

SUPREME COURT OF NIGERIA
FRIDAY 26TH FEBRUARY, 2016. SC. 18/2016
CORAM:- M. MOHAMMED, CJN, I. T. MUHAMMAD,
S. GALADIMA, O. RHODES-VIVOUR, K. B. AKA'AH,
K. M. O. KEKERE-EKUN, C. C. NWEZE, JJSC

OKEZIE VICTOR IKPEAZU APPELLANT
AND

1. ALEX OTTI
2. ALL PROGRESSIVES
GRAND ALLIANCE
3. PEOPLES DEMOCRATIC PARTY RESPONDENTS
4. INDEPENDENT NATIONAL
ELECTORAL COMMISSION

APPEALS - Fresh evidence - Application must be brought to adduce further evidence on appeal - Appellant not having done this - The ground and issue formulated thereon cannot be competent (H1)

APPEALS - Grounds - Validity - Grounds must lie from decision of CA to SC - Hence appellant's ground 2 that attacks acts of registry of CA - Instead of acts of any of the Justices is incompetent (H2)

ELECTION PETITIONS - Crime - Allegation of - Proof - Where petitioner makes crime the basis of his petition - He must prove same beyond reasonable doubt (H3)

APPEALS - CA - Issues - Resolution of - The court being an intermediate court - Is admonished to pronounce on all issues arising in appeal before it - Even if the appeal has been disposed of by core issues (H4)

ELECTION PETITIONS - Judgment - Binding nature - Decision of the Tribunal which has not been set aside - Is not only binding on the parties - But on all authorities for enforcement of the judgment (H5)

ELECTION PETITIONS - Relief - As respondents' petition is not based on over voting - And there was no proof of same - CA could not

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have validly returned 1st respondent as Governor of the State (H6)

ELECTION PETITIONS - Appeals - Right of - By ordering INEC to issue certificate of return to 1st respondent - Appellant's constitutional right of appeal was foreclosed (H7)

ELECTION - Results - Cancellation of - State Returning Officer has no power to cancel election - Thus 1st respondent could not have been returned as winner - On the basis of such invalid cancellation (H8)

ELECTION PETITIONS - Over voting - Proof - Petitioner must inter alia tender voters' register - Statement of results - And relate each document to specific area of his case (H9)

ELECTIONS - Results sheet - Signing of - Non signing of form EC8D by agent of 1st and 2nd respondents - Will not vitiate the result of the election (H10)

DOCUMENTS - Credibility of - Proof - A party who did not make a document - Is not competent to give evidence on it - As the maker must be called to test veracity of the document (H11)

APPEALS - Grounds - Competence of - Arguments on incompetent grounds - Cannot be lumped together with those of competent grounds - And courts do not sift the good grounds from bad ones (H12)

ELECTION PETITIONS - Tribunal - Justice - Courts are enjoined to do substantial justice - And to refrain from undue technicality - Especially in election petition - Where wider interest is paramount (H13)

ELECTION PETITIONS - Grounds - Facts - Petitioner is required to state facts giving rise to grounds - Upon which he based his petition - Otherwise the Tribunal will strike out the ground (H14)

FACTS

Petitioners/1st and 2nd respondents brought this election peti-

tion before the Abia State Governorship Election Petition Tribunal sitting at Umuahia. Among other reliefs, they pray for a declaration that the return of appellant as the Governor of the State is void for substantial non-compliance which substantially affected the results of the gubernatorial election held on 11th and 25th April 2015 in the State. Appellant contested the said gubernatorial election as the candidate of 3rd respondent. 1st respondent equally contested in the same election as candidate of 2nd respondent. At the end of the polls and collation of results, 4th respondent declared appellant the winner and returned him the duly elected Governor of Abia State.

1st and 2nd respondents were dissatisfied. Hence, they filed the petition. Hearing commenced in the matter. At the end of the hearing, the Tribunal dismissed the petition on diverse grounds inter alia, that none of the criminal allegations contained in the petition was proved and that 1st and 2nd respondents who were challenging the result of the election based on alleged over-voting did not rely on any Voters' Register of Form EC8A as mandatorily required under section 49 of the Electoral Act 2010 (as amended). Dissatisfied, 1st and 2nd respondents appealed to the Court of Appeal Owerri Division. The Court allowed the appeal and reversed the decision of the Tribunal. Appellant was not satisfied and has appealed to the Supreme Court.

ISSUES FOR DETERMINATION

"1. Juxtaposing the fact that the Tribunal in its judgment rightly held that the criminal allegations in the petition before it were not proven, vis-à-vis issue 9 formulated by the 1st and 2nd Respondents (as appellants), whether the lower Court did not fall into serious error, not only in its failure to treat and resolve the said issue 9, but also going further to overturn the judgment of the Tribunal in the absence of the resolution of the said issue.

2. Considering the reliefs specifically sought by the 1st and 2nd Respondents (first as petitioners before the Tribunal, and later as appellants before the lower Court), vis-a-vis the judgment of the Tribunal and that of the lower Court, whether the lower Court did not fall into grave error, and also acted without jurisdiction by reversing the decision of the Tribunal on the said reliefs, and also granting the reliefs and consequential orders it so made.

3. Having rightly found that the State Returning Officer had

no power to cancel elections, whether the lower Court was not in error when it returned the 1st respondent as Governor of Abia State.

4. Whether the lower Court was not wrong in solely relying on Exhibit PWC2 in voiding the election and return of the appellant on the allegation of over voting.

B *5. Having regard to the judgment of the Tribunal which was based on the evidence adduced before it and appraisal of same (including the evidence of PW19 and PW20), vis-à-vis the fact that the lower Court did not overturn the findings of the Tribunal on core areas of its judgment, whether the lower Court did not fall into serious error by setting aside the judgment of the Tribunal.*

C *6. Having struck out Ground 28 of the 1st and 2nd Respondents' (as appellants) Grounds of Appeal, as well as issue 14 in their brief of argument, whether the lower Court did not fall into serious error and also acted without jurisdiction by still going ahead to treat the issue arising from the struck out ground, as well as the struck out issue.*

D *7. Having regard to the various reasons given by the Tribunal in striking out paragraphs 16, 21, 30(a) and 48 of the petition, whether the lower Court was not in error in restoring the said paragraphs in a wholesale manner.*

F **HELD** (Unanimously allowing the appeal per GALADIMA JSC)
APPEALS - Fresh evidence

G **1. On the first point, I agree with the learned Senior Counsel for the Respondents that the facts the Appellant relied upon are fresh facts which the Respondents were unaware of and they had no opportunity to react or respond to. The fact that the Appellant could not obtain his copy of the Judgment until 6th January, 2016, does not mean that other parties did not get their own copies before that date. In the circumstance,**
H **such evidence has to be brought in vide the normal application to proffer or adduce further or fresh evidence on appeal. This is to enable the parties address and express their views and the Court to rule on it. Appellant having not done this,**

this ground of appeal and the issue formulated thereon cannot be said to be competent, it must be dismissed and it is hereby dismissed. (p. 1396 H)

APPEALS - Grounds - Validity

2. The second point tilts in favour of the respondent. It is whether the issue not being an appeal from the decision of the lower Court is competent. The triteness of the law that the Grounds of Appeal must lie from a decision of the Court below to this Court has been laid to rest in a litany of decisions of this Court. Section 233 (2) of the 1999 Constitution (as amended) clearly provides for this thus-

“(2) An appeal shall lie from the decisions of the Court of Appeal to the Supreme Court as of right in the following case:-

(e) decisions on any question-

(i) whether any person has been validly elected to the Office of President, Vice-President, Governor and Deputy Governor under this Constitution”.

The operative word in the foregoing provision is ‘decision’. An Appeal is from a decision of the lower Court and not necessarily administrative actions of the Court Registry as shown here.

My careful perusal of the particulars of the Ground of Appeal and the argument on the issue formulated there from are attacks against what the Registry of the lower Court did after the judgment had been delivered. Therefore, the only decision the Appellant can appeal against is the decision of the lower Court made by justices of that Court and this has been rightly set out in other Grounds of Appeal of the Appellant. This Ground 2 is attacking the acts of certification, enrollment of order and availability of the judgment to the appellant before 6th January, 2016. I have not seen anything on record what the Justices who delivered the judgment being appealed against, did after delivery of the judgment. The Appellants letter of 2nd January, 2016 was addressed to the Registrar of the lower Court and not to any of the Justices of the Court below.

In view of the foregoing this preliminary objection is considered necessary and sustainable. It is allowed. A fortiori, and even for the stronger reason, the incompetent Appellant's Ground 2 and issue 8 are otiose and unworthy of consideration. (p. 1397 C)

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ELECTION PETITIONS - Crime - Allegation of - Proof

3. Therefore, the trial Tribunal, after considering these criminal allegations considered the mandatory provisions of Section 139(1) (as amended) of the Evidence Act vis-à-vis proof of allegations in any criminal proceedings. It is at page 5562 of the record, the tribunal held that grave criminal allegations were made in the petition but were not proved beyond reasonable doubt. That is the law. It has not changed. 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, Section 135(1) of the Evidence Act 2011 imposes strict burden on the said petitioner to prove the crime beyond reasonable doubt.

E

If he fails to discharge the burden, his petition fails. I agree with the Learned Senior Counsel for the Appellant that crime was inextricably woven with the allegation in the petition. The basis of alleged irregular accreditation is violence but as observed that has not been proved. The claim of over-voting could not have been succeeded without proof of forgery, fabrication etc. Where petitioners suffuse criminality with their pleadings, in a civil claim they are bound to prove same beyond reasonable doubt. (pp. 1399 E/1402 G)

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APPEALS - CA - Issues - Resolution of

4. It is imperative for the Court below to make a definite finding on the issue presented before it and to resolve same in one way or the other; bearing in mind the necessity of doing so this Court has admonished the Court of Appeal, particularly as an intermediate Court to pronounce on all issues arising or raised in an appeal before it, even if the appeal had been disposed of by only some of the core issue(s) for determination. (p. 1400 H)

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Judgment - Binding nature

5. Issue 9 is central to this appeal. It has not been resolved. In the absence of not setting aside the judgment of the Tribunal to the effect that the diverse criminal allegations in the petition were not proved, then where is the jurisdiction and power of the Court below to have set aside the judgment of the Trial Tribunal summarily. It is further noted in the submission of the learned counsel for the Appellant that the central issue of the failure of the petitioner to prove the criminal allegations made in the Respondents' petition was resolved against the petitioners by the Trial Tribunal, coupled with the fact that the judgment of the Tribunal on that issue has not been set aside, is binding on all parties in this case. Then the question for the umpteenth time is can the decision of the Court below, summarily setting aside the judgment of the trial Tribunal still stand firmly. The judgment having not been set aside, is not only binding on all the parties concerned to obey, but to all the authorities charged with the responsibility for enforcement of such judgment. (p. 1401 B)

ELECTION PETITIONS - Relief

6. In the same relief, not only was it further stated that the same was sought in the alternative of relief (iv), which prayed for 1st respondent to be returned as Governor of Abia state. It also specifically pleaded that nullification of result in those LGAs should be made in order for the conduct of "a fresh/supplementary election", to ascertain the final scores of candidates in the election. I agree that the Court below went against the grain of the reliefs sought by the petitioners, turning itself to be Father Christmas, dishing out the reliefs not claimed.

The Court nullified the elections in 3 LGAs and returned the petitioners as winners of the election, when by their pleading relief (v) the petitioner, expressly agreed that it is only supplementary election that can ascertain the final scores of candidate. It was evident that the Court below partly granted reliefs (v) and (iv) in the petition, when the reliefs were sought in the

alternative. The Court voided elections in the 3 LGAs as specifically prayed in relief (v) and returned 1st Respondent as Governor as specifically prayed in relief (iv). For the umpteenth time, I hold that there was no relief for the return of the 1st Respondent as Governor in the event of the Court voiding the
 B **said elections in the 3 LGAs. More particularly so, when the petitioners (as appellants) before the lower Court expressly abandoned the said relief (v) by failing to canvass any arguments thereon in respect of a request for a re-run election. That being so there was no basis for nullification of elections**
 C **in the said 3 LGAs.**

The implication of returning the 1st Respondent as Governor of Abia State is that the Court below gave him more than he had prayed for. So it seems, because in returning him
 D **as the Governor after purportedly canceling and excluding the results in the said 3 LGAs, the Court below at page 5873 of the record allotted 164, 332 votes to the 1st Respondent and the Appellant 115,444. In the effect, the lower Court gave the 1st Respondent well over eight thousand votes more than they**
 E **had expressly asked for. It is expected that before the lower Court embarked upon this mathematical “additions and subtractions exercise, ex curiae and suo motu” as contended by the Appellant, he should have been afforded a hearing.**

In the process of these calculations the Court below cancelled the elections in the said three Local Government Areas disenfranchising thousands of voters, including the appellant who allegedly is said to have hailed from one of those Local Government Areas. At the risk of repetition, the petition of the respondents was not based on over-voting and there
 F **was no proof of the same. One cannot fathom the reason why the Court below held, on page 5871 of the record, that “ordering of fresh election would arise only where a clear winner did not emerge after the deduction of the illegal vote”.**
 G

H (p. 1404 B)

Appeals - Right of

7. A point has further been made that the Court below did not only act without jurisdiction but also based its decision on

speculation. By ordering the INEC to issue certificate of return to the 1st Respondent “forth with” the lower Court had usurped the constitutional and statutory duty of the 4th Respondent (INEC). By this order, the constitutional right of appeal of the Appellant was automatically foreclosed, considering the clear provisions of Section 233 (2)(e)(iv) of the said Constitution which accords appellant right of appeal to this Court against the decision of the lower Court and Section 143, of the Electoral Act (supra) which provides that the appellant shall remain in office pending the expiration of the time within which an appeal shall be brought to this Court and determined.

