

SUPREME COURT OF NIGERIA
FRIDAY 27TH MAY, 2015. SC. 204/2015
CORAM:- J. A. FABIYI, N. S. NGWUTA, O. ARIWOOLA,
M. D. MUHAMMAD, C. B. OGUNBIYI, J. I. OKORO,
C. C. NWEZE, JJSC

1. SENATOR IYIOLA OMISORE
 2. PEOPLES DEMOCRATIC PARTY APPELLANTS
AND
 1. OGBENI RAUF ADESOJI
AREGBESOLA
 2. ALL PROGRESSIVE CONGRESS RESPONDENTS
 3. INDEPENDENT NATIONAL
ELECTORAL COMMISSION
-

PARTIES - Description of - Mistake - Where description of party on a process is a mere misnomer - An amendment would suffice to put it right - Provided that the person misnamed is a juristic entity (H1)

APPEALS - Grounds - Particulars - Defect - Courts are encouraged to make the best they can out of a bad ground - Hence defects in particulars would not necessarily render the ground incompetent (H2)

APPEALS - Success of - Basis - Where appellant fails to satisfy appellate court - That lower court was wrong in its application of facts to applicable law - His appeal will fail (H3)

COURTS - Evidence - Evaluation - Ascription of credibility to evidence of witnesses is within power of trial court - Which appellate courts cannot interfere with (H4)

COURTS - Document - Evaluation - A Judge is not permitted to embark on inquisitorial examination of documents outside court room - Or to act on what he discovered in same - Without evidence in support (H5)

PLEADINGS - Averments - Not supported by evidence - Averments do not speak for the pleader without supporting evidence - Unless

1822 Omisore v. Aregbesola (2015) 5 KLR (pt. 365) 1821; (2015)
the adversary admits them (H6)

ELECTIONS - Non compliance - Allegation of - Must be established to have had substantial effect on election result - And must establish any infraction of the Act no matter how minuscule (H7)

CROSS EXAMINATION - Evidence - Admissibility - Evidence obtained in cross examination on matters that are pleaded - Is admissible (H8)

ELECTION PETITIONS - Filing - Time limit - Due to the peculiar nature of the matter - Any process filed out of time is incompetent - And is liable to be struck out (H9)

DOCUMENTS - Public document - Admissibility - Only duly certified copies of the documents are admissible - Where the parties do not intend to produce their originals (H10)

ELECTRONIC EVIDENCE - Computer document - Admissibility of - Exhibits 243 & 342 being computer generated documents - Could only have been admissible - Upon compliance with Evidence Act s. 84 (H11)

FACTS

Before the Osun State Governorship Election Petition Tribunal sitting in Osogbo, petitioners/appellants filed election petition challenging the return of defendant/respondent as the Governor of the State following the conduct of the gubernatorial election in the State on the 9th of August 2014. Appellants' claims are inter alia that 1st respondent was not duly elected by majority of lawful votes cast in the election and that it be declared that 1st appellant was duly elected and ought to have been returned as the elected Governor of the State. 1st appellant was the candidate sponsored by 2nd appellant (Peoples Democratic Party) for the aforesaid gubernatorial election.

At the close of the election, 3rd respondent (Independent National Electoral Commission) declared the result and returned 1st respondent as the winner with 394,684 votes against 1st appellant's score of 202,747 votes. Dissatisfied with the said result, appellants

commenced this action at the Tribunal. Appellants' grounds for the petition are among others that the election was invalid by reason of corrupt practices, electoral malpractices and substantial non-compliance with the Electoral Act 2010. Both parties adduced evidence in favour and in defence of the petition. At the end, the Tribunal delivered its judgment and dismissed the petition. Dissatisfied, appellants filed an appeal at the Court of Appeal Akure Division and in a unanimous judgment, the court dismissed the appeal. 1st respondent filed a cross-appeal which was allowed. Aggrieved further, appellants appealed to the Supreme Court. Also dissatisfied with some aspects of the judgment in the cross appeal, 1st respondent filed a cross appeal.

ISSUES FOR DETERMINATION

1. Whether the learned Justices of the Court of Appeal were right in holding that Ground 13 of the appellants' Notice and Issue five distilled therein (sic) are incompetent?

2. Whether the learned justices of the Court of Appeal were right in affirming the tribunal's findings on the doctrine of severance; burden and standard of proof on allegation of non-compliance and irregularities in the conduct of the election?

3. Whether the learned Justices of the Court of Appeal were right in affirming the tribunal's findings that the appellants failed to prove substantial non-compliance with the provisions of the Electoral Act, 2010 (as amended), Manual for Electoral Officials, 2014 and the Guidelines for the Conduct of the election having regard to the state of the pleadings and the evidence adduced?

4. Whether the learned Justices of the Court of Appeal did not fail in their duty to evaluate properly the appellants' evidence and draw the necessary inferences as demonstrated before them?

5. Whether the learned Justices of the Court of Appeal were right in affirming the findings of the tribunal which rejected the reports and evidence of PW15 and PW38?

6. Whether the learned Justices of the Court of Appeal were right in the interpretation of paragraph 16 (1) and (2) of the First Schedule to the Electoral Act, 2010 (as amended) on [the] appellants' reply filed in the petition?

7. Whether [the] learned Justices of [the] Court of Appeal were right in affirming the tribunal's findings that the allegations of corrupt practice were not proved beyond reasonable doubt?

HELD (Unanimously dismissing the appeal and allowing the cross-appeal per **NWEZE JSC**)

PARTIES - Description of - Mistake

B 1. What is at play in this appeal, however, is not a mistake as to the identity of the second respondent. In my view, this court has the undoubted power to correct this slip in the name of the second respondent as this is a case of a misnomer.

C For sure, it is the law that where the description of a party on a process in a litigation [as happened here] is a mere misnomer, an amendment would suffice to put it right provided that the person misnamed is a juristic entity and is in existence, just like the second respondent. The essence of such an

D amendment is to ensure that justice is done to all parties to the dispute. As already shown above, it is a cardinal duty of the Courts to ensure, at all times, that substantial justice is accorded to all parties to the disputes before them. The objection is overruled on this score. I hereby enter order effect-
E ing the amendment of the said process by striking out the word “Peoples.” (p. 1841 F)

APPEALS - Grounds - Particulars - Defect

F 2. The answer to the objectors’ invitation is predictable. The current mood of this court to technicalities has been depicted above. Consistent with this libertarian trend, the position now is that it is not every failure to attend to Grounds of Appeal with the fastidious details prescribed by the rules of this court
G that would render such a ground incompetent. This is particularly, so where sufficient particulars can be gleaned from the grounds of appeal in question and the adversary and the court are left in no doubt as to the particulars on which the grounds are founded.

H Even then, courts are now encouraged to make the best they can out of a bad or inelegant ground of appeal in the interest of justice. Hence, bad or defective particulars in a ground of appeal would not, necessarily, render the ground

itself incompetent. Put differently, since the essence of particulars is to project the reason for the ground complained of, the inelegance of the said particulars would not invalidate the Grounds from which they flow. (p. 1842 E)

APPEALS - Success of - Basis

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3. In the first place, it is settled that where an appellant fails to satisfy the appellate court that the lower court was wrong in its application of the facts to the prevailing and applicable law, his appeal will fail. This rule, which has a fairly ancient ancestry, has been endorsed in a succession of decisions of this court dating back to 1974. (p. 1859 E)

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Evidence - Evaluation

4. What is more, due to the initial advantage which the trial court had of actually seeing and assessing the witnesses, issues relating to the demeanour of such witnesses which the court saw and assessed and the ascription of weight to their evidence are the exclusive prerogatives of the trial court: prerogatives which neither the lower court nor this court can interfere with. This foundation dictated the rule that a trial court has the power to ascribe credibility to the evidence of witnesses who testified before it. (p. 1860 G)

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Document - Evaluation

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5. I have no difficulty in upholding the lower court's affirmation of the trial Tribunal's ascription of weight to the witnesses presented before it. This, equally, applies to its affirmation of the findings with regard to the electoral documents dumped on the trial Tribunal. It cannot be otherwise for it has long been settled that a Judge is not permitted to embark on an inquisitorial examination of documents outside the court room. Worse still, he is not allowed to act on what he discovered in such a document in relation to an issue when that was not supported by evidence or was not brought to the notice of the parties to be agitated in the usual adversarial procedure. (p. 1865 E)

H

PLEADINGS - Averments - Not supported by evidence

6. I, equally, endorse the lower court's affirmation of the finding that averments in pleadings [no matter their eloquent phraseology] do not speak for the pleader without supporting evidence unless the adversary admits them. (p. 1865 H)

ELECTIONS - Non compliance - Allegation of

7. In the absence of credible evidence, therefore, in proof of the allegation of non-compliance (supra) [substantial non-compliance with the principles of the Electoral Act etc or, in the alternative, substantial effect on the election result of any infraction of the said Act etc no matter how minuscule the transgression may be], all the brilliant submissions on the cogency of this court's decision on Swen v Dzungwe (supra) are, merely, speculative or, at best, hypothetical.

My understanding of the sacred principles consecrated in section 139 (1) of the Electoral Act, 2010, that is, the doctrine of substantial compliance there-under is that its consideration will only arise where the petitioners [such as the appellants who were the petitioners at first instance] have succeeded in establishing substantial non-compliance with the principles of the Electoral Act etc or, in the alternative, substantial effect on the election result of any infraction of the said Act etc no matter how minuscule the transgression may be. (p. 1866 C)

Evidence - Admissibility

8. It remains to be added that it has long been settled that evidence obtained in cross examination on matters that are pleaded, that is, on matters on which issues were joined [as was the case at the Tribunal], is admissible. In effect, the argument that the third respondent had no evidence before the trial Tribunal is incorrect. (p. 1867 A)

ELECTION PETITIONS - Filing - Time limit

9. The simple answer is that the said Interpretation Act is inapplicable to this matter being an election matter, Okechukwu v INEC and Ors (supra). Thus, as his reply was not filed in

strict fidelity to the time protocol ordained in paragraph 16 (supra), the lower court, rightly struck it out. This must be so because the time lines therein are sacrosanct due to the peculiar nature of election matters which are time-bound. Strictly speaking, this sort of invidious provision should not feature in a user friendly judicial process. However, in the peculiar circumstance of the urgency involved in the determination of such electoral disputes, the much this court can do is to wink at the tyranny of deadlines entrenched therein. In effect, any process filed out of time is incompetent and is liable to be struck out.

I find sufficient merit in the contention of the respondents here. I endorse the unanswerable submission that the tribunal, having found that the said pre-hearing notice application was not filed within the time stipulated after close of pleadings pursuant to paragraph 18 (1) (supra), ought to have dismissed the petition under paragraph 18 (4) (supra) as being abandoned.

It is not in doubt that the drafts person of the said Act, aware of the obvious time constraints on the tribunals dealing with election matters in complying with the time frames therein, deliberately, wove some new case management techniques into the Act with a view to empowering them [trial Tribunals] to control and manage the proceedings expeditiously. Paragraph 18 (1) is one of such mechanisms. It is, thus, a deliberate device which erected time frames by calendaring the permissible periods for consummating or accomplishing certain steps within the time management regime created in the Act itself.

The consequence is that if a petitioner fails to consummate the issuance of pre-hearing notice [Form -TF007] within seven days, he cannot fall back on paragraph 53 (1), a provision which because Paragraph 18 (4) (supra) prohibits the extension of time, is inapplicable and, so, does not avail such a tardy petitioner. (pp. 1871 A/1876 A)

DOCUMENTS - Public document - Admissibility

10. The first documents, as shown above, are public documents [exhibits 1-185]. I entirely, agree with the submissions of the cross appellant with regard to their admissibility. Pur-

suant to section 104 of the Evidence Act, 2011, the said documents which, merely, had CTC stamps bearing engraved signatures on them without the subscription of the name and the official title of the officer who certified them, were not properly certified in conformity within the mandatory requirements of section 104 (supra). Most worrisomely, there are several pencil inscriptions, evidently, additions to the contents of the documents.

These alterations, wittingly or unwittingly, had the effect of supplanting the main jurisprudential rationale for the statutory requirement that only duly certified copies of public documents are admissible where the parties do not intend to produce their originals. (p. 1880 C)

D ELECTRONIC EVIDENCE - Computer document - Admissibility of 11. As noted above, the main plank of the argument of the first and second cross respondents, with regard to the second issue above, was that only internet-generated documents are caught by the admissibility requirements of section 84 of the 2011 Evidence Act. With profound respect, this argument is untenable.

Even the very chapeau or opening statement in section 84 (1) contradicts this submission. The relevant phrase here is “a statement contained in a document produced by the computer...” Interestingly, the drafts person did not leave the meaning of the word “computer” to conjecture. In section 258 (1), the Act defines “computer” to mean “any device for storing and processing information, and any reference to information being derived from other information is a reference to its being derived from it by calculation, comparison or any other process.”

In effect, exhibits 243 and 342, being computer-generated documents, could only have been admissible in evidence upon compliance with the requirements of section 84 (supra). The lower court was, therefore, in error in this regard. I resolve this issue in favour of the cross appellant. (p. 1880 H)

NOTABLE POINTS OF INTEREST

NWEZE JSC

1. Technicalities are no longer entertained in courts

Now, it is no longer in doubt that this court, and indeed, all courts, have made a clean sweep of “the picture of the law and its technical rules triumphant,” *Aliu Bello and Ors v A. G. Oyo State* (1986) 5 NWLR (pt 45) 528, 886. Let me explain. By its current mood, it is safe to assert that this court has firmly and irreversibly spurned the old practice where the temple of justice was converted into a forensic abattoir where legal practitioners, employing such tools of their trade like “the whirligig of technicalities,” daily butchered substantive issues in courts in their “fencing game in which parties engage[d] themselves in an exercise of outsmarting each other.” Those days are gone, gone for good!

This current approach, and a robust and wholesome one at that, is to permit litigants, more particularly, parties in election-related matters, to ventilate their grievances without any hindrances by technical arguments that have the tendency of clogging the wheel of electoral justice in the election Tribunals and courts entertaining appeals from them. (p. 1840 E)

2. Court - Decision - Meaning of

Although, section 318 of the 1999 Constitution (as amended) defines the word “*decision*” to mean “*in relation to a court, any determination of that court...*” [italics supplied], it does not define the word “determination.” That notwithstanding, scholastic views and judicial decisions are ad idem that the said uncountable noun “determination” means “the settling of a controversy by a judicial decision; a coming to a decision.” The New Webster’s Dictionary of the English Language (International Edition) 261; “a final decision by a court or administrative agency,” Bryan A. Carrier (ed), *Blacks Law Dictionary*, (8th edition) 480; “the [resolution] of a question,”

Simply put, therefore, a decision is a court’s pronouncement which represents its final verdict to a question brought before it for determination. (p. 1848 C)

3. *Obiter dictum - Meaning of*

In Legal Theory, an obiter dictum, in contradistinction to the ratio decidendi of a case, is a Judge's passing remarks which do not reflect the reasoning of the court or ground upon which a case is decided. (p. 1849 B)

B

4. *Supreme Court - Interference with concurrent findings*

I have, equally, leaned for support on the prescription that this court also has certain duties when considering findings of fact made by a trial court and affirmed by the lower court. These Trinitarian obligations are that it [this court] must: (a) recognise the onus on the appellant to satisfy it that the decision of the trial court, affirmed by the lower court, was wrong; (b) recognise the essential advantage which the trial court enjoyed in seeing the witnesses and watching their demeanour; and (c) bear in mind that in cases which turn on the conflicting testimonies of witnesses and the credibility ascribed to them, it can never recapture the initial advantage of the trial court which saw and assessed the witnesses. Against the background of these obligations, this court considering a complaint against the lower court's concurrent findings or non-findings of facts, will seek to know: (i) the evidence before the trial court; (ii) whether the said court accepted or rejected any evidence upon the correct perception; (iii) whether the court correctly approached the assessment of evidence before it and placed the right probative value on it; (iv) whether the court used the imaginary scale of justice to weigh the evidence on either side; (v) whether the court appreciated, upon the preponderance of evidence, on which side the scale was weighted having regard to the burden of proof.

F

The position, therefore, is that it is only where it is manifest that the findings of facts, as affirmed by the lower court, were based on a wrong perception or wrong principles of law that this court will interfere with them. It will, equally, be proper for this court to interfere where it is shown that the findings do not find anchorage on the evidence led at the trial or where it is shown that the findings are glaringly wrong and will pervert the cause of justice. In such situations, therefore, this court will interfere with such findings of fact in order to put the facts and the law in their proper context and perspective.

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Thus, where concurrent findings of facts are not perverse; this court cannot interfere with them. (p. 1859 G)

REPRESENTATION

Dr. Alex A. Izinyon, SAN; Chief Chris Uche, SAN; Chief T. O. Ashaolu, SAN; N. O. Oke, SAN; Roland Otaru, SAN and Nella Rabana, SAN^B for the appellants/cross respondents; with them are: Wole Jimi Bada, Esq; E. Ogbojafor, Esq; L O. Fagbemi, Esq; C. W. Udeh, Esq; G. A. Ashaolu, Esq; O. G. Arinde, Esq; J. A. Majebi, (Miss); A. S. Oshaba, (Miss); O. O. Owulo, Esq; C. U. Adah, (Miss); O. E. Bob, Esq; A. O. Nkeonye, (Mrs.); G. G. Ike Okafor, Esq; A. O. Usman, Esq; James Odiba, Esq; Adaobi Eziokwu (Mrs.); Kanayo Okafor, Esq; Oluwatoyin Runsewe (Mrs.); John Sambo, Esq; Uzoma Nwosu-Iheme, for the appellants.

Chief Akinlolu Olujinmi, SAN with Kola Awodein, SAN, Chief Charles Edosomwan, SAN, Adewale Folabi, Dr. Joel Anwo, A. W. Salmon, Kunle Adegoke, T. S. Adegboyega, Daud' Akinloye, Muhydeen Abiodun Adeoye, Yinka Adeniran, Yomi Obaditan, Adebukola Atobatele and Akinboro Olabisi for the 1st Respondent.

Oluwarotimi Akeredolu, SAN, with Femi Falana, SAN, Chima Okereke, Mrs. Funmi Falana, Muritala Abdul-Rasheed, Dapo Akinosun, Ajibola Basiru, Ibraheem Lawal, Abdul Rasak Adeoye, Kolapo Alimi, Fatima Adeshina, Abdul-Majeed Oloyede, Tawfeeq Iyanda Ibikunle, Mariam A. Lai-Ibrahim and Oluwole Ilori, Esq., for the 2nd Respondent.

Asiwaju A. S. Awomolo, SAN with Eyitayo Fatogun, Esq., Tinuke Osoba (Miss), Jude Daniel Odi, Esq., Olayemi Akanmode, (Mrs.), Bolaji Bello Esq., and Oluwasanmi Aiyemowa, Esq., for the 3rd Respondent.

CASES REFERRED TO

PPA v. INEC [2012] 13 NWLR (pt. 1317) 215
 Bello v. A. G. Oyo State (1986) 5 NWLR (pt. 45) 528
 Afolabi v. Adekunle [1983] 2 SCNLR 141
 Egolum v. Obasanjo [1999] 7 NWLR (pt. 611) 355
 Nwobodo v. Onoh [1984] 1 SCNLR 1
 Njoku v. UAC Foods [1999] 12 NWLR (pt. 638) 557
 Carlen v. University of Jos [1994] 1 NWLR (pt. 232) 231

Nkwocha v. Federal University of Technology [1996] 1 NWLR (pt. 422) 112

Emespo J. Continental Ltd v CSR MBH and Coy (2006) LPELR - 1129 (SC) 14

Okechukwu and Sons v. Ndah (1967) NMLR 368

B Agbomagbe Bank Ltd v Gen. Manager G. B. Ollivant Ltd. (1961) ANLR 125

Maersk Line v. Addide Investment Ltd. [2002] II NWLR (pt. 778)

Njemanze v. Shell B. P. Port Harcourt [1966] Vol. 4 NSCC 6

C Olu of Warri v. Esi [1958] Vol. 1 NSCC

Alexander Mountain and Co. v. Rumere Ltd. (1948) 2 All ER 483

STATUTES & RULES REFERRED TO

Electoral Act 2010, First Schedule paras. 16(1), 18(1), (3)(4)

D Constitution of the Federal Republic of Nigeria 1999, s. 318

Interpretation Act Cap 123 LFN 2004, s. 15(4)(5)

Supreme Court Act, s. 22

Evidence Act, ss. 84, 104, 258(1)

Supreme Court Rules, O. 2 r. 8

E

BOOKS REFERRED TO

Webster's Dictionary of the English Language (Intern. ed.) 261

Blacks Law Dictionary (8th ed.) 480

F Phipson on Evidence (11th ed.) para. 92 p. 40

Phipson on Evidence (London: Sweet and Maxwell 2010) 7th ed.

LEAD JUDGMENT BY NWEZE JSC

My Lords, the proceedings, which culminated into this appeal, were prompted by the divergent responses to the outcome of the election which the Independent National Electoral Commission (INEC) conducted in Osun State on August 9, 2014. In the said election, the first appellant in this appeal, who was sponsored by the second appellant, a registered political party, was the latter's Governorship candidate.

On the other hand, the first respondent herein was the candidate of the second respondent in the said election. Sequel to the third respondent's declaration of the results and return of the first respondent as the winner in the keenly-contested election, the peti-

tioners beseeched the Governorship Election Petition Tribunal, Osun State (in this judgment, simply, referred to as “the trial Tribunal”) with a petition challenging the declaration and return of the first respondent in seventeen out of the thirty Local Government Areas of Osun State. Even in the said seventeen Local Government Areas, the petition was only circumscribed to certain wards and polling units. B They claimed the following reliefs:

1. Whereof the Petitioners pray that it be determined and declared that the first respondent, Ogbeni Rauf Adesoji Aregbesola, was not duly elected by a majority of lawful votes cast in the Osun State Governorship election held on the 9th of August, 2014, and therefore his election is null and void; C

2. That it be declared that Senator Iyiola Omisore was duly elected and ought to have been returned as duly elected Governor of Osun State having scored the highest number of lawful votes cast at the election held on the 9th August, 2014, and satisfies the provisions of the 1999 Constitution of the Federal Republic of Nigeria and Electoral Act, 2010 (as amended) to be so declared; D

3. In addition, that Senator Iyiola Omisore be declared as the winner of the Osun State Governorship election held on the 9th of August, 2014, based on the results obtained at the physical recount and re-examination by and before the Tribunal or otherwise of the votes from the affected or afore-mentioned Local Governments, Wards, Units and/or Centres. E

Or, in the alternative: F

4. That the Osun State Governorship election held on 9th August, 2014, having been vitiated by substantial non-compliance with the mandatory statutory requirements which has substantially affected the validity of the election in the Units and Wards of the Local Government Areas being challenged be declared nullified or cancelled and the third respondent be ordered and or directed to conduct fresh elections for the office of the Governor of Osun State in the affected areas. G

The grounds of the petition were listed as follows: H

a. The first respondent was not duly elected by majority of the lawful votes cast at the election and did not score 1/4 (one-quarter) of the lawful votes cast in at least twenty of the thirty Local Government Areas of Osun State and therefore did not meet the require-

ments of the law to be returned as the winner of the election;

b. The election of the first respondent is invalid by reason of corrupt practices and electoral malpractices perpetrated by the members and agents of the first and second respondents in the places challenged in this petition;

B c. The election of the first respondent is invalid by reason of substantial non-compliance with the provisions of the Electoral Act, 2010 (as amended), the Manual for Election Officials, 2014, the Guidelines issued for the conduct of the election and the law in the conduct of the election.

C Issues were joined in the settled pleadings [and there were many processes, indeed]. On October 16, 2014, the first respondent filed a Notice of Preliminary Objection under paragraph 4 (1) of the First Schedule to the Electoral Act. The appellants, vigorously, opposed it.
D Not done yet, the first respondent filed another Motion on Notice on October 21, 2014, under paragraphs 16 (1) and 18 (1), (3) and (4) of the First Schedule to the Electoral Act. In it, he prayed for the following reliefs: an order of the trial Tribunal striking out the appellants' Reply to the first respondent's Reply on the ground that it was
E filed out of time; an order deeming the petition as abandoned and an order dismissing the said petition for the appellants' failure to apply for the issuance of notice of pre-hearing session within the time prescribed by the Rules.

