

**SUPREME COURT OF NIGERIA**

MONDAY 15<sup>TH</sup> FEB., 2016. SC. 12/2016 & SC. 12A/2016

**CORAM:- W. S. N. ONNOGHEN, N. S. NGWUTA, M. U.  
PETER-ODILI, M. D. MUHAMMAD, C. B. OGUNBIYI,  
J. I. OKORO, A. SANUSI, JJSC**

SENATOR RASHIDI ADEWOLU LADOJA ..... APPELLANT  
AND

1. SENATOR ABIOLA ADEYEMI AJIMOBİ  
2. ALL PROGRESSIVES CONGRESS ..... RESPONDENTS  
3. INDEPENDNENT NATIONAL  
ELECTORAL COMMISSION  
4. ACCORD PARTY  
AND

1. SENATOR ABIOLA ADEYEMI AJIMOBİ  
2. ALL PROGRESSIVES CONGRESS  
3. INDEPENDNENT NATIONAL  
ELECTORAL COMMISSION  
4. SENATOR RASHIDI ADEWOLU LADOJA  
AND

ALL PROGRESSIVE CONGRESS  
AND

1. SENATOR RASHIDI ADEWOLU LADOJA  
2. SENATOR ABIOLA ADEYEMI AJIMOBİ  
3. INDEPENDNENT NATIONAL  
ELECTORAL COMMISSION  
4. ACCORD PARTY  
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SENATOR RASHIDI ADEWOLU LADOJA  
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ELECTORAL COMMISSION  
4. ACCORD PARTY

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APPEALS - Consistency - Appeal is continuation of a trial - As there should be consistency in prosecuting a case - At trial court as well as

**1692** Ladoja v. Ajimobi (2016) 2 KLR (pt. 382) 1691; (2016) 10  
in the appeal court (H1)

APPEALS - Rights - Limit - Although the right is constitutional - Yet exercise of same must be within bounds and not at large - Hence appellant is not provided with unregulated procedure in filing appeal (H2)

COURT PROCESSES - Abuse - Features - Instituting multiple actions by using similar processes in respect of same right - Is abuse of legal process - Which fundamentally attacks jurisdiction of court (H3)

ELECTION PETITIONS - Non compliance - Proof - Petitioner who complains of non compliance in polling units - Must present evidence from eye witnesses at the units to prove the allegation (H4)

EVIDENCE - Expert opinion - It is only opinion of person specially skilled in an area that is admissible - Hence evidence of PW1 based on his opinion - Lacks evidential value as an expert opinion (H5)

DOCUMENTS - Admissibility - Principle - A party relying on document in support of his case - Must tender and link the document to specific areas of his case (H6)

ELECTION PETITIONS - Over voting - Proof - Petitioner alleging over voting must tender the voters register used in the election - And forms EC8A (H7)

ELECTION PETITIONS - Evidence - Proof - Respondent needs not call evidence - Where petitioner has failed to prove his case - As petitioner has the duty to prove his case on balance of probability (H8)

### ***FACTS***

Petitioner/appellant and his political party – Accord party jointly filed this election petition at the Oyo State Governorship Election Petition Tribunal. They are challenging the election of 1<sup>st</sup> respondent as the Governor of the State. 1<sup>st</sup> respondent was declared the winner of the gubernatorial election conducted by 3<sup>rd</sup> respondent (INEC) in

the State on 11<sup>th</sup> April 2015. Appellant was sponsored by Accord party, while 1<sup>st</sup> respondent was sponsored by All Progressive Congress. Other candidates participated in the election. At the Tribunal, the petition was based on the grounds that the aforesaid election was invalid by reason of corrupt practices and that 1<sup>st</sup> respondent was not duly elected by the majority of the lawful votes cast at the election. The parties called several witnesses to prove their respective cases.

At the end of the hearing, the Tribunal dismissed the petition and upheld the election of 1<sup>st</sup> respondent as the Governor of the State. Dissatisfied, appellant appealed to the Court of Appeal Ibadan Division. Accord Party equally filed another appeal against the same judgment of the Tribunal. At the Court of Appeal, preliminary objection to the competence of the appeal was raised on the ground that the petition having been jointly prosecuted and a single judgment delivered it is an abuse of court process to have two separate appeals against the single judgment. The objection was heard together with the substantive appeal. The Court in its judgment acknowledged that the separate appeals could be an abuse of process. The Court however dismissed the objection on the ground that the right to appeal is guaranteed under section 246(1)(b)(ii) of the 1999 Constitution. It was this ruling that gave rise to the appeal at the Supreme Court.

### **ISSUES FOR DETERMINATION**

#### **1<sup>st</sup> Issue**

Whether the court below was right in endorsing, agreeing with and confirming the decision of the trial tribunal on the worthlessness of the testimony of PW1 and lack of Probative Value of Exhibits 1 - 192 tendered through the witness who gave evidence as a member of Accord and a farmer.

#### **2<sup>nd</sup> Issue**

Whether the court below was not right in holding that the trial Tribunal properly evaluated and ascribed proper probative value to the testimony of all the witnesses fielded by the Appellant and properly evaluated all the documentary evidence especially Exhibits 1 - 192 tendered by the Appellant at the trial tribunal.

**HELD** (Unanimously dismissing the appeal per

**OGUNBIYI JSC)**

*APPEALS - Consistency*

**1. It is also trite law that an appeal is a continuation of the trial. It is often held and settled that there should be consistency in prosecuting a case at the trial court as well as in the appeal court. By the two cross respondents as common petitioners at the tribunal splitting their appeals at the court below and designating Accord as respondent to Ladoja and vice versa, it is akin to each party being a claimant and defendant at the same time. This act of proliferation is nothing less than turning the judicial process into a mere gambling exercise, which the lower court should have acted with immediate dispatch to condemn.** (p. 1706 G)

*D APPEALS - Rights - Limit*

**2. In my view and without mincing words, I hold that the court below was in great error when it based the dismissal of the appellant's preliminary objection within the narrow interpretation of section 246 of the 1999 Constitution without any consideration for the equally relevant sections 6(6)(a), 243 and 248 of the same Constitution. Had the holistic view of all the sections been taken together, it would have dawned on the lower court that section 246 of the Constitution is not a stop cork and does not therefore deprive the court of the power to prevent an abuse of its process, neither does it provide for an appellant an unregulated and free for all procedure for approaching an appellate court or any other.**

**It is an elementary principle of law that the right to appeal is constitutional. However, it is within the province of the law also that the exercise of such right must be within bounds and not at large. Where the right is let loose, the effect stands to endanger the very purpose for which it is set out to achieve. All rights are subject to limitation and a constitutional right is not an exception but is circumscribed also within that principle.**

**It stands to reason that while a party can restrict his appeal to a limited number of respondents and decide not to appeal against some parties, against whom he has litigated at**

**the trial, the same cannot also apply in the case at hand, where two petitioners filed a joint petition, both of them lost together, and the 1<sup>st</sup> respondent appealed to the lower court and made the 4<sup>th</sup> respondent, his co-petitioner at trial, a co-respondent. Also before the same lower court, the 4<sup>th</sup> respondent, who was 1<sup>st</sup> petitioner at trial again filed his own separate appeal and made 1<sup>st</sup> respondent a co-respondent.** B

**From the substratum of this cross appeal, the 1<sup>st</sup> and 4<sup>th</sup> cross respondents having filed a joint petition at the tribunal, cannot as a matter of practice and convention file different appeals at the lower court. (p. 1707 A)** C

#### *COURT PROCESSES - Abuse - Features*

**3. The summary and the conclusion from the foregoing authority is obvious; that is to say the concept of abuse of court process is serious and fundamental as it goes into the jurisdiction of the court. There must be sanity in the application and exercise of the given constitutional right.** D

**Again, in the context of the case of Agwasun V. Ojichie (supra), by instituting multiplicity of actions in a situation where two similar processes are used in respect of the exercise of the same right, as it is in the cross appeal before us, is an outright misuse of a legal process. It is a departure from legal or orthodox use of process culminating into an abuse thereof. (p. 1709 C)** E F

#### *ELECTION PETITIONS - Non compliance - Proof*

**4. It is pertinent from the foregoing complaint lodged by the appellant that the malpractices are in specific polling units, particularly every polling unit in all the 10 local government areas (10 LGAs) and beyond as per those listed in the brief. It follows that the legal implication on the appellant is obvious; that is to say a petitioner, like the appellant who complains of non-compliance in specific polling units has the onus to present evidence from eye witnesses at the various polling units who can testify directly in proof of the alleged non-compliance. (p. 1713 D)** G H