In the light of the foregoing, this issue is also resolved in favour of the Appellant. (p. 1406 B)

ELECTION - Results - Cancellation of

8. I agree with the learned senior counsel for the Appellant that the plank of the case of the 1st and 2nd Respondents petition to be returned as winners of the election was hinged on the act of cancellation of election results by the State Returning Officer at the State Collation Centre. See paragraphs 24, 25 and 27 of the Respondents’ Petition [pp 10 -11 of vol. 1 of the Record] where the Appellant has demonstrated that Abia case was inextricably woven around the wrong assumption that the trial Tribunal found that the cancellation was properly done on that basis the 1st Respondent should be returned as the Governor.

In its finding that the State Returning Officer had no power to cancel election results, the Court below was agreeing with the settled position of the law, as laid down by this Court in DOMA v INEC (supra) to the effect that it was ultra vires the powers of the State Returning Officer to cancel elections. Since in law the State Returning Officer acted ultra vires to cancel election results, the 1st Respondent could not have been returned as the winner on the basis of such invalid cancellation. As earlier noted, the only relief where the Respondents (as petitioners) expressly sought for voiding of election in those LGAs is the alternative relief (v) which was sought

subject to a re-run election. In the light of the foregoing, I am of the firm view that this issue should be resolved in favour of the Appellant herein, and it is hereby so resolved. (p. 1408 A)

ELECTION PETITIONS - Over voting - Proof

B 9. In the determination of this issue, that case and other relevant cases shall be addressed, anon. First, Section 49 (1) and (2) is very clear on the procedure of accreditation at an election. For this, the Court below had no basis at all, either in law or in fact venturing into its conclusion that there was over-voting.

Consideration was not given to the real issue before it leading to the denial of according fair hearing to the Appellant.

D As earlier stated, I may have to revisit HARUNA v MODIBO (supra) and the two latest decision of this Court, particularly in unreported Appeal No: SC. 907/2015 - MAHMUD ALIYU SHINKAFI & ANOR v. Y. ABDULAZEEZ ABUBAKAR YARI & 2 ORS; delivered on 8th January, 2016, where at page 24 - 30, this Court held as follows:-

F “Learned Senior Counsel for the appellant submitted that although it is the law that to prove over-voting, the petitioner must tender voter’s register, tender statement of results in the appropriate forms relate each of the documents to the specific areas of its case, the usage of card reader has taken away the burden placed on the petitioner as stated above. According to him, the cases of Haruna v Modibo (2014) 16 NWLR (Pt. 900) 48... which were decided before the introduction of accreditation of voters via Card Reader Machines are no longer good law on how to prove over-voting.....To prove over-voting, the law is trite that the petitioner must do the following:-

**H 1. Tender the voter’s register.
2. Tender the statement of results in the appropriate forms which would show the number of accredited voters and number of actual votes.**

3. Relate each of the documents to the specific area of his case in respect of which the documents are tendered.

4. Show that the figure representing the over-voting, if

removed, would result in victory for the petitioner.....

However, learned silk opines that with the introduction of the Card Reader Machines, it would no longer be necessary to tender voters register and other steps set out earlier.... My view on this is that the principle of law that is well established cannot be abolished simply because an appellant failed to prove his case in accordance with those principles. My understanding of the function of the Card Reader Machine is to authenticate the owner of a voter's card and to present multiple voting by a voter. I am not aware that the Card Reader Machine has replaced the voters register or taken the place of statement of results, in appropriate form."

I cannot embellish or improve on the forgoing obvious and firm statement of the laws as to the function of the Card Reader Machines in the scheme of our electoral process. This Court has spoken. The controversy has now been finally laid to rest. (p. 1410 B)

ELECTIONS - Results sheet - Signing of

10. As if perverseness of this decision is not enough, the Court went further to raise Issue of non-signing of Form EC8D by the agent of the 1st and 2nd Respondents. I agree with the Appellant's Senior Counsel that it is not the law that non-signing of Form EC8D will vitiate the result of an election. It is contended that Exhibit PWC 2 which the Court below wrongly made use of contains partial accreditation figures in respect of 5 Local Government Areas of the 17 Local Government Areas in Abia State, while Form ECSD contains accreditation figures on local government by Local Government basis for the entire State. While Form EC8D is superior to and supersedes Exhibit PWC2, the said Exhibit cannot be used to vitiate Form EC8D. (p. 1412 G)

DOCUMENTS - Credibility of - Proof

11. By paragraph 6 of PW 19's witness Statement, she stated clearly that one Collins Onyemaobi was the maker of Exhibit PWC 2 who also certified it. Again in paragraph 9 of PW 19's witness statement, she admitted that the said Exhibit PWC 2

which she earlier stated was certified by Collins Onyemaobi as well as certificate of compliance as provided in Section 84 of the Evidence Act, was also certified by one Mrs. O. O. Babalola. It is now settled law that a party who did not make a document is not competent, to give any evidence on it. This is the situation here. PW 19 did not make Exhibit PWC 2 she cannot competently tender it. The maker must be called to test its credibility and veracity. In sum, this issue is resolved in favour of the Appellant. (p. 1415 E)

APPEALS - Grounds - Competence of
12. The issue that is not contested at the Court below is that Issue 11 was formulated from ground which was already struck out. Appellant's case was simply that having struck out Ground 28, the Court below was without jurisdiction to consider same and that the said Issue 11 should be struck out along side with the other issues jointly considered. This point is fairly settled in a number of decisions of this Court to the effect that arguments or submissions on incompetent issues and/or Grounds of Appeal cannot be lumped together with those of competent Grounds of Appeal and issues for determination. If this is done it will not be the business of the Court to "sift the chaff from the grains" an exercise that would clearly involve arguments in respect of the valid grounds from the invalid ones. It is true that such an exercise may involve the Court in descending into the arena of dispute which will often becloud the judgment of the Court. In this case, just as the lower Court lumped all the 9 issues together, it also lumped its consideration and resolution of the said issues together. This Court cannot embark now on any "surgical operation" to sift out the good grounds from the ones already struck out, as well as issue 11 that was struck out. In the circumstance, this issue is resolved in favour of the Appellant. (p. 1417 E)

ELECTION PETITIONS - Tribunal - Justice
13. As correctly observed by the Court below, on this point, the "Tribunal should have, in the interest of doing substantial justice ignored the inconsequential mistakes." That is true,

the Courts are enjoined to do substantial justice and to refrain from undue technicality. Nowhere else is the need to do substantial justice greater than in election petition, for the Court is not only concerned with the rights of the parties inter se but the wider interest and rights of the constituents who have exercised their franchise at the polls. However, an election petition is statutory and is unlike any other civil claim, where there is much latitude. In the case at hand, I am of the firm view that the trial Tribunal was right to have struck out those paragraphs for not complying with Paragraphs 4(1) (d) and (2) of the First Schedule to the Electoral Act (supra). (p. 1419 G) B
C

ELECTION PETITIONS - Grounds - Facts

14. The petitioner is required, as a matter of necessity, to state in clear terms the facts giving rise to a ground or grounds upon which he based his petition. Anything short of that renders the Ground(s) ambiguous, vague and incomprehensive capable of beclouding the mind of the respondent making him unable to understand what he is required to respond to. Where such a situation presents itself, the trial Tribunal has no alternative but to strike out such ground(s) of the petition (as in this case at hand). D
E

I agree with Learned Senior Counsel when he submitted that 1st and 2nd Respondents did not make any application whether oral or written before the Tribunal to correct any “typographical error” in their petition. The Tribunal could not have suo motu corrected the admitted error(s) by the said Respondents. It is in view of the foregoing I resolve this issue in favour of the Appellant. (p. 1420 A) F
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REPRESENTATION

Chief Wole Olanipekun (SAN) with him, Chief Kanu Agabi (SAN), Chief Adeniyi Akintola (SAN), D.D. Dodo (SAN), Mr. Tayo Oyetibo (SAN), S.T. Hon (SAN), A.T. Kehinde (SAN), Mr. Emeka Etiaba (SAN). Chief Theo Nkire, Nasif A. Dangari, Benchuks Nwosu, Elele Casmir, Audu Anugu, Anaga Kalu, Uche Ihemmanma, U.T. Nwachukwu, M.E. Nwaohamuo, Dr. Sam Enrgo, T. Gbashima,

Olaborode Olanipekun, Festus Jumbo, A.A. Dodo, Patrick Okoh, Paul Mgbeoma, C.O.C. Emeka-Izima, Bukola Araromi (Mrs.), Aisha Aliyu (Mrs.), Luter I. Atagher, Samson A., Eigege, Ginika Ezeoke, Peter Erivwode, Bolarinwa Awujoola, Yunusa Umaru, Edidiong Usungurua, Temitope Olanipekun, Mesuabari Mene-Josiah, Alex Nwosu, Chi B Adiele, Adebayo Majekolagbe, Tola Adetomiwa, Dominic O. Chinbuo, Adekunle Kosoko, Ukpai Ukairo, Christian Okoh, Matthew Opukumo, Nancy N. Okoli, Madu Gadzama, Calistus Aneke, Lubaba Yusuf, Jummai Pam and Chukwudifu Mbamali, for the Appellants

C Chief Olujinmi (SAN) with him, Awa U. Kalu (SAN), Chief Chris Uche (SAN), Owonikoko Abiodun (SAN), Ikoro No. Ikoro, Ifeanyi Egwuasi, Akinsola Olujinmi, Oloyede Oyediran, Kanayo Okafor, Marcel Duru, Michael Lano, Emmanuel Okorie, Uzoma Nwosu-Iheme, Isaac D Nwachukwu, E.C. Ani, C.I. Obidike, B.A.P. Folorunso, C.N. Kalu (Miss), D.E Idang, Ricardo Ebikade, Ifeoluwa Ajani (Miss), Olakunle Lawal, Blessing Akinsehinwa, Ifedolapo Yejide Esan (Ms), James Ebbi, Francis Nsigbunam, Chinwendu Nduka-Edede (Miss), N.H. Nwankwo, G.N. Ogbonna, Ken Ahia, Carol Dike-Okorafor (Mrs.), Sunday E Olowomoran and Nwala Oracle, for 1st and 2nd Respondents

Dr. Onyechi Ikpeazu (SAN) with him, Elder Paul Ananaba (SAN), Prof. Ikeohi Mgbeoji, Raymond Anyawata, Uche Ihediwa, C.A.N. Nwokeukwu, Henry Balogun, T.A.N. Nwamara, L.T.C. Ebuba, Charles F Ezeonu, E.A. Ibrahim Effiong, Alex Ejesieme, Onyinye Anumonye, Emeka Nri-Ezedi, Gabe Igboko, Anayo Nwokolo, Emeka Eze, S.N. Mbaezue, Ann Uchendu, Udo Uduma, Jude Nwokolo, Uche Ihemanma, P.C. Uzoaga, E. Evulukwu (Mrs.), U. Ajaga, Ogechi G Ogbonna, Tobechukwu Nweke, Nwachukwu Ibegbu, Obinna Onya, Dr. A.B.C. Agbazeere, St. Moses Ogbonna, Ifeyinwa U. Mande, O.A. Nkoro, O.O. Nkume, Okey Barrah, Chuka Ikpeazu, Julius Mba, Nwamaka Ofoegbu (Miss), Fred Onuobia, Ijeoma Utchay (Mrs.) and Emmanuel Rukari, for 3rd Respondent

H Chief Adegboyega Awomolo (SAN) with him, Dr. Livy Uzoukwu (SAN), Prof Charles Ilegbune (SAN), Dr. Akinpelu Onigbinde (SAN), Valentine Offia, Ebuka Nwaeze, Olajide Olaleye-Kumuyi and Jude Daniel Odi, for 4th Respondent

CASES REFERRED TO

- A.G Rivers v. Ude (2006) 6 - 7 SC
 Okechukwu v. INEC (2014) 17 NWLR (pt. 1436) 255
 Nwobodo v. Onoh (1984) 1 SCN
 Doma v. INEC (2012) NWLR (pt. 628) 813 B
 INEC v. Abubakar (2009) 8 NWLR (pt. 1143) 259
 Haruna v. Modibo (2004) 16 NWLR (pt. 900) 487
 Ivienagbor v. Bazuaye [1999] 9 NWLR (pt. 620) 552
 Owe v. Oshinbanjo (1965) 1 All NLR 72
 Bornu Holding Co. Ltd. v. Bogoco (1971) 1 All NLR 324 C
 Onibudo v. Akibu (1982) 7 SC 60
 Nwaga v Registered Trustees Recreation Club (2004) FWLR (pt. 190) 1360
 Jalingo v. Nyame (1992) 3 NWLR (pt. 231) D
 Ugochukwu v. Co-operative (1996) 7 SCNJ 22
 WAB v. Savannah Ventures (2002) FWLR (pt. 112) 53
 Obasi Brothers Ltd. v. MBA Securities Ltd. (2005) 2 SC (pt 1) 51

STATUTES REFERRED TO

- Constitution of the Federal Republic of Nigeria 1999 (as amended), ss. 233(2)
 Evidence Act 2011, ss. 52 (2), 135 E

LEAD JUDGMENT BY GALADIMA JSC

This Court heard and allowed this Appeal SC.18/2016 on the 3rd February, 2016. I promised to proffer reasons for doing so today, 26th February, 2016, today. My reasons are set out below.