F Expectably, the appellants, stridently, opposed the application. Just like the first respondent, the second respondent filed a Motion on Notice on October 29, 2014 asking for the same reliefs which the first respondent had sought for in his own motion of October 21, 2014. The appellants opposed it, as well.

G At the hearing of the petition, the appellants [who were first and second petitioners, respectively, at the trial Tribunal] marshaled a whopping forty three witnesses, namely, PW1 to PW43. They, equally, tendered documentary exhibits, marked exhibits 1A to 380. These were electoral forms, result sheets and sacks of ballot papers
H which were, incautiously, dumped on the trial Tribunal without any attempt to chart their nexus with the specific complaints in the specified areas on which issues were joined in the settled pleadings.

On his part, the first respondent called nineteen witnesses, RW1-RW 19. Although he did not tender any documentary exhibits through

his own witnesses; while his counsel was cross examining the appellants' witnesses, he tendered some documents through them. The second respondent called eight witnesses, viz, RW 20- RW27. The third respondent did not call any witness. However, counsel tendered exhibits 395, 396 and 397 from the Bar. While cross examining the appellants' witnesses, he, nevertheless, elicited vital evidence from them. B

At the close of evidence and final addresses, the trial Tribunal delivered its judgment on February 6, 2015. While it overruled the said preliminary objections of the first and second respondents, on the one hand; it dismissed the appellants' petition, on the other hand. C The appellants were dissatisfied with the judgment which dismissed their petition, just as the first and second respondents were aggrieved by the trial Tribunal's ruling overruling their said objections to the competence of the petition and the admissibility of certain documents. D

Thus, while the appellants appealed against the substantive judgment to the Court of Appeal, Akure Division [hereinafter, simply, referred to as "the lower court"], the first respondent cross appealed against the ruling relating to the competence of the petition and the issue of admissibility of documents. So, also, did the second respondent. In its judgment of April 2, 2015, the lower court dismissed the appellants' appeal while allowing the first and second respondent's cross appeal in part. E

Still dissatisfied, the appellants appealed to this court against both the lower court's main judgment, as per their first Notice of Appeal filed on April 10, 2015 and against part of the judgment in the Cross Appeal, through the second Notice of Appeal filed on the same day. On his part, not, entirely, satisfied with the judgment in the Cross Appeal, the first respondent, also, cross appealed to this court. F G His complaint was against that part of the judgment in the Cross Appeal which discountenanced his objection against the admissibility of some documents which the appellant tendered at the trial Tribunal. H

In other words, before this court, the appellant has two appeals, namely, the appeal in the first Notice of Appeal against the main judgment of the lower court and a second appeal, as evidenced in the second Notice of Appeal, against part of the lower court's judgment relating to the cross appeal of the first respondent. The third

appeal before this court is the First respondent's cross appeal against part of the judgment in his Cross Appeal at the lower court. In addition, the first and second respondents filed Preliminary Objections to the Notices of Appeal and issues formulated from them. I shall return to these objections shortly. Before then, however, attention will now
 B be drawn to the issues which the parties put forward for the resolution of their agitations.

ISSUES FOR DETERMINATION

The appellants distilled seven issues for this court's determination of this appeal. These issues were framed in these words:
 C

1. Whether the learned Justices of the Court of Appeal were right in holding that Ground 13 of the appellants' Notice and Issue five distilled therein (sic) are incompetent?

2. Whether the learned justices of the Court of Appeal were
 D right in affirming the tribunal's findings on the doctrine of severance; burden and standard of proof on allegation of non-compliance and irregularities in the conduct of the election?

3. Whether the learned Justices of the Court of Appeal were right in affirming the tribunal's findings that the appellants failed to
 E prove substantial non-compliance with the provisions of the Electoral Act, 2010 (as amended), Manual for Electoral Officials, 2014 and the Guidelines for the Conduct of the election having regard to the state of the pleadings and the evidence adduced?

4. Whether the learned Justices of the Court of Appeal did not
 F fail in their duty to evaluate properly the appellants' evidence and draw the necessary inferences as demonstrated before them?

5. Whether the learned Justices of the Court of Appeal were right in affirming the findings of the tribunal which rejected the re-
 G ports and evidence of PW15 and PW38?

6. Whether the learned Justices of the Court of Appeal were right in the interpretation of paragraph 16 (1) and (2) of the First Schedule to the Electoral Act, 2010 (as amended) on [the] appellants' reply filed in the petition?

7. Whether [the] learned Justices of [the] Court of Appeal were
 H right in affirming the tribunal's findings that the allegations of corrupt practice were not proved beyond reasonable doubt?

On his part, although adopting the appellants' seven issues, the first respondent rephrased the tenor of the self-same issues thus:

1. Whether the Court of Appeal rightly upheld the preliminary objection of the first and second respondents on Ground 13 of the appellants' Notice of Appeal and issue five distilled therefrom?

2. Whether the Court of Appeal was right in holding that the Tribunal properly applied the required standard of proof in respect of allegations of non-compliance made by the appellants? B

3. Whether the Court of Appeal was right in holding that evidential burden would only shift to the third respondent if the appellants proved their allegations of substantial non-compliance with the Manual for Election Officials, 2014 and Electoral Act, 2010 (as amended)? C

4. Whether the Court of Appeal was right when it upheld the findings of the Tribunal that the appellants failed to prove its allegations of non-compliance?

5. Whether the Court of Appeal was right in upholding the decision of the Tribunal rejecting the report and evidence of PW15 and PW38? D

6. Whether the Court of Appeal was right in holding that the Replies of the appellants to the respondents' Replies to the petition were filed out of time? E

7. Whether the Court of Appeal was right in upholding the decision of the Tribunal that the allegations of corrupt practices made by the appellants were not proved beyond reasonable doubt?

The second respondent's seven issues were a facsimile reproduction of the seven issues of the first respondent, [paragraphs 3.1.1-3.1.7, page 6 of the second respondent's brief]. On its part, the third respondent condensed the issues into four, viz: F

1. Whether the Court of Appeal was right when it held that the Tribunal examined and evaluated the totality of the evidence led by the parties and correctly found that the appellants failed to prove by credible evidence that the Governorship election conducted in Osun State on the 9th day of August, 2014 was invalid by reasons of corrupt practices, irregularities and substantial non-compliance with the provisions of the Electoral Act, 2010 (as amended), the INEC Manuals as well as the Guideline for the Conduct of Election? G H

2. Whether the Court of Appeal was right in holding that the evidential burden would only shift to the third respondent if the appellants proved their allegations of substantial non-compliance with

the Manual for Election Officials, 2014 and Electoral Act, 2010 (as amended)?

3. Whether the Court of Appeal was correct when it upheld the decision of the Tribunal that the first respondent was validly returned as the candidate, who polled the majority of the lawful votes cast at the Governorship election conducted by the third respondent in Osun State on the 9th day of August, 2014?

4. Whether the Court of Appeal was correct when it upheld the decision of the Tribunal that struck out the appellants' Reply to the third respondent's Reply when it found that the Reply of the appellant was indeed filed out of the time prescribed by the First Schedule to the Electoral Act, 2010 (as amended)?

It is only proper to pause here for a consideration of the Preliminary Objections of the first and second respondents. Since, like Siamese twins, the complaints in both objections are un-differentiable, a composite ruling will suffice in disposing of them.

PRELIMINARY OBJECTION

In the common paragraph two of the first and second respondents' briefs [paragraph 2. 1, page 6 of the first respondent's brief; paragraph 2.1, page 5 of the second respondent's brief], it was averred that "[at or before the hearing of this appeal, the first [and second] respondent (s) will raise preliminary objection (s) to the Notice of Appeal and issues formulated therefrom." The particulars of the objection were highlighted thus:

1. The parties to this appeal have not been constituted in accordance with the requirements of Order 2 Rule 8 of the Supreme Court Rules. Except with the leave of the Supreme Court it is not open to an appellant to introduce a new party into an appeal to the Supreme Court. Therefore where a stranger has been introduced into an appeal without the leave of the Supreme Court, the appeal is incompetent and the same must be struck out. The party named as second respondent in the Notice of Appeal of the appellants was never a party to this petition and the appellant never obtained the leave of the court to make the named second respondent a party to this appeal. In the premises, the appeal is incompetent and same must be struck out;

2. Grounds 1 and 2 of the Notice of Appeal are vague

3. Grounds 4, 5, 6 and 7 are the same as they relate to the

same complaints on the standard of proof;

4. Particulars of Ground 9 are not supported by the record;

5. Grounds 3 and 10 are similar

At the hearing of the appeal, Chief Akinlolu Olujinmi, SAN who, with Kola Awodein, SAN; Chief F. O. Fagbounge, SAN, Deji Sasegbon, SAN and Segun Ajibola, SAN, appeared with a retinue of other counsel from the Outer Bar, and whose names were subjoined to the counsel's list, pointed out that the said preliminary objection affects both appeal No SC. 204/2015 and appeal No SC. 204A/2015. He explained that the appellants changed the parties to the petition. Specifically, he drew attention to the fact that the second respondent is a stranger to the proceedings, citing Order 2 Rule 8 of the Rules of this court; PPA v INEC [2012] 13 NWLR (pt. 1317) 215, 237. In his submission, the Notice of Appeal being, thus, corrupted renders the two appeals incompetent. He invited the court to strike out the said Notices of Appeal.

Oluwarotimi Akeredolu, SAN who, with Femi Falana, SAN, appeared with other counsels for the second respondent, associated himself with the above submissions. In addition, he contended that if judgment is given in the appeal as, presently, constituted, it would be against All Peoples Progressive Congress that was never a party to the petition.

Asiwaju A. S. Awomolo, SAN, who appeared with other counsels on the list, equally, adopted the above submissions. He drew attention to pages 7984 -7993 of Volume 15 of the record for the first Notice of Appeal and pages 7994-7999 of the same Volume 15 of the record for the second Notice of Appeal. He pointed out that Ground 12 of the first notice was related to the Ground 2 of the second Notice. He maintained that the approach which the appellants adopted in interweaving the issues for determination in the briefs in respect of the disparate Notices of Appeal was inelegant, citing paragraph 4.95 etc of the appellants' brief.

Expectably, Dr. Alex Izinyon, SAN, who, with Chief Chris Uche, SAN; T. Ashaolu, SAN; N. O. Oke, SAN; R. Otaru, SAN and N. H Rabana, SAN, led other counsel for the appellants, canvassed arguments in his gallant effort to confute the entirety of the objectors' contention, [paragraphs 1.6-1.14 of the appellants' Joint Reply Brief, [Appeal No SC. 204/2015], to the first and second respondents' brief

of argument dated April 29, 2015, although filed on April 30, 2015]. In his elucidation of the said brief, he pointed out that the lower court delivered two judgments, namely, the main judgment and another judgment in respect of the Cross Appeal of the first respondent. They were thus two distinct appeals which necessitated two Notices of Appeal. He urged the court to look at the respective Grounds in the main appeal and the judgment in the Cross Appeal. He prayed the court to discountenance the said objections. [Paragraph 1. 14, page 3 of the said brief]

C RESOLUTION OF THE PRELIMINARY OBJECTION

With profound respect, it is, extremely, difficult to fathom the juridical impulsion to the first and second respondents' objections to what they described as "the introduction of a stranger" to this appeal. Senior counsel quibbled about, what evidently, is an innocuous and inadvertent slip of the interposition of the word "Peoples" into the name of a registered political party, to wit, "All Progressive Congress," [APC], the second respondent in this appeal. It is not their contention that the said second respondent is a non-juristic person. They have equally not complained that they were, in any way misled by the said slip or that it [the slip] had occasioned a miscarriage of justice.

Now, it is no longer in doubt that this court, and indeed, all courts, have made a clean sweep of "the picture of the law and its technical rules triumphant," Aliu Bello and Ors v A. G. Oyo State (1986) 5 NWLR (pt. 45) 528, 886. Let me explain. By its current mood, it is safe to assert that this court has firmly and irreversibly spurned the old practice where the temple of justice was converted into a forensic abattoir where legal practitioners, employing such tools of their trade like "the whirligig of technicalities," daily butchered substantive issues in courts in their "fencing game in which parties engage[d] themselves in an exercise of outsmarting each other." Afolabi v Adekunle [1983] 2 SCNLR 141, 150. Those days are gone, gone for good!

H This current approach, and a robust and wholesome one at that, is to permit litigants, more particularly, parties in election-related matters, to ventilate their grievances without any hindrances by technical arguments that have the tendency of clogging the wheel of electoral justice in the election Tribunals and courts entertaining appeals

from them. *Egolum v. Obasanjo* [1999] 7 NWLR (pt. 611) 355; *Nwobodo v. Onoh* [1984] 1 SCNLR 1.

Consistent with this robust outlook, an innocuous slip [such as the one complained of in the Preliminary Objections] will not be allowed to vitiate proceedings which were duly, initiated or properly filed. Surely, it would not be in the interest of justice to defenestrate (sic) this appeal, as senior counsel for the objectors have urged this court to do, just because the word “Peoples” featured in the name of a juristic person, the second respondent herein. Dr. Izinyon, SAN, has pleaded inadvertence. This is understandable. After all, it is a matter of common knowledge that the imaginary or fictional Printer’s Devil has become the Scapegoat for accidental slips or errors in all written works, including court processes. *Njoku v. UAC Foods* [1999] 12 NWLR (pt 638) 557; *Carlen v. University of Jos* [1994] 1 NWLR (pt. 232) 231; *Nkwocha v. Federal University of Technology* [1996] 1 NWLR (pt. 422) 112; *Emespo J. Continental Ltd v CSR MBH and Coy* (2006) LPELR -1129 (SC) 14.

Different considerations would apply, however, if the argument was that the second respondent is a non-juristic person. In such a case, there would have been no valid amendment of the title of the suit since there was never a legal person before the Court, *Okechukwu and Sons v. Ndah* (1967) NMLR 368. The only option open to the Court, in such a situation, would be to strike out the name of the non-juristic person, *Agbomagbe Bank Ltd v General Manager G. B. Ollivant Ltd. and Ors* (1961) ANLR (Reprint) 125. ***What is at play in this appeal, however, is not a mistake as to the identity of the second respondent.*** *Maersk Line v. Addide Investment Ltd.* [2002] 11 NWLR (pt. 778) 317, 377. ***In my view, this court has the undoubted power to correct this slip in the name of the second respondent as this is a case of a misnomer.*** *Njemanze v. Shell B. P Port Harcourt* [1966] Vol. 4 NSCC 6; *Maersk Line v. Addide Investment Ltd.* (supra) 377-378; *Olu of Warri and Ors. v. Esi and Anor* [1958] Vol. 1 NSCC; *Establishment Baudelot v. R. S. Graham & Co. Ltd* (1953) 1 All ER 149; *Alexander Mountain and Co. v. Rumere Ltd.* (1948) 2 All ER 483.

For sure, it is the law that where the description of a party on a process in a litigation [as happened here] is a mere misnomer, an amendment would suffice to put it right provided

that the person misnamed is a juristic entity and is in existence, just like the second respondent. A. B. Manu & Co. (Nig.) Ltd. v. Costain (WA) Ltd. [1994] 7 NWLR (pt. 367) 112. **The essence of such an amendment is to ensure that justice is done to all parties to the dispute.** Vulcan Gases Ltd. v. G. F. Industries A. G. [2001] 9 NWLR (pt. 719) 610, 653. **As already shown above, it is a cardinal duty of the Courts to ensure, at all times, that substantial justice is accorded to all parties to the disputes before them.** Adewunmi v. Attorney-General Ekiti State [2002] 2 NWLR (pt. 751) 474, 507; Afolabi v. Adekunbe [1983] 2 SCNLR 141; Shokunbi v. Mosaku (1969) 1 NMLR 54; Vulcan Gases v. G. F. Industries A. G. (supra) 653. **The objection is overruled on this score. I hereby enter order effecting the amendment of the said process by striking out the word “Peoples.”**

D OBJECTIONS RELATING TO THE GROUNDS OF APPEAL

The objectors, equally, contended that: Grounds one and two of the Notice and Grounds of Appeal are vague; Grounds four, five, six and seven are the same as they relate to the same complaints on the standard of proof; Particulars of Ground nine are not supported by the record and Grounds three and ten are similar. On the premises of the above-cited defects, they invited the court to strike out those Grounds and the issues woven around them.

The answer to the objectors’ invitation is predictable. The current mood of this court to technicalities has been depicted above. Consistent with this libertarian trend, the position now is that it is not every failure to attend to Grounds of Appeal with the fastidious details prescribed by the rules of this court that would render such a ground incompetent. This is particularly, so where sufficient particulars can be gleaned from the grounds of appeal in question and the adversary and the court are left in no doubt as to the particulars on which the grounds are founded. Ukpon and Anor v Commissioner for Finance and Economic Development and Anor (2006) LPELR-3349, citing Hambe v. Hueze [2001] 4 NWLR (pt.703) 372; [2001] 5 NSCQR 343, 352.

Even then, courts are now encouraged to make the best they can out of a bad or inelegant ground of appeal in the interest of justice. Dakolo and Ors v Dakolo and Ors (2011) LPELR

-915. **Hence, bad or defective particulars in a ground of appeal would not, necessarily, render the ground itself incompetent.** Prince Dr. B. A. Onafowokan v Wema Bank [2011] 45 NSCQR 1; Best (Nig) Ltd v Black Wood Hodge [2011] 45 NSCQR; Abe v UNILORIN (2013) LPELR. **Put differently, since the essence of particulars is to project the reason for the ground complained of, the inelegance of the said particulars would not invalidate the Grounds from which they flow.** NNB Plc. v. Imonikhe [2002] 5 NWLR (pt 760) 241, 310; D. Stephens Ind Ltd and Anor v BCCI Inter (Nig) Ltd (1999) 11 NWLR (pt 625) 29, 3101.

This position: a position shaped by the contemporary shift from technicalities to substantial justice, is, clearly, evidenced in such cases like: Aderounmu v Olowu [2000] 4 NWLR (pt 652) 253; Hambe v Hueze (supra); Abe v UNILORIN (2013) LPELR- 20643. Indeed, this court, recently, stamped its infallible authority on this current posture. Abe v UNILORIN (2013) LPELR-20643, citing Prince (Dr.) B. A. Onafowokan and others v Wema Bank Plc and Ors [2011] 45 NSCQR 181 SC; Best (Nigeria) Ltd v Black Wood Hodge (Nigeria) Ltd and Ors [2011] 45 NSCQR 849.

This court has no justification for departing from this wholesome contemporary attitude. In consequence, I find against the arguments canvassed in the above preliminary objections. I, further, find that I must, and I, hereby, enter an order dismissing the said Preliminary Objections. I endorse Dr. Izinyon's contention that the two distinct appeals necessitated the two Notices of Appeal.

RESOLUTION OF ARGUMENTS IN THE MAIN APPEAL [SC. 204/2015]

Having disposed of the preliminary objections, I now turn to the resolution of the submissions in the main appeal, that is, Appeal No. SC. 204/2015. As indicated earlier, while the appellants formulated seven issues, the first and second respondents adopted these issues, although rephrasing their tenor. However, the third respondent concreted only four issues for determination.

From my intimate reading of the above issues, I have no difficulty in pinpointing their thematic connections. In this regard, attention may be drawn to issues two; three; four and seven. Unarguably, the common thread which girds these four issues is the complaint against the lower court's affirmation of the trial Tribunal's findings

with respect to:

(a) The burden and standard of proof on allegations of non-compliance with the provisions of the Electoral Act, 2010 (as amended), Manual for Election Officials, 2014 and the Guidelines for the conduct of the election; and irregularities in the conduct of the election, subject of this appeal;

(b) The lower court's affirmation of the trial Tribunal's findings that the allegations of corrupt practice were not proved beyond reasonable doubt.

(c) The lower court's alleged failure to evaluate the evidence properly and draw the necessary inferences;

Simply put, the complaints in these four issues are predicated on the trial Tribunal's alleged improper evaluation of evidence with regard to the issues itemized above and the lower court's touted error in affirming those findings. Against this background, therefore, issues two; three; four and seven will be dealt with under the rubric, improper evaluation of evidence. The resultant consequence is that the issues for determination will be re-numbered as: issue One [the appellants' original issue One; first and second respondents' original issue one]; issue two [the appellants' original issues two; three; four and seven; first and second respondents' issues two; three; four and seven; third respondent's original issues one, two and three]; issue three [the appellants' original issue five; first and second respondents' original issue five] and issue four [the appellants' original issue six; first and second respondents' issue six; third respondent's original issue four].

ARGUMENTS ON THE ISSUES

ISSUE ONE

OBJECTION TO THE VALIDITY OF GROUND 13

[The appellants' original issue one; first and second respondents' original issue one]

APPELLANTS' CONTENTION

When this appeal came up for hearing on May 7, 2015, Dr. Alex Izinyon, SAN, who, with Chief Chris Uche, SAN; T. Ashaolu, SAN; N. O. Oke, SAN; R. Oturu, SAN and N. Rabana, SAN, led other counsel for the appellants, first, identified the following as the appellants' processes in this appeal:

(a) The appellants' forty-page brief of April 21, 2015, which is

tied to the first Notice of Appeal against the main judgment. With the consent of counsel, this process was designated the brief of arguments in Appeal No. SC. 204/2015;

(b) The appellants' second, twelve-page brief, equally, filed on April 21, 2015, which deals with the appeal against the lower court's judgment in the Cross Appeal and the subject of the second Notice of Appeal, designated Appeal No. SC. 204A/2015; B

(c) The appellants' seven-page Joint Reply brief to the first and second respondents' brief in Appeal No. SC. 204/2015, dated April 29, 2015, but filed on April 30, 2015;

(d) The appellants' six page Joint Reply Brief to the first and second respondents brief [in respect of the Preliminary Objection only]. C

(e) The appellants' four-page Reply to the third respondent's brief in Appeal No. SC. 204/2015 D

(f) The appellants' three-page Reply filed on April 30, 2015 in respect of Appeal No. SC. 204A/2015

(g) The appellants' ten-page process titled "first and second Cross Respondents' Brief of Argument" filed on April 30, 2015 in relation to Appeal No. SC. 2014A/2015 E

He [Dr. Izinyon, SAN) adopted the above-cited briefs in respect of the main appeal [in SC. 204/2015 and SC. 204A/2015] and their briefs in response to the Cross Appeal of the first and second respondents/Cross Appellants. Paragraphs 4.8 - 4.14, pages 9-11 of the brief in Appeal No. SC. 204/2015 were devoted to the arguments in respect of issue one. He pointed out that the appellants had urged the trial Tribunal to view the first respondent's Chart of irregularities as an admission. Its refusal, he explained, prompted the phraseology of Ground 13 and its particulars, as set out on paragraph 4.8 of the said brief. F

Attention was drawn to page 7502 of Vol. 14 of the record where the trial Tribunal disagreed with the submissions of the petitioners' counsel that the said table or Chart amounted to an admission that the first respondent scored 234, 971 valid votes. He pointed that it was the said disagreement with the submissions of the appellants' counsel that led to the said Ground 13. Counsel maintained that it was a valid complaint and not an obiter dictum as the lower court held. The argument was canvassed that the lower court was in H

error in its view that the trial Tribunal did not make a finding that the first respondent made an admission in the said Chart. *Akpan v Bob* [2010] 17 NWLR (pt 1223) 421, 464-465 was cited as authority for the view that the scope of a Ground of Appeal can arise in a number of ways.

- B Learned senior counsel, further maintained that, from the said Ground 13, the appellants' complaint was that the trial Tribunal erred in its view that "the first respondent's submission as contained in his prepared chart cannot be used against him," [paragraph 4.13, page 11 of the said brief].
- C Counsel pointed out that the lower court should have discountenanced the respondents' objection. According to him, the first respondent's Chart, where he tabulated various irregularities based on EC8A series, already, tendered by the appellant as exhibits 1-162, established the appellants' case of substantial irregularities.
- D He maintained that the Chart, showing irregularities, on its own, was sufficient to nullify the entire election because a vote of 159, 713, arising from irregularities in a total of 394, 684, for the winner, could not be said to be insufficient to nullify the entire election, *Swem v Dzungwe* (1966) NMLR 297, 300-305. He urged the court to re-
- E solve this issue in favour of the appellants and, thus, allow this appeal on this score.