*EVIDENCE - Expert opinion*

**5. As rightly submitted by the counsel representing the 3<sup>rd</sup> respondent, the above statements of PW1 are pronouncements which remain the prerogative of a competent court. The duty of a witness is simply to present the facts before the court, while it is the constitutional duty of the court to pronounce judgment based on the facts presented. Based on the circumstances, no reasonable court or tribunal would ascribe any probative value to the testimony of a witness on the pronouncement made by PW1. His evidence is rightly said to be purely opinion evidence. This is made obvious from the appellant's submission at paragraphs 3.22-3.28 of the brief of argument. The reference made to the qualification of PW1 coupled with the state of his comportment is conclusive that he was not presented as an expert.**

**It is settled law that when a court of law or a tribunal requires forming an opinion on a point, it is only the opinion of a person specially or professionally skilled in the area that is admissible. The court is not allowed to accommodate any other opinion outside an expert. It is correct to say that PW1's evidence based on his opinion as stated in his statement on oath and the analysis in the Report of the Inspect of the electoral documents lacks evidential value as an expert opinion.**  
(p. 1716 H)

*DOCUMENTS - Admissibility - Principle*

**6. The appellant's further complaint against the decision by the lower court is where it was held that the Exhibits 1 - 192 were dumped on the tribunal and did not link with the case of the appellant; the counsel submits forcefully that the lower court did not evaluate exhibits 1 - 192. I seek to say that the law is settled on documents tendered in court which purpose and worth must be demonstrated through a witness. It is settled also that the duty lies on a party who wants to rely on a document in support of his case to produce, tender and link or demonstrate the documents tendered to specific parts of his case. The fact that a document was tendered in the course of proceedings does not relieve a party from satisfying the**

**legal duty placed on him to link his document with his case.**  
(p. 1723 A)

*ELECTION PETITIONS - Over voting - Proof*

**7. It goes without saying that there are crucial electoral documents which must be tendered by a petitioner in proof of over-voting and how such must be tendered. The most important of such are the voters' register used in the challenged election, and forms EC8A. These are the documents which the appellant, through its witness PW1, admitted they did not tender and thus an admission against interest.** (p. 1725 B)

*Evidence - Proof*

**8. The appellant also contended that the 3<sup>rd</sup> respondent did not lead any evidence to explain the established discrepancies found in the documents used for the election. The law is trite that a respondent needs not call evidence where the petitioner has failed to prove his case.**

**The plaintiff has the duty to prove his case on the balance of probability or on preponderance of evidence. The weakness of the defence will not relieve him of the responsibility. Issue No. 2 for all intents and purposes is also resolved against the appellant.** (p. 1728 D)

## NOTABLE POINTS OF INTEREST

### OGUNBIYI JSC

#### **1. Appeals – Competence of grounds**

In determining whether or not a ground of appeal is competent, it has been held a time without number that the proper approach is to focus on the substance of the complaint with a view to determining whether the ground contains a genuine complaint which correctly arises from the judgment. The paramount intention is to ensure that the adverse party is in clear understanding of the exact complaint against the judgment. Elegance in couching a ground of appeal is not of material significance. It should be specifically described so as to avoid vagueness, repetition, narration or argument. (p. 1702 C)

**2. Appeals – Particulars of ground drafted inelegantly**

It is pertinent to say also that where a particular is inelegantly drafted, it does not invalidate the ground of appeal from which it flows. The totality of the objection raised against grounds 1 and 10 of the appellant's notice of appeal are in my view of no substance and the reason B which the preliminary objection raised against same is discountenanced. Objection is hereby overruled. (p. 1703 B)

**REPRESENTATION**

C Aderemi Olatubora, Esq for appellant & 1<sup>st</sup>-4<sup>th</sup> cross respondents with him are Messrs. Nathaniel Egbet, Esq; Adelani Ajibade Esq; Olumide Ogidan, Esq; Miss Abiola Taiwo; Miss Temitope Ajepe; Mrs. Toritseju Ikime and miss Love Ikhine

Wole Aina Esq. for 1<sup>st</sup> Cross Appellant with him: Oluwole Ilori Esq, D Ifeoluwa Ajani (Miss) and Akinsola Olujinmi Esq.

Mrs. Adedoyin Rhodes-Vivour for 2<sup>nd</sup> Cross Appellant appearing with Anthony Onwaeze Esq.

Olabode Olanipekun for the 1<sup>st</sup> Respondent with him: Bolarinwa Awujoola, Vanessa Onyemauwa, Tolulope Adetomiwa, Adebayo E Majekolagbe and Ahmadu Gadzama

Oluwarotimi O. Akeredolu Esq, SAN for the 2<sup>nd</sup> Respondent with him: Sabatunde A. Aiku SAN, Kolawole Esan Esq, Iyiola Oladokun Esq, Sola Alabi Esq, Tosin Oke (Miss) and Stephen O. Kanu Esq.

F Prof. Wahab Egbewole for the 3<sup>rd</sup> Respondent with him: Ayo Olarenwaju, Esq., Adeboye Sobanjo, Esq., Mobolaji Ojibara, Esq., T. N. Alatise, Esq., C. N. Akuneto, Esq., and Adaobi Ike, Esq.

Mr. Lawal Adebayo Adeleke for the 4<sup>th</sup> Respondent with him: M. O. Aderomi Esq, and Dr. Nureni Adeniran

G **CASES REFERRED TO**

Bango v. Chado (1998) 9 NWLR (pt. 564) 139

Sosanya v. Onadeko (2005) 8 NWLR (pt. 926) 185

Abe v. Unilorin (2013) 16 NWLR (pt. 1379) 182

H Best (Nig) Ltd v. B. H. (Nig) Ltd (2011) 5 NWLR (pt. 1239) 95

Apapa v. INEC (2012) 8 NWLR (pt. 1303) 409

Onyeabuchi v. INEC (2002) 97 LRCN 959

Arubo v. Aiyeleru (1993) 24 NSCC (pt. 1) 255



Okafor v. Nweke (2007) 10 NWLR (pt. 1043) 521

Okarika v. Samuel (2013) 7 NWLR (pt.1352) 19

Ngige v. Obi (2006) 14 NWLR (pt. 999) 1

Aiyeola v. Pedro (2014) 13 NWLR (pt. 1424) 409

Olufeagba v. Abdulraheem (2009) 18 NWLR (pt. 1173) 384

Okelue v. Maduka (2011) 2 NWLR (pt. 1230) 176

Saraki v. Kotoye (1992) 9 NWLR (pt. 264) 156

Agwasun v. Ojichie (2004) 10 NWLR (pt. 882) 613

B

**STATUTES & RULES REFERRED TO**

Constitution of the Federal Republic of Nigeria 1999, ss. 6(6)(a), 243(b), 246(1)(b)(ii), 248

Electoral Act 2010 (as amended), s. 151(1)

Evidence Act 2011, s. 68(1)

Supreme Court Rules, O. 8 r. 2(4)

C

D

**LEAD JUDGMENT BY OGUNBIYI JSC**

This court heard the appeals and cross appeals in the substantive appeals above listed on 2<sup>nd</sup> of February, 2016. Judgment therein were delivered whereby the cross appeals in SC.12/2016 were allowed following which the rulings of the lower court dismissing the objection of the cross appellants therein were set aside. Consequently, appeal No. CA/IB/EPT/GOV/31/2015 filed by Senator R. A. Ladoja in the lower court was dismissed for being in abuse of process.

E

In the same judgment, the court also dismissed the surviving appeal No. SC/12<sup>A</sup>/2016 for lack of any merit and the reason for the judgment was adjourned to the 15<sup>th</sup> February, 2016; the reasons are set out hereunder.

F

Governorship election was held in Oyo State of. Nigeria on 11<sup>th</sup> April, 2015. In the said election, the 4<sup>th</sup> Respondent, Senator Rashidi Adewolu Ladoja was the candidate of the Appellant, Accord. Whilst the 1<sup>st</sup> Respondent, Senator Abiola Adeyemi Ajimobi was the candidate of the 2<sup>nd</sup> Respondent, All Progressives Congress (APC). There were other There were other candidates for the election.

H

At the conclusion of the election, the 3<sup>rd</sup> Respondent declared the 1<sup>st</sup> Respondent as the winner of the election crediting him with 327,310 votes against the 4<sup>th</sup> Respondent who was credited with 254,520 votes.

Dissatisfied with the outcome of the election, the appellant and the 4th respondent on 2<sup>nd</sup> May, 2015 presented their petition No. EPT/18/GOV/22/2015 in the trial Tribunal on the following two grounds:-

(i) That the election of the 1<sup>st</sup> respondent, Senator Abiola B Adeyemi Ajimobi was invalid by reason of corrupt practices or non-compliance with the provision of the electoral Act 2010 (as amended).

(ii) That the 1<sup>st</sup> respondent Senator Abiola Adeyemi Ajimobi was not duly elected by the majority or highest number of lawful votes cast at the election.