This appeal is against the judgment of the Court of Appeal sitting in Owerri, in APPEAL No: CA/OW/EPT/6/2015 delivered on 31st December, 2015, wherein the Court allowed the appeal of the 1st and 2nd Respondents [hereinafter referred to as the (“Respondents”). The Governorship Election Tribunal which sat in Umuahia, Abia State had on 3rd November, 2015 dismissed the petition filed by the 1st and 2nd Respondents in which they challenged the declaration of the Appellant as the winner of the Governorship Election conducted in Abia State on 11th and 25th April, 2015. G H

In a nutshell, the Appellant herein contested in the Gubern-

torial Elections of 11th and 25th April, 2015, as the candidate of the 3rd Respondent, the Peoples Democratic Party (PDP). The 1st Respondent also participated in the same elections as the candidate of the 2nd Respondent, the All Progressives Grand Alliance (APGA). At the end of the polls and collation of results, the 4th Respondent declared the Appellant the winner and returned him the duly elected Governor of Abia State. The 1st and 2nd Respondents challenged the declaration of the Appellant herein as the winner of the said election at the Governorship Election Tribunal in Umuahia, seeking some reliefs, praying as follows:-

“(i) That it may be determined and thus declared that the return of the 1st Respondent as Governor of Abia State pursuant to election held on 11th April and 25th April, 2015 is void for substantial non-compliance with the provision of the Electoral Act 2010 (as amended) and which non compliance substantially affected the result of the election.

“(ii) That it may be determined and thus declared that the 1st Respondent was not duly elected by majority of lawful votes cast and did not satisfy the mandatory constitutional threshold and spread across the local Government areas of Abia State at the Governorship election held in Abia State on 11th April, 2015.

“(iii) That it may be determined and declared that the election and return of the 1st Respondent as Governor of Abia State is invalid by reason of corrupt practices and liable to be nullified; and further.

“(iv) That it may be determined and thus declared that the 1st Petitioner won majority of lawful votes cast at the 11th and 25th April 2015 election/supplementary election held in Abia State and satisfied the constitutional threshold and spread across the 17 Local Govt. Areas of the State; and ought to be and thus be ordered to be returned as the duly elected Governor of Abia State.

“(v) In the alternative to prayer (iv), that it may be determined and thus declared that the elections in the Local Govs, Wards, Units and/or centers characterized by electoral irregularities and non-compliance during the conduct of the Abia State Governorship election and satisfied the constitutional threshold and spread across the 17 Local Govt. Areas of the State; and ought to be and thus be ordered to be returned as the duly elected Governor of Abia State.

“(vi) If the alternative to prayer [iv], that it may determined and

thus declared that the elections in the local Govts, Wards, Units, and/ or Centers characterized by electoral irregularities and non-compliance during the conduct of the Abia State Governorship Election held on 11th April, 2015 be voided and/or set aside and a fresh/ supplementary election be conducted by 3rd Respondent in the affected Polling units to ascertain the final scores of candidates at the election - that is in respect of:-

- (a) The whole of Obingwa Local Government Area,*
- (b) The whole of Osioma Local Government Area,*
- (c) The whole of Isiala Ngwa North Area,*
- (d) The 9 (nine) Polling units 18, 19, 20, 21, 22, 23, 24, 25^C and 26 Urban Ward, Afara-ukwu Ward 1, of Umuahia North Local Government Area, and*
- (e) The 82 Polling Units in Ward 1 of Ugunagbo Local Government Area, Units, 1,2,5,6: Ward 2 Units t, 3, 4, 5,6, 8; ward 3 Units 2, 3, 4,5, 6,7,8,9,10, 11, 12 Ward 13, Units 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13 and 16; Ward 5 Units 1,2,3, 4, 5, 6, 7, 8, 9, 10, 11 and 12; ward 6, Units 1, 2, 3,4, 5, 6, 8, 9 and 10; ward 7 Polling Units 1, 11, 13 and 14; Ward 8 Polling Units 3 and 4: Ward 9 Polling Units 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15; ward 10 Polling Units 4, 5, 6, 7, 8 and 9"*

The Tribunal in its considered judgment, dismissed the petition on diverse grounds, including but not limited to the fact that none of the criminal allegations contained in the petition was proved; that the petitioners, who were challenging the result of the election based on alleged over-voting did not rely on any Voters' Register of Form EC8A as mandatorily required under Section 49 of the Electoral Act, 2010 (as amended); that they merely relied on a Card Reader Report (Exhibit PWC 2), which in itself not only contradicts another Card Reader Report (Exhibit PWD) tendered by the same petitioners, but which also conflicts with the testimony of PW19; that all documents tendered by the petitioners were merely dumped on the Tribunal without more etc.

Dissatisfied, with the decision of the Tribunal, 1st and 2nd Respondents appealed to the Court below which reversed the decision of the Tribunal. The Appellant was not satisfied and has appealed to this Court. In the appellant's brief filed on 18th January, 2016 by his counsel CHIEF WOLE OLANIPEKUN SAN, the 10 issues distilled for

determinations of this appeal are as follows:-

B “1. Juxtaposing the fact that the Tribunal in its judgment rightly held that the criminal allegations in the petition before it were not proven, vis-à-vis issue 9 formulated by the 1st and 2nd Respondents (as appellants), whether the lower Court did not fall into serious error, not only in its failure to treat and resolve the said issue 9, but also going further to upturn the judgment of the Tribunal in the absence of the resolution of the said issue. - Grounds 22 and 23.

C 2. Considering the reliefs specifically sought by the 1st and 2nd Respondents (first as petitioners before the Tribunal, and later as appellants before the lower Court), vis-a-vis the judgment of the Tribunal and that of the lower Court, whether the lower Court did not fall into grave error, and also acted without jurisdiction by reversing the decision of the Tribunal on the said reliefs, and also granting the D reliefs and consequential orders it so made. - Grounds 3, 5, 7, 20, 21, 24, 25 and 28.

E 3. Having rightly found that the State Returning Officer had no power to cancel elections, whether the lower Court was not in error when it returned the 1st respondent as Governor of Abia State. - Grounds 1, 12 and 13

F 4. Whether the lower Court was not wrong in solely relying on Exhibit PWC2 in voiding the election and return of the appellant on the allegation of over voting. - Grounds 10, 11, 16, 17, 18, 19 and 30

G 5. Having regard to the judgment of the Tribunal which was based on the evidence adduced before it and appraisal of same (including the evidence of PW19 and PW20), vis-à-vis the fact that the lower Court did not upturn the findings of the Tribunal on core areas of its judgment, whether the lower Court did not fall into serious error by setting aside the judgment of the Tribunal. - Grounds 6, 8, 14, 15, 26 and 29

H 6. Having struck out Ground 28 of the 1st and 2nd Respondents’ (as appellants) Grounds of Appeal, as well as issue 14 in their brief of argument, whether the lower Court did not fall into serious error and also acted without jurisdiction by still going ahead to treat the issue arising from the struck out ground, as well as the struck out issue. - Grounds 9 and 27

7. Having regard to the various reasons given by the Tribunal

in striking out paragraphs 16, 21, 30(a) and 48 of the petition, whether the lower Court was not in error in restoring the said paragraphs in a wholesale manner. - Ground 4.

8. Whether the decision of the lower Court is not altogether a nullity. - Ground 2.

9. Whether the lower Court was not in error to have adopted the 17 issues formulated by the appellants. - Ground 31

10. Considering the antecedents of the case before the lower Court, including the oral and documentary evidence led at the Tribunal, whether the judgment of the lower Court would not be set aside.” - Ground 32

In the 1st and 2nd Respondents’ brief of argument filed on 22nd January, 2016 by their counsel Chief Akin Olujinmi CON, SAN, the 8 issues formulated for determination are as follows:-

“1. Whether in view of the Petitioners’ case as shown by their pleading and evidence before the Tribunal, the Lower Court was not right in its decision on Respondent’s Issue 9 at the lower Court and concluding by upturning the Judgment of the Tribunal -Grounds 22 and 23.

2. Whether the Lower Tribunal was right in its decision on the reliefs claimed by the Petitioners at the Tribunal and granting the reliefs setting aside the election of the Appellant and declaring the 1st Respondent as winner of the election. Covers Grounds 3, 5, 7, 20, 21, 24, 25 and 28

3. Whether the lower Court rightly considered the Appeal before it on merit and rightly set aside the Judgment of the lower Court and returned the 1st Respondent as Governor of Abia State. Grounds 1, 6, 8, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 26, 29 and 30.

4. Whether the lower Court was wrong in adopting the 17 issues formulated by the appellants in disposing of the appeal before it. Ground 31

5. Whether the Judgment of the lower Court was not justified in view of the uncontradicted evidence led before the lower tribunal. Ground 32

6. Whether the lower Court was wrong in considering and resolving the 1st and 2nd Respondent’s Issue 14 raised in the appeal before the lower Court.

7. Whether on the materials on the records, the lower Court

was wrong in restoring paragraphs 16, 21, 30(a) and 48 of the petition which were wrongly struck out by the Tribunal.

8. Whether the decision of the lower Court delivered on 31st December, 2015 was a nullity simply because the enrolment of the Judgment was dated 6th January, 2016 and that a copy of the Judgment was certified on 6th January, 2016. - covers Ground 2"

It is noted that Appellant in response to the 1st and 2nd Respondents' (the respondents) brief, filed a reply brief on 27th January, 2016.

On 3rd February, 2016, when this appeal was heard the respective learned counsel, having identified their briefs, adopted and relied on the arguments proffered therein. It should be pointed here that the Respondents in their paragraph 2.03 - 2.06, have challenged by way of a preliminary objection the competence of Ground 2 of the Appellant's Notice of Appeal and Issue 8 distilled there from. It is contended that Ground 2 of the Notice of Appeal simply states that the entire judgment of the lower Court is a nullity and supplied particulars that are extraneous to the Record of Appeal. In paragraphs 11.4 of the brief and 3.1 - 3.2 - 3.6 and of their reply brief, the Appellant's senior counsel has argued strenuously that while the judgment of the lower Court is dated 31/12/2015, it was not certified until January 6, 2016 and that the signing of the enrolled and certification of the judgment on that date leads to the conclusion that the lower Court disposed of appeal before it on January 6, 2016 and thus the lower Court disposed of the matter 4 days outside the time mandated by the Constitution.

Two points are discernible from the stance taken by the learned silk set out in the preliminary objections. The first point is whether the facts relied upon, that is the Appellant's letter of 2nd January, 2016 and the fact that certification was done on 6th January, 2016 and the enrolled order issued on 6th January, 2016 are not fresh evidence on appeal which requires leave of this Court before they can be relied upon. Secondly, that whether this issue not being all appeal from a decision of the lower Court is competent.

On the first point, I agree with the learned Senior Counsel for the Respondents that the facts the Appellant relied upon are fresh facts which the Respondents were unaware of and they had no opportunity to react or respond to. The fact that

the Appellant could not obtain his copy of the Judgment until 6th January, 2016, does not mean that other parties did not get their own copies before that date. In the circumstance, such evidence has to be brought in vide the normal application to proffer or adduce further or fresh evidence on appeal. This is to enable the parties address and express their views and the Court to rule on it. Appellant having not done this, this ground of appeal and the issue formulated thereon cannot be said to be competent, it must be dismissed and it is hereby dismissed.

The second point tilts in favour of the respondent. It is whether the issue not being an appeal from the decision of the lower Court is competent. The triteness of the law that the Grounds of Appeal must lie from a decision of the Court below to this Court has been laid to rest in a litany of decisions of this Court. Section 233 (2) of the 1999 Constitution (as amended) clearly provides for this thus-

“(2) An appeal shall lie from the decisions of the Court of Appeal to the Supreme Court as of right in the following case:-

(e) decisions on any question-

(i) whether any person has been validly elected to the Office of President, Vice-President, Governor and Deputy Governor under this Constitution”.

The operative word in the foregoing provision is ‘decision’. An Appeal is from a decision of the lower Court and not necessarily administrative actions of the Court Registry as shown here.

My careful perusal of the particulars of the Ground of Appeal and the argument on the issue formulated there from are attacks against what the Registry of the lower Court did after the judgment had been delivered. Therefore, the only decision the Appellant can appeal against is the decision of the lower Court made by justices of that Court and this has been rightly set out in other Grounds of Appeal of the Appellant. This Ground 2 is attacking the acts of certification, enrollment of order and availability of the judgment to the appellant before 6th January, 2016. I have not seen anything on

record what the Justices who delivered the judgment being appealed against, did after delivery of the judgment. The Appellants letter of 2nd January, 2016 was addressed to the Registrar of the lower Court and not to any of the Justices of the Court below.

B In view of the foregoing this preliminary objection is considered necessary and sustainable. It is allowed. A fortiori, and even for the stronger reason, the incompetent Appellant's Ground 2 and issue 8 are otiose and unworthy of consideration.

C It is noted that the Appellant raised a total of 10 Issues, the 8th of which I struck out in the course of this judgment for being incompetent. The 1st and 2nd Respondents distilled a total of 8 Issues. However, in the circumstance and the totality of evidence elicited in **D** the record of this Court, I am of the firm view that the first 7 issues raised by the respective parties which are substantially the same, are apt and will adequately assist in the determination of this appeal. The remaining Appellant's peripheral issues 9 and 10 will be considered, very briefly, if necessary.

