambra State. That the appellant did not tender any result sheet from any of the "new" polling units. He urged this court to uphold the findings of the two lower courts that the appellant failed to prove any of the new units allegedly created. He urged this court to resolve this issue against the appellant.

Let me start it this way. ***By Section 138 (1)(b) of the Electoral Act, 2010 (as amended), an election may be questioned on the ground that the election was invalid by reason of corrupt practices or non-compliance with the provisions of the Act. However, by Section 139(1) of the same Act an election shall not be liable to be invalidated by reason of non compliance with the provisions of the Act if it appears to the Election Tribunal or Court that the election was conducted substantially in accordance with the principles of the Act and that the non compliance did not affect substantially the result of the election.***

The two provisions i.e. Sections 138 (1) (b) and 139 (1) of the Electoral Act, from the way they are couched, have placed a heavy burden of proof on any petitioner seeking to challenge the result of an election on the ground that the election did not comply with the provisions or principles of the Electoral Act. This is so because, apart from showing or prov-

ing that it did not comply with the provisions of the Act, such a petitioner must prove to the Tribunal or Court that the election was not conducted substantially in accordance with the principles of the Act and that the non compliance substantially affected the result of the election.

B *Let me further state the matter as I understand the sections. Where an election has been held and the result declared by the Election body, in this case, the Independent National Electoral Commission, that result, is, prima facie correct. See*
C *Section 168 (1) of the Evidence Act, 2011 on the presumption of regularity. By Section 139(1) of the Electoral Act, 2010 (as amended), the Tribunal or Court shall not invalidate that result if it appears to it that the election was conducted substantially in accordance with the principles of the Act and that*
D *the non compliance did not affect the result of the election. It is clear that a petitioner seeking to challenge the outcome of an election on this ground has an uphill task. See CPC V. INEC (2011) 18 NWLR (pt. 1279) 493, Abubakar V. Yar’adua (2008) 19 NWLR (pt. 1120) 1, Buhari V. Obasanjo (2005) 13 NWLR (pt. 941)*
E *1, Oke V Mimiko No. 2 (2014) 1 NWLR (pt. 1388) 332.*

The question is, how will the tribunal or court determine whether the election was not conducted in compliance with the provisions of the Act and that it was not substantially
F *in compliance with the principles of the Act? The answer is that one of the parties must give evidence to that effect. That party, I must say, is the petitioner since he is the party alleging that the election was not conducted substantially in accordance with the principles of the Act.*

G *In the instant case, it appears to me that the appellant underestimated the evidential burden placed on it by the Electoral Act. For instance, the appellant pleaded that the 1st respondent did not display the “authentic” voters register. That was his case. However, at the hearing, evidence tended to show*
H *that no register was displayed at all. As was quite efficiently argued by the learned senior counsel for the 25th respondent, the case of the appellant was taken to the realm of the validity or authenticity of the Register of voters that was displayed and not the issue of whether the register was at all displayed.*

That is why he pleaded that the “authentic” register was not displayed.

It is trite law that at all times, parties are bound by their pleadings. A party will not be allowed to set up a new case on appeal other than that which was ventilated at the trial court. See American Cynamid Company V. Vitality Pharmaceuticals Ltd (1991) 2 NWLR (pt. 171) 15, Osho V. Foreign Finance Corporation & Anor. (1991) 5 SC 59. B

Again, the appellant alleged that 1,900 polling units were created by INEC at the eve of the election. In this court, the appellant was talking about “polling points” as if polling units are the same as polling points. Be that as it may, there is no iota of evidence to support this allegation. The appellant on page 37 of Vol. I of the record of appeal stated the documents it will rely to prove this issue. These are (1) certified true copy analysis of voting points to be obtained from INEC on subpoena and (2) certified copy of all documents relating to the additional polling points. With due respect, none was produced. Thus, the appellant failed woefully to prove this issue. C

This court has held in Ucha V Elechi (2012) 3 SC (pt I) 26 at 59 that: D

“Were a petitioner complains of non-compliance with the provisions of the Electoral Act 2010 (as amended), he has a duty to prove it polling unit by polling unit, ward by ward. He must establish that the non-compliance was substantial, that it affected the result of the election. It is only then that the respondents are to lead evidence in rebuttal.” E

As it turned out in this case, the appellant failed woefully to bring its case within the parameters set by this court.