C There are 33 Local Government Areas in Oyo State. The Appellant's case is that the election in all the polling units of 10 Local Government Areas namely Atiba, Atisbo, Iseyin, Iwajowa, Kajola, Itesiwaju, Oriire, Ogbomosho North, Ogbomosho South and Surulere D Local Government Areas are void for reasons of non-compliance. The appellant and the 4th respondent also challenged the results from wards and polling units which identities are pleaded in the petition and set out in the testimony of PW1.

E Meanwhile on the 28<sup>th</sup> day of April, 2015 the appellant and the 4th respondent got an order of Honourable Tribunal to inspect all documents and gadgets used by the Independent National Electoral Commission (INEC) for the conduct of the said election (see page 5212 Vol.7 Record of Appeal).

F The statement on oath of the petitioners' first witness, PW1 was based on the said inspection and in which several sacrilegious violations of the law and guidelines for the election were alleged found in the election documents purportedly used in the disputed polling units, wards and local government areas.

G In addition to PW1, the appellant and the 4th respondent also called 28 other witnesses namely, PW2 through to PW29. Exhibits 1 - 192 (Certified True copies of electoral materials) were tendered in evidence through PW1, Bimbo Adepoju, who was the petitioners' star witness. He was the head of the team that inspected the election H materials. He deposed to a written statement which incorporated the inspection report.

Judgment was delivered by the Tribunal on Tuesday 21st October, 2015 wherein it dismissed the petitioners' petition and upheld the result of the election conducted by the 3<sup>rd</sup> respondent which de-

clared the 1<sup>st</sup> respondent Senator Abiola Adeyemi Ajimobi as winner of the contested Governorship election and having scored the majority of valid votes cast.

The petitioners, that is the appellant and the 4th respondent herein, were dissatisfied with the said judgment and hence filed separate Notices of Appeal before the lower court against the same judgment i.e. the decision of the Governorship Election Petition Tribunal sitting at Ibadan delivered on the 21st October, 2015. In other words, while the appellant filed Appeal No. CA/IB/EPT/GOV/31/2015 the 4th respondent Accord filed appeal No. CA/EPT/GOV/31A/2015. The two appeals filed before the lower court are those which have now given rise to SC. 12/2016 and SC. 12A/2016 respectively which are now the subject of contention.

At the Court of Appeal, the cross appellants herein, raised a preliminary objection to the competence and hearing of the appeal on the ground that the petitioners having jointly presented and prosecuted a joint petition in which a single judgment was delivered, it was an abuse of court process and improper for them to file two separate appeals in each of which one of the parties was the appellant and the other, a respondent instead of filing a joint appeal.

The court below heard the objections together with the substantive appeals which were argued in the briefs of parties and held that “the situation creates an avoidable confusion” that the appeal could possibly be ‘an abuse of the court process’ but for section 246(1)(b)(ii) of the 1999 Constitution guaranteeing a right of appeal”. In the result, the lower court dismissed the preliminary objections raised and the outcome which has now given rise to the cross appeals before us.

On the 29<sup>th</sup> January, 2016, a motion was filed on behalf of the 1<sup>st</sup> respondent for an order striking out grounds 1 and 10 of the appellant’s notice of appeal filed on 30<sup>th</sup> December, 2015 as well as issues 1 and 4 in the appellant’s brief filed 18<sup>th</sup> January, 2016. The grounds predicated the application are that while ground 1 of the notice of appeal does not arise from the ratio decidendi of the judgment of the lower court, ground 10 of the notice of appeal is without any particulars and also that the complaint therein the ground is vague as well as being contrary to Order 8 Rule 2(4) of the Rules of this court. The application further prays that issues 1 and 4 formulated

from grounds 1 and 10 respectively are also incompetent and should be struck out.

It is the submission of counsel that every ground of appeal must lay a complaint against the ratio decidendi of the judgment of the lower court; that at best the appellant's ground 1 is a summary of the case made by counsel for the 3<sup>rd</sup> respondent on the competence of ground 10; counsel again submits that the absence of any particular does not disclose the pith and substance of the appellant's complaint against the judgment of the lower court; that the two grounds 1 and 10 as well as issues 1 and 4 formulated therefrom should be struck out.

In determining whether or not a ground of appeal is competent, it has been held a time without number that the proper approach is to focus on the substance of the complaint with a view to determining whether the ground contains a genuine complaint which correctly arises from the judgment. The paramount intention is to ensure that the adverse party is in clear understanding of the exact complaint against the judgment. Elegance in couching a ground of appeal is not of material significance. It should be specifically described so as to avoid vagueness, repetition, narration or argument. See the cases of *Bango V. Chado* (1998) 9 NWLR (Pt 564) 139 at 148; *Sosanya V. Onadeko* (2005) 8 NWLR (Pt 926) 185 at 226.

In his submission in response to the preliminary objection raised, the appellant submits that ground 1 is competent and clearly verges on the court below against relying on irrelevant material as part of the evidence it considered and therefore incorrectly summarized the evidence before it. For all intents and purposes, ground 1, is a clear and specific complaint against the court below wherein it relied on unsworn comment of the 3<sup>rd</sup> respondent's counsel which is not borne out on the record. The issue is whether the complaint is genuine and understood by the opponent and not whether it can be substantiated. The said ground, I hold should sustain as competent. In the same vein and as rightly submitted by the appellant's counsel, ground 10 alleges the failure of the court below to exercise its statutory and judicial powers to re-evaluate the documentary evidence placed before the tribunal. The said ground is consistent with the established principle as it was held in the case of *Abe V. Unilorin* (2013) 16 NWLR (Pt 1379) 182 at 199 by this court that:-

*“...once they (grounds of appeal) represent an appellant’s complaint against the decision he is not satisfied with and in respect of which grouse he seeks the appellate court’s intervention.”*

The said principle was enunciated by this court in the earlier decisions of *Best (Nig) Ltd V. B. H. (Nig) Ltd* 2011 5 NWLR (Pt 1239) 95 at 115 and *Apapa V. INEC* (2012) 8 NWLR (Pt 1303) 409 B at 424 to 425.

It is pertinent to say also that where a particular is inelegantly drafted, it does not invalidate the ground of appeal from which it flows. The totality of the objection raised against grounds 1 and 10 of the appellant’s notice of appeal are in my view of no substance and the reason which the preliminary objection raised against same is discountenanced. Objection is hereby overruled. C

On behalf of the 3<sup>rd</sup> respondent, also, a preliminary objection was raised and which challenged the competence of ground 1 of the ground of appeal in terms of the objection raised by the 1<sup>st</sup> respondent. In a nutshell, the same reason proffered in the earlier objection is also adopted herein and the horse needed not be over flogged out of proportion and I hold that the objection is hereby overruled. D

Now back to the two sets of cross appeals which arose as a result of the appeals originating from the dismissal by the court below of the preliminary objections alleging an abuse of court process; the common issue from the cross appeals was whether the lower court was not in error when it dismissed the appellant’s preliminary object which challenged the appeal filed by the 1<sup>st</sup> respondent before it, as an abuse of court process? F

The facts relevant to this segment of cross appeal are the same as stated in the main appeal supra wherein judgment was delivered by the tribunal in the joint petition filed by 1<sup>st</sup> and 4th cross respondents. The joint petition can be found at pages 24 to 163 of the record. Both petitioners/cross respondents were in common in terms of representation of counsel, witnesses as well as addresses by parties at the tribunal. Pages 162, 166 to 881 and 5002 to 5041 of the record of appeal are all in reference. G H

A further confirmation of the twin existence of the cross respondents is where they also filed a joint notice of appeal at the lower court against the ruling of the Tribunal which dismissed their motion in which they prayed for an order seeking leave to call additional

witnesses. Their joint appeal was No. CA/13/EOT/GOV/06/2015 which the lower court dismissed on 14th October, 2015.

The subject matter of contention in the cross appeal resulted from the separation of the Siamese twins nature of 1<sup>st</sup> and 4th cross respondents wherein a separate notice of appeal each was filed in the court below on behalf of the two cross respondents against the judgment of the tribunal delivered on 27<sup>th</sup> October, 2015.

The brief facts of this case will give a historical background to this appeal.

The 1<sup>st</sup> cross respondent herein filed a notice of appeal against the judgment of the trial tribunal which dismissed the petition of the 1<sup>st</sup> and 4th cross respondents and affirmed the cross appellant as the winner of the Oyo State Governorship Election held on 11th day of April 2015.

The cross appellant filed a preliminary objection to the hearing of the appeal on the ground that the 1<sup>st</sup> and 4th cross respondents, having presented a joint petition at the lower tribunal, could not present separate and distinctive appeals in the court below. The court below on the 17<sup>th</sup> December, 2015 dismissed the objection and hence the notice of cross appeal filed 30<sup>th</sup> December, 2015 in this court.