E **ISSUE 1 (1st and 2nd Respondents' issue i):**

The Appellant formulated Issue 1 and Grounds 22 and 23 of the Notice of Appeal. From the words used, Ground 22 is basically complaining that the Court below did not refer to the pleadings in the petition before resolving the issue on allegation of over-voting **F** made by the petitioners (1st and 2nd Respondents herein). 1st and 2nd Respondents have contended that the only argument that the Appellant can canvass from this ground has to show basically what the petitioners pleaded to in relation to the over-voting and whether **G** the Court below made reference to those pleadings. That anything different is of no moment and should be discountenanced and that the Appellant cannot go outside his Grounds of appeal. Reliance was placed on *A.G RIVERS vs UDE* (2006) 6 - 7 SC at 131.

H Our attention has been drawn by the Learned Senior Counsel for the Appellant in his reply brief and rightly too, that throughout the "length and breadth" of the 1st and 2nd Respondents' Issue 1, they did not defend the decision of the Court below that arguments on Issue 9 before that Court were covered by the said Respondents' arguments under Issues 2 and 17 before the Court below.

In view of the importance of the nature of the reliefs sought by the 1st and 2nd Respondents (as petitioners) vis-à-vis the decisions of the two lower Courts, as well as the resolution of the issues raised for the determination of this appeal and ease of reference, these said reliefs have been produced extensively above careful scrutiny of petition of the respondents generally, before the trial Tribunal is a catalogue of criminal allegations characterized by ballot box snatching to unprecedented violence, fabricated and fraudulent entries in the electoral forms, and over voting. These are serious criminal allegations which must be established, but none was so established. I refer to pp 5561- 5562 of the record, where the trial Tribunal, after considering issues (1) and {2) raised by the petitioners before it focused on the issue relating to the criminal allegation and stated as follows:-

“We shall consider the issue of criminal allegations made by the petitioners committed during the election in the form of violence, hijacking of electoral materials, intimidations, threat to life, corrupt practices, forgery and falsification and fabrication of results, highlighted and particularized in paragraphs 30(a) (d), (f), (g); 32(d), (e); 37(d), (e), (f); 38(d), (e), (f); 39’ 41 of the petition.”

Therefore, the trial Tribunal, after considering these criminal allegations considered the mandatory provisions of Section 139(1) (as amended) of the Evidence Act vis-à-vis proof of allegations in any criminal proceedings. It is at page 5562 of the record, the tribunal held that grave criminal allegations were made in the petition but were not proved beyond reasonable doubt; placing reliance on the decision of this Court in OKECHUKWU v INEC (2014) 17 NWLR (pt. 1436) 255 and NWOBODO v ONOH (1984) 1 SCN LT at p. 29: 1984 1 SC. Reprint). ***That is the law. It has not changed. 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, Section 135(1) of the Evidence Act 2011 imposes strict burden on the said petitioner to prove the crime beyond reasonable doubt.***

If he fails to discharge the burden, his petition fails. It was against the judgment of the Tribunal on the foregoing issue of the non-proving of criminal allegations, the 1st and 2nd Respondents (as petitioners) appealed to the Court below. By their Grounds

14 and 15, they specifically challenged the findings. May it however, be noted that in their issue 9, they raised before the Court below the following:-

“Whether in the light of the pleadings, the evidence on record and the extant laws the learned Trial Judges of the Tribunal were not wrong in holding that the Appellants failed to prove the criminal allegations made in the pleading.”

It is pertinent to state, that this issue was addressed by the respective parties in their briefs of argument before the Court below. The lower Court admitted this much but nevertheless, on page 5872 vol. 7 having set out the said Issue 9, held thus:-

“This issue deals with proof of criminal allegations made by the Appellants/Petitioners. The learned senior counsel for the Appellants addressed this issue in his submissions under issue (sic) 1 and 17 above. The Learned Senior Counsel for the 1st, 2nd and 3rd Respondents also addressed the issue while responding to the submissions of the learned senior counsel for the Appellants under the said Issue 2 and 17 already set out earlier above in this judgment. We are of the view that having considered and resolved Issues 2 and 17, the necessity of resolving issue 9 is obviated.”

Admittedly, Issue 9 was not resolved by the Court below having considered and resolved Issues 2 and 17. I agree with the learned senior counsel for the Appellant; that the Court below “went off-target”. This is because Issue 2 deals with the Electoral Act, Approved Regulations and Manual of Election, while Issue 17 relates to who, as between 1st petitioner (1st respondent herein) and the Appellant in this appeal scored majority of lawful votes cast. Whether the nexus between Issue 9, on one hand, and Issues 2 and 17 (whether jointly or severally considered) on the other hand? Could it be that the Court below completely misapprehended the case before it? It is suggestive, because the issue of proof of criminal allegation did not feature at all in petitioners’ argument of Issues 2 and 17 in their brief at the Court below as well as its resolution of the said issues: See pages 5600 - 5610 of the record to appreciate this point.

It is imperative for the Court below to make a definite finding on the issue presented before it and to resolve same in one way or the other; bearing in mind the necessity of doing so this Court has admonished the Court of Appeal, particu-

larly as an intermediate Court to pronounce on all issues arising or raised in an appeal before it, even if the appeal had been disposed of by only some of the core issue(s) for determination. See KATTO v CBN (1991) 9 NWLR (PT. 240) 126 at 149; OKONJI v NJOKANMA (1991) 7 NWLR (PT. 202) 131 at 150; CHUKWU v SONEN BONEN (2000) 2 SCNJ 18 at 38. B

Issue 9 is central to this appeal. It has not been resolved. In the absence of not setting aside the judgment of the Tribunal to the effect that the diverse criminal allegations in the petition were not proved, then where is the jurisdiction and power of the Court below to have set aside the judgment of the Trial Tribunal summarily. It is further noted in the submission of the learned counsel for the Appellant that the central issue of the failure of the petitioner to prove the criminal allegations made in the Respondents' petition was resolved against the petitioners by the Trial Tribunal, coupled with the fact that the judgment of the Tribunal on that issue has not been set aside, is binding on all parties in this case. Then the question for the umpteenth time is can the decision of the Court below, summarily setting aside the judgment of the trial Tribunal still stand firmly. The judgment having not been set aside, is not only binding on all the parties concerned to obey, but to all the authorities charged with the responsibility for enforcement of such judgment. See SARAKI v KOTOYE (1992) 9 NWLR (pt.264) 156 at 184; ROSEK V. ACB LTD (1993) 8 NWLR 12 (Pt. 312) 382 at 435. C D E F

The jurisdiction of this Court cannot be exercised in vacuum; it must be based on resolved issues before it. No binding decision of the lower Court can arise without it being based on the resolution of all the issues raised before it, either for or against the parties. It is pertinent to note that the Court below adopted all the issues formulated by the 1st and 2nd Respondents, as appellants before it, on the excuse that it did not want to miss any points; but at the end of it all, it omitted to resolve crucial and core points especially as set out in issue 9. If the Court below had considered arguments on this issue, it would have agreed with the trial tribunal that the allegations in the petition were not proved. Thus the Court wrongly came to the conclusion that there was over-voting in the three Local Government G H

Areas of Abia State, namely, Osisioma, Obingwa and Isiala Ngwa North. It held that the votes generated therefrom “were smeared and infested with illegality” yet it failed or neglected to resolve the issue submitted to it on the criminal allegation. It also held, *inter alia* at page 5871 of the record thus:-

B *“Ordering of fresh election will arise only where a clear winner did not emerge after a deduction of the illegal votes”.*

I cannot fathom the soundness of this conclusion based on “illegal votes”, without upturning the judgment of the Trial Tribunal that the criminal allegations in the petition were not proved. This decision is perverse. The finding of the Court below was premised solely on accreditation. This necessitates a consideration of the complaints in the petition about it. For it was clearly stated in paragraph 30 (9) (page 12) of the record, that:-

D *“Due to large scale violence which marred the elections on 11th April, 2015, in three Local Governments viz, Osisioma Isiala Ngwa North and Obingwa... no valid accreditation and elections took place there...”*

In paragraph 36(d) and (e); 37(d) and (e) and 38 of the petition in respect of the said three Local Government Areas, the petitioner summarized their allegations to be that the entries into all electoral forms were “fictitious, fabricated and false” as a result of collusion between the appellant herein, his sponsoring political party and 4th Respondent herein, INEC. On page 186 of the record, PW20 in his witness statement paragraph 17, claimed that he recorded the cancellation of election results at the state collation centre on a video, which he failed to tender. He however quoted the SRO thus:-

G *“The rule of law of the Federation says that where election is marred by violence especially incontrovertible violence, the election results for that area may be cancelled, I hereby cancel the election result for the following Local Govt .Area Obingwa, Isiala Ngwa North, Osisioma...”*

H ***I agree with the Learned Senior Counsel for the Appellant that crime was inextricably woven with the allegation in the petition. The basis of alleged irregular accreditation is violence but as observed that has not been proved. The claim of over-voting could not have been succeeded without proof of forgery, fabrication etc. Where petitioners suffuse criminality***

with their pleadings, in a civil claim they are bound to prove same beyond reasonable doubt. See NWOBODO v ONOH (supra) and Section 135 Evidence Act (supra).

Finally on this issue, it is pertinent to note that contrary to the submission of the Respondents (in paragraph 3.03) page 9 of the brief, that the Court below considered all the paragraphs of the petition and the evidence led in making a conclusive finding of over-voting, the specific complaints of the 1st and 2nd Respondents on over-voting was in respect of only 25 polling units of Obingwa, Isiala Ngwa and Ugwunagbo Local Governments Areas. See paragraphs 37, 38 and 43 of their petition respectively. It is noted that they did not specifically make any complaints on over-voting in respect of polling units in Osisioma Local Government Area. I am of the view that the Respondents are wrong when they stated in their brief that the Court below considered all pleadings and evidence to arrive at its judgment, when the said pleadings and evidence were not sufficient enough to prove over-voting in the entire of the three Local Government Areas of Osisioma, Obingwa and Isiala Ngwa North.

In the appellant's reply brief to the 1st and 2nd Respondents brief, his counsel has made an impressive conclusion of the summary of all the arguments and submissions on Issue 1. Notably to the effect that the Respondents have failed to disentangle the issue of over-voting from accreditation and accreditation from allegations of criminal acts as well as over-voting from criminality as pleaded. He submitted further and I agree with him that the Respondents have not given any justification for the fact that relief (iii) in the petition seeking for the nullification of the election and return of the Appellant, which the Court below granted when the issue was expressly based on corrupt practices and that they did not prove any scintilla of corrupt practices. In law, therefore, they have conceded Appellant's argument that nullification of Appellant's Election and return as done by that Court, was wrong, since the respondents specifically asked for such nullification on the basis of corrupt practices, which were not proved. In the light of the foregoing, this issue is resolved in favour of the Appellant.

ISSUE TWO (1st and 2nd Respondents issue 11):

The Appellant formulated this issue on quite a number of Grounds of Appeal viz: 3, 5, 7, 20, 21, 24, 25 and 28 so also the

Respondents. I have given a detailed glean through the judgment of the Court below. I agree with the learned silk for the Appellant that Court returned the 1st Respondent as the Governor of Abia State of Nigeria based on the voting of elections in the 3 Local Government Areas, namely Osisioma, Obingwa, and Isiala Ngwa North. See reliefs B (a), (b), (c) respectively reproduced above, from the introductory part of the appellant's brief it is clear that not only were these 3 LGAs' specifically mentioned, but specific request was made for the voiding of election.

C ***In the same relief, not only was it further stated that the same was sought in the alternative of relief (iv), which prayed for 1st respondent to be returned as Governor of Abia state. It also specifically pleaded that nullification of result in those LGAs should be made in order for the conduct of "a fresh/***
D ***supplementary election", to ascertain the final scores of candidates in the election. I agree that the Court below went against the grain of the reliefs sought by the petitioners, turning itself to be Father Christmas, dishing out the reliefs not claimed.***

E ***The Court nullified the elections in 3 LGAs and returned the petitioners as winners of the election, when by their pleading relief (v) the petitioner, expressly agreed that it is only supplementary election that can ascertain the final scores of candidate. It was evident that the Court below partly granted reliefs***
F ***(v) and (iv) in the petition, when the reliefs were sought in the alternative. The Court voided elections in the 3 LGAs as specifically prayed in relief (v) and returned 1st Respondent as Governor as specifically prayed in relief (iv). For the umpteenth***
G ***time, I hold that there was no relief for the return of the 1st Respondent as Governor in the event of the Court voiding the said elections in the 3 LGAs. More particularly so, when the petitioners (as appellants) before the lower Court expressly abandoned the said relief (v) by failing to canvass any argu-***
H ***ments thereon in respect of a request for a re-run election. That being so there was no basis for nullification of elections in the said 3 LGAs.***

The implication of returning the 1st Respondent as Governor of Abia State is that the Court below gave him more

than he had prayed for. So it seems, because in returning him as the Governor after purportedly canceling and excluding the results in the said 3 LGAs, the Court below at page 5873 of the record allotted 164, 332 votes to the 1st Respondent and the Appellant 115,444. In the effect, the lower Court gave the 1st Respondent well over eight thousand votes more than they had expressly asked for. It is expected that before the lower Court embarked upon this mathematical “additions and subtractions exercise, ex curiae and suo motu” as contended by the Appellant, he should have been afforded a hearing.

In the process of these calculations the Court below cancelled the elections in the said three Local Government Areas disenfranchising thousands of voters, including the appellant who allegedly is said to have hailed from one of those Local Government Areas. At the risk of repetition, the petition of the respondents was not based on over-voting and there was no proof of the same. One cannot fathom the reason why the Court below held, on page 5871 of the record, that “ordering of fresh election would arise only where a clear winner did not emerge after the deduction of the illegal vote”.