SUBMISSIONS OF THE FIRST AND SECOND RESPONDENTS

- On his part, Chief Akinlolu Olujinmi, SAN, adopted the first respondent's brief of argument dated and filed on April 24, 2015 in
- F respect of Appeal No. SC 204/2015. For the second respondent, O. Akeredolu, SAN, adopted the brief dated and filed on April 24, 2015. The effervescent arguments proffered in paragraphs 1.1.2, pages 6-11 of the first respondent's brief; paragraphs 1.1.2, pages 6-11 of the
- G second respondent's brief were, expectably, guided forensic missiles designed to dismantle the above submissions of the appellants' counsel.

- The main plank of these submissions may be summed up. The appellants' Ground 13 was not a complaint against the actual decision of the trial Tribunal and, as such, does not constitute a valid
- H ground of appeal, citing pages 7502-7503 of the record for the trial Tribunal's summation of the arguments of the respondents in their written address. Attention was drawn to the lower court's affirmation of the trial Tribunal's conclusion on this point. It was pointed out that the lower court struck out the said Ground 13 because it did not

complain against the decision of the trial Tribunal. Counsel, noting the inapplicability of *Akpan v Bob* (supra), urged the court to resolve this issue in favour of the respondents. Counsel for the third respondent did not proffer any argument with respect to this issue.

APPELLANTS' REPLY

The appellants, vide appellants' Reply Brief filed on April 30, 2015, responded to the issues of law that arose from the first and second respondents' submissions, paragraphs 1.17 -1.30, pages 3-5 of the said brief, where these learned senior counsel for the appellants tackled the respondents' arguments most meticulously.

RESOLUTION OF THE ISSUE

The arguments in this issue are, inextricably tied up to the submissions, already, attended to in the preliminary objection just disposed of. For clarity of presentation, I shall proceed to disaggregate the constitutive limbs of Dr. Izinyon's brilliant submissions. In the first place, there is considerable merit in his contention that Ground thirteen is a valid complaint against the decision of the trial Tribunal: a decision encapsulated in its disagreement' with the submissions of learned senior counsel. Let me throw more light on this question.

In their final address, counsel for the respondents prepared a Chart of the alleged irregularities that characterized the election under review. Although, the first respondent neither pleaded nor volunteered oral evidence in this respect, or Izinyon canvassed the view that the said Chart, which only featured in the written final address of the first respondent's counsel, had morphed (sic) into an admission by the first respondent that the said election was riddled with irregularities. In its judgment, the Tribunal rejected that proposition, in these words:

"We do not, however, agree with the submissions of petitioners' counsel that the table amounts to an admission that the first respondent scored 234, 971 valid votes. We say this in view of paragraph 4. 2. 4 of the final address Page 7502 of Vol. 14 of the record". [Italics supplied for emphasis]

In Ground 13 of the appellants' Grounds of Appeal, the appellants inveighed against that disagreement of the tribunal with learned counsel. For the first and second respondents, it was contended that the above statement of the tribunal was a mere obiter dictum.

It is not in doubt that the above passage was the trial Tribunal's unequivocal rejection of the specific invitation of the appellants' counsel to it [that is, the trial Tribunal] to treat the chart contained in the final address of the counsel for the first respondent as an admission by the first respondent that there were irregularities in the election. In the
 B view of the counsel for the appellants, the said "admission" was sufficient to nullify the election, paragraph 4.13, page 11 of the appellants' brief. As shown above, the trial Tribunal was not hoodwinked into endorsing the said submission with the sophistry that underpinned
 C it. This is, clearly, evident in its decision [embodied in its "disagreement" with that ingenious, albeit, tendentious, argument]. In effect, Ground 13 was the appellants' expression of their disavowal of the tribunal's main reason for "disagreeing" with them.

Although, section 318 of the 1999 Constitution (as amended)
 D defines the word "*decision*" to mean "*in relation to a court, any determination of that court...*" [italics supplied], it does not define the word "determination." That notwithstanding, scholastic views and judicial decisions are ad idem that the said uncountable noun "determination" means "the settling of a controversy by a judicial decision;
 E a coming to a decision." The New Webster's Dictionary of the English Language (International Edition) 261; "a final decision by a court or administrative agency," Bryan A. Carrier (ed), Blacks Law Dictionary, (8th edition) 480; "the [resolution] of a question," Automatic Telephone and Electric Co. Ltd v. Fed. Military Govt. of Nigeria (1963) 1
 F All NLR 429, at 423; "to make an end of a matter'," Oaten v. Auty (1919) 2 KB 278, 288; Deduwa v. Okorodudu (1976) 1 NMLR 236.

Simply put, therefore, a decision is a court's pronouncement which represents its final verdict to a question brought before it for
 G determination. Bamaiyi v. A-G Federation and Ors (2001) LPELR 730 (SC) 14, A-C; Akande and Ors. v. Adesanwo and Ors. (1962) All NLR 206; Aduke v Longe (1962.) All NLR 201; Emordi v Igbeke (2011) LPELR 1136 (SC) 9, D-E; Ononuwa v Oshodin (1985) LPELR 2654 (SC) 13, C-E.

H Thus, the trial Tribunal's "disagreement" with the submissions of counsel for the appellants [petitioners, as the trial forum] was its resolution of the question whether the Chart in the final address of the first respondents' counsel constituted an admission. Its decision or determination of that question [embodied in its "disagreement"

with the submission of counsel] was that the said chart did not constitute an admission. It was, thus, an appealable decision or determination of that heady question. Ground 13 (*supra*), which attacked that decision, was a valid challenge to the ratio decidendi of the trial Tribunal's reasoning (culminating in its "disagreement" with counsel's position) and not an obiter dictum as submitted by the respondents' counsel. B

In Legal Theory, an obiter dictum, in contradistinction to the ratio decidendi of a case, is a Judge's passing remarks which do not reflect the reasoning of the court or ground upon which a case is decided. Paton and Sawyer, "Ratio Decidendi and Obiter Dictum in Appellate Courts" (1947) 63 LQR 461, 481; Rupert Cross, "The Ratio" in 20 MLR 124-126; A. G. Karibi-Whyte, "The Tyranny of Judicial Precedents", in (1990) Vol.3 No. 1 Cal. LJ; P. U. Umoh, *Precedent in Nigerian Courts* (Enugu: Fourth Dimension Publishers Ltd, 1984) 208; *Nwanna v FCDA and Ors* (2004) LPELR 2102 (SC) 12, F-G; *Yusuf v. Egbe* [1987] 2 NWLR (pt. 56) 341; *Amobi v Nzegwu* [2013] 12 SCNJ 91. C

It is true, as argued by respondents' counsel, that an appeal is usually against the ratio decidendi and, generally, not against an obiter, *U. T. C Nigeria Limited v. Pamotei* [1989] 2 NWLR (pt. 103) 244; *Saude v. Abdullahi* [1989] 4 NWLR (pt. 116) 387; *Ede v Omeke* [1992] 5 NWLR (pt. 242) 428; *Dakar v Dapal* [1998] 10 NWLR (pt. 577) 573; *Abacha v Fawehinmi* [2000] 6 NWLR (pt. 571) 573. However, I do not know by what lexical alchemy, the disagreement between the trial Tribunal and the submission of the appellant's counsel could be transmogrified into an obiter. Surely, that was its determination of the question of the probative value of the Chart in question. The lower court was wrong, therefore, in striking out the said Ground 13 for being an attack on the trial Tribunal's obiter dictum. On the other hand, I find and hold that it was a valid complaint against the decision of the trial Tribunal with regard to the question whether the said Chart constituted an admission and so should have been accorded a probative value. I resolve this issue in favour of the appellants. F G H

ISSUE TWO

[The appellants' original issues two; three; four and seven; first and second respondents' issues two; three; four and seven; third

respondent's original issues one, two and three]

APPELLANTS' ARGUMENTS

The first arm of the complaint of the appellants' counsel on this issue was that the judgment of the trial Tribunal "fused the allegations of corrupt practices and non-compliance under issue two for determination," citing pages 6234-6241 of Vol 12 of the record. Citing page 7416 of Vol 14 of the record on issue two, it was pointed out that the trial Tribunal failed to distinguish between the two separate standards of proof in relation to (a) allegations of corrupt practices and (b) non-compliance. Put differently, the appellants understood the trial Tribunal to have employed a uniform standard of proof for the distinct allegations of corrupt practices and non-compliance without "severing those allegations on corrupt practices from non-compliance as to draw the line on when the burden of proof shift D (sic) should move and the standard of proof required in each case," [paragraph 4.23 (a), page 12 of the brief], citing pages 7416-7490 of Vol 14 of the record.

Reference was, also, made to pages 127-128 of Vol 1 of the record as clear evidence that, with regard to evidence from the seventeen LGAs [pages 7416 et seq of Vol 14 of the record], the trial Tribunal failed to sever the allegations of corrupt practices from the allegations relating to non-compliance. Counsel faulted the lower court's affirmation [at pages 7895 -7897 of Vol 15 of the record] of the perceived wrong approach of the trial Tribunal. The cases of *Ikoku v Ofi* (1962) All NLR 195; *Nwobodo v Onoh* [1984] NSCC 1 were cited on the principle of severance of pleadings.

Counsel, further, impugned the lower court's affirmation of the trial Tribunal's finding that the appellants had not "crossed the G threshold to warrant a rebuttal, especially, by the third respondent," page 7436 of Vol 14 of the record. The view was canvassed that, since the allegation of non-compliance was against the third respondent, "once the appellants led PW1, PW15 and PW38 and other witnesses with exhibits 1-340, especially, exhibits 1-162, the evidential burden shifted to the respondents, particularly, the third respondent, against whom the allegation of non-compliance relate (sic)," H [paragraphs 4.27, page 13 of the brief].

Praying in aid section 139 (1) of the Electoral Act, 2010 (as amended), counsel argued that it was in the interest of justice for the

third respondent to meet the requirement of the said section. Okuarume v. Obabokor (1965) All NLR 360; Are v Adisa (1067) 1 All NLR 148; Odulaja v Haddard (1973) 11 SC 357; Imana v Robinson [1979] 3-4 SC 1; Elias v Ornobare [1982] 5 SC 25 were cited as authorities for the proposition that the standard of proof in civil allegations, including election petitions, is on the preponderance of evidence or the balance of probabilities; that is, on the well-established principles enunciated in Mogaji v Odofin. B

Contending that the standard of proof on non-compliance is one of balance of probability or preponderance of evidence, counsel C averred that the lower court erred when it failed to sever the allegations of corrupt practice and non-compliance, which are separate grounds of the petition, but rather fused them into one. In his view, the trial Tribunal's position, affirmed by the lower court, was that the appellants had the burden of proving both allegations beyond reasonable doubt. He maintained that it was the duty of the trial Tribunal to sever the pleadings; and having done so, once there was still a cause of action to sustain the petition, then it should apply the standard of balance of probability on the allegation of non-compliance, Fayerni v Oni (2009) 7 NWLR (pt 1140) 223, 285-286; Swem v Dzungwe (1966) NMLR 297, 300-305; Buhari v INEC (sic) All FWLR (pt 1459) 419, 522; Chukuma v Anyakora [2005] All FWLR (pt 302) 21; Ajadi v Ajibola (2004) 16 NWLR (pt 898) 111, 165; INEC v Oshiomole (2009) 4 NWLR (pt 1132) 507, 570-671; Ukporkor v Imoke (2009) 1 NWLR (Pt 1121) 90, 143-144. D E F

Learned senior counsel canvassed the view that, since the third respondent did not call evidence, it failed to controvert the petitioners' case, Ucha v Elechi (2012) 13 NWLR (pt 1317) 330, 363; N. 1. D. B. v A. B. 1. Ltd (2005) 19 NWLR (pt 959) and a host of other G cases, [paragraph 4.33, pages 14-15 of the brief]. He, further, submitted that where the question is that of non-compliance with the INEC Manual and Guidelines, it is a complaint against INEC that conducted the election, Fannami v Bukar (2004) All FWLR (pt 198) 1210, 1238, 1239; CPC v INEC (2011) 18 NWLR (pt 1279) 493, 545. He observed that, once the petitioners succeed in showing that there was non-compliance with the INEC Manual and Guidelines, the burden shifts to INEC to rebut it, Swem v Dzungwe (supra); Fannami v Bukar (supra); Ikoku v Oli (supra); Nwobodo v Onoh H

(supra).

He pointed out that the INEC Manual was tendered as exhibit 186. Above all, PW1, PW15 and PW38 testified and exhibits 243 and 343 were tendered, all pointing to non-compliance. In his submission, at that stage, the evidential burden shifted to the third respondent, Fannami v Bukar (supra). He impugned the lower court's affirmation [at page 7979 of Vol 15 of the record] of the findings of the trial Tribunal that the appellants failed to discharge their burden, even after having tendered exhibit 186; exhibits 1-162; EC8A Series; the evidence of PW15 and PW38 showing the irregularities complained of, *Intercontinental Bank Ltd v Briffina Ltd* (2012) All FWLR (pt 639) 1192, 1206.

He drew attention to pages 7979-7910 Vol 15 of the record where the lower court affirmed the trial Tribunal's finding that the appellants did not cross "the threshold to warrant the third respondent's rebuttal evidence..." He maintained that there was evidence of substantial non-compliance and, being an election petition, the appellants were entitled to judgment, *Adusei v Adebayo* (2012) 3 NWLR (pt 1288) 534, 553; *Agbanelo v UBN Ltd* (2000) 7 NWLR (pt 666) 534, 549; *GE Inter Coop Ltd v. Oil and Gas Service* (2015) 1 NWLR (Pt 1440) 244, 270. He urged the court to resolve this issue in favour of the appellants.

Still on the lower court's affirmation of the trial Tribunal's finding that the appellants failed to prove substantial non-compliance with the provisions of the Electoral Act, 2010 (as amended); Manual for Electoral Officials, 2014 and the above Guidelines [original issue three in the appellants' brief], learned senior counsel re-iterated the earlier arguments on these issues and the cases, already cited, [paragraphs 4.44-4.52, pages 16-18 of the brief, citing pages 7492, Vol 15; 7490-7493 of Vol 14; 7436-7491 of Vol 14]. He emphasised the earlier submission on the clear delineation of the disparate grounds of non-compliance, [paragraphs 17, 18, 19, 22, 23, 36 (a) (d) (e) (f) (i) (j) (L), (n) 37 38 of the petition, pages 8-20 of Vol 1 of the record.

It was contended that the testimonies of PW1, PW15 and PW38, together with exhibits 1-340, proved non-compliance. It was further contended that the trial Tribunal did not follow the INEC Manual [exhibit 186] which was binding. Several authorities were cited here, paragraph 4.52 (2), particularly, at page 18 of the brief.

Reference was made to exhibits 1-162, Form EC8A series, as the pyramid of the election, citing *Ogboru v Uduaghan* (2011) 2 NWLR (pt 1232) 538, 597. In counsel's view, the testimonies of PW1, PW15, PW38 and the form EC8A series, clearly, showed non-compliance, *Terab v Lawal* (1992) 23 NWLR (pt 231) 519, 588. Pages 18-24 of the brief were devoted to other errors which in counsel's submission, characterised the judgment of the trial Tribunal [affirmed by the lower court].

Against the background of the above submissions, paragraphs 4.65- 4.81, pages 24-28 of the brief were devoted to the question of the lower court's alleged improper evaluation of evidence, [the original issue four in the appellants' brief]. The salient features of the arguments there may be summed up here. The appellants called forty-three witnesses and tendered exhibits; only the third respondent did not call evidence but tendered exhibits 395, 396 and 397 from the Bar, page 7357, Vol 14 of the record. The trial Tribunal's analyses of the testimonies of Ward Supervisors/Ward Collation Agents [paragraph 4.73, page 25 - testimonies which the Tribunal held to be hearsay testimonies as their testimonies were not direct evidence of what they observed but accounts given to them by their agents, [paragraphs 4.73 -4.76, pages 25 - 26]; the alleged failure of the trial Tribunal to evaluate the exhibits - 1A-380- dumped on it; the misapplication of the *Mogaji v Odofin* principles [paragraph 4.77-4.79 (3) and (4), 4.80-4.81, pages 26 -28] and a highlight of what the lower court ought to have done, [paragraph 4. 81, page 28 of the brief].

The last point on this issue was the lower court's alleged error in affirming the findings that allegations of corrupt practices were not proved beyond reasonable doubt, [the original issue seven of the appellants' issues, paragraphs 4.119-4.131, pages 37-39 of the brief]. The crux of the arguments here was that the appellants discharged the burden placed on them; the witnesses' testimonies proved the allegation of corrupt practices, [paragraph 4.127-4.131, pages 38 - 39 of the brief]. In all, counsel urged the court to resolve these issues in favour of the appellants.

SUBMISSIONS OF THE FIRST AND SECOND RESPONDENTS

The responses of the first and second respondents to the above issues were succinct. Paragraphs 1.2.1 - 1.2.11, pages 12 -16, of the first respondent's brief and paragraphs 1.2.1 - 1.2.11, pages 11-15

of the second respondent's brief attempted a refutation of the appellants' assertions that they were entitled to a favourable resolution of these issues in their favour under seven broad sub-issues. In paragraphs 1.2.1- 1.2.4, [common to the first and second respondents], counsel canvassed the view that the appellants' contention regarding the trial Tribunal's "fusion" of the distinct standards of proof was a mere figment of their imagination, citing pages 7436-7490; 7490-7491 of Vol 14 of the record.

The appellants misconceived the applicable rules of pleadings in their allegation that the Tribunal failed to consider the issue of substantial non-compliance which they pleaded, [paragraph 1.25, page 14; paragraph 1.2.5, page 13 of the second respondent's brief]. Above all, they, even misconstrued the dynamics of the rules of pleadings relating to pleading particulars of general averments, pages 14 and 13, respectively of the first and second respondents' briefs, *Akaninwo and Ors v. Nsirim and Ors* [2008] 1 SC (pt 111) 151. Arguments were further canvassed to demonstrate that the lower court, amply, dealt with the issue of non-compliance at pages 7897-7909 of Vol. 15 of the record.

On the failure of the third respondent to call oral evidence, both respondents pointed out that the third respondent extracted evidence favourable to its case in its counsel's comprehensive cross examination of the appellants' witnesses, thus, such evidence inured in its favour for the purpose of the *Mogaji v Odofin* exercise. What is more, being an action for declaratory reliefs, the appellants had to rely on the strength of the evidence they were able to adduce and cannot hope to plead want of evidence from the respondents, *Gindiri v Nyako* [2014] 2 NWLR (pt 1391) 211, 252. Worse still, the nature of the appellants' testimonies was such that did not need any rebuttal, having been, thoroughly, discredited during cross examination.

As affirmed by the lower court, the testimonies of PW1, PW15 and PW38 were found to be unreliable just as the exhibits attracted no probative value and no weight could have attached to them, *Saeed v Yakowa* [2011] All FWLR (pt 692) 1650 as these documents were not tested in open court, *ACN v Lamido* [2012] 8 NWLR (pt 1303) 560, 580- 581, paragraph 1.3.7, pages 15 and 17 of the first and second respondent's briefs, respectively. Both respondents re-iterated the submissions on the tactics which the third respondent adopted

of placing reliance on the evidence it elicited from the cross examination of the appellants' witnesses.

On the appellants' failure to prove their allegations of non-compliance, counsel for both respondents observed that there was no merit in the appellants' contention as the testimonies of PW1, PW5 and PW38, which they relied on, were dismissed as unreliable in the concurrent findings of the lower courts: findings which have not been proved to be perverse. B

Citing pages 742-744 of Vol 14 of the record, it was, further, pointed out that PW1, who offered evidence for all the seven Local Government Areas being challenged, conceded that his evidence was anchored on reports he received from his party agents. Counsel observed that, since the testimonies of PW15 and PW38 had been discredited during cross examination, the exhibits they tendered, namely, exhibits 242 and 343 could not be relied upon. Counsel drew attention to the findings at pages 7492-7493 of Vol 14 of the record on the appellants' failure to prove their allegations of non-compliance with the laws governing the conduct of the elections. C

In further demonstration of the poverty of the appellants' allegation; and the weakness of the case they made, attention was drawn to pages 7418-7419 [failure to prove improper accreditation]; pages 7419-7420 of the record on the failure to prove disenfranchisement of the appellants' supporters, *Ngige v INEC (2015) 1 NWLR (pt 1440) 251, 326*. Paragraph 36(e) of the appellants' petition, page 16 of Vol 1 of the record was cited in support of the contention that the allegation of absence of serial numbers of result sheets Form EC8VP, in respect of voting points, was at variance with the above paragraph of the pleading where the allegation on voting was made. What is more, PW15 and PW38, who gave report of inspection of electoral materials, failed to demonstrate the allegations of non-compliance on Forms EC25 and EC40, CPC and *Anor v INEC [2012] 12 SCM (pt. 3) 225, 245-246*. D

Counsel equally, noted that further evidence of the weakness of the appellants' case was the concession of the Ward Supervisors, Local Government Collation agents and the State Collation agents that they did not visit many of the polling units in respect of which they gave evidence and that their testimonies were, largely, based on reports of others, *Gindiri v Nyako [2014] 2 NWLR (pt 1391) 211,* E

240; *CAN v Nyako* [2012] 12 SCM (pt 3) 345.

The decisions in *Abdulmalik v Tijani* [2012] 12 NWLR (pt 1314) 461, 472-475; *Terab v Lawan* (1992) 3 NWLR (pt 231) 569, 594; *Mark v Abubakar* (2009) 2 NWLR (pt 1124) 79, 183-184 were cited in proof of the fact that the appellants' witnesses [page 24, paragraph 1.4.16 of the first appellant's brief] failed to prove their allegations of alteration etc and they could not prove disenfranchisement. *Audu v INEC (No 2)* [2010] 13 NWLR (pt 1212) 456, 522-523; over voting [par 1.4. 22]; inflation of figures [par 1.4.23, of first respondent]. It was pointed out that the documents which were tendered were dumped on the tribunal, page 27 of the first respondent. In all, the court was urged to affirm the concurrent findings that the appellants failed to establish that there was non-compliance, par 1.4.28, [page 27 of the first appellant].

Just as with the other allegations, the appellants, it was further contended, failed to prove the allegations of corrupt practices, citing pages 7436-7489 of vol 14 of the record: 7489-7490 and the lower court's affirmation of these findings, pages 7925-7933 of the record, pages 36-37 of the first respondent. Attention was drawn to the fact that, out of the thirty Local Governments in Osun State, only Ayedaade and Boriye LGAs were singled out. Even then only PW36 and PW 33 were called. Worse still, PW33's testimony was predicated on reports of agents. Indeed, this witness conceded under cross examination that he signed the summary of result sheet, exhibit 163 (2) and their agents, equally, signed same. He was frank enough to admit, under cross examination, that he did not see the counting or collation of votes in any of the units, including the unit where he voted. PW1, who testified for all the Local Government Areas of the State, admitted that his evidence was based on reports he received from his agents, page 7183 of Vol 14, page 39 of the first respondent.

Counsel observed that PW31, who testified on Boriye Local Government Area, gave unreliable evidence, pages 7447-7450 of vol 14. It was pointed out that, as averments in pleadings do not constitute evidence, allegations in the pleadings which were unsupported by evidence, were deemed abandoned. The court was urged to resolve these issues against the appellants.

THIRD RESPONDENT'S SUBMISSIONS

The third respondent, as already noted above, compressed all the above issues into three questions set out in its issues one, two and three, paragraph 3.1, page 4 of the brief.