In its ruling at page 6090 of volume 8 of the record, the lower court had this to say:-

*“While practices such as this are not to be encouraged as courts do not appreciate proliferation of cases, a fundamental point raised by Mr. Olatubora as to the right of appeal of each party (sic). He referred to Section 246(1)(b)(ii) of the Constitution of the Federal Republic of Nigeria (as amended)..... The rights of appeal thereby created by the constitution should not be circumscribed in any form or manner.”* See ORGAN V. NLING LTD. (2013) LSCQR 83.

The lone issue raised by the cross appellant therefore is: whether the lower court was not in error by dismissing appellant’s preliminary objection relating to the abusive nature of the appeal filed before it by the 1<sup>st</sup> respondent, Rashidi Adewolu Ladoja, who is a candidate of Accord, his political party.

The determination of this issue is not to be considered in isolation but in tandem to Sections 6(6)(a), 243(b) and 248 of the Constitution which reproduction provide thus:-

*“6. The judicial powers vested in accordance with the forego-*

ing provisions of this section-

(a) *Shall extend, notwithstanding to the contrary in this Constitution, to all inherent power and sanctions of a court of law;*

243. *Any right of appeal to the Court of Appeal from the decisions of the Federal High Court or a High Court conferred by this Constitution shall be –*

(b) *exercised in accordance with any Act of the national Assembly and rules of court for the time being in force regulating the power, practice and procedure of the Court of appeal.*

248. *Subject to the provisions of any Act of the National Assembly, the President of the Court of Appeal may take rules for regulating the practice and procedure of the Court of Appeal.*

A community reading of the foregoing provisions clearly indicates that an appeal to the Court of Appeal, even as of right, is not a free for all affair. It is still subject to statutes, such as the Court of Appeal Act, Electoral Act, Court of Appeal rules, Practice Directions, Practice and Procedure of the Court and the inherent jurisdiction as well as the discretionary powers of the court to control the proceedings before it for the attainment of the goal of justice.

The lower court, by its ruling as shown on the record conceded that the act of the appellant was in abuse of court process but nevertheless it ruled that its hands were tied by Section 246 of the Constitution which granted the appellant, the right of appeal. At page 6183 of the record for instance, the lower court said thus amongst others:-

*“The anomaly created could possibly result in the appeal being an abuse of the court’s process but for the point raised by the appellant’s counsel on the implication for the right of appeal.”*

It is pertinent to state that by section 6(6)(a) of the Constitution of the Federal Republic of Nigeria, 1999, the court has the power to strike out or dismiss an appeal in limine once it is found to be in abuse of court process. This, the lower court would have done had it given due consideration to its given inherent powers under Section 6(6)(a) of the Constitution, 1999. The said power was exercised in the case of Onyeabuchi V. INEC (2002) 97 LRCN 959 at 972 - 973 also in Arubo V. Aiyeleru (1993) 24 NSCC (pt.1) 255 at 264; both decided by this court.

The right of appeal conferred by section 246 of the 1999 Con-

stitution is not a cover cloak for a party to be in abuse of court process. In *Saraki V. Kotoye* (1992) 23 NSCC (pt.III) 331 at 349, this court held:-

*“The concept of abuse of judicial process is imprecise. It involves circumstances and situations of infinite variety and conditions. Its one common feature is the improper use of the judicial process by a party in litigation to interfere with the due administration of justice. It is recognized that the abuse of the process may lie in both a proper or improper use of the judicial process in litigation. But the employment of judicial process is only regarded generally as an abuse when a party improperly uses the issue of the judicial process to the irritation and annoyance of his opponent, and the effective administration of justice. This will arise in instituting a multiplicity of actions on the same subject matter against the same opponent on the same issues. See *Okorodudu V. Okoromadu* (1977) 3 SC 21, *Oyegbola V. Esso West African Inc.* (1996) 1 All NLR 170. Thus the multiplicity of actions on the same matter between the same parties even where there exists a right to bring the action is regarded as an abuse. The abuse lies in the multiplicity and manner of the exercise of the right, rather than the exercise of the right, parse.”* See also *Agbaje V. INEC* (unreported SC 675/2015 of 20/10/2015).

It is expected as a matter of duty on the court to have struck out the purported notices of Appeal which are deemed to constitute originating process. See *Okafor V. Nweke* (2007) 10 NWLR (Pt.1043) 521. Also the case of *Okarika V. Samuel* (2013) 7 NWLR (Pt.1352) 19 at 37 wherein this court reaffirmed that *“an initiating process whether writ of summons, originating summons or a notice of appeal must be valid to confer jurisdiction on a court to adjudicate between parties on a subject matter in dispute between them...”*

***It is also trite law that an appeal is a continuation of the trial.*** See *Ngige v. Obi* (2006) 14 NWLR (Pt 999)1 at 10 and *Aiyeola V. Pedro* (2014) 13 NWLR (Pt 1424) 409 at 447. ***It is often held and settled that there should be consistency in prosecuting a case at the trial court as well as in the appeal court.*** See *Olufeagba V. Abdulraheem* (2009) 18 NWLR (Pt 1173) 384. ***By the two cross respondents as common petitioners at the tribunal splitting their appeals at the court below and designating Accord as respondent to Ladoja and vice versa, it is akin to each***



*party being a claimant and defendant at the same time. This act of proliferation is nothing less than turning the judicial process into a mere gambling exercise, which the lower court should have acted with immediate dispatch to condemn. In my view and without mincing words, I hold that the court below was in great error when it based the dismissal of the appellant's preliminary objection within the narrow interpretation of section 246 of the 1999 Constitution without any consideration for the equally relevant sections 6(6)(a), 243 and 248 of the same Constitution. Had the holistic view of all the sections been taken together, it would have dawned on the lower court that section 246 of the Constitution is not a stop cork and does not therefore deprive the court of the power to prevent an abuse of its process, neither does it provide for an appellant an unregulated and free for all procedure for approaching an appellate court or any other.*

*It is an elementary principle of law that the right to appeal is constitutional. However, it is within the province of the law also that the exercise of such right must be within bounds and not at large. Where the right is let loose, the effect stands to endanger the very purpose for which it is set out to achieve. All rights are subject to limitation and a constitutional right is not an exception but is circumscribed also within that principle.*

*It stands to reason that while a party can restrict his appeal to a limited number of respondents and decide not to appeal against some parties, against whom he has litigated at the trial, the same cannot also apply in the case at hand, where two petitioners filed a joint petition, both of them lost together, and the 1<sup>st</sup> respondent appealed to the lower court and made the 4<sup>th</sup> respondent, his co-petitioner at trial, a co-respondent. Also before the same lower court, the 4<sup>th</sup> respondent, who was 1<sup>st</sup> petitioner at trial again filed his own separate appeal and made 1<sup>st</sup> respondent a co-respondent.*

*From the substratum of this cross appeal, the 1<sup>st</sup> and 4<sup>th</sup> cross respondents having filed a joint petition at the tribunal, cannot as a matter of practice and convention file different appeals at the lower court. In the case of Okelue v. Maduka*

(2011) 2 NWLR (Pt 1230) 176 it was held that a party cannot be plaintiff and defendant in the same matter.

The 1<sup>st</sup> cross respondent's counsel submitted vigorously in favour of re-enforcement of the constitutional right of appeal. He contends further that all the authorities cited by the cross appellant's counsel are distinguishable and do not support his (cross appellant's) case. Counsel submits in favour of dismissal of the cross - appeal.

I seek to state at this point and without hesitation that the issue at hand has nothing to do with a party's right to exercise his constitutional right to appeal the judgment of the tribunal. The constitutional provision is guaranteed in section 246(1)(b)(ii) which cannot be taken away by any means whatsoever. The missing link however is, to what extent can the right be exercised? It is extant and as provided in the case of Saraki V. Kotoye (1992) 9 NWLR (Pt.264) 156 cited by the 1<sup>st</sup> cross respondent's counsel. Reliance on that case is more in support of the cross appellant's case and not the 1<sup>st</sup> cross respondent. For instance, at page 183 of the report, this court held and said:-

*"The Constitution of this country and the law and practice in the administration of justice have vested in the aggrieved a right of appeal to a superior court against any decision in respect of which he is aggrieved on the grounds of law or fact on which he considers the court is in error."*

The same principle was applied also in the case of Agwasun V. Ojichie (2004) 10 NWLR (Pt 882) 613 at 662 - 663. The right, though available freely, is however restrictive and only to be exercised within bounds; that is to say it is subject to other rights which must not be encroached upon in the course of the cross respondents exercising their rights.

Excessive exercise of right outside the constitutional permit is no longer a right but a wrong which is an abuse of process. From all indications, I hold the strong view that the interpretation given by the 1<sup>st</sup> cross respondent's counsel to the authorities cited on behalf of the cross appellant is a complete misconception of Section 246(1)(b)(ii) of the Constitution.