Section 53(2) of the Electoral Act, 2010 (as amended) which the Court below referred to, provides for nullification of votes at the polling unit, if the votes cast in the polling unit exceed the number of registered voters, and could order the conduct of another election. It is in FORM EC40C the evidence of such cancellation and ordering of a fresh election is always recorded, and this fact was not before the Court below at all. The Court cannot “side-track” this clear provision and hold, as it did on page 5871 (supra).

My attention was further drawn to Subsection 3 of Section 53 of the Act which provides clearly that where election is nullified in accordance with Subsection (2), there shall be no return for the election until another poll has taken place in the affected area. The Electoral Act does not contemplate disenfranchisement of a registered voter at an election, how much more exercise his right in post election. More disturbing is the fact that the Court went further to declare the 1st Respondent herein as having scored majority votes cast in the election of 11th and 25th April, 2015 in spite of the fact that relief (ii) had been struck out. A point has been made by the Appellant that

even if that relief was not abandoned, the Court below is restricted to the election of 11th April, 2015. This point has been considered in issue 1, that even if the relief was not abandoned it can only be sought subject to another round of election to ascertain the true winner.

A point has further been made that the Court below did not only act without jurisdiction but also based its decision on speculation. By ordering the INEC to issue certificate of return to the 1st Respondent “forth with” the lower Court had usurped the constitutional and statutory duty of the 4th Respondent (INEC). By this order, the constitutional right of appeal of the Appellant was automatically foreclosed, considering the clear provisions of Section 233 (2)(e)(iv) of the said Constitution which accords appellant right of appeal to this Court against the decision of the lower Court and Section 143, of the Electoral Act (supra) which provides that the appellant shall remain in office pending the expiration of the time within which an appeal shall be brought to this Court and determined.

In the light of the foregoing, this issue is also resolved in favour of the Appellant.

ISSUE 3 (Subsumed In 1st and 2nd Respondents issue 3)

Appellants’ Issue 3 covers Grounds 1, 12 and 13 of the Grounds of Appeal. It is subsumed in 1st and 2nd Respondents’ Issue 3 as well, although their issue covers quite a number of 16 Grounds. In main, the Issue has to do with the power of the State Returning Officer of INEC to cancel elections and thereby returned the 1st Respondent as a Governor of Abia State.

It is not correct to say that no issue was joined on the pleadings on the legality or otherwise of the cancellation of results by the said State Returning Officer (SRO). It had always been the consistent position of the Appellant as the Respondent at both the Tribunal and the Court below that the State Returning Officer had no power to cancel election results. I refer to a specific subhead in Appellant’s Reply to the Petition which was devoted to the alleged cancellation of results in the 3 LGAs. See paragraphs 23, 24 and 25 of Appellant’s Reply to the petition (on pages 1298 - 1299 of 101.2 of the record). Appellant pleaded that there was no lawful cancellation of results in

those 3 LGAs since cancellation of result is a matter of law governed by the provisions of the Electoral Act and that the State Returning Officer cannot cancel results in an election that had already been concluded and results declared at the polling units. Issues having been joined on the pleadings on the legality of the cancellation the Court below rightly found that the alleged cancellation was unlawful. B

Beyond arguments of respective counsel on this issue, the law has been fairly settled on whose responsibility it is to cancel an election result. The two lower Courts are ad idem on this. It cannot be disputed either that the Appellant and the Respondents herein were in agreement as well at the trial Tribunal that the State Returning Officer had no power whatsoever to cancel polling results. The Appellant consistently relied on the decision of this Court in DOMA v INEC (2012) ALL NWLR (PT. 628) 813 at 833 to support this view, whilst the Respondents supported the Appellant's position with the Court of Appeal decision in INEC v ABUBAKAR (2009) 8 NWLR (PT. 1143) 259 at 289. In DOMA v INEC (supra), the authority to cancel election results came up for consideration. In the case DW3 who was the collation officer purported to have cancelled results of the election as against DW9 who was the presiding officer at the polling unit. This Court did not only hold that the State Returning Officer has no power in law to cancel election results but deprecated his "guts" to have done so. This is what the Court said at page 325 of the Report: C

"Senior counsel for the appellant maintains that there is contradiction in the evidence of DW3 and DW9 as to whether it was Dw3 - the collation officer or DW9 - the presiding officer, who cancelled the results for Oshugu Polling Unit. As there is conflict in the evidence of DW3 and DW9 such should be resolved by the consideration of Exhibit 44(13) certified true copy of the report of the electoral officer for Nassarawa Local Government Area... The report which should have been considered by the Court below but was not, reads as follows: D

"In local registration area, the collation officer cancelled the results of the election in Oshugu (004) because of incorrect and inappropriate entries in Form EC8A and EC8A1" E

From the above, it is clear that the result was cancelled by DW 3, a collation officer and not by DW 9, the presiding officer who had F

the vires to do same at the polling unit.

From the above decision of this Court the question of who had the power to cancel election results is put beyond doubt and to rest.

I agree with the learned senior counsel for the Appellant that the plank of the case of the 1st and 2nd Respondents petition to be returned as winners of the election was hinged on the act of cancellation of election results by the State Returning Officer at the State Collation Centre. See paragraphs 24, 25 and 27 of the Respondents' Petition [pp 10 -11 of vol. 1 of the Record] where the Appellant has demonstrated that Abia case was inextricably woven around the wrong assumption that the trial Tribunal found that the cancellation was properly done on that basis the 1st Respondent should be returned as the Governor. Flowing from this wrong assumption of the powers of the State Returning Officer, Respondents' counsel at page 5607 of the record submitted thus:

"WHAT CONCLUSION SHOULD TRIBUNAL HAVE REACHED?"

Having found that the cancellation of the election results from the three disputed local government areas was invalidly reversed by the State Returning Officer, the tribunal should have expunged the votes from the final results and then determined whether 1st respondent still won majority of lawful votes and satisfied the provisions of Section 179 of the Constitution. If the answer is No as it is obvious, the tribunal should have proceeded to find out if any other candidate satisfied the constitutional requirement for winning the election"

In its finding that the State Returning Officer had no power to cancel election results, the Court below was agreeing with the settled position of the law, as laid down by this Court in DOMA v INEC (supra) to the effect that it was ultra vires the powers of the State Returning Officer to cancel elections. Since in law the State Returning Officer acted ultra vires to cancel election results, the 1st Respondent could not have been returned as the winner on the basis of such invalid cancellation. As earlier noted, the only relief where the Respondents (as petitioners) expressly sought for voiding of election in those LGAs is the alternative relief (v) which was sought

subject to a re-run election. In the light of the foregoing, I am of the firm view that this issue should be resolved in favour of the Appellant herein, and it is hereby so resolved.

ISSUE 4 (1st and 2nd Respondents' issue 3):

Issue 4 of the Appellant reflects 1st and 2nd Respondents' issue 3. It follows therefore that the submissions and arguments in Appellant's issue 4 dovetail with those of 1st and 2nd Respondents. B

Alluding to the justification for nullifying the election in the 3 Local Govt. Areas, the Court below stated at page 5870 vol. 5 of the records thus:

"Meanwhile having regard to the uncontradicted and unchallenged evidence of PW19 as to the correct figures outlined in Exhibit PwC2, the prima facie conclusion to be reached on the basis of the above reproduced contents of the Exhibit is that there is non compliance with the provisions of the Electoral Act, 2010 (as amended). D Therefore, any figure outside the figures tendered by PW19 evidenced by Exhibit PWC2 would not be reckoned with." C

This Exhibit PWC2 is the Card Reader Report tendered in respect of isolated Local Governments in the State on the basis of which the Court below reached its finding that the figures contained therein represent the total number of accredited voters in the said 3 LGAs and the conclusion that there was over-voting in those local Government Areas. The point has been simplified by the Appellant in his brief under broadly two sub-heads showing the propriety or otherwise of the reliance on Exhibit PWC2 by the Court below in proof of over-voting. First, the non-tendering of Voters' Register relied on by the Court below; second contradictions between Exhibits PWC2 and PWD, (pleadings in the petition and the testimonies of PW19) and PW 20, on the other hand and Form EC8D. F

First, on the issue of non-tendering of the Voter's Register. As can be gleaned from pages 5563 - 5564 Vol. 5 of the record, the trial Tribunal rejected the petitions' (1st and 2nd Respondents) allegation of over-voting and correctly applying the provisions of Section 53 (2) of the Electoral Act (as amended), which state that over-voting occurs where votes cast in any polling unit exceed the number of Voters in that polling unit. However it rightly rejected the allegation of over-voting, and held that petitioners' tabulation as, can be seen in their counsel written address was only based on Card Reader Re- G H

port which was not tendered and the result of the election not being placed before it. These specific findings of the Tribunal were not up-turned by the Court below. The Court below referred to the decision in HARUNA v MODIBO (2004) 16 NWLR (PT. 900) 487 but which was not applied.

In the determination of this issue, that case and other relevant cases shall be addressed, anon. First, Section 49 (1) and (2) is very clear on the procedure of accreditation at an election. For this, the Court below had no basis at all, either in law or in fact venturing into its conclusion that there was over-voting.

Consideration was not given to the real issue before it leading to the denial of according fair hearing to the Appellant.

As earlier stated, I may have to revisit HARUNA v MODIBO (supra) and the two latest decision of this Court, particularly in unreported Appeal No: SC. 907/2015 - MAHMUD ALIYU SHINKAFI & ANOR v. Y. ABDULAZEEZ ABUBAKAR YARI & 2 ORS; delivered on 8th January, 2016, where at page 24 - 30, this Court held as follows:-

“Learned Senior Counsel for the appellant submitted that although it is the law that to prove over-voting, the petitioner must tender voter’s register, tender statement of results in the appropriate forms relate each of the documents to the specific areas of its case, the usage of card reader has taken away the burden placed on the petitioner as stated above. According to him, the cases of Haruna v Modibo (2014) 16 NWLR (Pt. 900) 48... which were decided before the introduction of accreditation of voters via Card Reader Machines are no longer good law on how to prove over-voting.....To prove over-voting, the law is trite that the petitioner must do the following:-

1. Tender the voter’s register.
2. Tender the statement of results in the appropriate forms which would show the number of accredited voters and number of actual votes.

3. Relate each of the documents to the specific area of his case in respect of which the documents are tendered.

4. Show that the figure representing the over-voting, if

removed, would result in victory for the petitioner.....

However, learned silk opines that with the introduction of the Card Reader Machines, it would no longer be necessary to tender voters register and other steps set out earlier.... My view on this is that the principle of law that is well established cannot be abolished simply because an appellant failed to prove his case in accordance with those principles. My understanding of the function of the Card Reader Machine is to authenticate the owner of a voter's card and to present multiple voting by a voter. I am not aware that the Card Reader Machine has replaced the voters register or taken the place of statement of results, in appropriate form."

I cannot embellish or improve on the forgoing obvious and firm statement of the laws as to the function of the Card Reader Machines in the scheme of our electoral process. This Court has spoken. The controversy has now been finally laid to rest.

Now, on the second sub-head on the issue of two conflicting Card Reader Reports tendered before the trial Tribunal, that is Exhibits PWC2 and PWD respectively. These were tendered to prove some points on alleged over-voting. Curiously enough, but rightly too, the trial Tribunal rejected both, I quite appreciate the appellant graphical highlights, not only just to show some contradictions, but also the "irreconcilable" differences between the two Card Reader Reports before the Court below. I have also perused the tabulation made by the Appellant to assist the Court below, which tabulation the Court on its own reproduced at Page 5850 Vol. 5 of the record. What could be made out of this is that the accreditation details in Exhibit PWD were the exact figures contained in the witness Statement of PW 20. Appellant has made reference to PW 20 because the Court below singled out both PW 19 and PW 20, of all witnesses that testified at the Trial Tribunal to believe and went on to hold that their testimonies were uncontradicted because they were not cross-examined. But there were discrepancies in the accreditation details in the witness statement of PW 20 and Exhibit PWD on the one hand, and the contents of Exhibit PW C 2 as well as paragraph 6 of PW19's witness statement. Hence, the testimonies of both witnesses became contradictory and could not be believed. Their testimonies have no

probative value. See YUSUF v OBASANJO (2005) 18 NWLR (Pt. 956) 96 at 213; ADEBAYO v IGHODALO (1996) 5 NWLR (pt. 450) 507 at 516.

I cannot see how the Court below would want to defend the “contradictions and irreconcilable differences” highlighted above, when it held at p. 5869 of the record thus:

“The submission of Learned Senior counsel for the 1st respondent that the written disposition (SIC) of PW 20 as regards the number of accredited voters as shown in Exhibit PWD differs from the number of accredited voters as shown on Exhibit Pw 2 is of no moment as the differences are infinitesimal.”

The above extract of the judgment of the Court below has once shown, with due respect, the over zealousness of the Court when often times, it descends into arena of dispute between parties. The 1st and 2nd Respondents, as Appellants before the Court below, offered no explanations on this very crucial issue.

A case of bias can be readily ascribed to the Court below against the Appellant where his right of fair hearing has been brazenly breached. The holding of the Court that the differences as regards the number of accredited voters as shown in Exhibit PWD and the number of accredited voters as shown in Exhibit PWC2, being infinitesimal is another clear case of bias against the Appellant herein. Besides, this holding is perverse, because, the total number of accredited voters in the testimony of Pw 20 for the 5 Local Government Areas of Osisioma, Obingwa, Isiala-Ngwa North, Ugwunagbo and Umuahia North is 129,613 while the total number of accredited voters in the testimony of PW 19 as contained in Exhibit PWC 2 tendered by her in respect of the same 5 Local Government Areas is 153,279. Simple arithmetic will indicate a contradiction and difference between the total number of accredited voters in the testimony of PW 20 and PW19 is 23, 666. The difference is not infinitesimal.