Since the appellant failed to prove its case, the 1st respondent, though had tendered some documents in proof of its case, had no business rebutting as nothing was there to rebut. See Chime V. Onyia (2009) 2 NWLR (pt. 1124) 1, Buhari V Obasanjo (2005) 13 NWLR (pt.941) 1. F

In all, I must say that the appellant has not shown that the election was not conducted substantially in accordance with the principles of the Electoral Act 2010 (as amended). G

I agree with the lower court that the tribunal was right to hold that the alleged non-compliance, if any, did not affect H

the result of the election. Accordingly, this issue does not avail the appellant.

On the whole, having resolved the three issues against the appellant, it only remains to be stated that this appeal is devoid of merit and is hereby dismissed. I affirm the decision of the Court of Appeal which upheld the judgment of the trial Tribunal upholding the election and return of the 25th respondent (Chief Willy Maduabuchi Obiano) as the duly elected Governor of Anambra State.

C Parties shall bear their respective costs.

MOHAMMED JSC

I have had the benefit before today of reading the judgment in this appeal which has just been delivered by my learned brother Okoro, JSC. I entirely agree with the reasoning and the conclusion there in that there is no merit at all in this appeal. The Preliminary Objection raised in the appeal and the issues for determination placed by the parties for resolution by this Court have all been effectively tackled and resolved in the lead judgment of my learned brother which I hereby adopt as mine as I have nothing useful to add. Consequently, I also dismiss the appeal and abide by all the orders made in the lead judgment, the order on costs inclusive.

F

MUNTAKA-COOMASSIE JSC

I must make it abundantly clear that I have had the privilege before now by reading in advance the lead judgment just delivered by my learned lord Okoro JSC. I agree with his conclusion that the appeal is devoid any demerit.

The preliminary objection, and all the issues raised by the parties were given adequate attention they deserved by my learned brother Okoro, JSC in his lead judgment.

H I therefore with tremendous respect adopt same as mine. I have no doubt in my mind that learned Justice Okoro, JSC has treated the three issues sent to us for our consideration and in my view he correctly and calmly arrived at a correct decision.

The problem of the Appellant, P.D.P. in this particular appeal is

failure to establish and prove its allegation before us. That being the case I have no slighted hesitation but to agree with his lordship and dismiss the appeal.

RHODES-VIVOUR JSC

I have had the privilege of reading in draft the judgment delivered by my learned brother, Okoro, JSC I am in full agreement with His Lordships reasoning and conclusions. I propose to add only a few observations.

By way of a preliminary objection, learned counsel for the appellant urged this court not to consider the 26th Respondents Brief, because according to him it was filed out of time.

The Practice Directions No. 33 of 2011 guides election Appeals from the Court of Appeal to the Supreme Court. That is to say the Supreme Court is bound by the Practice Directions.

Section 6 of the Practice Directions states that:

“6 The Respondent shall file in the court his own brief of argument within 5 days of the service of the Appellants Brief.”

The appellants brief was served on the 26th respondent on 22/8/14 and the 26th respondent filed his brief on 27/8/14.

The issue is:

Whether the 26th respondents brief was filed in accordance with Section 6 of the practice Directions.

Learned counsel for the 26th respondent Mr. Ikwueto, SAN, relied on *Unilag v. Aigoro* (1985) 1 NWLR (Pt. 1) p. 143; *Oni v. Fayemi* 2008 8 NWLR (Pt. 1089) P 400 to submit that time would start to run from the 23rd and not the 22nd of August 2014, the date of service. Consequently, the argued that filing of his brief on 27/8/2014 was within time.

The Practice Directions contains only mandatory provisions, and so this court must interpret the provisions therein without having recourse to any other document to aid interpretation e.g. Interpretation Act. The provisions in the Practice Directions must be interpreted free from any embellishments. The words used must be given their ordinary meaning.

“Within 5 days of service” - simply means once service is received time starts to run. The 26th respondent was served on 22/8/

14. Within 5 days ran out on 26/8/14. The 26th respondent's brief filed on 27/8/14 was filed out of time and this court has no jurisdiction to extend time. If we extend time we would defeat the mandatory provisions of the Practice Directions. Both cases relied on by learned counsel are not relevant when interpreting the practice Directions No. 33 of 2011. The Brief is hereby struck out for being filed out of time.