In the case of Agwasun V. Ojichie under reference (supra) at pages 622 - 623 of the report, this court listed some instances where an abuse of court process can occur as follows:-

*"The abuse of judicial process is the improper use of the judi-*

cial process by a party in litigation. It may occur in various ways such as:-

(a) instituting a multiplicity of actions on the same subject - matter against the same opponent on the same issue, or

(b) instituting a multiplicity of actions on the same matter between the same parties; B

(c) instituting different actions between the same parties simultaneously in different courts even though on different grounds; or

(d) where two similar processes are used in respect of the exercise of the same right.” C

**The summary and the conclusion from the foregoing authority is obvious; that is to say the concept of abuse of court process is serious and fundamental as it goes into the jurisdiction of the court.** See Dingyadi V. INEC (No 1) (2010) 18 NWLR (Pt 1224) 1 at 23. **There must be sanity in the application and exercise of the given constitutional right.** D

**Again, in the context of the case of Agwasun V. Ojichie (supra), by instituting multiplicity of actions in a situation where two similar processes are used in respect of the exercise of the same right, as it is in the cross appeal before us, is an outright misuse of a legal process. It is a departure from legal or orthodox use of process culminating into an abuse thereof.** E

The right of appeal which is constitutional is a creation of statute and is never at large.

As rightly submitted by the cross appellant’s counsel, jurisdiction of the Court of Appeal is derived from that of the Tribunal. It is also a plaintiff/petitioner’s claim that vests jurisdiction in the court. See Adeyemi v. Opeyori (1976) 9 - 10 SC 31 at 51. F

The circumstance of the appeal filed by the 1<sup>st</sup> cross respondent before the lower court did not vest jurisdiction in that court to entertain. The process of court in the circumstance was not just being abused, but also subjected to ridicule. G

With the appeal against the extant judgment of the tribunal, the 1<sup>st</sup> cross respondent (appellant before the lower court) is bound to maintain and sustain the appeal between the same parties and on the same subject. Again see a recent decision of this court in Agbaje V. INEC & Ors. (2015) 10 SC 42, see also PPA. V. INEC (2012) 13 NWLR (Pt. 1317) 215 at 237, where the court ruled that where a H

stranger displaces a party on appeal by usurping his position in a proceeding at the trial court, the appeal will be rendered as incompetent and consequently rob the appellate court of the jurisdiction to hear same.

Also in the case of *Shinning Stars Nig. Ltd. V. AKS Steel Nig. Ltd.* (2011) 4 NWLR (Pt 1238) 596, the initial notice of appeal filed by the appellant in this court was against four respondents. The appellant on a motion filed unilaterally, reduced the number of respondents to three. This court upheld a preliminary objection raised against the reduction and ruled the application as incompetent and was dismissed.

The appeal filed by the 1<sup>st</sup> cross respondent whereby it made the 4th cross respondent, (its co-petitioner at the trial Tribunal) a respondent to its appeal is nothing short of an abuse of court process. The consequential effect is an outright dismissal of the appeal so filed at the lower court. See *Arubo V. Aiyeleru* and *Onyeabuchi V. INEC* (supra).

In the result, I hold the view that the sole issue formulated is resolved in favour of the cross appellants and I make an order setting aside the decision of the lower court which dismissed cross appellants' preliminary objections. In its place however, an order is made allowing the said preliminary objections, and I so dismiss appeal No. CA/IB/EPT/GOV/31/2015 at the lower court on the ground that it is an abuse of the process of court.

The cross appeals in SC.12/2016 are hereby allowed and appeal SC.12/2016 is accordingly dismissed for abuse of process.

On The Merit of the Appeal SC. 12<sup>A</sup>/2016 filed by Accord against Senator Abiola Adeyemi Ajimobi and 3 others.

The historical background and the facts of this case have been spelt out earlier in the course of this judgment and I will not repeat same.

In compliance with the Rules of Court, Briefs were filed and exchanged by all parties. The appellant's brief was settled by Aderemi Olatubora Esq., while Olabode Olanipekun Esq. settled the brief on behalf of the 1<sup>st</sup> respondent; that of the 2<sup>nd</sup> respondent was by Chief Akin Olujinmi, SAN and the 3<sup>rd</sup> respondent's was by Prof. Wahab Egbewole and lastly that of the 4th respondent was settled by Chief Lawal Adebayo Adeleke.

On the 2<sup>nd</sup> February, 2016 at the hearing of the appeal, all counsel adopted their respective briefs of argument and adumbrated thereon.

On behalf of the appellant, the four issues raised are as follows:-

1. Having regard to the record of proceedings and processes placed before the court below and the court below (sic) own record of the hearing of the appeal, whether its conclusion that documents admitted in evidence were not demonstrated in open court but remained in vehicles and containers in which they were produced outside the court room was not perverse and occasioned a miscarriage of justice. (Ground 1) B  
C

2. Having regard to the grounds of appeal and Issue No. 1 submitted for the consideration of the court below by the Appellant, whether the court below was not wrong to have held that the decision of the tribunal to the effect that inspection and analysis conducted by PW1 involved specialized and knowledge of scientific and technical nature was not appealed against. (Ground 3) D

3. Having regard to the facts of this case, the state of the law, particularly the decisions of the court below in similar cases, whether the court below was not wrong to have excluded the evidence of PW1 and for failing to evaluate certified true copies of election documents Exhibits 1 to 192, on which PW1's evidence is based. (Ground 2, 4 and 5) E

4. Having regard to the facts of this case and the evidence led at the hearing of the petition, whether the court below was not wrong to have dismissed the appeal of the Appellant and affirmed the decision of the tribunal that the petition was not proved. (Grounds 6, 7, 8, 9, 10 and 11) F  
G

Two issues were formulated on behalf of the 1<sup>st</sup> respondent and same are hereby reproduced:-

1. Having regard to the nature of the evidence of PW1, whether the lower court was not right in affirming the decision of the trial Tribunal discountenancing his evidence in its entirety. (Grounds 2, 3, 4, 5, 6 and 11) H

2. Considering the facts of this case and the evidence before the lower court, whether the lower court was wrong when it affirmed the decision of the trial Tribunal dismissing the petition as having not

been proven. (Grounds 1, 7, 8, 9 and 10)

The 2<sup>nd</sup> respondent's counsel deemed it appropriate to adopt the four issues formulated on behalf of the appellant verbatim.

The two issues raised on behalf of the 3<sup>rd</sup> respondent bear a lot of similarities with the ones raised by the 1<sup>st</sup> respondent. I will reproduce their content in the Course of the judgment. The fourth respondent, like the 2<sup>nd</sup> has also indicated his intension and adopted the four issues raised by the appellant's counsel.

For the determination of this appeal, I will consider the two issues formulated by the 3<sup>rd</sup> respondent as adequate and all encompassing.

I seek to say at the point that although the appellant raised four issues for determination, the arguments on issues 1, 2 and 3 are closely interrelated and the totality which are interwoven and fused one into the other. I have therefore decided to merge the three issues into 1 while issue 4 is to be taken as issue 2. The reformulation of the appellant's issues fits squarely into the ones formulated on behalf of the 3<sup>rd</sup> respondent which I deem as pertinent to adopt. The two issues are as follows:-

1<sup>st</sup> Issue

Whether the court below was right in endorsing, agreeing with and confirming the decision of the trial tribunal on the worthlessness of the testimony of PW1 and lack of Probative Value of Exhibits 1 - 192 tendered through the witness who gave evidence as a member of Accord and a farmer. (Ground 3, 4, 5, 6 and 11)

2<sup>nd</sup> Issue

Whether the court below was not right in holding that the trial Tribunal properly evaluated and ascribed proper probative value to the testimony of all the witnesses fielded by the Appellant and properly evaluated all the documentary evidence especially Exhibits 1 - 192 tendered by the Appellant at the trial tribunal. (Grounds 1, 2, 7, 8, 9 and 10)

From the community reading of the appellant's brief, the grouse of his complaint against the decision of the lower court centres on the refusal by the court below to set aside the decision of the trial tribunal that the evidence of PW1 is opinion evidence, evidence of a party interested and evidence which was discredited thoroughly under cross examination and is therefore rendered inadmissible, worthless and

not worthy of any probative value. A further point of complaint is again the decision by the court below in affirming the judgment of the trial tribunal that Exhibits 1 -192 were not tied to the case of the Appellant, dumped on the Tribunal and therefore deserves not to be ascribed any probative value or made use of in arriving at a just decision in favour of the appellant. B

At paragraph 1.4 on page 2 of the appellant's brief of argument, allegations were centred on locations specifically as follows:-