In the first place, counsel argued that the Tribunal evaluated the evidence of the appellants' forty three witnesses, citing page 7436-7490 of Vol 14 of the record and the lower court, rightly, affirmed its findings. He referred to pages 7436-7489 and 7490 of Vol 14 [for the tribunal's findings on the issue of substantial non-compliance]; pages 7491-7493 [for its evaluation of other pieces of evidence which the appellants tendered]; pages 7417-7426 of Vol 14 [for its consideration of the alleged irregularities and the allegation of non-compliance]; pages 7417-7419 of Vol 14 [for the consideration of the allegation bordering on accreditation]; pages 7419-7420 [for the findings on the allegation of voting by ineligible persons and disenfranchisement of eligible voters]; pages 7420-7421 [for its findings on non-stamping of duplicate copies of Form EC8A]; pages 7421-7422 [on the allegations of over-voting/multiple voting]; pages 7422 of Vol 14 [for the findings on intimidation, harassment and inducement of voters]. It was submitted that the above findings of the Tribunal [as affirmed by the lower court] represent the law, paragraph 6.23, page 16 of the brief.

Counsel drew attention to the analysis of the tribunal on the probative value of the testimonies of PW15 and PW38, [pages 7494-7503 of Vol 14] and, in particular, to the question whether they qualify as experts, citing pages 7432-7434 of Vol 14. Learned counsel devoted paragraphs 7.11-7.22, pages 20-23 of the brief to an unremitting de-construction of the testimonies of these witnesses and the tribunal's orchestration of the errors that characterized the entries in the reports of PW15 and PW38, [paragraphs 7.9-7.22, pages 20-23 of the brief].

He contended that, as the appellants did not discharge their burden as required by law, the third respondent had no obligation to call any witness. He, further, contended that evidence elicited from cross examination from the appellants' witnesses constituted evidence in favour of the third respondent, paragraphs 8.0-8.7, pages 23-25 of the brief. He exposed the weaknesses of the exhibits which the appellants dumped on the Tribunal, paragraph 8.16 et seq. Like counsel for the first and second respondents, he urged the court to resolve

the above issues against the appellants.

APPELLANTS' REPLY

The appellants' Reply to the above submissions of the third respondent are contained in the process filed on April 29, 2015, paragraphs 1.1-1.11, pages 1-3, thereof.

B RESOLUTION OF THE ISSUES

As shown above, all the four issues [now classified under issue two] were lumped together under the rubric of evaluation of evidence. Indeed, the appellants' original issues two; three; four and seven were woven around the complaint against the findings of the tribunal which the lower court affirmed. Simply put, their quarrel was with: the lower court's affirmation of the finding that they failed to prove substantial non-compliance etc, issue two; failure to evaluate evidence, issue three; affirmation of finding that allegation of corrupt practice was not proved, issue seven. Before dealing with this issue of evaluation of evidence, however, the question of burden of proof has to be disposed of.

Now, there was an old maxim which was very popular in the Latin days of the Law. This maxim, which developed from the old Roman jurisprudence, was expressed thus: *incumbit probatio qui dicit, non qui negat*. It comes to this - the burden of proving a fact rests on the party who asserts the affirmative of the issue and not upon the party who denies it - for a negative is usually incapable of proof.

Instructively, this maxim has matured into an evidential rule in many jurisdictions. They include: England, Phipson on Evidence, (11th Edition), paragraph 92; page 40; *Pickup v Thames Ins. Co.* 3 Q.B.D. 594. 600; *Wakelin v L & S. W. Rv* 12 App Cas 41, 45; *Joseph Constantine Steamship Line Ltd. v. Imperial Smelting Corporation* [1942] AC 154, 174; *Seldon v Davidson* (1968) 1 WLR 1083; India, Sarkar on Evidence (15th edition, Reprint 2004) (Volume 21 Commentary at 1445) and Nigeria, *Imana v Robinson* [1974] 6 SC 83; approvingly, adopting the exposition in Phipson on Evidence, (11th Edition), paragraph 92; page 40: "Burden of proof on the pleadings" as the Nigerian law on the subject.

This has been the consistent posture of this court on this question, *Elemo and ors v Omolade and Ors* (1968) NMLR 359, 361; *Atane v Amu* (1974) 10 SC 237; *Fashanu v Adekoya* (1974) 6 SC 83; *Kate Enterprises Ltd v Daewoo Nig Ltd* (1985) 2 NWLR (pt 5)

116; Onyenge & Ors v Ebere 18 NSCQR (pt 11) 789, 802; Vulcan Gases Ltd v GESELLSCHAFT FUR Ind. (2001) 9 NWLR (pt.719) 610, 667.

In the instant case, were the appellants [as petitioners] able “to distinguish [between] the two distinct and frequently confused meanings which have always been attached to the words ‘burden of proof.’” B Elemo and Ors v Omolade and Ors (supra) at page 361? This question becomes even more cogent against the background of the presumption which inures in favour of the regularity of INEC’s election results, CPC v INEC and Ors (2011) LPELR -8257 (SC); Buhari v INEC and Ors [2009] All FWLR (pt 459) 419 and the burden of adducing evidence in rebuttal of the said presumption, Buhari v Yusuf [2005] 13 NWLR (pt 941) 1, 255; 193. C

In attending to the above complaints of the appellants against the concurrent findings of the lower courts, I have been guided by D the prescriptions, eloquently, enunciated in Case Law on the proper approach to be adopted in the resolution of complaints on findings of facts; credibility and demeanour of witnesses.

In the first place, it is settled that where an appellant fails to satisfy the appellate court that the lower court was wrong in its application of the facts to the prevailing and applicable law, his appeal will fail. This rule, which has a fairly ancient ancestry, Macaulay v Tukur (1881-1911) 1 NLR 35; Akinloye v Eyiola (1968) NMLR 92; ***has been endorsed in a succession of decisions of this court dating back to 1974.*** Obisanya v Nwoke (1974) 6 SC 69; Woluchem v Gudi (1981) 5 SC 291; Obodo v Ogba (1987) 2 NWLR (pt 54) and Ogologo v Uche (2005) 14 NWLR (pt 945) 226, 246. F

I have, equally, leaned for support on the prescription that this G court also has certain duties when considering findings of fact made by a trial court and affirmed by the lower court. These Trinitarian obligations are that it [this court] must: (a) recognise the onus on the appellant to satisfy it that the decision of the trial court, affirmed by the lower court, was wrong; (b) recognise the essential advantage H which the trial court enjoyed in seeing the witnesses and watching their demeanour; and (c) bear in mind that in cases which turn on the conflicting testimonies of witnesses and the credibility ascribed to them, it can never recapture the initial advantage of the trial court

which saw and assessed the witnesses. *Nteogwuile v Otuo* (2001) 16 NWLR (pt 738) 58; *Oyadare v Keji* (2005) 7 NWLR (pt 925) 571.

Against the background of these obligations, this court considering a complaint against the lower court's concurrent findings or non-findings of facts, will seek to know: (i) the evidence before the trial court; (ii) whether the said court accepted or rejected any evidence upon the correct perception; (iii) whether the court correctly approached the assessment of evidence before it and placed the right probative value on it; (iv) whether the court used the imaginary scale of justice to weigh the evidence on either side; (v) whether the court appreciated, upon the preponderance of evidence, on which side the scale was weighted having regard to the burden of proof. *Daramola and Ors v. AG Ondo* (2000) FWLR (pt 6) 997, 1015; 1016; *Osolu v. Osolu* (2003) FWLR (pt. 172) 1777, 1791.

The position, therefore, is that it is only where it is manifest that the findings of facts, as affirmed by the lower court, were based on a wrong perception or wrong principles of law that this court will interfere with them. It will, equally, be proper for this court to interfere where it is shown that the findings do not find anchorage on the evidence led at the trial or where it is shown that the findings are glaringly wrong and will pervert the cause of justice. In such situations, therefore, this court will interfere with such findings of fact in order to put the facts and the law in their proper context and perspective. *Balogun v Agboola* (1974) 10 SC 111; *Lokoyi v Olojo* (1983) 2 SCNLR 127; *Chinwendu v Mbamali* (1980) 3-4 SC 31; *Ibhefidon v Igbinosun* (2001) 8 NWLR (pt 716) 653; *Dibiemaka v Osakwe* (1989) 3 NWLR (pt 107) 101; *Odonigi v Oyeleke* (2001) 6 NWLR (pt. 708) 12.

Thus, where concurrent findings of facts are not perverse; this court cannot interfere with them. *Ajuwa v Odili* (1985) 2 NWLR. (pt. 9) 710; *Chukwueke v Nwankwo* (1985) 2 NWLR (pt 6) 195; *Nzekwu v Nzekwu* (1989) 2 NWLR (pt 104) 373. ***What is more, due to the initial advantage which the trial court had of actually seeing and assessing the witnesses***, *Nteogwuile v Otuo* (2001) 16 NWLR (pt 738) 58; *Oyadare v Keji* (2005) 7 NWLR (pt 925) 571, ***issues relating to the demeanour of such witnesses which the court saw and assessed and the ascription of weight to their evidence are the exclusive prerogatives of the trial court: pre-***

rogatives which neither the lower court nor this court can interfere with. Ebba v Ogodo (1984) 1 SCNLR 372; Owie v Ighiwi (2005) 5 NWLR (pt 917) 184, 208. **This foundation dictated the rule that a trial court has the power to ascribe credibility to the evidence of witnesses who testified before it.** Ajao v Ademola (2005) 3 NWLR (pt 913) 636, 656. B

Due to the weight of the learned senior counsel's invitation to this court to interfere with the concurrent findings of the lower courts, I was constrained in this judgment to plumb the voluminous records of appeal with the finery of a toothcomb in order to ascertain the salient findings of the trial Tribunal which the lower court affirmed. C This exercise took me through the sixteen out of the thirty, Local Governments of Osun State, where the appellants predicated their complaints.

AIYEDADE LOCAL GOVERNMENT AREA D

The trial Tribunal's evaluation of evidence, which the lower court affirmed, spanned pages 7436-7489 of the records, [fifty three pages], from Aiyedaade to Oshogbo Local Government Areas. In Aiyedaade Local Government Area, PW33, the Ward Supervisor, could not adduce evidence in proof of the allegations of unjustifiable disenfranchisement, voting by unqualified voters and the complaint of lack of accreditation. The Tribunal, in consequence, deemed the unsupported averments in the pleadings in this regard as abandoned, page 7438 of Vol Fourteen of the records. Worse still, his evidence was not the direct evidence of what he saw. Indeed, it was found at F page 7439 that PW33's concession under cross examination of signing "the result sheets [compromised] the allegations of arbitrary allocation of votes."

PW1 dumped on the Tribunal the duplicate copies of Forms: G (i) EC8As -exhibits 188 -204; (b) EC8Bs -exhibits 205 -209; (c) EC8Cs - exhibits 221 -232; (d) EC8Ds - exhibit 233; (e) exhibits 234 -235 and (f) certified true copy of court- exhibit 236. He failed to chart any nexus or connection between them and the complaints. Realizing that lacuna in the evidence, counsel rose to the occasion and attempted, albeit in vain, to do what the witness failed to do by providing some charts in his final address and "went ahead to make a robust analysis and evaluation of some of these documents as providing the required or necessary proof of the allegations in the peti- H

tion,” page 7443 of the record. However, he was reminded that “the obligation to tie documents to facts or evidence or admitted facts is one to be done in open court and not a matter for counsel’s address,” page 7443 of the record. In conclusion, it was found that “the evidence led by the petitioners completely lacks any degree of cogency to support the widespread allegations made with regard to the wards and units in Aiyedaade Local Government Area,” page 7444 of the record.

ATAKUMOSA LOCAL GOVERNMENT AREA

In this area, after juxtaposing the testimonies of the petitioners’ witnesses with the testimonies of the respondents, RW12 and RW22 “on the other side of the aisle” [an obvious reference to the *Mogaji v Odofin* evaluation of evidence canon, the Tribunal found “a complete absence of evidence of any value to sustain the allegations with respect to the polling units in Atakumosa East Local Government Area where the outcome of the Governorship election has been questioned,” page 7447 of the record.

BORIPE

Only one witness, PW31, was called as Ward Supervisor for Isale Oyo Ward four which has five polling units. After juxtaposing his lone evidence with the testimonies of RW8 and RW9, voters in units 01 and 02 of Ward four in Boriipe and who testified “to the orderly conduct of elections in these units,” the trial Tribunal found that “the evidence of pw31 is absolutely not cogent enough to support or sustain the allegations of electoral malpractices ... “ page 7450 of the record.

EDE NORTH

Here, the evidence of PW35 was found to have been “*made entirely from reports of PDP Ward Collation agents.*” Expectably, his testimony was branded hearsay evidence, page 7451 of the record.

EDE SOUTH

As allegations with respect to forty four units were not supported with oral evidence, they were deemed abandoned just as PW30, under cross examination, conceded that he signed the summary of results of his unit, exhibit 207 and that his party agents all signed the Forms EC8A for the four units in his ward vide exhibit 192, page 7453 of the record.

EJIGBO

It was found here that *“while the evidence of this witness [PW28] from this unit is clearly not material to the petitioners as it has not added any value to their case, it however confirms the fact that the third respondent was very diligent in its assignment...”* page 7456 of the record.

IFELODUN

B

PW13, 14, 16, 17 and 29 did not fare any better. For example, PW29, apart from bare assertions of intimidation of PDP voters, when asked if he made a report to the police, responded in the negative, page 7458.

C

ILESHA EAST

The witness here was given exhibits 195 and 210, forms EC8A and EC8B, respectively, and asked to point out the cases of over voting. He was unable to do so, page 7462.

ILESHA WEST

D

While the witness asserted that he used form EC8B to write his statement, it was found that the said form EC8B was not part of the four sheets of form EC8B from the Local Government which were before the Tribunal as exhibit 21, page 7463.

IREPODUN

E

Following the trial Tribunal’s evaluation of the testimonies of the witnesses, pursuant to the Mogaji v Odojin canon, it found “the evidence of these polling agents who remained at their polling units from beginning to conclusion of election, as to the conduct of the election, more reliable than the testimony of the ward agents/supervisors and Local Government collation agents who relied on information given to them by their agents at the polling units,” page 7466.

F

IREWOLE

Among other things, PW18 admitted under cross examination G “that his claims as in paragraph 3 j-p in his statement on oath are what his agents told him.” This was declared inadmissible; being hearsay evidence in so far as that was intended to establish the truth of the said allegations, page 7469 of the record. Worse still, PW19 failed to demonstrate before the Tribunal what he claimed to be over voting in unit 004, page 7470. Equally, PW20 could not demonstrate to the Tribunal the alleged over voting on the face of exhibit 248 (The Register of voters) for the ward and units and exhibit 198 which contained entries in respect of unit 003 of ward 6. Even then, the H

Tribunal found that “the results were duly stamped as shown in exhibits 90B, 90C, 90E, 90F, 90H and 90J. Forms EC 8A as it affects polling units 008, 009, 011 and 012 bear the stamp of the Presiding Officer with his signature,” page 7471 of the record.

IWO

B The petitioners challenged the elections in only fifty-three polling units of the one hundred and forty four polling units in the fifteen wards of two Local Government Area. Unfortunately, the only two witnesses, PW21 and PW22, could not prove the allegations. Since
C there was no evidence in respect of ninety one polling units in the ward, the averments were deemed abandoned, page 7473.

OBOKUN

While the evidence of PW40 was found not to have advanced the case of petitioners, PW3 “admitted before the Tribunal he voted
D for the candidate of his choice.” Under cross examination, he admitted before the Tribunal that exhibit 215 is the collated result for his ward and that in unit 004, APC scored 100 votes while PDP scored 124 votes and that the PDP won but that they struggled to win that unit,” page 7475.

E OLA OLUWA

Here PW 37 confirmed the result in form EC 88 and also confirmed his signature in exhibit 176. It was found that, from exhibits 201 and 172, he signed the results. “He failed to show any result
F sheet without the official stamp of the officials who conducted the election, neither did he show any altered entry not initiated or counter-signed,” page 7476.

OLORUNDA

While the petitioners called seven witnesses, PW7, 8, 9, 10,
G 11, 12 and 23, the first respondent called four witnesses, RW1, RW2, RW3 and RW4. In the tribunal’s findings, the testimonies of the respondents’ said witnesses “*appear to be more credible as... to what the witnesses personally saw and not reports from any other persons/agents. Their testimonies were not discredited by cross examination,*”
H page 7480.

ORIADE

Here, while PW32 “*failed to name specifically the wards and units he noted the alleged malpractices,*” the Tribunal found that, despite PW34’s disclamation of his signature on exhibit 144B, it [the

said exhibit 144B] bears the official stamp of the presiding officer. This is clear on the face of the exhibit,” page 7482.

OSOGBO

In the State capital, Osogbo, the petitioners could not show “that the votes recorded for these respondents on form EC 8A are different from those recorded for them in forms EC 8B and form EC 8C,” page 7489.

In all, contrary to the submissions of the appellants’ counsel, there is clear evidence of the Tribunal’s application of the canon in Mogaji v Odofin, see, pages 7436 -7489 of Vol fourteen of the records and, in particular, pages 7446; 7447; 7451; 7452; 7465; 7480 etc. I, therefore, endorse the submissions of the respondents’ counsel that there is no merit in the appellants’ submission that the Tribunal “fused the allegations of corrupt practices and non-compliance under issue two for determination,” paragraph 4.23, page 12 of the appellants’ brief. As shown above, it did not. The lower court, on its part, rightly, affirmed the above findings, pages 7897 -7909 of Vol 15 of the record.

I have no difficulty in upholding the lower court’s affirmation of the trial Tribunal’s ascription of weight to the witnesses presented before it. This, equally, applies to its affirmation of the findings with regard to the electoral documents dumped on the trial Tribunal. It cannot be otherwise for it has long been settled that a Judge is not permitted to embark on an inquisitorial examination of documents outside the court room. Worse still, he is not allowed to act on what he discovered in such a document in relation to an issue when that was not supported by evidence or was not brought to the notice of the parties to be agitated in the usual adversarial procedure.

Ivienagbor v. Bazuaye [1999] 9 NWLR (pt 620) 552; (1999) 6 SCNJ 235, 243; Owe v. Osinbajo (1965) 1 All NLR 72 at 75; Bornu Holding Co, Ltd. v. Alhaji Hassan Bogoco (1971) 1 All NLR 324 at 333; Alhaji Onibudo & Ors v Alhaji Akibu & Ors [1982] 7 SC 60, 62; Nwaga v Registered Trustees Recreation Club (2004) FWLR (pt 190) 1360, 1380-1381; Jalingo v Nyame (1992) 3 NWLR (pt 231) 538; Ugochukwu v co-operative Bank [1996] 7 SCNJ 22.

I, equally, endorse the lower court’s affirmation of the finding that averments in pleadings [no matter their eloquent

phraseology] do not speak for the pleader without supporting evidence unless the adversary admits them. Chime v Chime [2001] 3 NWLR (pt. 701) 527; UB.N. Ltd. v Jimba [2001] 12 NWLR (pt. 727) 505; Gamboruma v Borno [1997] 3 NWLR (pt. 495) 530; Yaktor v Governor of Plateau State [1997] 4 NWLR (pt. 498) 216; B Adeloye v Olona Motors (Nig) Ltd [2002] 8 NWLR (pt. 769) 445, 460; Savannah Bank Ltd v Pan Atlantic [1987] 1 NWLR (pt. 49) 212; Durosaro v Ayorinde [2005] 21 NSCQR 701, 718; Ifeta v SPDC (Nig) Ltd [2006] 8 NWLR (pt. 983) 585.

C **In the absence of credible evidence, therefore, in proof of the allegation of non-compliance (supra) [substantial non-compliance with the principles of the Electoral Act etc or, in the alternative, substantial effect on the election result of any infraction of the said Act etc no matter how minuscule the transgression may be], all the brilliant submissions on the co-**
D **gency of this court's decision on Swen v Dzungwe (supra) are, merely, speculative or, at best, hypothetical.**

My understanding of the sacred principles consecrated in section 139 (1) of the Electoral Act, 2010, that is, the doctrine of substantial compliance there-under is that its consid-
E **eration will only arise where the petitioners [such as the appellants who were the petitioners at first instance] have succeeded in establishing substantial non-compliance with the principles of the Electoral Act etc or, in the alternative, sub-**
F **stantial effect on the election result of any infraction of the said Act etc no matter how minuscule the transgression may be.** Buhari v Obasanjo [2005] 50 WRN 1, 177; Swen v Dzungwe (1966) NMLR 297; Agagu v Mimiko (2010) 32 WRN 16, 80; Yusuf G and Anor v Obasanjo and Ors (2005) 18 NWLR (pt 956) 96, 222.

The lower court, having rightly affirmed the trial Tribunal's correct findings [at page 7492 of volume 14] that "*in the instant petition, the petitioners have failed to establish before us what provisions of the Electoral Act and Manual have been contravened by any*
H *of the respondents in the conduct of the elections in any of the polling units being questioned...*," I shall say no more on that. The same applies to the lower court's affirmation of the finding relating to the appellants' failure to prove the criminal allegations of malpractice beyond reasonable doubt.

It remains to be added that it has long been settled that evidence obtained in cross examination on matters that are pleaded, that is, on matters on which issues were joined [as was the case at the Tribunal], is admissible. Adeosun v Governor of Ekiti State [2012] All FWLR (pt 619) 1044, 1059; Akomolafe v Guardian Press Ltd [2010] 3 NWLR (pt 1181) 338, 351; 353-354. ***In effect, the argument that the third respondent had no evidence before the trial Tribunal is incorrect.***

That argument would have been impregnable if the pieces of evidence Chief Awomolo, SAN, elicited from the petitioners' witnesses in cross examination were not supported by the pleading of either party, Punch Nigeria Ltd v Enyina [2001] 17 NWLR (pt 741) 228; SPDC v Anaro [2000] 10 NWLR (pt 675) 248; Ita v Ekpeyong [2001] 1 NWLR (pt 695) 587; Isheno v Julius Berger Nig Plc [2003] 14 NWLR (pt 840) 289, 304; Ojo v Kamalu [2005] 18 NWLR (pt 958) 523, 548; Woluchem v Gudi [1981] 5 SC 291, 320; Ewarami v ACB Ltd [1978] 4 SC 99, 108; Dina v New Nigeria Newspapers Ltd [1986] 2 NWLR (pt 22) 353; Agnocha v Agnocha [1986] 4 NWLR (pt 37) 366; Okwejinor v Gbakeji [2008] All FWLR (pt 408) 405.

The net effect is that there is no merit in the appellants' complaints in the composite issues just dealt with under rubric of "evaluation of evidence." These issues [the appellants' original issues two; three; four and seven] are, therefore, resolved against them.

ISSUE THREE

[The appellants' original issue five; first and second respondents' original issue five]

In this issue, which was the appellants' original issue five, the appellants' complaint was that the lower court erred in affirming the tribunal's findings which rejected the report and evidence of PW15 and PW38. Counsel argued that the lower court erred in rejecting the evidence of PW15 and PW38, paragraphs 4.90-4.94, pages 29 - 34 of the appellants' brief. He set out what, in his view, were the main missteps of the lower court, pages 29-34 of the brief. He urged the court to resolve this issue in favour of the appellants.

The first and second respondents responded to these arguments in paragraphs 1.5.1- 4.5.25, pages 27 - 33 and paragraphs 1.5.1-4.5.25, pages 26-32 of their briefs, respectively. In the main, it was their submissions that these two witnesses were not expert wit-

nesses. Attention was drawn to page 7434 of Vol 14 where the Tribunal found that there was no scientific or technical information contained in the reports submitted by PW15 and PW38 and its emphatic finding that “no such expertise is exhibited in these reports.” Counsel pointed out that the tribunal extensively evaluated the testimonies of
 B PW15 and PW38, including exhibits 243 and 342 at pages 7494-7501 of Vol 14 and found that they were discredited and unreliable, citing *Sowemimo v The State* [2004] All FWLR (pt 203) 951; *Akeredolu v Mimiko and Ors* [2013] 12 SCM (pt 2) 135, 157, 170.

C Attention was, equally, drawn to the extensive evaluation of the testimonies of these witnesses at pages 7494 -7501 of Vol 14 and the damaging evidence elicited from them during cross examination at pages 7216- 7218 [PW15]; 7288-7290 of Vol 14 [PW38]. Counsel was emphatic that the two witnesses were not expert witnesses
 D within the meaning of section 68 (1) of the Evidence Act, *AG v Abubakar* [2007] All FWLR (pt 375) 405; *ANPP v Usman* [2008] NWLR (pt 1100) 1, 67-68. It was observed that their reports were replete with errors, false entries and deliberate attempts to distort facts, citing page 7288 of vol 14 [PW38] and page 7216 of vol 14 for
 E the evidence of PW15].