Finally, I must observe that the findings in this appeal and 435/14, 479/74 are concurrent findings of facts of the two courts below. The position of the law is that once findings of two lower courts are reasonably justified by evidence, and there is no error of law, or miscarriage of justice, or violation of some principle of law or procedure this court would not upset such findings, rather much weight would be given to the opinion of the two courts below. See *Uwah v. Akpabio* (2014) 17 W.R.N. p.61; *DONG v. A.G. Adamawa State* (2014) 14 W.R.N. P 46; *Doma v. INEC* (2014) 12 WRN P 47.

Both courts below were correct in coming to the conclusion that the appellant failed to prove its case. Appeal dismissed. Parties to bear their costs.

NGWUTA JSC

I have read in draft the lead judgment just delivered by my learned brother, Okoro, JSC, and I adopt His Lordship's reasoning and conclusion in dismissing the appeal. I also agree with my learned brother that the 26th Respondent who was served the Appellant's brief on 22/8/2014 but filed his Respondent's brief on 27/8/2014 filed it outside the 5 day period stipulated in paragraph 6 of the Practice Direction.

It makes no difference at what time he was served the brief on 22/8/2014. Time should start running upon service of the process within the 24 hours of 22/8/2014.

Appeal No. SC.479/2014 arose from a petition filed by Nwoye Tony Okechukwu. Appeal No. SC.480/2014 arose from a petition filed by Peoples Democratic Party.

The Appellant in SC.479/2014 was sponsored by the Appellant in SC.480/2014 in the same election. Pursuant to S.137(1) of the Electoral Act, 2011 (as amended) the appellants in the two ap-

peals are entitled to present election petitions. There is nothing in the Electoral Act, nor does it accord with common sense, for the candidate and the party that sponsored them in the election to file separate petitions to challenge the result of the same election.

In the circumstances, the candidate and the party that sponsored him at the election must stand or fall together in their challenge of the result of the election. Multiplicity of petitions does not in any way enhance the success of any or both of the party and its candidate.

Applicants in the two appeals may have unlimited resources but they have no right to tax unduly the restricted time and limited resources of the judicial arm of government.

In conclusion, I sustain the preliminary objection for what it is worth to the appellant and I dismiss the appeal.

ARIWOOLA JSC

I had the opportunity of reading in draft the leading judgment of my learned brother, Okoro, JSC, just delivered and I agree entirely that the appeal is unmeritorious and is liable to dismissal.

It is interesting to note, that the appellant herein was the political party which sponsored the appellant - Nwoye Tony Okechukwu as its candidate in the Governorship Election of Anambra State, in yet another separate appeal No. SC.479/2014. One then wonders at what stage the appellant herein seem to have parted ways with its own candidate in the same election. As much as the court would not gag any party from coming to court to ventilate grievance, this type of action, in particular, in election or election related matters leave much to be desired. Counsel should however, strive to guide properly their clients, in all matters particularly in litigation. A word, I believe is enough for the wise.

Having failed to show any perversity in the findings of facts by the two courts below by the appellant or any error in law which has led to miscarriage of justice, this court will not interfere with such findings of fact and therefore hold it to be correct. See *Mainagge v. Gwamna* (2004) 9-12 SCM (Pt. 1) 129, (2004) 14 NWLR (Pt. 893) 323 (2004) 19 NSCQR 204. The two courts were right to have held that the appellant failed woefully to prove that the 25th respondent

who was declared the winner of the election by the 1st respondent qualified to contest the said election. We have no reason to disturb the concurrent findings of the two courts below.

For the above reason and fuller reasoning in the leading judgment, I also hold that this appeal is lacking in merit and is liable to dismissal. Accordingly it is dismissed by me.

I abide by the consequential orders in the lead judgment and I make no order on cost.

C

AKA'AH'S JSC

I read in draft the lead judgment of my learned brother Okoro, J.S.C. with which I am in complete agreement. Notwithstanding the fact that the appellant was a petitioner in EPT/AN/GOV/03/2013 - PDP v. INEC & 25 ORS which was consolidated with two other petitions namely EPT/AN/GOV/02/2013 - SENATOR (DR.) CHRIS NWABUEZE NGIGE & 1 OR v. INEC & 3 ORS and EPT/AN/GOV/04/2013 - NWOYE TONY OKECHUKWU v. INEC & 25 ORS, a separate appeal by the appellant instead of joining its appeal with that of Nwoye Tony Okechukwu, the candidate it sponsored during the election, is not only time wasting but amounted to hair splitting. A party who fires an action in court should be prepared to prove its allegation which is completely lacking in this case. I therefore find that the court below was right to endorse the dismissal of the petition by the Tribunal.

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