*"There are 33 Local Government Areas in Oyo State. The appellant's case is that the election in all the polling units of 10 local government areas namely Atiba, Atisbo, Iseyin, Iwajowa, Kajola, Itesiwaju, Orire, Ogbomoso North, Ogbomoso South and Surulere local government areas are void for reasons of non-compliance. The appellant and the 4th respondent also challenged the results from wards and polling units which identities are pleaded in the petition and set out in the testimony of PW1 in respect of the following local government areas namely Ibarapa North, Ibadan North West, Ibadan South West, Orelope, Saki, Oyo West and Ibadan North."* C D

***It is pertinent from the foregoing complaint lodged by the appellant that the malpractices are in specific polling units, particularly every polling unit in all the 10 local government areas (10 LGAs) and beyond as per those listed in the brief. It follows that the legal implication on the appellant is obvious; that is to say a petitioner, like the appellant who complains of non-compliance in specific polling units has the onus to present evidence from eye witnesses at the various polling units who can testify directly in proof of the alleged non-compliance.*** Reference in point can be made to ACN V. Nyako (2013) All FWLR (Pt 686) 424 at 477, Ucha V. Elechi (2012) All FWLR (Pt 625) 237 and Doma V. INEC (2012) 13 NWLR (Pt 1317) 297 at 321. E F G

It is a matter of fact that the entire strength of the appellant's case is rested on the evidence of PW1 as the star witness on whom reliance is made in proof of the malpractices alleged in the 10 local government areas and beyond. It is the submission of counsel that the court below proceeded on wrong principles of law by excluding the evidence of PW1 and for failing to evaluate Exhibits 1 - 192 on the grounds that PW1 was not an expert and also that his evidence is H

excluded because he was a person interested in the outcome of the litigation.

It is also the submission of counsel that PW1's evidence dealt exclusively with INEC election documents such as forms EC.SA, EC.SB, EC.SC, EC.SD, EC.SE, Voters register, Manual for Election B officials 2015, other guidelines and regulations tendered in evidence i.e. Exhibits 1 - 192.

C That the documents which form the essence and the basis of PW1's evidence are the disputed documents which are adequately pleaded and listed in the list of documents intended to be relied upon by the petitioner which was filed along with the petition.

D The counsel lamented profusely that in excluding the testimony of PW1, the court below characterized PW1 as a "person interested" in the outcome of the litigation. Counsel submits further that in the peculiarity of election cases, evidence is never excluded on the ground of the relationship between a witness and a litigant; that it is also not excluded because the statement on oath was made when a petition was anticipated or pending, particularly when the evidence is based on inspection of election documents as in the instant appeal, to maintain a petition. The counsel in support of his submission cited the authorities in the cases of: Aregbesola V. Oyinlola (2009) 14 NWLR (Pt 1162) 429 at 478 - 480, Adewale & Ors. V. Olaifa & Ors (2012) LPELR - 7861 (CA), Akintayo V. Jolaoye & Ors (2010) LPELR 3688 CA at 31-32 and Ayeleru V. Adegbola & Ors (2010) LPELR - 3828 F CA at 33; from the foregoing authorities, the appellant's counsel submits that the court below by characterizing the evidence of PW1 as interested party and excluding same was made *per incuriam*; that PW1, has the competence required to examine and report on election documents inspected and the decision of the court below in dismissing PW1's evidence on the ground of his practice as "arable farmer" is not supported by the evidence on the record and law; that PW1 is not caught up by section 68(1) of the Evidence Act; that all that PW1 did was to compare what he observed/saw on various documents made available to him by the 3<sup>rd</sup> respondent and pointed out discrepancies or incongruence on the documents.

H It is the counsel's submission further that the evidence of PW1 has nothing to do with matter of science or custom or foreign law etc; that it is basically composed of analysis of physical entries in election



documents and simple comparison of same; that the thrust of PW1's evidence was to prove that the 1<sup>st</sup> respondent in this appeal, Senator Abiola Adeyemi Ajimobi, did not win the majority of lawful votes cast in the disputed election and ought not have been declared the winner of the said election.

The entire gamut and proof of the appellant's case at the trial tribunal was centred on PW1 as the star witness. In other words the case/appeal succeeds or fails on the evidence of the witness PW1 - whose competence is the determinant life wire of the appellant's appeal now before us. Specific attention will now be paid to the said witness and the entirety of his evidence.

It is on record that PW1 whose evidence, appellant wants to ascribe probative value by the court below, testified before the trial tribunal as a member of the team that analyzed the election materials and made various comments and analysis in both the Report of the inspection and his statement on oath adopted as Evidence-in-chief. Exhibits 1 - 192 were also tendered and admitted through the witness.

The said PW1's evidence relates to analysis of the electoral documents used in the conduct of the election which result culminated into this appeal. It is on record and not disputed that PW1 is not an expert and the appellant during the trial did not present him as such.

The court below when confirming, agreeing with and affirming the decision of the trial tribunal held in its judgment at pages 6112 - 6113 of volume 8 of the record of Appeal, (that PW1 having not been an expert which PW1 admitted not to be), held as follows:-

*"As stated earlier in the course of this judgment, the issue whether or not PW1 is an expert is not in contention in this appeal. Indeed, the appellant has conceded that they did not put forward the (sic) appellant as an expert. In that respect, there is no need for a decision here as to whether or not PW1 based on the Inspection Report, are full careful; of his opinion and conclusions are inadmissible by virtue of section 67 of the Evidence Act 2011, PW1 not being an expert. The PW1 was not projected by the appellant before the tribunal as a person who has acquired specialized qualifications, experience knowledge or testimony in the act of establishing the electoral irregularities, analysis of electoral forms, card readers, voters*

*cards and other electoral materials or documents, his evidence is irrelevant and inadmissible in forming its opinion on the issues in contest."*

The court below went further at pages 6142 - 6143 of the same volume 8 of the record and said:-

B *"Furthermore, his statement on which he relies on as his evidence in chief was full of opinions and conclusions on the contents of the exhibits tendered. For example, PW1 deposed in paragraphs 8 and 9 at page 3525 of vol. 5 of the Report as follows:-*

C *8. The focus of our inspection was to establish the case made in respect of each of the disputed polling units.*

D *9. In each and every of the disputed polling units our team found that there was substantial non-compliance as a result of unlawful use of incident forms and inconsistency found in all the above listed documents on entries as to the number of voters accredited by Card Readers, number of votes accredited in Voters Register, total number of votes cast according to the tickings in the appropriate boxes in the voters Register, and the number of purported votes cast in form EC.8A, EC.8B, EC.8C and EC.80."*

E Following the analysis made which were comprehensively summarized, PW1 then drew his own conclusions at pages 4397 and 4398 also of Vol.5 of the record as follows:-

F *"From the result of analysis which are already contained in the main report, the Gubernatorial candidate of Accord, Senator Rashidi Adewolu Ladoja having scored the highest number of lawful votes as stated above also scored not less than 25 of the votes case in 22 local government which is the 2/3 of the 33 local government areas in Oyo state ought to and should be declared as WINNER of the Governorship Election held on 11<sup>th</sup> April, 2015...*

G *From the forgoing therefore, the analysis of our discoveries during inspection no doubt lend credence to our allegation, as contained in our petition that the 1<sup>st</sup> and 2<sup>nd</sup> respondents did not win the majority of lawful votes in the said election and the petitioners were indeed the winner of the election having scored the majority of lawful votes cast and not less than 25 of votes cast in at least 2/3 of the local government area in the state, see table 13."*

**As rightly submitted by the counsel representing the 3<sup>rd</sup> respondent, the above statements of PW1 are pronouncements**

***which remain the prerogative of a competent court. The duty of a witness is simply to present the facts before the court, while it is the constitutional duty of the court to pronounce judgment based on the facts presented. Based on the circumstances, no reasonable court or tribunal would ascribe any probative value to the testimony of a witness on the pronouncement made by PW1. His evidence is rightly said to be purely opinion evidence. This is made obvious from the appellant's submission at paragraphs 3.22-3.28 of the brief of argument. The reference made to the qualification of PW1 coupled with the state of his comportment is conclusive that he was not presented as an expert.*** B C

***It is settled law that when a court of law or a tribunal requires forming an opinion on a point, it is only the opinion of a person specially or professionally skilled in the area that is admissible. The court is not allowed to accommodate any other opinion outside an expert. It is correct to say that PW1's evidence based on his opinion as stated in his statement on oath and the analysis in the Report of the Inspector of the electoral documents lacks evidential value as an expert opinion.*** D E

On the question as to whether or not the witness PW1 lacks the capacity and qualification to make the analysis and documents in his witness statement, recourse must be had to his witness depositions on oath in particular at paragraph 3 where he states clearly that before the inspection team embarked on their assignment, they studied the petition carefully and they worked towards achieving the goal of the petition; pages 3522 – 3525 of the record, vol. 7 is in reference:- F

***“3. In carrying out the petition, our team studied the petition of the petitioners carefully and we strictly confined our inspection to the complaints contained in the petition and the documents the petitioners pleaded and gave notice of in the petition that they would rely upon at the hearing of the said petition.”*** G

Other related paragraphs are also the depositions at paragraphs 4, 6, and 8 where it is extant that PW1 exposed himself as a witness H with interest to serve on the Inspection team. He had a specific goal and area of contention to serve and salvage. He did study the allegations in the petition ahead of time and worked towards an answer which is to prove the allegations in the petition. The witness did not

hesitate to state that he is a member of the appellant, who participated in her campaigns and was in court to demonstrate his support and loyalty for his political party. He authored prominently as a member of the team that inspected and analyzed the electoral documents used for the election in issue.