More particularly, attention was drawn to page 7211 of vol 14 for the contradiction of the evidence of PW15 in cross examination and pages 7917-7920, particularly, pages 7497- 7498 of volume 14
 F for the tribunal’s finding that exhibit 243 which PW15 tendered “has been so discredited under cross examination that no reasonable tribunal can rely on it.” And the evidence of PW38 under cross examination, paragraph 4.5.22, page 33. Counsel urged the court not to interfere with the concurrent findings of the lower courts.

G **APPELANTS’ REPLY**

The appellants’ reply, essentially, re-iterated the earlier submissions on this issue.

RESOLUTION OF THE ISSUE

H In this case, the appellants [as petitioners], perhaps, believing that matters of scientific or of technical nature were in issue, summoned PW15 and PW38 who testified on their behalf. However, like blocks of ice tossed into a cauldron, their testimonies melted under the fusillade of probingly, devastating questions in cross examination, exposing them as witnesses whose testimonies were riddled with mis-

takes, errors and inexcusable gaffes, pages 7216-7290.

Above all, at page 7434 of Volume fourteen, the trial Tribunal found “no scientific or technical information contained in the reports submitted by PW15 and PW38. While they may be experts in their respective fields, no such expertise is exhibited in these reports. They, simply, looked at the electoral materials and brought out facts therefrom. Their reports and themselves would therefore be treated not as expert evidence/witnesses.” As Asiwaju Awomolo, SAN, submitted there was no appeal to the lower court on these findings with regard to the status of these two witnesses, pages 19 of the third respondent’s brief.

Against this background, it would not serve any useful purpose dissipating precious judicial energy on this point as there are authorities on when the evidence of knowledgeable experts would be imperative, for example, in matters that are scientific or technical in nature, *Seismograph Services Ltd v Onokpasa* [1972] 4 SC 123; *Seismograph Services Ltd v Ogbeni* [1974] 4 SC 85, and, consequently, may be beyond the ken and comprehension of the court, *Kaydee Ventures Ltd v Hon. minister, FCT* [2010] All FWLR (pt 519) 1079, 1114.

The submission that, in the absence of rebuttal evidence from the respondents’ expert witnesses, the trial Tribunal had the obligation to accept the testimonies of PW15 and PW38 is unavailing. In the first place, as shown above, their testimonies did not wither the barrage of questions in cross examination. Worse still, the tribunal agreed that the exhibit, subject of PW15’s evidence “*has been so discredited under cross examination, page 7498. Still on page 7498, it stated that ...PW38, another expert witness for the petitioners admitted under cross examination that his report covers more grounds than the complaints of the petitioners.*”

Contrary to the appellants’ contention, therefore, the trial court was, amply justified in not according their testimonies any probative value, *Kaydee Ventures Ltd v Hon Minister, FCT* (supra); *AG Oyo State v Fairlakes Hotels (No 2)* [1989] 5 NWLR (pt 121) 255.

What is more, the so-called expert even admitted that what was involved was a matter in which any literate person could have proffered opinion. In effect, expert opinion was not even necessary in the first place, *Kaydee Ventures Ltd v Hon Minister, FCT* (supra);

Seismograph Services Ltd v Onokpasa (supra): Seismograph Services Ltd v Ogbeni (supra). With respect, there is no merit in the appellants' complaint in this issue and it is, accordingly, resolved against them.

ISSUE FOUR

B [The appellants' original issue six; first and second respondents' issue six; third respondent's original issue four]

C This issue, on the propriety of the lower court's interpretation of the effect of paragraph 16 (1) (2) of the First Schedule to the Electoral Act on the appellants' reply in the petition, was dealt with in paragraphs 4.103-4.115, pages 35-37 of the appellants' brief. Counsel cited so many cases on the requirements of the Interpretation on the exclusion of Sunday in computing time. Paragraph 4.103-4.107, page 35, page 35 of the brief.

D The first and second respondents articulated their responses to the above arguments on paragraphs 4.6.1-4.6.5, pages 33-36 of the brief. Their salient arguments are: the appellants' arguments are misconceived having regard to the case law on this point, paragraphs 4.6.4-4.6.5, pages 34-36 of the brief.

E The arguments of the third respondent on this issue span pages 31-34, paragraphs 9.2-9.12 of the brief. Like the other respondents, counsel debunked the arguments on the interpretation of paragraph 16 (1) and (2) (supra). The appellants offered their replies to these arguments in their reply brief.

F RESOLUTION OF THE ISSUE

My Lords, in view of the earlier magisterial position of this court on the inapplicability of the Interpretation Act on the computation of time in election matters, *Okechukwu v INEC and Ors* [2014] 9 SCNJ G 47, 78, per Ariwoola, JSC, this issue need not delay us further in this judgment.

H From a perusal of paragraphs 4.97-4.115, pages 34-37 of the appellants' brief, it is not in doubt that the main plank of their contention is that, in the interpretation of the time frame stipulated in paragraph 16 (1) and (2) of the First Schedule to the Electoral Act, 2010 (as amended), the relevant instrument to be considered is section 15 (4) and (5) of the Interpretation Act, Cap 123, LFN, 2004. That done, this court should hold that the appellants' reply was filed within time.

The simple answer is that the said Interpretation Act is inapplicable to this matter being an election matter, Okechukwu v INEC and Ors (supra). Thus, as his reply was not filed in strict fidelity to the time protocol ordained in paragraph 16 (supra), the lower court, rightly struck it out. This must be so because the timelines therein are sacrosanct due to the peculiar nature of election matters which are time-bound. Buhari v INEC and Ors [2008] 19 NWLR (pt 1120) 246. ***Strictly speaking, this sort of invidious provision should not feature in a user friendly judicial process. However, in the peculiar circumstance of the urgency involved in the determination of such electoral disputes, the much this court can do is to wink at the tyranny of deadlines entrenched therein. In effect, any process filed out of time is incompetent and is liable to be struck out.*** Okechukwu v INEC and Ors (supra) 79. D
This issue is, also, resolved against the appellant.

In all, I find that there is no merit in the complaints with regard to issues two, three, four, five, six and seven. Although issue one was resolved in the appellants' favour, it does not alter the fate of their appeal which is bound to fail. I, therefore, enter an order dismissing E it. Appeal dismissed and the parties are to bear their costs.

APPEAL NO. SC. 204A/2015

FACTUAL BACKGROUND

As observed at the outset of this judgment, the appellants filed F a second appeal, as evidenced in the second Notice of Appeal, against part of the lower court's judgment relating to the cross appeal of the first respondent. At the trial Tribunal, the first respondent had filed a motion on October 21, 2014 asking the tribunal for the reliefs sub-joined hereunder: G

(1) An order of the Tribunal striking out the Petitioners' Reply to the first respondent's reply same having been filed out of time prescribed by paragraph 16 (1) of the First Schedule to the Electoral Act, 2010 (as amended);

(2) An order of the Tribunal deeming the Petition as abandoned for the petitioners' failure to apply for the issuance of Notice of pre-hearing session after the close of pleadings; and H

(3) An order of the Tribunal dismissing the petition for failure of the petitioners to apply for issuance of pre-hearing session before

the expiration of the time prescribed by the Rules of the Honourable Tribunal

Issues were joined in the affidavit evidence of the parties. The parties, equally, filed written addresses. When the motions were ripe for hearing, the tribunal opted to hear it with the petition so as to deliver a composite judgment, comprising the ruling on the motion and the main judgment. On February 6, 2015, the tribunal delivered its ruling, holding that the appellants' said replies were filed out of time. However, in its final judgment, it elided any reference to the said replies. This informed the decision of the first and second respondents to challenge the ruling as per their Notice of Appeal of February 18, 2015.

After hearing the parties, the Court of Appeal [lower court], in its judgment of April 2, 2015, dismissed the appellant's appeal. It, also, allowed the first respondent's Cross Appeal in part. It struck out the appellants' said replies. In addition, it dismissed the appellants' petition as having been abandoned for their failure to apply for the issuance of pre-hearing Notice pursuant to paragraph 18 (1) of the First Schedule to the Electoral Act (supra). The appellants' appeal in Appeal No SC 204A/2015 stems from these aspects of the lower court's judgment in the Cross Appeal of the first respondent.

The appellants formulated only two issues for the determination of this appeal, subject of their second Notice of Appeal [now, Appeal No 204A/2015. They are:

(1) Whether the learned Justices of the Court of Appeal were right in the interpretation of paragraph 18 (1) of the First Schedule to the Electoral Act, 2010 (as amended) in dismissing the appellants' petition?

(2) Whether the learned Justices of the Court of Appeal were right in their interpretation of paragraph 16 (1) and (2) of the First Schedule to the Electoral Act, 2010 (as amended) in striking out the appellants' reply?

On his part, the first respondent rephrased the said two issues thus:

(1) Whether the Court of Appeal was right in holding that the Tribunal ought to have dismissed the petition as having been abandoned?

(2) Whether the Court of Appeal was right in holding that the

Tribunal ought to have made a consequential order striking out the replies after holding that the replies [sic, they] were filed out of time?

Before dealing with these issues, I shall pause here to dispose of the first respondent's Preliminary Objection, paragraph 2.1, page 5 of the brief filed on April 24, 2015.

PRELIMINARY OBJECTION

B

This objection, which is similar to the objection in SC 204/2015, was expressed thus:

At or before the hearing of this appeal, the first respondent shall raise objection that the appellants have abandoned Ground two of the Notice of Appeal because the issue purportedly distilled therefrom is at variance with the Ground of Appeal.

C

In the said objection, the question of the introduction of a new party to the appeal was broached once more, just as the issue of the abandonment of Ground two in the Notice of Appeal was re-presented to this court for re-consideration. Parties canvassed arguments in favour of, and in opposition to this objection.

D

RESOLUTION OF THE ARGUMENTS

This objection is a repetition of the objection in Appeal No 204/2015 which had been disposed of at the outset of this judgment. For the avoidance of the indefensible wearisome repetition of the reasons advanced earlier for dismissing the said objection as unmeritorious, it shall suffice to state here that I adopt the said reasons for dismissing the self-same objections in Appeal No 204/2015 as my reasons for, equally, dismissing this objections in this Appeal [Appeal No 204A/2015]. Accordingly, I hereby enter an order dismissing the objection as unmeritorious. Since the Objection of the second respondent is an exact copy of the first respondent's objection, I have no hesitation in likewise dismissing it as lacking in merit.

E

F

G

MAIN APPEAL [No 204A/2015]

ARGUMENTS OF COUNSEL

ISSUE ONE

Whether the learned Justices of the Court of Appeal were right in the interpretation of paragraph 18 (1) of the First Schedule to the Electoral Act, 2010 (as amended) in dismissing the appellants' petition?

H

Learned senior counsel, Dr. Alex Izinyon, as shown above adopted the brief filed on April 21, 2015 as the appellant's argu-

ments in respect of this appeal. On this issue, two main arguments were put forward. In the first place, it was submitted that the lower court erred when it held that the appellants' failure to apply for the issuance of pre-hearing session notice amounted to a complete abandonment of the petition, thereby dismissing it. It was pointed out that the tribunal did not strike out the petition. Rather, in the interest of justice, it saved the said petition. Counsel submitted that the provision dealing with pre-hearing session is procedural and cannot defeat the petition.

In the second place, counsel contended that the tribunal was right in not dismissing the petition as an abandoned petition notwithstanding its finding that the appellants failed to apply for the pre-hearing notice within the seven days stipulated by paragraph 18 (4) and (5) of the First Schedule to the Electoral Act (*supra*).

In the submission of learned senior counsel, as procedural provisions, the said paragraph 18 (4) and (5) prescriptions cannot warrant the striking out of a petition on the ground of jurisdiction which is part of substantive law, *Abubakar v Nasamu* [2012] 17 NWLR (pt 1330) 523; *Saeed v Yakowa* [2013] All FWLR (pt 692) 1650, 1686. He contended that the current trend is to allow aggrieved parties ventilate their grievances through legal means without being shut out on the altar of technicalities. He maintained that the trial Tribunal rightly relied on paragraph 53 (1) of the First Schedule (*supra*), urging the court to affirm the position that the petition should be heard on merit.

FIRST RESPONDENT'S CONTENTION

Having adopted the brief in respect of this appeal [No 204A/2015], Chief Olujinmi, SAN, pointed out that the appellants, as petitioners, were required to file a Notice of pre-hearing session within seven days after the close of pleadings. He explained that, the tribunal having found that the said pre-hearing notice was not filed within the time stipulated after close of pleadings pursuant to paragraph 18 (1) (*supra*), ought to have dismissed the petition under paragraph 18 (4) (*supra*) as being abandoned, *Enwezor v INEC* [2009] 8 NWLR (pt 1143) 223, 237; *Okereke v Yar'Adua* [2008] 12 NWLR (pt 1100) 95; *Dada v Dosunmu* [2006] 18 NWLR (pt 1010) 134, 166; *Mohammed v Martins Electronics* (2009) LPELR-3708.

He contended that where a statute stipulates how a particular

act shall be done, failure to do so is fatal. He noted that the tribunal was in error to have placed reliance on paragraph 53 (1) (supra) to save the petition. He explained that nothing in this paragraph detracts from the provisions of paragraph 18 (4) (supra), hence the petition was liable to be dismissed, *Inakoju v Adeleke* [2007] 4 NWLR (pt 1025) 427, 590, 697; *Maitsidon v Chidari* [2008] 16 NWLR, (pt 1114) 553, 575; paragraphs F-G; *Okereke v Yar'Adua* (supra). B

He canvassed the further view that the use of the word “shall” in paragraph 18 (4) (supra) is mandatory. He noted that the express provision of paragraph 18 (4) (supra) is that non-compliance with paragraph 18 (1) amounted to failure to prosecute which attracts the sanction of dismissal, *Amaechi v INEC* [2008] 5 NWLR (pt 1080) 227, 359, 360, paragraphs C-D; *Abubakar v Nasamu* (No 2) [2012] 17 NWLR (pt 1330); *Saeed v Yakowa* [2013] All FWLR (pt 692) 1650, 1686, 7410-7415. C D

He contended that a literal interpretation of the above paragraph shows that the said provision of paragraph 53 (1) was intended to apply in such situations as, in the First Schedule, where no specific provision on the consequences that should follow any act of non-compliance was made. He took the view that the phrase “except otherwise stated or implied” qualifies or limits the application of paragraph 53 (1). He pointed out that paragraph 18 (4) expressly provided a definite line of action to be carried out by the tribunal. He maintained that paragraph 53 (1) only saves a petition or a proceeding where the consequence or non-compliance with any of the provisions of the Act is not expressly or impliedly stated to defeat the petition. In his submission, the tribunal wrongly relied on paragraph 53 (1) to preserve the petition which was abandoned. E F

He pointed out that *Abubakar v Nasamu* (No 2) (supra) and *Saeed v Yakowa* (supra) did not factor in the exclusion clause in paragraph 53(1), namely, “except otherwise stated or implied.” Above all, he contended, in those cases, the respondents were shown to have taken steps in the proceedings even with the knowledge of the alleged irregularity; hence, they were taken to have waived their rights. Contrariwise, in the instant case, the first respondent raised his objection before taking any fresh steps and it was the tribunal that ruled that it was going to hear the objection together with the substantive suit. He urged the court to resolve this issue against the appellant. G H

RESOLUTION OF THE ISSUE

I find sufficient merit in the contention of the respondents here. I endorse the unanswerable submission that the tribunal, having found that the said pre-hearing notice application was not filed within the time stipulated after close of pleadings pursuant to paragraph 18 (1) (supra), ought to have dismissed the petition under paragraph 18 (4) (supra) as being abandoned. Enwezor v INEC [2009] 8 NWLR (pt 1143) 223, 237; Okereke v Yar'Adua [2008] 12 NWLR (pt 1100) 95; Dada v Dosunmu [2006] 18 NWLR (pt. 1010) 134, 166; Mohammed v Martins Electronics (2009) LPELR - 3708.

It is not in doubt that the drafts person of the said Act, aware of the obvious time constraints on the tribunals dealing with election matters in complying with the time frames therein, deliberately, wove some new case management techniques into the Act with a view to empowering them [trial Tribunals] to control and manage the proceedings expeditiously. Paragraph 18 (1) is one of such mechanisms. It is, thus, a deliberate device which erected time frames by calendaring the permissible periods for consummating or accomplishing certain steps within the time management regime created in the Act itself. Okechukwu v INEC (supra).

The consequence is that if a petitioner fails to consummate the issuance of pre-hearing notice [Form -TF007] within seven days, he cannot fall back on paragraph 53 (1), a provision which because Paragraph 18 (4) (supra) prohibits the extension of time, is inapplicable and, so, does not avail such a tardy petitioner. Contrary to the brilliant submissions of the appellants' counsel, Abubakar v Nasamu (No 2) (supra) and Saeed v Yakowa (supra), decisions of this court, are, clearly, distinguishable. The reason is simple.

The effect of paragraph 18 (4) (supra) on paragraph 53 (1) (supra) was not before this court in those two cases. They are, therefore, not authorities on the resolution of the issues in this appeal, namely, whether the said paragraph 53 (1) can save a petition in view of the exclusionary clause therein. In my view, it does not. There is, thus, no conflict between the position in this appeal and the positions in those two cases. Each case is decided based on its peculiar

facts and surrounding circumstances.

From the specific issues canvassed here - issues which were not presented to this court in those two cases -I have no hesitation in holding that the rationes decidendi in the said cases are inapplicable to the concrete question here, that is, whether trial Tribunal, rightly, prayed in aid the saving provision in paragraph 53 (1) in favour of the petitioners. For the reasons adduced above, it was wrong in so doing. The lower court, rightly, disagreed with the Tribunal on this point. I resolve this issue against the cross appellants.

ISSUE TWO

Whether the learned Justices of the Court of Appeal were right in their interpretation of paragraph 16 (1) and (2) of the First Schedule to the Electoral Act, 2010 (as amended) in striking out the appellants' reply?

On this issue, Dr. Izinyon, SAN, canvassed the view that the lower court was wrong when it struck out the appellants' reply and reprimanded the tribunal for not striking out the petition, having found that the said reply was filed out of time. In his view, that was a narrow interpretation of paragraph 16 (1) and (2) (supra). Although conceding that the period stated in paragraph 16 (1) and (2) is five days, he maintained that governs the computation of such period of less than six days is the Interpretation Act excludes Sunday.

Presuming this to be the correct position, he argued that the appellants' reply which was filed on October 14, 2014 was within five days, that is, excluding Sunday, hence, the filing on October 14, 2014 was proper and valid, Etuk v Ikon and Ors (2011) LPELR 4045 (CA) where the Court of Appeal interpreted the provision of paragraph 16 (1) relying on external aids to exclude the date of service. He urged the court to approve of the reasoning in that case.

Learned senior counsel, citing section 15 (4) and (5) of the Interpretation Act, which stipulate that Sunday and Public holidays should be discounted in computing a period that does not exceed six days and several cases on those sections, contended that by the above provisions, Sunday should be discounted in computing the five days period within which the reply was to be filed. In his view, therefore, the appellants' reply was not filed one day outside the five days provided under paragraph 16 (1), Etuk v Ikon and Ors (supra).

He disclaimed the relevance of the cases which the tribunal

relied on, paragraph 1.45, page 9 of the brief. He re-iterated the earlier submission that paragraph 16 (1) and (2) provisions are procedural and cannot override the substantive law which governs elections, *Abubakar v Nasamu* (supra) and *Saeed v Yakowa* (supra). He urged the court to invoke section 22 of the Supreme Court Act and consider the replies which the appellants filed having regard to the fact that the appellants already had evidence and new facts in the reply, paragraphs 1.49-1.50, pages 9-10 of the brief. He urged the court to allow the appeal.

FIRST RESPONDENT'S REPLY

On his part, Chief Olujinmi, SAN, pointed out that, although the tribunal endorsed their [respondents'] submissions that the reply was filed out of time, it failed to pronounce on the effect of this failure, pages 7403- 7404, Vol 14 of the record. He submitted that the lower court was right in its view that the tribunal was wrong in failing to strike out or dismiss the appellants' incompetent replies, having found that they were filed out of time, *Okechukwu v INEC*[2014] 17 NWLR (pt 1436) 255, 285-286, para D-A. He pointed out that paragraph 16 (2) strictly forbids the tribunal from extending time for filing the said replies, thereby treating as unpardonable such default to file reply within five days. He urged the court to endorse the findings of the lower court on this issue.

The second respondent's brief, filed on April 24, 2015, was an exact copy of the first respondent's brief. The arguments of the third respondent were similar to the arguments of the first respondent. They all invited the court to sustain the position of the lower court.

APPELLANTS' REPLY TO THE THIRD RESPONDENT

Relying on the brief filed on April 30, 2015, in reply to the third respondent's brief, Dr. Izinyon, SAN, re-iterated his earlier submissions on paragraph 18 (i), [paragraph 1.3, page 1]; the Interpretation Act, [paragraph 1.4, page 1 and the cases of *Saeed v Yakowa* (supra) and *Abubakar v Nasamu* (supra)].

RESOLUTION OF THE ISSUE

This issue had been dealt with in the main appeal [Appeal No 204/2015]. I, therefore, adopt my reasons in the main appeal as my reasons for resolving this issue against the cross appellants in this cross appeal.

CROSS APPEAL OF THE FIRST RESPONDENT/CROSS AP-

PELLANT

What prompted this cross appeal was the ruling of the trial Tribunal which over-ruled the objection of the first respondent [now, cross appellant] to the admissibility of three categories of documents. They are:

(a) Exhibits 1-185 and 249-341. It was their contention that, being public documents, they were improperly certified. The trial Tribunal, as shown above, overruled this objection; B

(b) They also objected to the admissibility of exhibits 243 and 342, computer-generated documents on the ground that they were tendered in breach of section 84 of the Evidence Act, 2011. Essentially, the argument of the cross respondent was that only documents generated from the internet fall within the definition of computer-generated documents. The tribunal overruled the objection; C

(c) Lastly, there was the objection to the admissibility of exhibits 368-380, ballot papers which were tendered by the first and second cross respondents. D

Upon the dismissal of these objections, the cross appellant appealed to the lower court which allowed the appeal in part. Aggrieved by the lower court's view on the admissibility of the above documents, the cross appellant has, further appealed to this court through the Notice of Cross Appeal of April 15, 2015. They formulated three issues, viz, E

(1) Whether the learned Justices of the Court of Appeal did not err in law in their decision dismissing the objection of the cross appellant to the admissibility of exhibits 1-185 and 249- 341 tendered by the first and cross respondents? F

(2) Whether the learned appellate Justices were right in overruling the objections of the cross appellant to the admissibility of exhibits 243 and 342 which were computer generated documents but which were tendered in evidence by the cross respondents without complying with the mandatory requirements of section 84 of the Evidence Act? G

(3) Whether the learned Justices of the Court of Appeal were right in their decision dismissing the objection of the cross appellant to the admissibility of exhibits 364-380 which were "sacks said to contain ballot papers" and wrongly relied by the Tribunal? H

Expectably, very divergent arguments were proffered in re-

spect of the propriety of the position of the lower court, see, paragraphs 3.1 - 3.47, pages 4-16 of the cross appellant's brief; paragraphs 5.01-7.4, pages 3-7 of the brief of the first and second cross respondents' brief of April 29, 2015.

RESOLUTION OF THE ARGUMENTS

- B Since the three issues hinge on the question of the admissibility of the three categories of documents, they will be resolved together under one sub-heading of admissibility of documents.