As if perverseness of this decision is not enough, the Court went further to raise Issue of non-signing of Form EC8D by the agent of the 1st and 2nd Respondents. I agree with the Appellant’s Senior Counsel that it is not the law that non-signing of Form EC8D will vitiate the result of an election. It is contended that Exhibit PWC 2 which the Court below wrongly made use of contains partial accreditation figures in respect

of 5 Local Government Areas of the 17 Local Government Areas in Abia State, while Form ECSD contains accreditation figures on local government by Local Government basis for the entire State. While Form EC8D is superior to and supersedes Exhibit PWC2, the said Exhibit cannot be used to vitiate Form EC8D.

Appellant has further highlighted some inconsistencies between the pleadings in the Respondent's petition and Exhibit PWC 2. First, in paragraph 47 (1) (vii) of PW 20's Witness Statement [found on page 192 Vol. 1) of the record. Petitioners (1st and 2nd Respondents herein) aver that the Card Reader upload is done immediately upon accreditation and before voting. If so, there should be one figure reflecting the votes cast not two or more inconsistent or contradictory figures as recorded in the case of Osisioma Local Government, Exhibit PWC 2 records lower accreditation in Exhibit PWD. In Isiala Ngwa North and Obingwa Local Government Areas Exhibit PWC 2 records higher accreditation in PWD. As if these Exhibits are not significantly irreconcilable, contradictory in a volatile manner, the certification of PWD on 13th May. 2015 and Exhibit PWC 2 dated and certified on 17th August, 2015, are certainly irreconcilably contradictory. Definitely Exhibit PWC 2 was later in time. Then the question is if as pleaded in the petition, the Card Reader accreditation details are uploaded upon verification by the card reader immediately at the polling units, how come accreditation figure in Exhibit PWC 2 obtained later in time than PWD reduced the figure in respect of Osisioma Local Govt. Area? The Second question is how come about that the number of accredited voters got reduced after accreditation exercise was completed. I agree that whatever answer would be given in justification of this reduction would also be met with the opposite question in Obingwa and Isiala Ngwa North Local Government Areas, as to why their figures increased. Most importantly, whichever angle both Exhibits PWC2 and PWD are viewed, they cannot ground the nullification of the election of the Appellant.

The bane of the 1st and 2nd Respondents case is the undue reliance of Exhibit PwC 2 in nullifying the election of the Appellant. A lot has been said on this in the foregoing consideration of the issue worst still the details contained in the said Exhibit PWC 2 in Osisioma local Govt. Area is 118.616. In paragraph 36(b) of the petition, ap-

pearing on page 19, Vol.1 of the record, the petitioners pleaded in respect of Osisioma Local Government as follows:

“36 (b). In the Local Government, the total number accredited voters as uploaded into INEC database was 19, 120 voters”.

In respect of Isiala Ngwa North Local Govt. Area, the card reader accreditation figure in Exhibit PWC 2 is 23,786 whereas in paragraph 38 (b) of the petition appearing at page 51 of the record, the petitioner pleaded in respect of that Local Govt. Area thus:-

“38 (b). In this Local Govt. the total number of accredited voters as uploaded into INEC database was 23, 548”

In respect of Obingwa Local Govt. Area, the card reader accreditation figure from Exhibit PWC 2 is 50, 967, whereas in paragraph 37(b) of the petition appealing on page 27 of the record, the petitioners pleaded in respect of the said Local Govt. thus:-

“37 (b). In this Local Government the total number of accredited voters as uploaded in to INEC data base was 33, 062 voters. ”

In conclusion, PWC 2 really goes to no issue since evidence is at variance with pleaded facts. See *OMOBORIOWO v AJASIN* (1984) 1 SC NLR 108; *BUHARI v OBASANJO* (2005) 2 NWLR (pt. 916) 241 at 362. If Form EC8D is the final declaration of results which contains full details of accreditation in the entire Abia State and is deemed to be regular by dint of Section 168 of the Evidence Act, PWC 2 cannot in any way, be superior to Form EC8D.

Further analysis and comparison between accreditation details in Exhibit PWD and the ones pleaded in the Respondents’ petition, only gives mind boggling complexity caused by reliance on Exhibit PWC 2 by the Court below in nullifying the election. The Court below returned the 1st petitioner as winner of the election based on purported votes scored by him in all the Local Government Areas of Abia State, excluding the often cited 3 Local Govt. Area of Osisioma, Obingwa and Isiala Ngwa North. For example, in Abia North Local Govt. Area, petitioners scored 24, 567 votes while Exhibit PWD puts total accreditation at 16,465. In Ohafia Local Govt. Area petitioners scored 17,690, while PWD puts total accreditation at 16, 131. In Ukwu East Local Govt. Area, Appellant and petitioners scored 8112, while Exhibit PWD puts total accreditation at 7,654 etc. For a breakdown of the scores of the 14 Local Government Areas as pleaded, see Form EC8D and paragraph 22 of the petition. By this analysis,

the Appellant has shown that the card reader accreditation cannot be evidence to grant any positive relief in favour of the petitioners and also that their case from the word go was inherently contradictory.

DUMPING OF EXHIBIT PWC2:

Exhibit PWC2 was dumped. The trial tribunal made a finding of this, but the Court below did not consider this unassailable finding before relying on the said document. In their petition, the petitioners pleaded that accreditation occurs at each polling unit designated for voting. Section 53 (2) of the Electoral Act 2010 deals with over-voting at polling units. In proof of the allegation of over-voting, petitioners (1st and 2nd Respondents) bear the responsibility of calling eyewitnesses from each polling unit to give evidence of the circumstances that led to over-voting, preferably party agents. See *UCHA v ELECHI* (2012) 13 NWLR (Pt. 1317) 33 at 359; *ACN v NYAKO* (2012) 11 NSC 1 at 66 PW 19 who tendered Exhibit PWC 2 was clearly not in a position to give evidence on it and her witness statement, Exhibit PWB, a total of 12 paragraphs could not have explained over-voting in each of the polling units in the affected three Local Govt. Areas. Exhibit PWC 2 is said to be dumped.

By paragraph 6 of PW 19's witness Statement, she stated clearly that one Collins Onyemaobi was the maker of Exhibit PWC 2 who also certified it. Again in paragraph 9 of PW 19's witness statement, she admitted that the said Exhibit PWC 2 which she earlier stated was certified by Collins Onyemaobi as well as certificate of compliance as provided in Section 84 of the Evidence Act, was also certified by one Mrs. O. O. Babalola. It is now settled law that a party who did not make a document is not competent, to give any evidence on it. This is the situation here. PW 19 did not make Exhibit PWC 2 she cannot competently tender it. The maker must be called to test its credibility and veracity. In sum, this issue is resolved in favour of the Appellant.

ISSUE 5 (Subsumed in 1st and 2nd respondents' issue iii)

The gamut of the lengthy submission of the Appellant's senior counsel in issue 5 was clearly on the unsustainability of relying on Exhibit PWC 2 to prove over-voting. This issue also covers Appellant Issue 10. The issues have been subsumed in issue 4 which I have exhaustively dealt with. The issue of over-voting would necessarily

and invariably involve allegation of malpractices across the 3 Local Govt. Areas.

I have held that PW 19 who tendered Exhibit PWC 2 was not in a position to give evidence of the circumstances that led to the alleged over-voting. The same goes for PW 20 whose bulk of the testimony was hearsay. He gave evidence of alleged malpractices across the 3 Local Govt. Areas of the State that he did not visit. Such hearsay evidence qualifies it as unreliable as it is not in tune with the provision of Section 38 of the Evidence Act. See *DOMA v INEC* (supra); *HASHIDU v GOJE* (supra).

I refer to page 5563 of the record where the trial Tribunal emphatically found that the Exhibits tendered were merely dumped on it without speaking to them, and that the petitioners relied heavily on PW 20 who gave evidence which is not reliable, as he was not a Polling Unit Agent or Ward or Local Govt. Agent. By their Ground 21 of the 1st and 2nd Respondents' Notice of Appeal before the lower Court (page 5580 of the record) they challenged the finding of the tribunal that their documents and Exhibits were dumped. Issue 12 in their brief of argument (pp 5628 - 5630 of the record) was distilled from that Ground 21. The Court below did not upturn the findings and judgment of the Tribunal on the issue that PW 20 was neither a polling unit agent nor a ward agent or Local Govt. Agent as well as the fact that the Exhibits relied on including Exhibit PWC 2 were merely dumped.

APPELLANT'S ISSUE 6 (subsumed in 1st and 2nd respondents' issue 6)

Appellant's issue 6 is whether the lower Court, having struck out Ground 28 of the 1st and 2nd Respondent's (as appellant) Grounds of Appeal, as well as Issue 14 in their brief of argument, whether the Court did not err and acted without jurisdiction by still going ahead to treat the issue arising from the struck out ground, as well as the struck out issue. This issue is raised from Grounds 9 and 27 of the Appellant's Ground of Appeal in the Court.

The grouse of the Appellant is that Issue 11 having been struck out should not have been treated together with Issues 2, 3, 5, 6, 7, 8, 10 and 17 by the Court below. Issue 11 relates also to proof of the 1st and 2nd Respondents' case, as the trial Tribunal had rightly held that they did not prove any case. From the record, Issue 11 was

distilled from Grounds 20, 28 and 30. I agree with the Learned Senior Counsel for the Appellant when he submitted that the Court below has no jurisdiction to re-open or entertain any issue or argument based on Grounds of Appeal already struck out. The striking out of this issue puts an end to its existence. It is a crucial issue which have been taken together with 8 other issues and through which the Court below assessed and apprised evidence of witnesses and attaching probative value to their evidence and delved into what it considers over-voting, calculation of votes etc and resolved the joint issues in favour of the 1st and 2nd Respondents to the effect that the 1st Respondent having scored the highest votes at the election ought to have been returned as validly elected Governor of Abia State. B
C

I am not very clear about the submissions made by the respondents in their issue 6. It would appear that they did not comprehend the Appellant's submission on this issue. In their paragraphs 8.4 - 8.7 page 30 of their brief, the respondents argued that their contention was on the assumption that the appellant's brief was argued on the fact that Issue 11 was struck out. Hence they contended in paragraph 8.4, line 3 - 5 of their brief thus:- D

"At no time throughout the entire judgment did the lower Court strike out Issue 11 as wrongly posited by appellant's counsel". E

The issue that is not contested at the Court below is that Issue 11 was formulated from ground which was already struck out. Appellant's case was simply that having struck out Ground 28, the Court below was without jurisdiction to consider same and that the said Issue 11 should be struck out along side with the other issues jointly considered. This point is fairly settled in a number of decisions of this Court to the effect that arguments or submissions on incompetent issues and/or Grounds of Appeal cannot be lumped together with those of competent Grounds of Appeal and issues for determination. If this is done it will not be the business of the Court to "sift the chaff from the grains" an exercise that would clearly involve arguments in respect of the valid grounds from the invalid ones. It is true that such an exercise may involve the Court in descending into the arena of dispute which will often becloud the judgment of the Court. See KOREDE v ADEDOKUN (2001) 1 NWLR (pt. 736) 483 AT 499. In this case, just as the lower Court lumped F
G
H

all the 9 issues together, it also lumped its consideration and resolution of the said issues together. This Court cannot embark now on any “surgical operation” to sift out the good grounds from the ones already struck out, as well as issue 11 that was struck out. In the circumstance, this issue is resolved in favour of the Appellant.

ISSUE 7 (Subsumed in 1st and 2nd Respondent issue vii)

In issue 7, the Court below gave various reason while restoring paragraphs 16, 21, 30(a) and 48 of the Appellant’s petition. Of course, the trial Tribunal equally gave various reasons for striking out the same paragraphs. It struck out paragraph 16 of the petition because the paragraph was vague. Appellant has asserted that the 1st and 2nd Respondents did not provide any basis to show that the Trial Tribunal was wrong in striking out those paragraphs and that the 1st and 2nd Respondents conceded to the innate incorrectness of the struck out paragraphs.

However, the Learned Senior Counsel for the Respondents produced at paragraph 9.4 of the brief the summarized arguments (as appellant) at the Court below, trying to justify the reasons for the restoration of the said struck out paragraphs.

Perhaps, one may say that the Appellant did a better explanation why the struck out paragraph was improper. Appellant has drawn the attention of this Court to Paragraph 16 of the petition. It is correctly contended that not only were the 9 polling units referred there not properly identified, the paragraph did not refer to any other paragraph containing the particulars of the said 9 and 82 polling units.

In respect of paragraph 21 of the petition, copied at page 5524 Vol. 5 of the record, the Tribunal held that the polling units vaguely referred to should have been properly listed out.

As regards paragraph 30(a) of the petition (page 5524 of the record), the Tribunal held that no election result was declared on 12th April, 2015 as incorrectly stated by the 1st and 2nd Respondents.

Pertaining to paragraph 48 of the petition, the Tribunal held that it had considered paragraph 46 referred to in paragraph 48 as containing the list of polling units complained about, but that no such list can be found therein.