B The witness admitted under cross examination that the campaign-  
 C gned for the appellant and its candidate at the election which culminated into the petition the subject matter of this appeal. He also participated actively in the election. Reference is copiously made to page 5373 of vol. 7 of the record of appeal. The witness' report of the inspection was also made during the pendency of the petition.

The court below discountenanced the appellant's argument predicated that since the learned tribunal granted leave to the appellant to conduct inspection on the electoral materials the court is legally bound to admit the report of the inspection and PW1's evidence based on the same. The rejection was sequel to PW1's being a party interested and therefore his evidence is inadmissible on the authority of section 83(3) of the Evidence Act 2011 which is justified also on the cases of *Nigeria Social Insurance Trust v. Klifco Nigeria Ltd* (2010) LEPLR 22-23 and *C.P.C V. Ombeigadu* (2013) All FWLR (Pt 706) 406 at 472-473 wherein this court in defining a person interested under Section 91(3) of the Evidence Act 2011 held and said:-

F *"By the provision of Section 91(3), Evidence Act, a person interested is a person who has a pecuniary or other material interest and is affected by the result of the proceedings and therefore would have a temptation to pervert the truth to serve his personal or private ends. It does not mean an interest purely due to sympathy. - It means an interest in the legal sense which imports something to be gained or loose."*

G Section 83(3) of the Evidence Act also states thus:-

H *"Nothing in this section shall render admissible as evidence any statement made by a person interested at a time when proceedings were pending or anticipated involving a dispute as to any fact which the statement might tend to establish."*

PW1's purported witness statement is a demonstration of a party preparing and filing a case, and thereafter fishing and sourcing for evidence to prosecute it. See *N.S.I.T.F.M.B. V. Klifco Nig. Ltd.* (2010) 13 NWLR (Pt 1211) 307 at 324 a decision of this court. See

also Gwar V. Adole (2003) 3 NWLR (Pt 808) 516 at 531.

The lower court was then correct in its decision when in affirming the view held by the trial tribunal in rejecting the evidence of PW1 on the ground that he is a person interested and said thus at pages 6135 - 6136 of vol. 8 of the record of appeal:-

*"It is clear therefore that the statement of PW1 was made subsequent to the inspection carried out based on the order of the tribunal. The election in dispute has thus been concluded and the result declared. The PW1 did not in any part of the statement say that he played any role at the election, either as a polling agent or in any other capacity. He was therefore not present when any of Exhibits 1 - 192 was made..."*

*Clearly therefore, the report made by the PW1 and indeed the entirety of his written statement on oath were made during the pendency of the petition. By his statement, the report he and his team of inspectors made was aimed at achieving the purpose of the petition..."*

The lower court after x-raying the circumstance under which the report was made came to the right decision in agreeing with and affirming the view held by the trial tribunal at pages 6100 - 6101 of Volume 8 of the record of appeal. It is also found by the lower court that the appellant did not at any time dispute the fact that PW1 is an interested party and that his evidence was made when proceedings was ongoing or anticipated. The court below in its decision acknowledged that the appellant kept silent on this uncontroverted fact. Again the lower court at pages 1601 - 1602 of Volume 8 of the record said thus in part:-

*"The appellant had the opportunity of responding thereto when they filed their reply to the 1<sup>st</sup> respondent's final address. If they did not notice that submission or neglected to respond to it, they cannot now contend that the issue was raised suo motu by the Tribunal."*

PW1's report of inspection is replete with analysis of election materials and at the end of each table, he gave analysis and opinion and conclusion of the materials analyzed by him. This is evidenced at pages 4397 and 4398 of Vol.5 of the record reproduced earlier in the course of this judgment.

The analysis of the smart card reader, accreditation, PVC collected and votes cast on each table in each local government is made

from pages 3611 through 4371 of the volume 5 of the record. The poser question which calls for an answer as rightly asked by the 1<sup>st</sup> respondent's counsel is, can a witness who is not an expert engage in a thorough analysis of INEC documents and the smart card reader as portrayed by the appellant? It is in evidence that PW1 in his own testimony admitted that he is not an expert; for all intents and purposes, it goes without saying therefore that he cannot engage in the analysis of INEC documents as he sought to say in his report. The witness PW1 is also not qualified to analyze or subject to forensic scrutiny electoral forms, results and documents in the manner he did. In the case of *Buhari V. INEC* (2008) 19 NWLR (Pt 1120) 246 at 386 - 391 on a somewhat related matter, the Court of Appeal without much ado rejected the appellant's report because he was not qualified to analyze INEC documents. The lower court at pages 386 - 389 of the report, wasted no time in rejecting the documents.

Also in a recent decision in SC. 409/2012 - *Action Congress of Nigeria V. Rear Admiral Murtala H. Nyako & Ors.*, delivered on November 12, 2012 reported in (2012) LPELP 19649 (SC) this court in a similar situation rejected the evidence qua statistical analysis of a witness who described himself in his statement on oath as graduate of Economics, a consumer Banking officer and a retail financial analyst, held and said:-

*"PW66 by qualification and learning is not an expert in the art of establishing multiple registration and voting in elections special skill in respect of which would have entitled him to assist the tribunal to form its opinion on the point. I resolve appellant's 5<sup>th</sup> issue against the appellant. The effect of all these is that the appellant is left without a single competent witness in proof of its petition. What it has left are the certified true copies of the voters' registers and the various electoral forms, exhibits P760 - P771, tendered from the bar. The makers of these forms have not been called to tender the forms themselves."*

From all indications, the Banking officer and the retail financial analyst in the case in reference stood in a better position of credibility than the witness PW1 herein, being a self professed and confessed "arable farmer". The lower court was on a sound footing therefore when it followed the decision of this court in *Buhari V. INEC* and *ACN V. Nyoko* (supra) and found at page 6112 of the record that it

was not in contention between the appellant and respondents that PW1 was not an expert. The court at page 6134 of the record again held thus and said:-

*“The views or opinions expressed by him on the Report of inspection was not admissible by virtue of section 67 of the Evidence Act. He was not an expert in any of the fields stipulated in sections 68, 69 and 70 of the Evidence Act 2011. It did not also involve opinion of non-experts under sections 72, 73, 74 and 74 of the Evidence Act. Not having shown that PW1 gave evidence as an expert, his evidence is therefore mere opinion evidence, and inadmissible under section 67 of the Evidence Act.”*

This finding by the lower court is unassailable and it is fortified against the background of the fact that PW1 neither held out himself as an expert nor did he demonstrate at the trial tribunal that he possessed special skill, knowledge or training which may have been of value to the trial Tribunal. There was also no ground of appeal challenging the classification of PW1’s testimony as ‘mere opinion evidence, by the lower court. Again see the case of Aladegbemi V. Fasanmade (1988) 3 NWLR (Pt 81) 129 wherein this court held that an un-appealed finding is binding against all parties to the suit. The consequential effect of such finding has rendered this appeal academic since this court although as an apex court, cannot overturn the said decision without an appeal.

It is on record also that PW1 had often given wrong opinions and conclusions under cross examination in particular of the materials analyzed by him.

An example is at page 5317 of the record under cross examination of PW1 by the 3<sup>rd</sup> respondent’s counsel where the witness testified as follows:-

*“I have seen page 639 of volume 2, my remark in unit 2, 182, is accredited. I know I was wrong. I see page 64, unit 1, where I wrote there is no accreditation. Number of 200 is accredited. For that unit if (sic) is not correct to say there was no accreditation. I have seen page 656 in unit 7. The remark is that there was no accreditation in manual register, but we have 37 as accredited I used documents to arrive at the figures there. I did not tender any documents save card (sic) read Exhibit 4. Total number of registered voters and PVC collected are in the same booklet supplied by INEC. They are*

*not here.*” (emphasis are provided).

Further flaws, contradictions ‘and inconsistencies of the Report by PW1 are obvious, without end and a highlight of a few of such will confirm the worthlessness of the witness’s evidence.

B i) Number of Registered voters on Exhibit SC is 779, while registered voters in the report of PW1 is 869. See page 5374 of volume 7 of the record.