ADMISSIBILITY OF DOCUMENTS

- C ***The first documents, as shown above, are public documents [exhibits 1-185]. I entirely, agree with the submissions of the cross appellant with regard to their admissibility. Pursuant to section 104 of the Evidence Act, 2011, the said documents which, merely, had CTC stamps bearing engraved signatures on them without the subscription of the name and the official title of the officer who certified them, were not properly certified in conformity within the mandatory requirements of section 104 (supra).*** Tabik Investment Ltd v GTB Plc [2011] All FWLR (pt 602) 1592; Nwabuoku V. Onwordi [2006] All FWLR (pt 331) 1236, 1251-1252. ***Most worrisomely, there are several pencil inscriptions, evidently, additions to the contents of the documents.***

- F ***These alterations, wittingly or unwittingly, had the effect of supplanting the main jurisprudential rationale for the statutory requirement that only duly certified copies of public documents are admissible where the parties do not intend to produce their originals.*** Tabik Investment Ltd v GTB Plc. [2011] All FWLR (pt 602) 1592, 1608; Odubeko v Fowler [1993] 7 NWLR (pt 308) 637; Onubruchere v Esegine [1986] 1 NWLR (pt 19) 79; [1986] 2 SC 385; Ogbu v Ani [1994] 7-8 SCNJ (pt 11) 363; Goodwill and Trust Inv. Ltd v Witt and Busch Ltd [2011] All FWLR (pt 576) 517. I resolve this issue in favour of the cross appellant.

- H ***As noted above, the main plank of the argument of the first and second cross respondents, with regard to the second issue above, was that only internet-generated documents are caught by the admissibility requirements of section 84 of the 2011 Evidence Act. With profound respect, this argument is untenable.*** S. Mason (ed), Electronic Evidence: Disclosure, Discov-

ery and Admissibility, (London: Lexis Nexis, Butterworths, 2007) passim; H. M. Malek (ed), Phipson on Evidence (London: Sweet and Maxwell, 2010) (Seventeenth Edition) passim; R v Shepherd [1993] 1 All ER 225, 231 [a decision of the defunct House of Lords]; Kubor v. Dickson [2013] 4 NWLR (pt 1345) 534, 577- 578.

Even the very chapeau or opening statement in section 84 (1) contradicts this submission. The relevant phrase here is “a statement contained in a document produced by the computer...” Interestingly, the drafts person did not leave the meaning of the word “computer” to conjecture. In section 258 (1), the Act defines “computer” to mean “any device for storing and processing information, and any reference to information being derived from other information is a reference to its being derived from it by calculation, comparison or any other process.”

In effect, exhibits 243 and 342, being computer-generated documents, could only have been admissible in evidence upon compliance with the requirements of section 84 (supra), Kubor v Dickson (supra). The lower court was, therefore, in error in this regard. I resolve this issue in favour of the cross appellant.

Finally, having resolved the issue of “dumping” of documents on the trial Tribunal earlier in this judgment, I adopt my reasoning, with all the decisions of this court in support thereof, as my reasons for finding in favour of the cross appellant on this issue. Having resolved the three issues in favour of the cross appellant, I have no hesitation in allowing this cross appeal. Cross appeal is allowed. For the avoidance of any doubt, the orders of this court are as follows:

(a) There being no merit in the preliminary objections in respect of Appeal No SC 204/2015, I hereby make an order dismissing them;

(b) There being no merit in the main appeal in Appeal No SC 204/2015, it [the said appeal - SC 204/2015] is, also, dismissed;

(c) The preliminary objections in Appeal No 204A/2015 are, equally, discountenanced as being unmeritorious

(d) Finding no merit in Appeal No SC 204A/2015, I hereby dismiss it and

(e) Cross Appeal on the admissibility of documents is hereby

allowed;

(f) I, further, affirm the concurrent decisions of the trial Tribunal and the lower court on the due election and due return of the first respondent, Ogbeni Rauf Adesoji Aregbesola, as the Governor of Osun State.

B These shall be the orders of this court. Parties are to bear their costs.

FABIYI JSC

C I have had a preview of the judgment just handed out by my learned brother - Nweze, JSC. I agree with the reasons therein advanced to arrive at the conclusions contained in the comprehensive judgment.

D The appeal is against the judgment of the Court of Appeal, Akure Division (the court below) delivered on the 2nd day of April, 2015. Therein, the judgment of the trial Tribunal sitting in Osun State delivered on 6th February, 2015 was affirmed by the court below.

E The 3rd respondent (INEC) in exercise of its powers under the Constitution of the Federal Republic of Nigeria (CFRN) 1999, as amended, and the Electoral Act, 2010, conducted election to the office of Governor of Osun State on Saturday, 9th August, 2014 in all the 30 Local Government Areas of Osun State. At the conclusion of the election, the 1st respondent, the candidate of the 2nd respondent won the majority of lawful votes cast at the election and was declared as the Governor elect of Osun State by the 3rd Respondent.

F The 1st and 2nd appellants felt unhappy with the declaration of the 1st respondent as the winner and filed a petition before the trial Tribunal based on three grounds to wit (1) 1st respondent was not duly elected by majority of the lawful votes cast at the election; (2) election being invalid for reason of corrupt practices and (3) election being invalid by reason of substantial non-compliance with the provisions of the Electoral Act, 2010 (as amended), the Manual for Election Officials 2014 and Guidelines issued for the conduct of the election.

H Parties filed necessary processes. Preliminary objections were filed. The trial Tribunal took them along with the hearing of the peti-

tion proper. In its judgment of 6th February, 2015, the trial Tribunal dismissed the petition and, in the main, affirmed the return of the 1st respondent as the duly elected Governor of Osun State. The appellant felt irked with the position taken by the trial Tribunal and appealed to the court below. In the same vein a second appeal tagged SC. 204A/2015 was filed in respect of a cross-appeal filed thereat. B

The court below heard the appeal and affirmed the judgment of the trial Tribunal on 2nd April, 2015. The appellant has decided to further appeal to this court.

The issues canvassed before this court have been set out in the lead judgment. I need not repeat them here to conserve time and space. C

Issue 1 relates to the so-called admission in the chart contained in the address of the 1st respondent's counsel before the trial Tribunal. It seems that the appellant's counsel read the issue superficially D and attempted to cling to it rather tenaciously.

The trial Tribunal found that same did not amount to admission. It must be noted that written address by counsel cannot be equated with evidence. The court below affirmed the position taken by the trial Tribunal. I form the view that they were right. E

I should note it briefly that the appellants sought declaratory reliefs before the Tribunal. They had the burden of proof to establish such declaratory reliefs to the satisfaction of the court or Tribunal; as herein. Such declaratory reliefs are not granted even on admission F by the defendant where a claimant, as herein, fails to establish his entitlements to the declaration by his own evidence. See: *Dumez Nig. Ltd. vs. Nwakhoba* (2008) 18 NWLR (Pt. 1119) 361 at 373; *Ali Ucha vs. Martins Elechi* (2012) A1RSCJ Vol. 1 79 at 104; (2012) 4 SCM 28 (2012) 12 NWLR (Pt. 1317) 230. G

In short, the court below was correct when it affirmed the position taken by the trial Tribunal that the appellants who sought declaratory reliefs failed to discharge the burden of proof placed on them by the law.

The appellants tried to make a mountain out of their allegation H of non-compliance with Electoral Act 2010 (as amended) and guidelines for election officers. The trial Tribunal found that there was no concrete and credible evidence in support of same. The court below affirmed same.

It has been consistently reiterated by this court that for a petition to succeed on non-compliance with the provisions of the Electoral Act, the petitioner must prove not only that there was non-compliance with the provision of the Act but that same substantially affected the result of the election. In other words, the petitioner has
B two burdens to prove -

1. That the non-compliance took place.
2. That the non-compliance affected the result of the election.

C The decisions in the cases of Buhari vs. INEC (2008) 19 NWLR (Pt. 1120) 246 at 435, Buhari vs. Obasanjo (2005) 13 NWLR (Pt. 941) 1 at 80, Akinfosile vs. Ijose (1960) SCNLR 447; Awolowo vs. Shagari (1979) 6-7 SC 51 are directly in point here.

D The trial Tribunal found that the appellants failed to prove substantial non-compliance, Same was affirmed by the court below. The appellants attempted to push the burden of proof of their declaratory reliefs at the door steps of the respondents. Such was not in tune with the law.

E Since the appellants failed to prove non-compliance, they could not depict, in clear terms, that non-compliance substantially affected the outcome/result of the election. The issue must be resolved in favour of the respondents; without much ado.

F With respect to allegation of corrupt practices thrown up by the appellants the tribunal clearly appreciated that same should be severed from allegation of non-compliance. It found that no credible evidence was led to prove corrupt practices. Allegation of corrupt practices touch on the realm of criminality. Same must be proved beyond reasonable doubt. See Nwobodo vs. Onoh (1984) 1 All NLR
G 1. With due diffidence, outlandish address on behalf of the appellants without evidence, was to no avail.

H There was the complaint that the 3rd respondent - INEC did not call witnesses to clear itself. There was no cause to call on the 3rd respondent to call witnesses as it devastated the evidence of the appellants through cross-examination which is a vital tool for perforating falsehood if properly employed; as herein. The appellants dumped documents on the Tribunal; to no avail. A court or Tribunal should not embark upon cloistered justice by making enquiry into the documents which were in evidence when same had no case outside the

court; not even by examination of documents which were in evidence when same had not been examined in the open court. A judge is an adjudicator; not an investigator. *Duriminiya vs. C.O.P* (1961) NNLR 70 at 74)' *Dennis Ivienagbor vs. Henry Osato Bazuaye* (1999) 6 SCNJ 235 at 243); *ACN vs. Sule Lamido* (2012) 8 NFWLR (Pt. 1303) 560 at 580. B

The trial Tribunal was in order in not placing premium on such dumped documents by the appellants. The court below acted in the right direction when it affirmed same, See *Ali Ucha vs. Martins Elechi* (supra). C

Apart from the above, the concurrent findings of the trial court and the court below was that PW1's evidence cannot be alright to establish what transpired throughout the State. He never saw any act of corrupt practices. His evidence did not provide nexus for the document dumped on the Tribunal by the appellants. Again, see *Akwe Doma vs. INEC & Ors.* (2012) LPELR 782. D

The appellants tried to place premium on the evidence adduced by PW 15 and PW38 who were referred to by them as expert witnesses. These witnesses agreed that any literate person can look at the documents considered by them and make observations. They admitted that they were paid for the job carried out by them on behalf of the appellants. Even under cross-examination, they variously admitted that their evidence was false. It was not surprising that the Tribunal, as well as the Court below, did not place serious premium on their evidence. Same was in tune with the position in the decision of this court in *ACN Sule Lamido* (2012)8 NWLR (Pt. 1303) 560. E F

In respect of issue 6, the appellants' (Petitioners ') Reply to the 3rd respondent's Reply which was filed out of time was struck out by the Tribunal and rightly affirmed by the court below sequel to paragraph 16 (1) and (2) First Schedule to Electoral Act 2010 (as amended). It is clear that Election Petition proceedings are sui generis. Time for filing proceedings is sacrosanct. Interpretation Act provision is out of the matter. The decision in the case of *Ikahriale vs. Okoh* (2009) 12 NWLR (Pt. 1154) 1 at 38 is clearly in point. See also *Tony Nwoye Okechukwu vs. INEC & Ors.* (2014) 17 NWLR (Pt. 1436) 255 at 284. H

For the above reasons and those carefully set out in the lead

judgment, I have no doubt that the appeal in SC. 204/2015 is devoid of merit. It is hereby dismissed.

I adopt the reasons in the lead judgment to dismiss Appeal No. SC. 204A/2015. I have nothing new to add and hereby keep my peace. Cross-appeal on admissibility of documents is hereby allowed.

B In all, the judgment of the trial Tribunal which sustained the election of the 1st respondent as the duly elected Governor of Osun State which the court below rightly affirmed is hereby confirmed by me.

C _____

ARIWOOLA JSC

I had the opportunity of reading in draft the lead judgment just delivered by my learned brother, Nweze, JSC.

D It is an appeal against the judgment of the Court of Appeal, Akure Division delivered on the 2nd of April, 2015. In the said judgment of the court below the judgment of the trial tribunal that sat in Osun State, delivered on 6th February, 2015 was affirmed.

E In the Governorship election in Osun state conducted by the 3rd respondent (INEC) on Saturday, the 9th August, 2014, both the 1st appellant and 1st respondent were among the contestants into the office of the Governor of Osun State, having been sponsored by the 2nd appellant and 2nd respondent respectively.

F At the conclusion of the said election, the 3rd respondent found the 1st respondent to have secured and won the majority of lawful votes cast at the election and he was accordingly declared the winner of the election as the Governor elect.

G Aggrieved by the 3rd respondent's declaration of the 1st respondent as the winner of the election led to the filing of a petition by the appellants as petitioners. In their said petition, filed on August 28, 2014 they prayed for the following:-

H "(i) That it be determined and declared that the 1st respondent, Ogbeni Rauf Adesoji Aregbesola was not duly elected by a majority of lawful votes cast in the Osun State Governorship election held on the 9th of August, 2014 and therefore his election is null and void.

(ii) That it be declared that SENATOR IYIOLA OMISORE was duly elected and ought to have been returned duly elected Gover-

nor of Osun State having scored the highest number of lawful votes cast at the election held on the 9th August, 2014 and satisfied the provisions of the 1999 Constitution of the Federal Republic of Nigeria and Electoral Act 2010 (as amended) be so declared.

(iii) In addition, that SENATOR IYOLA OMISORE be declared as the winner of the Osun State Governorship election held on the 9th August, 2014, based on the results obtained at the physical recount and re-examination by and before the Tribunal or otherwise of the votes from the affected or aforementioned Local Governments, Wards, Units and/or Centres.

OR IN THE ALTERNATIVE:

(iv) That the Osun State Governorship election held on 9th August, 2014 having been vitiated by substantial non-compliance with the mandatory statutory requirements which has substantially affected the validity of the election in the units and wards of the Local Government Areas being challenged be declared nullified or cancelled and the 3rd respondent be ordered and or directed to conduct fresh elections for office of the Governor of Osun State in the affected areas.”

They gave the following as the grounds for their petition.

“(a) The 1st respondent was not duly elected by majority of the lawful votes cast at the election and did not score $\frac{1}{4}$ (one quarter) of the lawful votes cast in at least 20 of the 30 Local Government Areas of Osun State and therefore did not meet the requirements of the law to be returned as the winner of the election;

(b) The Election of the 1st respondent is invalid by reason of corrupt practices and electoral malpractices perpetrated by the members and agents of the 1st and 2nd respondents in the places challenged in this petition.

(c) The Election of the 1st respondent is invalid by reason of substantial non-compliance with the provisions of Electoral Act 2010 (as amended), the Manual for Election Officials 2014, the Guidelines issued for the conduct of the election and the law in the conduct of the election.”

At the conclusion of the hearing at the Election Petition Tribunal, the petition of the appellants was found to be devoid of any merit and was dismissed, which decision led to the appeal to the court below. In its considered judgment delivered on 2nd April, 2015,

the Court of Appeal dismissed the appeal and affirmed the judgment of the trial tribunal which had earlier affirmed the declaration by the 3rd respondent of the 1st respondent as the winner of the election.

There is no doubt, my learned brother dealt meticulously and As expected from a highly litigious person, the appellants being further aggrieved with the decision of the Court of Appeal resorted to the appeal to this court diligently with all the issues involved in this matter. I am in total agreement with the reasoning therein and the conclusion arrived thereat and I accordingly adopt them as my own as they represent exactly what we agreed at the conference on the matter. I have nothing new to add if I will not be repeating the same thing, which is not necessary. In the circumstance, the preliminary objections being unmeritorious in both appeals SC.204/2015 & SC.204A/2015 are dismissed by me. In the same vein, the two main D appeals are equally devoid of merit and are hereby dismissed.

However, the cross appeal on the admissibility of documents is sustainable and has merit. Accordingly, it is allowed. I also affirm the declaration by the third respondent (INEC) of the first respondent- Ogbeni Rauf Adesoji Aregbesola as the rightly elected Executive Governor of the State of Osun, having been certified to have won the required majority of the total lawful votes cast in the Governorship election in question.

I abide by the other consequential orders including the order on costs.

MUHAMMAD JSC

I read in draft the lead judgment of my learned brother Nweze G JSC, just delivered. I share his lordship's reasoning and conclusion that whereas the two appeals being unmeritorious stand dismissed, the cross-appeal on the other hand succeeds and is allowed.

The facts on which the two appeals and the cross appeal predicate are fully stated in the lead judgment and I rely on same in making this contribution in support of the lead judgment and purely for the sake of emphasis.

I imbibe the profound statement of the position of the law proffered in the lead judgment in overruling the objections raised by the 1st and 2nd respondents as to the competence of this appeal.

The issues distilled by the appellants in appeal No. 204/2015 which should form the basis of determining the appeal are as reproduced in the lead judgment.

On the 1st issue, learned senior counsel for the appellants Mr. Izinyon submits that the chart contained in the address of 1st respondent's counsel at the tribunal constitutes an admission. The chart, he contends, catalogues series of irregularities on the face of the form EC8A series, Exhibits 1- 162. Learned counsel for the petitioners, it is submitted, had joined issues with counsel for the 1st respondent on the chart and urged the tribunal to hold that the chart constitutes an admission of interest by the 1st respondent. The tribunal in its judgment at page 7502 of Vol. 14 of the record of appeal, learned senior counsel submits, disagrees with the appellants.

This finding of the tribunal, contends learned senior counsel, constitutes appellants complaints in ground 13 of their Notice of Appeal the lower court, upon a preliminary objection by the 1st respondent, adjudged along with the issue distilled from the ground incompetent. The decision of the lower court, learned senior counsel to the appellant argues, is wrong. The court ought to have overruled 1st respondent's objection and thereafter consider appellant's complaints under the ground as contained in the issue distilled from the ground. He urges this Court to consider appellants complaint in the ground and resolve the issue distilled from the ground in appellants favour by adjudging the irregularities contained in Exhibits 1-162 as tabulated in the chart in the submissions of 1st respondents' counsel at the trial court as substantial enough to nullify 1st respondent's election.

Learned counsel supports his contention with the decisions of this Court in *Akpan V. Bob* (2010) 17 NWLR (Pt 1223) 421 at 464 and *Swen V. Dzunwe* (1966) NMLR 297 at 300-305.

In their replies to appellants arguments on the 1st issue, learned counsel to the 1st and 2nd respondents maintain a common posture in their respective brief. Therein, it is argued that for a ground of appeal to be valid it must emanate from the judgment appealed against. Ground 13 in the appellants' notice at the lower court, it is submitted, neither arise nor flow from the decision of the tribunal and so the lower court is right in its finding that the ground and the issue distilled from the ground are incompetent. Both counsel rely,

inter-alia, on Saraki & ors V. Kotoye (1992) 3 MSCC 331, C.C.B Ltd V. Nwokocha (1998) 9 NWLR (Pt 564) 98.

The 3rd respondent appears not to have responded to appellants' arguments under the first issue.

One readily agrees with learned counsel to the 1st and 2nd respondents, for it is trite, that only a ground of appeal which attacks the finding, nay a decision in the judgment appealed against is valid. The lower court is not oblivious of this principle: see page 7877 of volume 15 of the record of appeal. Thereat, the court alluded to Sarah & ors V. Kotoye (1992) 3 NSCC 331 wherein this Court per Karibi - Whyte JSC stated thus:-

"It is well established proposition of law in respect of which there can hardly be a departure that ground of appeal against a decision must relate to the decision and should constitute a challenge to the ratio of the decision." See also Saude V. Abdullahi (1989) 4 NWLR (Pt 116) 397 and Egbe V. Alhaji (1990) 1 NWLR (Pt 128) 546.

The portion of the tribunal's judgment the appellants contend ground 13 of their Notice of Appeal at the court below attacks, see pages 7878-7899 volume 15 of the record of appeal, reads:-

"Page 8 of the final written address of the 1st Respondent contains a table showing amongst other details the total votes remaining for APC and the total votes remaining for PDP. The total votes remaining for PDP are stated to be 219, 189. Counsel on behalf of the Petitioners, relying on this table in his final oral submission before us contends that this is an admission by counsel to the 1st Respondent that the lawful votes scored by the 1st Respondent at the election are 234,971 and not 394,684 declared by the 3rd Respondent. That their votes of 292,747 declared by the 3rd Respondent being higher than the valid votes of the 1st Respondent, the Petitioners ought to have been declared winners of the said election.

Relying on the case of OKONKWO & ORS V KOAJIE & ORS (1992) NWLR (PT. 226) 633 amongst several other cases, counsel submits that this admission by counsel binds the 1st Respondent. We do not however agree with the submission of Petitioners' counsel that the table amounts to an admission that the 1st Respondent scored 234,971 valid votes."

Ground 13 in appellants Notice of appeal at the court below, shorn of its particulars, reads:-

"The learned tribunal erred in law in holding that the 1st Respondent admission as contained in his prepared chart as final address cannot be used against him."

In upholding the 1st and 2nd respondents objection to the competence of the ground, the lower court at page 7879 of Vol. 15 of the record of appeal held:- B

"It is evident from the statement reproduced supra that the tribunal only restated what the appellants counsel said. The tribunal did not make a finding that 1st Respondent admitted his chart. In the circumstances, I hereby uphold preliminary objection raised by the 1st and 2nd respondents counsel and strike out ground 13 of the appellants Notice of Appeal and issue No 5 distilled therefrom." C

Learned senior counsel Iziyon is on a firm terrain that the lower court's foregoing finding is manifestly wrong.

The tribunal's pick on whether or not the chart contained in D the address of 1st respondent's counsel is unmistakably the tribunal's determination of an aspect of the controversy between the parties thereat. It is the tribunal's decision on the issue. It cannot be otherwise as wrongly found by the court below. Mr. Iziyon is not however entitled to insist that this lapse on the part of the lower court out- E rightly guarantees the success of their appeal to this Court. Section 22 of the Supreme Court Act empowers the court thus:-

"The Supreme Court may, from time to time, make any order necessary for determining the real question in controversy in the ap- F peal, ...and generally shall have full jurisdiction over the whole proceedings as if the proceedings had been instituted and prosecuted in the Supreme Court as a court of first instance..."

Invoking the foregoing powers, I unhesitatingly state that the tribunal is correct in its finding that a counsel's address, no matter G how brilliant same is, does not constitute evidence on which basis, along with pleadings, cases are won or lost. It must be restated that counsel's submission being neither part of pleadings nor evidence should never be equated with the resolution of the issue before and by the court. See Idika V. Erisi (1988) 2 NWLR (Pt 78) 563; Olufosoye H v. Fakorede (1993) 1 NWLR (Pt. 272) 747 at 783. See UBN V Ayodere NSCQR Vol. 30 (2007) 1 SC and Olatinwo V. State NSCQR vol. 8 (2013) 82 SC. Had the lower court considered this aspect of the case, the right decision it would have arrived at is the affirmation

of the tribunal's unassailable position that the chart in 1st respondent counsel's submission does not and cannot constitute the admission on the part of the 1st respondent Mr. Iziyon insists it is. Furthermore, the appellants are duty bound not only to establish a lapse in the decision they appeal from, they must go the extra mile of establishing the injustice the lapse occasioned. See *Soleh Boneh Overseas (Nig) Ltd* (1989) 1 NWLR (Pt 99) 549 and *Kate Enterprises Ltd V. Daewoo Nig. Ltd.* (1985) 2 NWLR (Pt 5) 116. In relation to this particular issue, therefore, having failed to go the extra mile, the appellants cannot benefit from the success they appear to have recorded. It is for this reason that one discountenances their 1st issue.

My lords, the appellants' position by all their other issues appears to be that the lower court's findings as so challenged entitle them not only to the reversal of each and every finding so attacked but an overall success in the appeal and their case. The appellants in all these issues are contending that the lower court is either wrong in its affirmation of the evaluation of evidence undertaken by the tribunal or the tribunal's application of particular principles to ascertained facts.

The reliefs the appellants as petitioners urged the tribunal to grant them are canvassed on the following three grounds:-

"(a) The first respondent was not duly elected by majority of the lawful votes cast at the election and did not score 1/4 (one-quarter) of the lawful votes cast in at least twenty of the thirty Local Government Areas of Osun State and therefore did not meet the requirements of the law to be returned as the winner of the election;

(b) The election of the respondent is valid by reason of corrupt practices and electoral malpractices perpetrated by the members and agents of the first and second respondents in the places challenged in this petition;

(c) The election of the first respondent is valid by reason of substantial non-compliance with the provisions of the Electoral Act, 2010 (as amended). The Manual for Election Officials, 2014 the Guidelines issued for the conduct of the election and the law in the conduct of the election."