I must observe that apart from reproducing the lower Court’s

judgment in their brief, where the Court summarized the arguments of the respondents herein, as appellants, they did not provide satisfactory reasons showing how Tribunal was wrong in striking out the said paragraphs 16, 24, 30 (a) and 48. Appellant herein has shown that the Respondents have conceded to the “innate incorrectness” of the paragraphs that were struck out. Details of these were proffered: B
In paragraph 16.4 of the 1st and 2nd Respondents brief at the Court below, they admitted that the reference they made to paragraph 48 of the record was wrong. This is not only an admission against interest, in law, but it is a failure to comply with Paragraphs 4(1) (d) and 4(2) of the First Schedule to the Electoral Act 2010 (as amended). C
The Sub-paragraphs provide in mandatory manner the contents of election petition thus:-

“4 (1). An election petition under this Act shall -

*(d) State clearly the facts of the election petition and the ground D
or grounds on which the petition is based and the relief sought by the petition.*

*(2) The election petition shall be divided into paragraph and each of which shall be confined to a distinct issue of major facts of the election petition and every paragraph shall be numbered consecu- E
tively.”*

As earlier stated the Court below did not specifically consider clear reasons given by the trial Tribunal for striking these paragraphs, before restoring same for not being “vague”. With due respect, the Court below did not give dispassionate consideration of all the issues and arguments raised before it. The failure to comply with the mandatory provisions of the foregoing schedule of the Electoral Act is fatal. F

***As correctly observed by the Court below, on this point, G
the “Tribunal should have, in the interest of doing substantial justice ignored the inconsequential mistakes.” That is true, the Courts are enjoined to do substantial justice and to refrain from undue technicality. Nowhere else is the need to do substantial justice greater than in election petition, for the H
Court is not only concerned with the rights of the parties inter se but the wider interest and rights of the constituents who have exercised their franchise at the polls. However, an election petition is statutory and is unlike any other civil claim,***

where there is much latitude. In the case at hand, I am of the firm view that the trial Tribunal was right to have struck out those paragraphs for not complying with Paragraphs 4(1) (d) and (2) of the First Schedule to the Electoral Act (supra).

The petitioner is required, as a matter of necessity, to state in clear terms the facts giving rise to a ground or grounds upon which he based his petition. Anything short of that renders the Ground(s) ambiguous, vague and incomprehensive capable of beclouding the mind of the respondent making him unable to understand what he is required to respond to. Where such a situation presents itself, the trial Tribunal has no alternative but to strike out such ground(s) of the petition (as in this case at hand).

I agree with Learned Senior Counsel when he submitted that 1st and 2nd Respondents did not make any application whether oral or written before the Tribunal to correct any “typographical error” in their petition. The Tribunal could not have suo motu corrected the admitted error(s) by the said Respondents. It is in view of the foregoing I resolve this issue in favour of the Appellant.

APPELLANT’S ISSUE 9 (subsumed in 1st and 2nd Respondents’ issue iv)

Appellant’s issue 9 is Respondents’ issue 4. It is whether the lower Court was not in error to have adopted the 17 Issues formulated by the Appellant. It is the contention of the Appellant that the Court below treated 15 Issues instead of 12 donated by the Appellant for determination. Issue 1, 15, 4, 13, 14 and 2 were treated together; Issues 17, 3, 5, 6 and 7 were treated together; 7, 8, 10 and 11 were treated together and Issue 9 treated separately. It is submitted that the Appellant (1st and 2nd Respondents herein) formulated 17 Issues, out of which 2 were struck out leaving 15 Issues. The issues reproduced on pages 5807 - 5810 of the record are 17 in number and not 12.

Learned Counsel for the Respondents has contended that the Appellant was prejudiced by the adoption of the issues formulated by the lower Court that the issues formulated before the lower Court did not cover any issues which the Appellant formulated before the lower Court.

However, it is to be noted that the Appellant herein raised a preliminary objection at the Court below that Ground 2, of the Grounds of Appeal did not arise from the reliefs claimed and that the said Grounds 2, 5, 23 and 28 are repetitive and that particulars (a) (b) (c) and (d) of Ground 15 and particulars (a) and (b) of Ground 15 are argumentative. B

It is clear that all grounds of objection and that which complained that ground 2 did not arise from reliefs claimed the Court below resolved those grounds of objection. In dismissing same, the Court on page 21 of the judgment said:-

“A careful perusal of Ground 2 shows clearly that it is an attack on the judgment of the Tribunal with respect to its findings that there were re-run elections held in Osisioma, Obingwa and Isiala Ngwa North Local Government Areas of Abia State and in some polling units on 25th April, 2015 and that all parties participated and a final declaration of the results was announced and the 1st Respondent was declared the winner. And that the Appellants who were Petitioners having contested the election held on 25th April, 2015 and pleaded same can no longer approbate and reprobate.” C D

The foregoing was the decision of the Court below with which I agree with the Respondents herein that there was no appeal against. My perusal of Ground 31 of the Appellant’s Notice of Appeal only challenged the statement of the lower Court by which it adopted the issues formulated by the 1st and 2nd Respondents as Appellants before the lower Court. Besides, the particular supplied in the Appellants notice did not support the ground. For this reason, I cannot countenance Appellants’ Issue 9 distilled from Ground 31. In any case if the Appellant’s grouse is that the primacy given to those 15 or 17 Issues led to non-resolution of issues raised by the Appellant, particularly on the question of failure to prove over-voting, etc, these have been fairly considered virtually in all the issues presented by the Appellant for determination, particularly his Issue 4. E F G

APPELLANT’S ISSUE 10 (Subsumed in 1st and 2nd Respondents’ issue vii) H

Appellant Issue 10 covers Respondent’s Issue 5. It is distilled from Ground 32. The issue prays for the obvious. The consequence of my holding that the lower Court’s decision is not meritorious is to set it aside. The issue of consideration of oral or documentary evi-

dence etc have been adequately addressed in Appellant's Issue 4.

In sum, I find merit in this appeal, it is allowed. I hereby set aside the judgment of the Court of Appeal dated 31st December, 2015 and affirm the decision of the Tribunal of 3rd November, 2015; which upheld the election and return of the Appellant herein, OKEZIE
 B VICTOR IKPEAZU AS GOVERNOR OF ABIA STATE OF NIGERIA.
 In clear terms, in the circumstance, the parties are to bear their respective costs. APPEAL ALLOWED.

C

MOHAMMED CJN

This appeal was heard by this Court on Wednesday 3rd February, 2016. On that same day, my learned brother Galadima, JSC, delivered his lead Judgment allowing this appeal and promised to
 D give his own reasons for allowing the appeal today, 26th February, 2016. In agreeing with my learned brother Galadima, JSC., in his lead Judgment, I also, on that same day, 3rd February, 2016, delivered my own concurring Judgment allowing the appeal and undertook to give my own reasons for doing so today.

E This appeal arose from the Governorship election conducted by INEC, the 4th Respondent in this appeal in Abia State on 11th April, 2015, wherein the Appellant was returned by the 4th Respondent as the duly elected Governor of Abia State. The appeal is against
 F the Judgment of the Court of Appeal delivered on 31st December, 2015, allowing the 1st and 2nd Respondents appeal by setting aside the Judgment of Governorship Election Tribunal of Abia State of 3rd November 2015. In that Judgment of the Court of Appeal, the Court found for the 1st Respondent as having been duly elected and re-
 G turned as the elected Governor of Abia State to give rise to the present appeal to this Court by the Appellant.

I have had the privilege of reading before now the lead Reasons for the Judgment put in place by my learned brother Galadima, JSC, for allowing this appeal. I agree entirely with the Reasons for the
 H Judgment and conclusion reached in allowing this appeal and I adopt the same as mine. It was for the comprehensive reasons articulated by my learned brother Galadima, JSC, that I allowed the appeal and abide by the consequential orders made including the order on costs.

MUHAMMAD JSC

When this appeal was heard on Wednesday, 3rd of February, 2016, my learned brother. Galadima., JSC. delivered the lead conclusion (Judgment) wherein he allowed the appeal; set aside the decision of the Court below and restored the decision of the tribunal. In my Judgment, I agreed with him. I deferred giving my reasons for allowing the appeal to today. B

I have read the reasons given by my learned brother, Galadima, JSC; for allowing the appeal. I am in agreement with his reasoning which I adopt as mine. I abide by consequential orders made in the lead reasoning of my learned brother, including order as to costs. I allow the appeal. C

RHODES-VIVOUR JSC

On 3rd February, 2016, this Court heard this appeal and dismissed it and adjourned to 26th February, 2016 for reasons for that conclusion. I have had the privilege of reading in advance the reasons for the judgment given by my learned brother, Galadima JSC. I agree entirely with his conclusion that the appeal be allowed. I too allow this appeal. I only wish to add a few comments of my own in amplification of the views expressed by my learned brother, Galadima, JSC. D E

The petitioners challenged the result of the election based on alleged over-voting but did not rely on any voters register. They relied only on Card Reader Report. F

Section 49 of the Electoral Act states that:

“49 (1) Any person intending to vote with his voters card shall present himself to a Presiding Officer at the polling unit in the constituency in which his name is registered with his voters card. G

(2) The Presiding Officer shall, on being satisfied that the name of the person is on the Register of Voters, issue him a ballot paper and indicate on the Register that the person has voted.” H

The National Assembly, i.e. Congress made the Electoral Act. The Electoral Act is an Act of the National Assembly, the arm of Government that makes laws for Nigeria.

Now, Section 49 of the Electoral Act says in simple English that a person would be allowed to vote if and only if his name is in the

voters Register.

On the other hand, there is the Card Reader. It is the brain-child of the former head of INEC. It has no statutory backing like the voter Register. It was introduced to improve the accreditation process. It does not violate any law.

B Where a petitioner seeks to prove that there was over voting in the election in which he participated, he would succeed if he is able to show that the number of votes exceeds the number of would be voters in the voter register. If the petitioner decides to rely on Card
C Reader Report as in this case to show that the number of votes exceeds the number of voters recorded by the card reader but less than would be voters on the voters register, he would fail. That explains the plight of the petitioner in this petition/appeal. The card reader may be the only authentic document if and only if the National As-
D sembly amends the Electoral Act to provide for card readers. It is only then that card readers would be relevant for nullifying elections.

I must observe that the petitioners made criminal allegations to wit: ballot box snatching, violence, fabricated and fraudulent entries in the electoral forms. None of them were established or proved be-
E yond reasonable doubt as required by Sec. 139 of the Evidence Act.

Finally, an examination of the Electoral Act and a study of decided authorities on electoral matters reveals that a petitioner has a difficult task proving his petition in accordance with the Electoral Act.
F It is very difficult to prove criminal allegations beyond reasonable doubt. That explains why I am firmly of the view that the Electoral Act should be amended to shift the burden of proof to the Independent National Electoral Commission. It should be their burden to prove that they conducted an election properly.

G For this, and the more detailed reasoning given by my learned brother, Galadima JSC, I also would allow the appeal.

AKA'AHS JSC

H We heard this appeal on 3rd February, 2016 and allowed it. I adjourned to today, 26th February, 2016 to give my reasons for allowing the appeal.

This appeal is against the judgment of the Court of Appeal, Owerri Division delivered on 31st December, 2015. At the Abia State

Governorship election held on April 11th and 25th, 2015, 4th Respondent (Independent National Electoral Commission (INEC for short) declared the appellant as the winner of the election, having polled 264,713 lawful votes and having secured the highest number of lawful votes cast at the election as well as meeting the constitutional requirement of Section 179(2) of the Constitution of the Federal Republic of Nigeria 1999 (as amended). B

Dissatisfied with the return of the appellant, the 1st and 2nd respondents (as petitioners) filed a petition at the Governorship Election Tribunal Umuahia challenging his return, and sought the following reliefs in paragraph 51 of the petition: C

“Wherefore your Petitioners pray as follows:

(i) That it may be determined and thus declared that the return of the 1st respondent as Governor of Abia State pursuant to election held on 11th April, and 25th April, 2015 is void for substantial non- compliance with the provisions of the Electoral Act 2010 (as amended) and which non-compliance substantially affected the result of the election.

(ii) That it may be determined and thus declared that the 1st respondent was not duly elected by majority of lawful votes cast and did not satisfy the mandatory constitutional threshold spread across the local government areas of Abia State at the Governorship election held in Abia state on 11th April, 2015.

(iii) That it may be determined and declared that the election and return of the 1st respondent as Governor of Abia State is invalid by reason of corrupt practices and liable to be nullified and further. F

(iv) That it may be determined and thus declared that the 1st petitioner won majority of lawful votes cast at the 11th and 25th April, 2015 election/supplementary election held in Abia State and satisfied the constitutional threshold and spread across the 17 local Government Areas of the State, and ought to be and thus be ordered to be returned as the duly elected Governor of Abia State. G

(v) In the alternative to prayer (iv), That it may be determined and thus declared that the election in the Local Government, Wards, unit, and or /centers characterized by electoral irregularities and non-compliance during the conduct of the Abia State Governorship election held 11th April, 2015 be voided and/or set aside and a fresh/ supplementary election be conducted by 3rd respondent in the af- H

fected polling units to ascertain the final scores of candidates at the election - that is in respect of-

- (a) *the whole of Obingwa Local Government Area,*
- (b) *the whole of Osisioma local Government,*
- (c) *the whole of Isiala Ngwa North Area,*
- B (d) *the 9 (nine) polling Units 18, 19,20,21,22,23,24,25 and 26 Urban ward, Afara-Ukwu Ward of Umuahia North Local Government Area and*
- (e) *The 82 polling units In ward 1 of Ugwunagbo Local , Government Area, units 1, 2, 5 6; Ward 2 units 1, 3, 4, 5,6; Ward 3 units*
- C *2, 3, 5, 6, 7, 8, 9, 10, 11, 12; Ward 13 units 1,2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13 and 16; Ward 5 units 1, 2 ,3, 4, 5, 6, 7, 8, 9, 10, 11 and 12, Ward 6, Units 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10, Ward 7 polling units 1,11, 13 and 14; Ward 8 polling units 3 and 4; Ward 9, polling*
- D *units1, 2, 3. 4, 5. 7, 8, 9, 10, 11, 12, 13, 15; Ward 10, polling units 4, 5, 6, 7, 8 and 9.*
- (vi) *Cost of petition”*

The tribunal dismissed the petition holding that not even on of the criminal allegation in the petition was proved and also that the petitioners who were challenging the result of the election on alleged over-voting did not rely on any voters register of form EC8A as mandatorily required under Section 49 of the Electoral Act 2010 (as mentioned).