Learned senior counsel for the appellants cannot be faulted in his contention that the law does not place uniform burden of proof of the foregoing grounds on the appellants as petitioners and that the

tribunal, if indeed it placed uniform burden on them, is wrong. An affirmation of such a wrong decision by the lower court, if at all, it must further be conceded to learned senior counsel, will equally be perverse.

It is the law that whereas the appellants as petitioners are to prove all allegations of the invalidity of 1st respondent's election by reason of corrupt practices and electoral malpractices beyond reasonable doubt, allegations pursuant to substantial non-compliance with the provisions of the Electoral Act, on the other hand, requires proof with preponderance of evidence. Learned senior counsel is again right that burden of proof in civil cases is not static as same shifts depending on the state of pleadings and/or the discharge of the burden of adducing primary evidence. Learned senior counsel's reliance, inter-alia, on section 139(1) of the Evidence Act (as amended), *Ikoku V. Okoli* (1962) ALL NLR 195 and *Nwobodo V. Onoh* (1984) NSCC 1 is unassailable.

Now, the questions to answer, inter-alia, are: if indeed the trial court had fused the two grounds in appellants' petition and required them to discharge the same standard of proof in respect of the two grounds and, whether the lower court's judgment on the point is an affirmation of the trial court's perverse decision in that regard; still, have the appellants, given the averments in their petition and the evidence, documentary and oral, proved their case as required by law?

Learned appellants counsel must be reminded of the finding of the tribunal at pages 7490-7491 of Vol. 14 of the record of appeal which reads:-

"As correctly submitted by all counsel to the Respondents and as we have already alluded to in the course of this judgment. It is to be reiterated that allegations of corrupt practices are in the nature of criminal charges and ought to be proved beyond reasonable doubt.

The petitioners in ground (iii) of the same paragraph 20 have gone further to question the Election and Return of 1st Respondent on grounds of substantial non-compliance with the provisions of the Electoral Act 2010 (as amended) etc To support this contention, the petitioners made various allegations of non-compliance as contained in the petition ... the question that arises is whether or not the petitioners have satisfactorily established by credible evidence, that the

scores or result recorded for the 1st Respondent by 3rd respondent were unlawful, void and or invalid, or that such votes resulted from non compliance with the Electoral Act and/or the INEC Manual or the Election Guidelines.

Unfortunately, from the gamut of the evidence we have evaluated, we do not see any such credible proof.”

The lower court’s affirmation of the foregoing finding, one disagrees with learned senior appellants counsel cannot be wrong. The courts have reiterated the principle applicable to what standard of proof they apply on the two distinct grounds in the appellants’ petition, one on corrupt practices and the other on substantial non compliance. See *Omoboriowo v. Ajasin* (1984) 5 NLR 108, *Ikoku V. Okoli* (supra) *Nwobodo V. Onoh* (supra) and *Fayemi V. Oni* (2009) 7 NWLR (Pt 1140) 223.

The decisions of the two courts concurrently applying this principle must persist.

Learned senior counsel for the appellants, it must be recalled, further contends that the appellants having discharged the initial burden of proof, in respect of the non-compliance with the 3rd respondents Manual and Guidelines, the latter’s failure to lead any evidence in rebutted entitles the appellants to judgment. It is also argued that appellants have established by credible evidence all the other grounds in their petition. This, the two courts, insists learned senior counsel, have wrongly denied the appellants.

Firstly, learned senior counsel to the appellants seems oblivious of the fact that the reliefs they urged the two courts below are declaratory and the principle in relation to such reliefs is that even where the defendants admit the claims, as petitioners they still have to establish their case otherwise their claim fails. And this principle applies to all the grounds of their petition. See *Mogaji V. Odofin* (1978) 4 se 91, 93-95 and *Nwobodo V. Onoh* (1984) 1 SCLR 27 at 28. The two courts below have concurrently found that the appellants have nothing on record, contrary to the contention of learned senior counsel, to support their claims. This Court remains hesitant in interfering with these concurrent findings of fact and indeed correct application of law on ascertained facts. See *Ogundipe V. Awe* (1988) 1 NWLR (Pt 68) 118 and *Okonkwo V. Adigwu* (1985) 1 NWLR (Pt 4) 694.

It is for the foregoing and more so the detailed reasons adum-

brated in the lead judgment that I dismiss both appeals SC

It is for the foregoing and more so the detailed reasons adumbrated in the lead judgment that I dismiss both appeals SC. 204/2015 and SC. 204A/2015 and allow the cross appeal. I also abide by the order or costs contained in the lead judgment.

B

OGUNBIYI JSC

This is an appeal against the decision of the Court of Appeal, Akure Division delivered on 2/4/2015 which dismissed the appeal to it by the appellants from the decision of the Governorship Election Tribunal delivered on 6/2/2015. C

The 1st petitioner/1st appellant was the candidate sponsored by the 2nd Petitioner a registered political party as her candidate for the Osun Gubernatorial election held in Osun State on 9/8/2014. At the close of poll, the 3rd respondent on 10/8/2014 declared the result and returned the 1st respondent as the winner with a total vote of 394,684 against the 1st petitioner's score of 292,747 votes. D

Dissatisfied with the said result, the petitioner filed a petition against same before the tribunal in accordance with the Electoral Act, 2010 (as amended) and the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and claimed three clear cut reliefs and an alternative relief four. There are three grounds predicated the petition. On the 6th February, 2015, the tribunal delivered its judgment and dismissed the petition. On the 2nd day of April, 2015 the Court Of Appeal Akure Division also in an unanimous judgment dismissed the appeal lodged by the petitioners/appellants. In the same appeal, the cross Appeal by the 1st respondent was partly allowed. The appellants are again dissatisfied with the decision and have appealed to this court against the judgment of the main appeal vide notice of appeal filed 10/4/2015. The said appellants are also dissatisfied with part of the cross appeal and have lodged an appeal arising from the said cross appeal. F

The seven issues formulated by the appellants for determination are as follows:- G

"1. Whether the learned Justices of the Court of Appeal were right in holding that ground 13 of the Appellants Notice and Issue 5 distilled therein are incompetent. (Ground 1 of the Notice of Appeal) H

2. *Whether the learned Justices of the Court of Appeal were right in affirming the tribunal's findings on the doctrine of severance, burden and standard of proof on allegation of non compliance and irregularities in the conduct of the election. (Grounds 2, 3, 5, 6, 7 and 10 of the notice of Appeal)*

B 3. *Whether the learned Justices of the Court of Appeal were right in affirming the tribunal's findings that the Appellants failed to prove substantial non-compliance with the provisions of the Electoral Act, 2010 (as amended), Manual for Electoral Officials, 2014 and the Guidelines for the Conduct of the election having regards to state of the pleadings and the evidence adduced (Grounds 8, 9 of the Notice of Appeal)*

C 4. *Whether the learned Justices of the Court of Appeal did not fail in their duty to evaluate properly the Appellants evidence and draw the necessary inferences as demonstrated before them. (Grounds 4 and 14 of the Notice of Appeal)*

D 5. *Whether the learned Justices of the Court of Appeal were right in affirming the findings of the tribunal which rejected the reports and evidence of PW15 and PW.38. (Ground 11 of the Notice of Appeal)*

E 6. *Whether the learned Justices of the Court of Appeal were right in the interpretation of Paragraph 16(1)(2) of the 1st Schedule to the Electoral Act, 2010 (as amended) on Appellants Reply filed in the petition. (Ground 12 of the Notice of Appeal)*

F 7. *Whether learned Justices of the Court of Appeal were right in affirming the tribunal's findings that the allegations of corrupt practice were not proved beyond reasonable doubt. (Ground 13 of the Notice of Appeal.)"*

G Issue 1 relates to the 1st respondent's written address which was introduced as a chart or table cataloguing the irregularities on the face of form EC8A series Exhibits 1 - 162.

H It is the contention by the appellants' counsel strongly that the chart is an admission against interest and which is binding on the 1st respondent, to the effect that there were irregularities in the said election as shown in the tabulated table. While the tribunal held and disagreed with the appellants that the chart was an admission, the lower court also upheld the preliminary objection by the 1st respondent that the said ground 13 and issue 5 formulated there from are

incompetent and struck out same.

The reproduction of ground 13 which challenges the chart introduced by the 1st respondent reads as follows:-

“The learned tribunal erred in Law in holding that the 1st respondent’s admission as contained in his prepared chart as final address cannot be used against him.” B

Particulars of error (i) - (iv) are supplied.

Whether or not the allegation amounts to an admission, is not the main issue now in controversy. I will seek to state briefly however that it is not in contention that the chart in question came into existence as a result of the final written address by the 1st respondent’s counsel before the tribunal. The address in question is akin to submission of counsel. The law is trite and well settled that address of counsel no matter how elegant it can never take the place of evidence. An admission has been defined also as “a voluntary acknowledgment made by a party of the existence of the truth of certain facts which are inconsistent with his claim in an action”. See Vockie V. General Motors Corp. Chevrolet Division D. C. Pa. 66 FRD 57, 60 (Black Dictionary, Sixth Edition of page 47) per Fabiyi, JSC (P.25). See also Adusei V. Adebayo (2012) 3 NWLR (Pt. 1288) 534 which defines admission further as:- *“a concession or voluntary acknowledgment made by a party of the existence of certain facts; a statement made by a party of the existence of a fact which is relevant to the cause of the adversary;”* C D E

The critical question which is raised in issue 1 is, whether the learned justices of the Court of Appeal were right in holding that ground 13 (reproduced supra) of the appellants’ notice of appeal and issue 5 emanating there from are incompetent. It is the refusal by the tribunal to hold the chart (table) as an admission that led to ground 13 and the issue raised thereon. The refusal by the tribunal was affirmatively endorsed by the court below. F G

It is pertinent to say also that the pronouncement made by the trial court in refusing to accept the chart (table) as an admission is in itself a decision which was taken in the course of a proceeding. The Black’s Law Dictionary Ninth Edition by Bryan A. Garner at page 467 has defined decision as a:- H

“Judicial or agency determination after consideration of the facts and the law; especially a ruling, order or judgment pronounced

by a court when considering or disposing of a case”.

It is an act of decision making with a view to arriving at a finding thereon. In submitting on behalf of the appellants, their counsel argued that ground 13 arose as a result of a valid complaint from a finding which was not an obiter as erroneously held by the court below. Judicial authorities by this court had settled the scope of a ground of appeal; that it is not one of mathematical exactitude and can arise in a number of situations. See the case of Akpan V. Bob (2010) 17 NWLR (Pt. 1223) 421 at 464 - 465,

“Although many authorities lay emphasis that a ground of appeal must stem from the text of the judgment (ipsissima verba), for instance,..., such decisions in my humble view, by no means limit the scope of a ground definitions, a ground of appeal, can arise in a number of situations such as the following:...”

Also at page 465 of the report, the court puts it beyond dispute and said:-

“As stated earlier, the complaint of the appellants before this court in the said grounds of appeal relates to the refusal of the court below to consider a notice of withdrawal of appeal lodged before the court about three months before the judgment was delivered. These grounds of appeal, as aforementioned challenged the inaction or omission of the court below to consider a court process duly filed before it delivered its judgments. That, in my view, is a good and valid ground of appeal.”

In short and as rightly submitted by the learned counsel for the appellants the competence of ground 13 is not a matter of question. It is a ground raised from the ratio decidendi of the court which cannot be characterised as obiter. The lower court I hold was in error to the extent of holding out that ground 13 is incompetent.

However, and despite the conclusion arrived at thus far, supra, it is pertinent to emphasize that the hope entertained by the appellants in seeking to rely on the chart (table) as an admission against the respondents’ interest in proof of the non-compliance alleged in the election will not in the circumstance be met. This is because the basis predicating ground 13 of the notice of appeal is unfounded. In other words admission sought to allege was neither alluded to in the pleadings nor was evidence given thereon before the trial court.

The entire concept in respect thereof was first originated from

the address of counsel which can never take the place of evidence, as I postulated earlier.

The totality of the 1st issue therefore will serve no useful purpose to the appellants which same is accordingly resolved against them.

Issues 2, 3, 4 and 7 are related in material particular and will therefore be taken together for convenience. It is the submission vehemently by the learned counsel for the appellants in issue 2 that the court below was in grave error in affirming the tribunal's findings on doctrine of severance, burden and standard of proof and allegation of non-compliance as well as irregularities in the conduct of the said election; that the tribunal did not for instance distinguish the standard of proof required of allegation on corrupt practices which are criminal from that of non-compliance as required by law; that the allegation of non-compliance was levied against the 3rd respondent and that with the appellant having led P.W.1, P.W. 15 and P. W. 38 and other witnesses with Exhibits 1 - 340 especially Exhibits 1 - 162, the evidential burden shifted to the Respondents particularly the 3rd respondent against whom the allegation of non-compliance relates; that the 3rd respondent never gave any rebuttal evidence; that the court below fell into grave error therefore for its inability to sever the allegations of corrupt practices and non-compliance which failure has led to miscarriage of justice. Counsel urged that the issue be resolved in favour of the appellant.

Issue 3

It is submitted on behalf of the appellants that the court below erred in affirming the tribunal's findings that appellants failed to prove substantial non-compliance with the provision of the Electoral Act, 2010 (as amended), manual for Electoral officers 2014 and the guidelines for the conduct of the election, having regard to the state of the pleadings and the evidence adduced; that in its deliberations, the tribunal did not consider the issue of substantial non-compliance and give its proper prominence and resolution of all facts embedded therein. The counsel submitted strongly also that the court below fell into grave error in holding that Appellants did not prove substantial non-compliance and if any, they did not substantially affect the conduct of the polls in the totality of the constituency of Osun State; that proof of non-compliance is one on balance of probability not be-

yond reasonable doubt; that the tribunal, although it admitted that there were irregularities, it did not however deem it sufficient to vitiate the election without first pointing out the said irregularities; that the evidence of P. W. 1, P. W. 15 and P. W. 38 as well as Exhibits 1 - 162 show lawful and unlawful votes flowing from this non-compliance but the court below did not take pain to delve into them before affirming the conclusion by the tribunal that even if they exist, they were not substantial to affect the election; that this is a perverse finding which is not supported by evidence; that the court below was also wrong in affirming the tribunal's findings on the said 17 LGAs on the issue of substantial non-compliance which is copiously pleaded in the petition. Counsel in the circumstance has urged us to invoke the provision of section 22 of the Supreme Court Act, consider the issue of non-compliance made by the appellants and resolve this issue in the appellants' favour; that where documentary evidence is before a court or tribunal, oral evidence cannot be used to contradict what is in the document. Counsel cites the case of *Civil Design Construction Nigeria Ltd. V. SCOA Nigeria Ltd.* (2007) 6 NWLR (Pt. 1030) 300 at 366 also the case of *UBN Ltd. V. Prof. Albert Ozigi* (1994) 3 NWLR (Pt. 333) 385. The court is also urged to resolve this issue in favour of the appellants.

Issue 4

The learned counsel for the appellants re-echoed again that the appellants led 43 witnesses and tendered documents which were admitted in evidence as Exhibits both at the trial and at reserved judgment stage; that the 1st and 2nd set of respondents called some witnesses, while the 3rd respondent did not call any evidence but tendered few documents from the bar as Exhibits 395, 396 and 397. It is the counsel's submission further that the various findings of the tribunal which were affirmed by the court below are against the weight of evidence, perverse and should be set aside; that the appellant's witnesses consisted of collation officers, ward supervisors and polling agents for the affected units; that the court below failed to evaluate the Exhibits 1A - 380 in arriving at its judgment and that this has occasioned a serious miscarriage of justice and that the issue should be resolved also in favour of the appellants.

Issue 7

In respect of this issue, it was submitted on behalf of the appel-

lants that the court below was in error in affirming the tribunal's finding that appellants did not prove the allegation of corrupt practices beyond reasonable doubt; that on a careful perusal of the evidence led on behalf of the appellant, same will clearly show that they did discharge the burden placed on them by law; that the evidence of P. W. 1, P. W. 33 and P. W. 36 remained unchallenged and uncontroverted during cross examination. Equally that the Exhibits tendered in respect of the Ayedade Local Government Area remained intact and enough to discharge the burden the law placed on the appellant; that the trial tribunal heavily relied on its perception of the witnesses and affirmed by the court below without going further to show how this perception is supported by evidence on the relevant fact. The counsel urged that issue 7 should also be resolved in favour of the appellants. B C

In response to the foregoing 2nd Issue, the 1st respondent's counsel submits that had the appellants' adverted attention properly to the judgment, they would have realized that the adverse finding on the ground of substantial non-compliance was predicated on evaluation done by the tribunal and that the general evaluation of the evidence was not devoted to allegations of corrupt practices; that the contention of the appellants on the fusion of standard of proof beyond reasonable doubt and balance of probabilities is merely in the figment of their imagination; that pleadings do not constitute evidence and the tribunal cannot act on allegations in pleadings without evidence being led thereon; that the paragraphs of the appellants' pleadings made general allegations in support of the ground of non-compliance in the petition; that with each local government having been particularized and allegations made in respect of same, any evidence led outside the specific and particularized pleadings for each local government, ward or polling unit will be at variance with the pleadings. D E F G

In response to the 3rd Issue raised and relating the 3rd respondent's decision not to call witnesses in rebuttal, the respondents submit that the effect will not be detrimental to their case; that in cases seeking declarative orders, as it is at hand, the duty lies on the Petitioners to prove their case and not rely on lack of evidence by the respondents; that since the proof rests on the appellants the issue should in the circumstance therefore be resolved against them. H

The 4th issue questions whether the court below was right when it upheld the findings by the tribunal that the appellants failed to prove their allegations of non-compliance. Contrary to the contention held by the appellants, the respondents counsel submitted that there is no merit whatsoever in the contentions put forth on behalf of the appellants; that the evidence of P. W. 1, P. W. 15 and P. W. 38 relied upon heavily by the appellants were found to be unreliable by both the court below and the Tribunal; that the P. W.s that are Ward Supervisors, Local Government Collation Agents and the State Collation Agents are competent to testify as witnesses, notwithstanding that they are not polling agents, provided their evidence is direct within the meaning of section 125 of the Evidence Act. In the absence of the required credibility of the witnesses counsel urges that the issue be resolved also against the appellants.

Issue 7 also questions whether the lower court was right in upholding the decision of the tribunal that the allegations of corrupt practices made by the appellants were not proved beyond reasonable doubt? In disagreeing with the contention held on behalf of the appellants, the 1st respondent's counsel submits that the tribunal clearly adverted to grounds (ii) and (iii) of paragraph 20 of the petition separately in the judgment and found that the appellants failed to lead credible and cogent evidence in support of the allegations. Also on the call made on this court by the appellants to examine the Exhibits and the evidence given by the 43 witnesses, the respondents counsel submits that the concurrent findings of the two lower courts cannot be interfered with; that a clear example is the reference made to the evidence in respect of Ayedade and Bori Local Governments, where the records show that the evidence in those two local governments demonstrated the hopelessness of the case for the appellants. In other words that the allegations made were based on the evidence by P. W. 36 as well as by P. W. 33 who was the only witness in respect of Ayedade local government whose testimony is predicated on reports of the agents in each of the units; that under cross examination the witness P. W. 33 conceded that both himself and their party agents signed the summary of the result sheet, Exhibit 163(2) and that he neither saw the counting nor collation of votes in any of the units including the unit where he voted. Counsel therefore applauded the tribunal in holding that the appellants have failed to prove beyond

reasonable doubt the corrupt practices alleged. The court is therefore urged to dismiss the appeal on the whole.

Issues 2, 3, 4 and 7 form the crux of this appeal wherein the general complaint is against the lower court's approval and holding that the tribunal properly adverted to and applied the required standard of proof in relation to allegations of non-compliance on one hand and corrupt practices on the other. The allegation in other words, questions whether the lower court was right in affirming the tribunal's findings on the doctrine of severance, burden and standard of proof on allegation of non compliance and irregularities in the conduct of the election. There is also the encapsulation as to whether the allegation of corrupt practices was not proved beyond reasonable doubt. B C

On whether or not the doctrine of severance was adhered to by the tribunal, reference can be made on the record of appeal on pages 7490 to 7491 wherein the tribunal held thus:- D

'As correctly submitted by all counsel to the Respondents and as we have already alluded to in the course of this judgment, it is to be reiterated that allegations of corrupt practices are in the nature of criminal charges and ought to be proved beyond reasonable doubt.

The petitioners in ground (iii) of the same paragraph 20 have gone further to question the Election and Return of 1st Respondent on grounds of substantial non-compliance with the provisions of the Electoral Act 2010 (as amended) etc... To support this contention, the petitioners made various allegations of non-compliance as contained in the petition..., the question that arises is whether or not the petitioners have satisfactorily established by credible evidence, that the scores or result recorded for the 1st Respondent by 3rd respondent were unlawful, void and or invalid, or that such votes resulted from non compliance with the Electoral Act and or the INEC Manual or the Election Guidelines. Unfortunately, from the gamut of the evidence we have evaluated, we do not see any such credible proof." E F G

As rightly submitted by the 1st respondent's counsel, had the appellants adverted to the above excerpts from the judgment, they would have realized that the adverse finding on the ground of substantial non-compliance was predicated on evaluation done by the tribunal and which general evaluation of evidence were not devoted to allegations of corrupt practices. The argument of the appellants on the fusion of standard of proof beyond reasonable doubt and bal- H

ance of probabilities does not obviously hold. While proof in criminal allegation is beyond reasonable doubt that of non-compliance is on the balance of probability. The doctrine of severance of pleadings in Election cases is also well enunciated in the case of *Omoboriowo V. Ajasin* (1984) SC NLR 108 wherein the two are separated constructively into compartments with one having no bearing on the other. The cases of *Ikoku Vs. Oli* (1962) All NLR 195 and *Nwobodo Vs. Onoh* (1984) NSCC 1 are also very explicit on the same principle. See also the case of *Fayemi V. Oni* (2009) 7 NWLR (Pt. 1140) 223.

On the allegation by the appellants that the tribunal did not consider the issue of substantial non-compliance pleaded by them in certain paragraphs of their petition, the law is again well settled that pleadings do not constitute evidence and the tribunal cannot act on such allegations without evidence being led thereon. In order to justify the allegation, the appellants ought to identify the evidence led by them in support of the allegations in those paragraphs that were not considered and evaluated.

Contrary to the submission advanced by the appellants' counsel, it is apparent as borne on the record of appeal that the lower court dwelt extensively on the findings by the tribunal regarding non-compliance.

The next point for consideration is the position taken by the 3rd respondent who did not deem it necessary to call any witness in his rebuttal. In other words, the appellants have submitted extensively that the 3rd respondent, whose act of conducting the election is being questioned, bears the burden to satisfy the court that the election in issue was conducted substantially within the principles of the Electoral Act and that the non-compliance complained of did not affect substantially the result of the election; the appellant questions further the non calling of witnesses or adducing of any evidence by the 3rd respondent.

It is trite law and well established that the fact of non calling of any evidence by the 3rd respondent did not affect his case adversely in any way. In other words, by the very act of cross-examining the witnesses of the petitioners, the 3rd respondent had given evidence. As rightly submitted by the 1st respondent's counsel, it is not in dispute that all the evidence extracted through cross-examination from the witnesses of the Appellants and the Respondent are evidence for

the 3rd respondent. The 3rd respondent also did tender documents as exhibits inclusive of all the CTC of electoral documents which are all evidence in its favour.

I seek to state further that with the case at hand being declaratory in nature, the law makes it incumbent on the petitioners to prove their case and not rely on the absence of evidence by the respondents. See the following cases in point:- Gundiri V. Nyako (2014) 2 NWLR (Pt. 1391) 211 at 252; CPC V. INEC (2012) FWLR (Pt. 517) 605 at 633 - 634; Fannami V. Bukar (2004) All FWLR (Pt. 198) 1210 at 1238 - 1239 and C.P.C. V. INEC (2011) 18 NWLR (Pt. 1279) 493 at 545.

In a claim for declaration therefore, the onus is always on the person who alleges to establish his case and not rely on the weakness of the defence. The petitioner must in such situation satisfy the court with cogent and compellable evidence properly pleaded, that he is entitled to the declaration.

I wish to restate also that admissions by the defendant may not satisfy as proof. See Bello V. Magnes Eweka (1981) 1 SC 101. It is only after petitioners/appellants herein, have proved their case that the onus would shift to the respondents to establish that the result of the election was not so affected. See CPC V. INEC (2011) 18 NWLR (pt. 129) 568. In the present case, the appellants have failed to lead credible evidence in support of their petition on allegation of non-compliance: they cannot therefore rely on the failure of the defence particularly 3rd respondent to lead evidence as proof of the allegations. Merely raising the issue in the pleading is not enough. See Ngige V. INEC 9 (2015) (Pt. 1440) 281.

It is also an established principle of law that where an evidence had been thoroughly discredited during cross-examination so much so that there is nothing left for purpose of weighing on an imaginary scale for consideration then such will certainly need no rebuttal. The two lower courts for instance found the evidence of P.W. 1, P.W.15 and P.W. 38, upon which the appellants rely, to be unreliable. The exhibits tendered from the bar without calling the maker thereof were also held to attract no probative value because there was no opportunity given the respondents to cross examine upon for purpose of testing their veracity. See Saeed V. Yakowa (2011) All FWLR (Pt. 692) 1650. As a matter of law, documents are to be tested in open

court before the tribunal can evaluate them. See ACN V. Lamido (2012) 8 NWLR Pt. 1303 p.56 at 580 - 581.

The appellant submitted strenuously and argued that both the tribunal and the court below wrongly held that they (appellants) failed to establish allegations of non-compliance levied by them. In other words, it is the contention of the appellants that the allegations of non-compliance were proved through P.W.1, P.W.15 and P. W. 38 and also Exhibits 186 and others. It has been restated earlier in the course of this judgment that the evidence of the foregoing witnesses was found to be unreliable by both the two lower courts. The law is trite and did not give this court the liberty to readily disturb concurrent findings of lower courts unless same is found to be perverse or not supported by evidence on the record. Such discredited testimonies cannot sustain the appellants' contention against the respondents.

P. W.1 for instance offered evidence for all the seventeen local governments being challenged by the appellants and his deposition did not hesitate to state that his evidence was based on reports received from his party agents. The tribunal's copious finding after evaluating P.W.1's evidence is borne on record at pages 742 - 744. The totality of the evidence of P. W. 1 is nothing more than hearsay and which lacks probative value as rightly found by the tribunal and confirmed by the lower court. It is the evidence of P.W. 1 for instance that he was confined to his unit 9 of ward 8 Ifelodun local government throughout the day of the election and that movement was restricted until the close of polling and counting of votes. The witness attested that the evidence he gave was based on phone calls and reports he received from his party agents. He also tendered in evidence some documents i.e. duplicate copies of forms EC8A's Exhibits 188 and 204. The witness who was not the maker of the report could not however provide any nexus between him and the exhibits. He could not also offer proper explanation of what specific relevance each document is to serve. See Nwole V. Iwuagwu (2006) All FWLR (Pt 316) 325 and Esiogu V. Onyeagnocha (2006) All FWLR (Pt. 317) 467.

In other words, documentary evidence, no matter its relevance, cannot on its own speak for itself without the aid of an explanation relating its existence. The validity and relevance of documents to ad-

mitted facts or evidence is when it is done in the open court and not a matter for counsel's address. It is not also the duty of a court to speculate or work out either mathematically or scientifically a method of arriving at an answer on an issue which could only be elicited by credible and tested evidence at the trial.

In other words and in the absence of any documentation of any sort to prove the allegations by P.W.1 with respect to Ayedaade local government and also all the contested local governments, the outcome is certainly detrimental to the appellants' case. B

It is borne on record as earlier stated that the appellants called a total of 43 witnesses to prove their case covering about 930 polling units in seventeen local governments. Apart from those witnesses who gave evidence as polling agents and P. W. 15 and P.W. 38 who were called as "experts" the remaining witnesses are ward supervisors local government collation agents and the state collation agent. I seek to say at this point that the foregoing categories of witnesses are competent in law to testify notwithstanding that they are not polling agents, as long as their evidence is direct within the meaning of section 125 of the Evidence Act. The irony however is that the witnesses admitted in their evidence in chief that their testimonies are based largely on reports received from others. In other words, and like P. W. 1, the witnesses also admitted under cross-examination that they did not visit many of the polling units in respect of which they gave evidence. Therefore, it is not out of place as rightly held by the trial court and affirmed by the lower court that such testimonies were characterised as incompetent, unreliable and not credible. Again see Gundiri V. Nyako and A.C.N V. Nyako supra where evaluation would not be based on number of witnesses but rather on their credibility and the acceptability of the evidence. A witness who has the first hand knowledge of that which he testifies to will be in the front line burner and to the contrary, any evidence which is not within a witnesses' personal knowledge, will not be accredited as competent. See again the cases of Gundiri V. Nyako and A.C.N V. Nyako (supra). C D E F G

P. W. 15 and P. W. 38 were put forward as experts who were instructed by the appellants to carry out "physical inspection as well as statistical analysis" of the election materials used in the 17 local government Areas. H

The duo witnesses supra merely presented what they consid-

ered to be their findings upon examination of electoral materials and this is what the tribunal said at page 7434 of the record :-

B *“We have found no scientific or technical information contained in the reports submitted by P. W. 15 and P. W. 38. While they may be experts in their respective fields, no such expertise is exhibited in these reports. They simply looked at the electoral materials and brought out facts there from.”*

C The court below agrees with this conclusion by the tribunal and thus a concurrent finding of fact which this court can interfere or set aside only where it is found as perverse and unsupported by evidence.

D I must say quickly that the appellants have not shown on the record that this is the case. In other words it is not for this court to take upon itself to interfere with the findings of the two lower courts. It ought to be on the prompting made by the appellants who must state convincing reasons and facts. Contrary to the submission by the appellants, the tribunal is not obliged in law to act on the evidence of P. W. 15 and P.W. 38 merely because it is contained in a written deposition. The law is well settled that a court will act only on a written E deposition of a witness which is his evidence in chief, if it is found to be, credible and reliable upon proper evaluation. In the instant case, it is borne, on the record at pages 7494 to 7501 of vol. 14 that the tribunal fully and extensively evaluated the evidence of P. W. 15 and P. W.38 including Exhibits 243 and 342, and found that they were F discredited and unreliable. See the case of Sowemimo V. The State (2004) All FWLR (pt. 203) 951, S.C; Akeredolu V. Mimiko & Ors. (2013) 12 SCM (Pt. 2) 135 at pages 157, 170, 179 -180.

G NB what was said by P.W. 38 under cross - examination for instance at page 7288 vol. 14 of the record.

“Petitioners retained me to gather facts, examine the electoral materials to ascertain whether there are irregularities, non-compliance with the manual and electoral Act.”...any literate person can look at a document and bring out facts.”

H The witnesses P. W. 15 and P. W. 38 made their personal observation on the election materials. Their evidence cannot be classified as an expert evidence within the meaning of section 68(1) of the Evidence Act 2011; consequently, P.W. 15 and P. W. 38 are not experts as rightly submitted by the respondents’ counsel; See the case

of Attorney-General V. Abubakar (2008) 2 C.C.L R. 483; see also ANPP V. Usman (2008) NWLR (Pt. 1100) 1 at 67 - 68.

On pages 7436 to 7489 of vol. 14 of the record of appeal, the Tribunal examined the pleadings and evaluated the totality of evidence led by the parties in respect of allegations made in each of the seventeen local government areas and held thus:- B

“What we have therefore done in the foregoing is to painstakingly demonstrate that from the evidence led by the petitioners on record throughout the contested local governments, they have failed to prove their case that the election and return of the 1st Respondent as Governor of Osun State was invalid by reason of corrupt practices and electoral malpractices as contended in ground (ii) of paragraph 20 of the petition. We so hold.” C

The court below in agreeing with the Tribunal also found that the evidence led by the appellants lack probative value. D Furthermore and on the allegations of corrupt practices, the tribunal also held and said thus:-

“As correctly submitted by all counsel to the Respondents and as we have already alluded to in the course of this judgment, it is to be reiterated that allegations of corrupt practices are in the nature of criminal charges and ought to be proved beyond reasonable doubt. It is not sufficient to show through the conduit of a written address however well written that there are grounds to believe or suspect that there have been corrupt practices as the Petitioners have attempted to do without the critical element of creditably establishing these allegations by evidence of witnesses within the threshold as allowed by law.” E F

i. That the Respondent whose election is being challenged personally committed the corrupt act or aided, abetted, consented or procured the commission of the alleged acts of corrupt practices. G

ii. That where the alleged act was committed through an agent, that the agent was expressly authorized to act in that capacity or granted authority; and

iii. That the corrupt practice substantially affected the outcome of the election and how it affected it. See Audu v. INEC (No. 2) (2010) 13 N.W.L.R. (Pt. 1212) 456 at 544; Eze v. Okoroagu (2010) 3 N.W.L.R (pt. 1180) 183 at 233-234; Aregbesola v. Oyinlola (2011) 9 N.W.L.R. (Pt. 1253) 458 at 557.” H

The lower court, without any hesitation approved the tribunal's finding that the appellants have failed to prove the allegation of corrupt practices beyond reasonable doubt. This is what the court said:-

"The Appellants complaint is in respect of the finding of the Tribunal that they failed to prove the allegations of corrupt Practices beyond reasonable doubt. The standard of proof required is proof beyond reasonable (sic) since the allegations are criminal in nature. As earlier stated under issue 2 although the Tribunal fused grounds 2 and 3 they were mindful of the fact that the standard of proof required in respect of corrupt practices and non-compliance are different. Tribunal did apply the standard of proof beyond reasonable doubt in respect of the allegations of corrupt practices. See section 135 of the Evidence Act, 2011. Section 135 (1) provides:-

"If the commission of a crime by a party to any proceeding is directly in issue in any proceeding civil or criminal it must be proved beyond reasonable doubt."

In NWOBODO V. ONOH & ORS (1984) N.S.C.C 1 the apex court held where in an election Petition, the Petitioner makes an allegation of a crime against a respondent and he makes the commission of the crime the basis of his petition, subsection (1) of section 135 of the Evidence Act 2011, imposes a strict burden on the Petitioner to prove the crime beyond reasonable doubt. If the Petitioner fails to discharge the burden, his petition fails."

On the whole and having regard to the record of appeal before us, the appellants have undoubtedly fallen short of proving their petition as per their reliefs sought for. The lower court in the circumstance correctly reviewed the judgment of the trial court and arrived at a concurrent finding.

I agree with my learned brother Nweze, JSC that the findings of the two lower courts are unassailable and I also endorse same.

On the totality and with the comprehensive reasoning arrived at in the lead judgment of my learned brother Nweze, JSC, I hold the view that Appeal SC 204/2015 is totally devoid of any merit and I also dismiss same in terms of all the orders made therein the lead judgment inclusive of the order made as to costs.

In respect of Appeal SC. 204A/2015, I adopt the lead judgment of my brother as mine and I do not have anything useful to add.

In respect of the cross appeal on admissibility of documents I however find merit in same and it is allowed in terms of the lead judgment.

On the totality the tribunal's judgment which is affirmed by the lower court is also affirmed by me. In other words the 1st respondent's victory as the duly elected Governor of Osun State is also hereby confirmed.

OKORO JSC

I was obliged in advance a copy of the judgment just delivered by my learned brother, C. C. Nweze, JSC with which I agree that the appeal lacks merit and deserves to be dismissed. It is an appeal against the judgment of the Court of Appeal, Akure Division delivered on 2nd April, 2015 wherein it equally dismissed the appeal to it from the decision of the Governorship Election Tribunal delivered on 6th February, 2015.

A brief fact of the case leading to this appeal will suffice. The 1st appellant was the candidate sponsored by the 2nd appellant, a registered political party for the Osun Governorship election held on 9th August, 2014. At the close of the election, the Independent National Electoral Commission, 3rd respondent herein, on 10th August, 2014 declared the result and returned the 1st respondent as the winner with 394,684 votes against the 1st Appellant's score of 202,747 votes. Dissatisfied with the said result, the appellants as petitioners filed a petition at the Governorship Election Petition Tribunal on 28th August, 2014 praying for the following reliefs:

1. Whereof the Petitioners pray that it be determined and declared that the 1st respondent, Ogbeni Rauf Adesoji Aregbesola was not duly elected by a majority of lawful votes cast in the Osun State Governorship election held on the 9th of August, 2014 and therefore his election is null and void.

ii. That it be declared that SENATOR IYOLA OMISORE was duly elected and ought to have been returned as duly elected Governor of Osun State having scored the highest number of lawful votes cast at the election held on the 9th August, 2014 and satisfied the provisions of the 1999 Constitution of the Federal Republic of Nigeria and Electoral Act 2010 (as Amended) be so declared.

iii. In addition, that SENATOR IYIOLA OMISORE be declared as the winner of the Osun State Governorship election held on the 9th August, 2014, based on the results obtained at the physical re-count and re-examination by and before the Tribunal or otherwise of the votes from the affected or aforementioned Local Governments, B Wards, Units and/or Centres.

OR IN THE ALTERNATIVE:

iv. That the Osun State Governorship election held on 9th August, 2014 having been vitiated by substantial non-compliance C with the mandatory statutory requirements which has substantially affected the validity of the election in the units and wards of the Local Government Areas being challenged be declared nullified or cancelled and the 3rd respondent be ordered and or directed to conduct fresh elections for office of the Governor of Osun State in the D affected areas."

The grounds for the petition were as follows:

Your Petitioners state that:

"i. The 1st Respondent was not duly elected by majority of the lawful votes cast at the election and did not score 1/4 (one-quarter) E of the lawful votes cast in at least 20 of the 30 Local Government Areas of Osun State and therefore did not meet the requirements of the law to be returned as the winner of the election;

ii. The Election of the 1st respondent is invalid by reason of corrupt practices and electoral malpractices perpetrated by the members and agents of the 1st and 2nd respondents in the places challenged in this petition. F

iii. The Election of the 1st respondent is invalid by reason of substantial non-compliance with the provisions of Electoral act 2010 G (as Amended), the Manual for Election Officials 2014, the Guidelines issued for the conduct of the election and the law in the conduct of the election."

Both parties marshalled evidence in favour and in defence of the petition. At the end, the Tribunal, on 6th February, 2015 delivered its judgment and dismissed the petition. Dissatisfied with the H decision of the tribunal, the appellants filed an appeal at the Court of Appeal, Akure Division and in a unanimous judgment, the lower court dismissed the appeal on 2nd April, 2015. The 1st respondent filed a cross-appeal which was allowed.

Again, dissatisfied with the judgment of the lower court, the appellants have further appealed to this court.

Also dissatisfied with some aspects of the judgment in the cross appeal, the 1st respondent has filed a cross appeal. Seven issues have been nominated by the appellants for the determination of the main appeal. The issues are:

1. Whether the learned Justices of the Court of Appeal were right in holding that ground 13 of the appellants Notice and issue 5 distilled therein are incompetent. (Ground 1 of the notice of appeal)

2. Whether the learned Justices of the Court of Appeal were right in affirming the tribunal's findings on the doctrine of severance, burden and standard of proof on allegation of non compliance and irregularities in the conduct of the election. (Grounds 2, 3, 5, 6, 7 and 10 of the notice of appeal).

3. Whether the learned Justices of the Court of Appeal were right in affirming the tribunal's findings that the appellants failed to prove substantial non-compliance with the provisions of the Electoral Act, 2010 (as amended), Manual for Electoral Officials, 2014 and the Guidelines for the Conduct of the election having regards to state of the pleadings and the evidence adduced. (Grounds 8, 9 of the notice of appeal).

4. Whether the learned Justices of the Court of Appeal did not fail in their duty to evaluate properly the Appellants evidence and draw the necessary inferences as demonstrated before them. (Grounds 4 and 14 of the notice of appeal.)

5. Whether the learned Justices of the Court of Appeal were right in affirming the findings of the tribunal which rejected the reports and evidence of PW15 and PW38. (Ground 11 of the notice of appeal).

6. Whether the learned Justices of the Court of Appeal were right in the interpretation of paragraph 16(1) (2) of the 1st Schedule to the Electoral Act, 2010 (as amended) on appellants reply filed in the petition. (Ground 12 of the notice of appeal.)

7. Whether learned Justices of the Court of Appeal were right in affirming the tribunal's findings that the allegations of corrupt practice were not proved beyond reasonable doubt. (Ground 13 of the notice of appeal.)

The 1st respondent also distilled seven issues as follows:

1. Whether the Court of Appeal rightly upheld the preliminary objection of the 1st and 2nd respondents on ground 13 of the appellants' notice of appeal and issue 5 distilled therefrom. (Distilled from Ground 1).

B 2. Whether the Court of Appeal was right in holding that the Tribunal properly applied the required standard of proof in respect of allegations of non-compliance made by the Appellants. (Distilled from Grounds 2, 4, 5, 6, 7 and 8).

C 3. Whether the Court of Appeal was right in holding that evidential burden would only shift to the 3rd respondent if the appellants proved their allegations of substantial non-compliance with the Manual for Election Officials 2014 and Electoral Act 2010 as amended (Distilled from Grounds 3 and 10).

D 4. Whether the Court of Appeal was right when it upheld the findings of the Tribunal that the appellants failed to prove its allegations of non-compliance. (Distilled from Grounds 8,9 and 14).

5. Whether the Court of Appeal was right in upholding the decision of the Tribunal rejecting the report and evidence of PW 15 & PW 38. (Distilled from Ground 11).

E 6. Whether the Court of Appeal was right in holding that the replies of the appellants to the respondents' replies to the petition were filed out of time. (Distilled from Ground 12).

F 7. Whether the Court of Appeal was right in upholding the decision of the Tribunal that the allegations of corrupt practices made by the appellants were not proved beyond reasonable doubt. (Distilled from Ground 13.)

G The 2nd and 3rd respondents also distilled similar issues in their various briefs. I do not intend to reproduce them here as they are covered by the 1st respondent's Issues.

H Both the trial tribunal and the court below held that the chart prepared by the 1st respondent's counsel in his final address before the tribunal was not an admission. I agree that such contraption in the address of counsel, without evidence to back it up cannot amount to an admission. It is trite that address of counsel however brilliant, cannot take the place of evidence particularly where there is no evidence to support the address. See *Oduwole V. West* (2010) 10 NWLR (pt. 1203) 598, *Neka G.B.B. Manufacturing Co. Ltd V. ACB* (2004) 1 SCNJ 193 at 205. There is no way the chart could have, by any

stretch of imagination, been an admission.

As a general rule, in civil cases, including election petitions, while the general burden of proof in the sense of establishing his case lies on the plaintiff, such burden is not as static as in criminal cases. Not only will there be instances in which on the state of the pleadings the burden of proof lies on the plaintiff but also, as the case progresses, B it may become the duty of the defendant to call evidence in proof or rebuttal of some particular point which may arise in the case. See *Adegoke V. Adibi* (1992) 5 NWLR (pt. 242) 410. The appellant had contended that the 3rd respondent did not call evidence in response C to the issues raised against it in the appellants' evidence at the trial court.

For me, I think the 3rd respondent - INEC had no business calling witnesses in view of the fact that it had successfully demolished the evidence adduced by the appellant during cross-examination. D Where a party dumps a truck load of documents on the tribunal without showing how these documents affect his case, it is not the duty of the court to embark on an independent enquiry to fix the documents on the evidence, moreso, when it is outside the hearing in court. See *ACN V. Lamido* (2012) 8 NWLR (pt. 1303) 560 at 580. E

I find it difficult to know where the appellants are coming from in respect of the evidence of PW15 and PW38. The two witnesses admitted that any literate person, without any formal expertise, can look at the documents in question and make observations. In other F words, that there was nothing requiring any expert evidence. Apart from the fact that the two witnesses were paid to do what they did, they admitted under cross-examination that their evidence was false. No reasonable tribunal or court can rely on such evidence to enter judgment for a party. It is no wonder therefore that the trial tribunal G and the Court of Appeal did not place any weight on their evidence. I can say and rightly too, that they were on a strong wicket.

One other aspect of this appeal I wish to comment is the vexed issue of proving criminal allegations in election petition matters. The court below had upheld the decision of the trial Tribunal that the H appellants failed to prove allegations of corrupt practices beyond reasonable doubt. This has given birth to issue No. 7 before this court. It states:

“Whether the learned Justices of the Court of Appeal were

right in affirming the tribunal’s findings that the allegations of corrupt practices were not proved beyond reasonable doubt.”

In arguing this issue, the appellants had referred to their argument in issue two that there is no severance of the treatment of issue 2 formulated by the tribunal which consist of the allegation of corrupt practices and non compliance with Electoral Act and Guidelines for the Election. He argued that the failure to do so led to a miscarriage of justice.

Learned senior counsel submitted further that a careful perusal of the evidence led by the appellants would clearly show that the appellants actually discharged the burden placed on them by law. He argued further that the trial Tribunal and the court below came to the conclusion that this burden was not discharged because it has on its own imposed a greater burden of proof beyond the shadow of doubt. It is his view that this burden is absolutely impossible for the appellants to discharge, relying on the case of *Muftau Buhari V. The State* (1987) 3 se 1 at 7.

The respondents in their various briefs had argued that in dealing with the issues formulated by the Tribunal, it clearly and distinctly examined each and every allegation made by the appellants and considered them in evaluating the evidence presented by parties before coming to the conclusion that the appellant failed to lead cogent credible and reliable evidence in support of the allegations of corrupt practices.

I am constrained to revisit the Issue of severance complained of in issue 2 because it has resurfaced in this last issue. From the record before me, I am certain that the court below was quite in order to hold that the tribunal was very clear in distinguishing the standard of proof between corrupt practices and non-compliance with provisions of the Electoral Act. On pages 7489 to 7490 of the record of appeal Vol. 14, the Tribunal had this to say.

“As correctly submitted by all counsel to the respondents, and as we have already alluded to in the course of this judgment, it is to be reiterated that allegations of corrupt practices are in the nature of criminal charges and ought to be proved beyond reasonable doubt. It is not sufficient to show through the conduit of a written address however well written that there are grounds to believe or suspect that there have been corrupt practices as the Petitioners have attempted

to do without the critical element of credibility establishing these allegations by evidence of witnesses within the threshold as allowed by law.”

Elsewhere In the judgment of the Tribunal, the allegations of non-compliance are treated separately. The lower court found so and I think that matter ought to be laid to rest. B

I need to emphasize that in Election Petitions, where allegations of corrupt practices are made, the petitioner making these allegations must lead cogent and credible evidence to prove them beyond reasonable doubt because they are in the nature of criminal charges. Being criminal allegations, they cannot be transferred from one person to another. It is personal. Thus it must be proved as follows: C

1. That the respondent whose election is being challenged personally committed the corrupt acts or aided, abetted, consented or procured the commission of the alleged corrupt practices. D

2. That where the alleged act was committed through an agent, that the agent was expressly authorized to act in that capacity or granted authority; and

3. That the corrupt practice substantially affected the outcome of the election and how it affected it. See *Aregbesola V. Oyinlola* (2011) 9 NWLR (pt. 1253) 458 at 557, *Audu V. INEC* (No. 2) (2010) 13 NWLR (pt. 1212) 456 at 544. E

Reading through the brief of the appellants, I have not seen any new area which they would want this court to intervene in order to demolish the concurrent findings of the two lower courts that the appellant failed to lead cogent and credible evidence to prove the criminal allegations they made in the petition beyond reasonable doubt. I have no reason to disturb these concurrent findings. F

On the whole, there is nothing placed before this court to tilt the scale of justice in favour of the appellants. In the circumstance, I agree that this appeal is devoid of any scintilla of merit and deserves to be dismissed. It is accordingly dismissed by me. G

As regards appeal No. SC. 204A/2015, I find no merit in it and it is hereby dismissed. I adopt the views and reasons adumbrated in the lead judgment as mine. H

I also allow the cross appeal on the issue of admissibility of documents. The preliminary objections in both appeals are adjudged

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unmeritorious and are dismissed. There shall be no order as to costs.

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