The Tribunal also found that the petitioners merely relied on a card reader report another card (Exhibit PWC2) which itself not only contradict another card reader report (Exhibit PWC2) which in itself not only contradict another card reader report (Exhibit PWD) tendered by the same petitioners but which also conflicted with the testimony of PWI9 and that all documents tendered by the petitioners were merely dumped on the Tribunal without more; that PW20 (the star witness) not only perjured by calling himself a Legal Practitioner in his witness deposition but that his evidence was hearsay, having described himself as a State collation agent, and did not witness the malpractices by himself.

The Tribunal found there was no evidence to prove over-voting because the petitioners relied only on the card reader report but did not tender the voters register relating to the polling unit results where the over-voting was alleged to have taken place.

The Petitioners appealed to the lower Court against the Judgment of the Tribunal which allowed the appeal. It is against the said judgment that appellant appealed to this Court.

My learned brother, Galadima JSC has dealt exhaustively with the issues which have been agitated the appeal and I entirely agree with him that the appeal has merit and therefore ought to succeed. I wish to briefly comment on two issues namely the criminal allegation contained in the petition concerning ballot vote snatching, fabricated and fraudulent entries the electoral forms and over-voting. B

The Tribunal found that the criminal allegations made by the petitioners was not proved beyond reasonable doubt. The Court below agreed that PW20 was incapable of testifying about the various allegations of irregularities and malpractices which purportedly took place at the various polling units where he was not physically present but relied on information supplied to him by other polling Unit agents. The allegation on ballot box snatching, violence, fabricated and fraudulent entries in the electoral forms were not established or proved beyond reasonable doubt as laid down Section 139 of the Evidence Act which could have led to the voiding of votes in the affected Local Government Areas and polling units. C D E

The Court below found that as the 2nd Appellant's State Collection Agent, PW20 was competent to testify as to the happenings at the State Collection Centre. In this regard PW20 gave evidence in support of the allegations that the total number of accredited voters announced by the State Returning Officer exceeded the total number of accredited voters on the INEC Data Base in the three contested local Government Areas. And PW19, Mrs. Abimbola Oladunjoye, the Head of unit, Data Management ICT Department of INEC was subpoenaed and she testified and tendered Exhibit PWC2. The Court below held that the purport of the testimony of PW19 is that not only were Smart Card Readers used for accreditation of voters in the affected local government areas, information of accredited voters at different units of the State were uploaded unto the database of the 3rd respondent and the information is conclusive and correct as to the number of accredited voters. F G H

The introduction of the card reader for the accreditation of voters is quite commendable as it is meant to improve on the credibility of the electoral process. However it must be brought within the

ambit of the Electoral Law. Section 49 of the Electoral Act 2010 (as amended) spells out what is to be done vote. It states when a voter decides to exercise his franchise to vote. It states as follows

“49(1) Any person intending to vote with his voters card, shall present himself to a presiding Officer at the polling Unit in the Constituency in which his name is registered,

(2) The Presiding Officer shall, on being satisfied that the name of the person is on the Register of Voters, issue him a ballot paper and indicate on the Register that the person has voted”

In order to prove over-voting, it must be shown the votes cast any polling unit are more than those accredited to vote. So even where the card reader used for accreditation, it still necessary to produce the Register of voters to show that the information on the card reader tallies with the names in the register and the discrepancy in the votes cast cannot be explained. This is why the incident form was introduced to ensure that where the card reader malfunctions, the names contained in the incidence form and those captured In the card reader when added up will tally with those accredited in the Register of Voters. Unless and until the Electoral Act is amended and electronic voting is introduced, the use of the voters Register will still be necessary. And it is only when this is done that the information on the Smart card Reader can supplant the Manual Register of Voters. In the instant case, over-voting was not proved.

It is for these reasons and the more electorate reasons contained in the judgment of my learned brother, Galadima JSC that I allowed the appeal on 3rd February, 2016. Parties should bear their respective costs.

KEKERE-EKUN JSC

On Wednesday 3rd February 2016 when this appeal was heard, I agreed with my learned brother, Galadima, JSC, that the appeal is meritorious. I allowed the appeal and promised to give my reasons for doing so today.

I have had a preview of the comprehensive and well-articulated reasons proffered by my learned brother for allowing the appeal. I agreed entirely with the reasons given and the conclusions reached, which I adopt as mine, I shall add a few words in further

support.

In this appeal, as in several other appeals arising from the April 11th 2015 Governorship elections, the reports generated from the newly introduced card reader machines, have been seen as a trump card by petitioners and relied upon as conclusive proof of the total number of accredited voters in the election being challenged. In the process, as in the instant appeal, the voters register has been largely ignored. This Court has held in several recent decisions, that in order to prove over-voting, which was one of the contentions in this case, the petitioner must tender the voters register, the statement of results in appropriate forms and must relate each of the documents to the specific area of his case. He must also show that the figure representing the over voting, if removed would result in victory for the petitioner.

Section 49 of the Electoral Act 2010 (as amended), which provides thus:

“(1) Any person intending to vote with his voter’s card shall present himself to a Presiding Officer at the polling unit in the constituency in which his name is registered with his voter’s card.

(2) The Presiding Officer shall, on being satisfied that the name of the person is on the Register of Voters, issue him a ballot paper and indicate on the Register that the person has voted.” is extant. The voters register remains an integral part of the accreditation process, See: Mahmud Aliyu Shinkafi & Anor Vs Abdulazeez Abubakar Yari & 2 Ors (unreported) SC. 907/2015 delivered on 8th January 2016; Okereke Vs Umahi (unreported) SC. 1004/2015 delivered on 5th February 2016; Wike Ezenwo Nyesom vs Hon, (Dr). Dakuku Adol Peterside & Ors SC. 1002/2015 delivered on 12th Feb. 2016.

This Court also held that the introduction of the card reader machine has not eliminated manual accreditation of voters. Laudable as the innovation of the Card Reader may be, it is only a handmaiden in the accreditation process. Thus any attempt to prove over-voting or non-accreditation without reference to the voters registers of the affected Local Government Areas, as in this case, was bound to fail. The Court below was wrong to have based its decision nullifying the elections in Osisioma, Obingwa and Isiala Ngwa North Local Governments on the basis of Exhibit PWC2 tendered by PW19.

Quite apart from the fact that PW19 gave hearsay evidence, as

she was not the maker of the card reader report, Exhibit PWC2, and could therefore not competently give evidence as to its veracity or the circumstances that led to the alleged over voting, the 1st and 2nd respondents tendered conflicting card reader reports - Exhibit PWC2 and Exhibit PWD.

B The law is that where the Court is faced with conflicting evidence it is not at liberty to pick and choose which to believe, The evidence will be deemed unreliable, See: *Doma Vs INEC* (2012) 13 NWLR (pt. 1317) 297 @322-323 G-C; *Boy Muka Vs The State* (1976) 9-10 SC (Reprint) 193 @ 205; *Onubogu Vs The State* (1974) 9 SC 1 @ 20. The evidence was rightly discountenanced by the trial Tribunal. With due respect to the lower Court, it erred in choosing and relying on Exhibit PWC2 in reaching its decisions.

D Furthermore, since it was not possible for PW19 to tie Exhibit PWC2 to the specific polling units across the three Local Governments complained of, the trial Tribunal was correct when it held that Exhibit PWC2 was dumped on it. It is well settled that it would amount to a Court descending into the arena of conflict, if it were to conduct a private investigation of documents not properly demonstrated before it.. See *Mr. Labaran Maku vs Alh. Umaru Tanko Al-Makura* (unreported) SC. 982/2015 delivered on 25th Jan 2016; *Ucha vs Elechi* (2012) 13 NWLR (Pt. 13171) 330; *ANPP Vs INEC* (2010) 13 NWLR (Pt. 1212) 549, *ACN vs Nyako* (2013) ALL FWLR (Pt. 686) 424.

F I am also in agreement with my learned brother, Galadima, JSC that the Court below erred in not considering the 1st and 2nd respondents' (then Appellants') Issue 9, which challenged the finding of the trial Tribunal that they failed to prove the criminal allegation of "fictitious, fabricated and false" entries in the Electoral forms as well as various acts of violence, intimidation, etc. By Section 135(1) of the Evidence Act, where the commission of a crime is in issue in a civil proceeding, the standard of proof is beyond reasonable doubt and the burden of proof is on he who asserts it. See: *Abubakar vs. Yar'Adua* (2008) 19 NWLR (Pt. 1120) 1 @ 143D-1448B; *Buhari vs Obasanjo* (2005) 2 NWLR (Pt. 910) 24; *Omoboriowo vs Ajasin* (1984) 1 SCNLR 108; *Kakih Vs PDP* (2014) 15 NWLR (Pt. 1430) 374 @ 422-423 B-C.

I agree with learned senior counsel for the Appellant that the criminal allegations were interwoven with the complaint about ac-

creditation in the affected Local Government Areas. Without considering issue 9 on its merit and setting aside the finding of the trial Tribunal on non-proof of criminal allegation beyond reasonable doubt, the said finding subsists and binds all the parties. See: Rossek Vs ACB Ltd. (1993) 8 NWLR (Pt. 312) 382; Akinfolarin & Ors Vs Akinola (1974) 4 SCNJ 30 @ 46, A.G. Anambra State Vs A.G. Federation & Ors (2005) 9 NWLR (Pt. 931) 572; Nwora & Ors Vs Nwabueze & Ors (2011) 17 NWLR {Pt. 1277} 699 @ 719 E-H. B

The error of the lower Court in this respect has had a far-reaching effect on the final decision reached. I agree with learned senior counsel for the Appellant that the unresolved issue 9 was central to the appeal and the Court had no basis for its conclusion at page 5870 of the record that the votes were “smeared and infested with illegality” it was therefore wrong to have annulled the elections in Obingwa, Isiala Ngwa North and Osisioma Local Governments on that ground and to have declared the 1st respondent the winner of the election. C

It was for these and the more detailed reasons advanced by my learned brother, Galadima JSC in his lead reasons for judgment, that I allowed the appeal. The judgment of the Court of Appeal delivered on 31st December 2015 is set aside. The judgment of the Abia State Governorship Election Tribunal affirming the declaration and return of Okezie Victor Ikpeazu as the duly elected Governor of Abia State is affirmed. Parties shall bear their costs. D

F

NWEZE JSC

On February 3rd, 2016, upon the hearing of this appeal, I agreed with my Lord, Galadima, JSC, that it was meritorious and ought to be allowed. I promised to give my reasons today. G

His Lordship, Galadima, JSC, obliged me with a copy of the Reasons for the judgment in this appeal. I, entirely, agree with these reasons for allowing this appeal. Incidentally, I had dealt with the main questions canvassed here in another appeal this Court heard and disposed of on February 3rd, 2016, namely Udom Gabriel Emmanuel v Umana and ors (Unreported judgment of this Court SC. 1/2016). I need not repeat myself here. H

As my Lord has demonstrably shown, in the face of the con-

flicting entries in the Card Reader Reports, exhibits PWC2 and PWD, the trial Tribunal was justified in discountenancing both of them. As such, the lower Court was wrong in preferring exhibit PWC2 when the entries therein were in conflict with the entries in exhibit PWD.

It had no such warrant for overturning the more prudent or
 B circumspect approach of the trial Tribunal on this point, *Ude v Nwara* (1993) 2 NWLR (pt 278) 638; *Onafowokan v State* (1987) 3 NWLR (pt 61) 538, 553; *Unipetrol v Adireje (WA) Ltd* (2005) 14 NWLR (pt 946) 563; *UNILORIN v Adeshina* (2009) All FWLR (pt 487) 56, 127; *Olowosago v. Adebajo* (1988) 4 NWLR (pt 88) 275, *Emegokwue v. Okadigbo* [1973] 4 SC 113; *National investment & Properties Co Ltd. v. Thompson Organization Ltd* (1969) 1 NMLR 99, 127; *Ufele v. Uneh* (1995) 5 NWLR (pt 393) 114.

Worse still, as the trial Tribunal found, PW19, merely, dumped
 D the said exhibit PWC2 on it without mapping any nexus between it (the said exhibit PWC2) and the Polling Units in the three LGAs of Osioma, Obingwa and Isiala Ngwa North. Accordingly, any attempt to predicate any findings on it would be tantamount to doing cloistered justice, *Ivienagbor v. Bazuaye* [1999] 9 NWLR (pt 620) 552;
 E (1999) 6 SCNJ 235, 243; *Owe v. Oshinbanjo* (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
 F (pt 231); *Ugochukwu v Co-operative* (1996) 7 SCNJ 22; *WAB v Savannah Ventures* (2002) FWLR (PT. 112) 53, 72; *Obasi Brothers Ltd v MBA Securities Ltd* (2005) 2 SC (pt 1) 51, 68; *ANPP v INEC* (2010) 13 NWLR (pt 1212); *Ucha v Elechi* (2012) 13 NWLR (pt
 G 1317) 330; *Omisore v Aregbesola* (2015) 15 NWLR (pt 1482) 202, 323-324

These, and the more elaborate, reasons which my Lord, Galadima, JSC, proffered this morning prompted my decision to allow this appeal. I abide by the consequential orders of my noble
 H Lord.