C ii) At Atiba Oke Afin 11, total votes cast in PW1’s report is 8 while total votes cast on EC8A is 72. See page 5374 of volume 7 of the record.

iii) PW1’s analysis shows 11 rejected votes, while Exhibit 6A shows 1 rejected vote. See page 5374 of volume 7 of the record.

D iv) At page 139 of PW1’s analysis in unit 1, there was no rejected vote, while the total rejected votes on Form EC8A are 4. Total votes cast in PW1’s analysis are 130, while the total votes cast in form EC8A are 134. See page 5375 of volume 7 of the record.

E Again, on page 139 of PW1’s analysis in unit 012 the total valid votes are 172, while in form EC8A the total valid votes are 176. In his analysis there are no rejected votes, while in form EC8A, rejected votes are 3, see page 5375 of volume 7 of the record.

vi) At page 85 of PW1’s analysis number of registered voters is 869 while in Exhibit 5A, it is 779. See page 5375 of volume 7 of the record.

F The contradictions are numerous and without end. The court below, while agreeing rightly with the findings of the trial tribunal that the evidence of PW1 was thoroughly discredited under cross examination held thus amongst others:-

G *“It is clear therefore that the testimony of PW1 on the issue of non-accreditation and non-voting was effectively discredited in cross-examination. The tribunal was therefore right when it found that the appellant failed to prove that there was non-compliance with the provisions of the Electoral Act, 2010 (as amended) and the manual and Guidelines for the conduct of the election.”*

H With the foregoing conclusive and convincing analysis therefore, one wonders on what basis the appellant is urging upon this court to set aside the decision of the lower court and to hold that PW1 is credible and a worthy witness. This is bearing in mind that the findings by the court below are sound and cannot be otherwise.



***The appellant's further complaint against the decision by the lower court is where it was held that the Exhibits 1 - 192 were dumped on the tribunal and did not link with the case of the appellant; the counsel submits forcefully that the lower court did not evaluate exhibits 1 - 192. I seek to say that the law is settled on documents tendered in court which purpose and worth must be demonstrated through a witness. It is settled also that the duty lies on a party who wants to rely on a document in support of his case to produce, tender and link or demonstrate the documents tendered to specific parts of his case. The fact that a document was tendered in the course of proceedings does not relieve a party from satisfying the legal duty placed on him to link his document with his case.*** See C.P.C V. INEC (2011) 18 NWLR (Pt 1279) 493 at 546 - 547. The appellant at the trial tribunal, apart from tendering exhibits 1 - 192 through PW1 did not bother to demonstrate the exhibits through any witness. The witness PW1 merely dumped the exhibits on the tribunal and expecting it to go on a voyage of discovery.

It is not the court's lot to be saddled with nor can it *suo motu* assume the partisan responsibility of tying each bundle of such documentary evidence to the appellant's case to prove the malpractice alleged. It would amount to the court doing a party's case which will occasion injustice to the other party. The court as an arbiter must not get into the arena and engage itself in doing a case for one party to the disadvantage of the other party. The petitioner has the duty to tie the documentary evidence to the facts he pleaded through a witness. Anything short of that would be taken as dumping the evidence (documents) on the tribunal. Each document has to be related to the case; PW1 did not tie any of the documents, exhibits 1 - 192, 201, 203 - 2013, to its case. Therefore, the tribunal cannot be faulted when it rejected the exhibits. The lower court also rightly endorsed same. This court in the case of Omisore V. Aregbesola (2015) 15 NWLR (Pt 1482) 205 at 323, 332 drove home the point when it held "*Documentary evidence, no matter its relevance, cannot on its own speak for itself without the aid of an explanation relating its existence.*"

At page 6146 of the record, the lower court found that Pw1, not being the maker of Exhibits 1 - 192, 201 and 203 - 216 was not competent to lead evidence on the contents of those documents. It is

also held that PW1, not being a polling unit or ward agent for the appellant was not privy to the making of any of the electoral forms or documents neither was he present when they were made. This was how their Lordships concluded on PW1.

B *“Any evidence so adduced by him as to the contents of those documents would be hearsay and therefore inadmissible.”*

C The view taken by the lower court cannot be faulted, moreso where the appellant has not presented any cogent argument to the contrary upon which this court may be invited to interfere with the well reasoned finding of the lower court. Premised on the unassailable and the detailed review, of the evidence of PW1 by the lower court therefore, it was proper that it upheld the decision of the trial Tribunal in rejecting the report/analysis qua opinion of PW1. The said issue is resolved against the appellant.

D **ISSUE 2**

The appellant’s grouse in this issue is where it challenges the lower court in affirming the decision of the trial Tribunal in spite of the alleged non evaluation or improper evaluation by the said tribunal. It is intriguing to state at this point that, although the appellant E called 29 witnesses, it has chosen to rely solely on the evidence given by PW1. The initial implication is the appellant’s abandonment of the evidence given by the 28 other witnesses. The other implication is simply that the proof of the various criminal allegations made in respect of hundreds of polling units in the 10 local government areas, F which proof is now anchored on the evidence of the same one man – PW1. There is no evidence shown either before the tribunal or lower court that PW1 is immortal and omnipresent so as to be at all the various polling units at one and the same time. See Okechukwu G V. INEC and Oke V. Mimiko (supra).

At page 6138 of the record, the lower court held and affirmed the tribunal decision when it said thus:-

H *“It is therefore obvious that the trial tribunal declined to give any weight or probative value to the documentary evidence tendered by the appellant and admitted in evidence, on the ground that the appellant led no evidence to demonstrate the purpose of the documents, but merely dumped them on the Tribunal.”*

The appellant did not appeal the decision of the lower court on the point that exhibits 1 - 192 were dumped. The law is settled

that a decision of a court or portion thereof, not appealed against remains binding on all persons and authorities and no issue can be raised therefrom; see *Akere v. Gov. of Oyo State* (2012) 12 NWLR (Pt 1314) 240 at 278, *Chami V. USA Plc* (2010) 6 NWLR (Pt 1191) 474 at 493 and *Saude V. Abdullahi* (1989) 7 NWLR (Pt 116) 384.

***It goes without saying that there are crucial electoral documents which must be tendered by a petitioner in proof of over-voting and how such must be tendered. The most important of such are the voters' register used in the challenged election, and forms EC8A. These are the documents which the appellant, through its witness PW1, admitted they did not tender and thus an admission against interest.*** See *Ipinlaye* 11 V. *Olukotun* (1996) 6 NWLR (Pt 453) 140 at 165.

Also in the recent decision of this court in se. 907/2015 – *Mahmud Aliyu Shinkafi & Anor. V. A. Abdulazeez Abubakar Yari & 2 Ors* (unreported) delivered on 8<sup>th</sup> January, 2016, it was held that-

*“To prove over-voting, the law is trite that the petitioner must do the following:-*

- 1. Tender the voters 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...”*

Also in the case of *Ucha & Anor V. Elechi & Ors* (2012) 13 NWLR (Pt 1317) 330 at 369 it was held thus:-

*“When a party decides to rely on documents to prove his case, there must be a link between the document and the specific area(s) of the petition. He must relate each document to specific area of his case for which the document was tendered. On no account must counsel dump documents on a trial court. No court would spend precious judicial time linking documents to specific areas of the party's case. See ANPP V. INEC (2010) 13 NWLR (Pt 1212) 549.”*

It cannot be over emphasized that a party must relate each document to specific area of his case. Without such link, no court would act on such dump documents.

Also at page 6141 of the record, the lower court further said:-

“...the documents tendered by the appellant remain devoid of any oral evidence linking the specific complains to them. When PW2 to PW29 testified, they did not fare better. The tribunal was therefore right when it held that the appellant dumped the exhibits on it without leading or adducing evidence linking or relating the specific allegations in the petition.”

It is the appellant’s argument also that with the tribunal giving the petitioner the liberty to inspect documents under section 151(1) of the Electoral Act, it had no choice but to admit and ascribe probative value to the report of such inspection. The lower court at pages 6100 to 6101 in putting the provision of section 151(1) of the Electoral Act into a proper perspective held that, the Section “has not been promulgated as a special provision for the admissibility of polling or electoral materials. It is to give to the tribunal or court hearing electoral disputes to compel the electoral body to give access to all necessary parties to inspect such documents used in the conduct of the election.” As rightly held out by the lower court, it is clearly unsailable that the intention of the Legislature in making Section 151 (d) of the Electoral Act is not to rubbish or diminish the effect of the settled position of law on admissibility of evidence. The appellant, as rightly held by the lower court, did not only fail woefully to prove any of the criminal allegations raised, but that the appellant actually abandoned the allegation of crime in the petition.

On the appellant’s brief, various issues of non-compliance were raised especially of non-accreditation and non-voting and in respect of which the appellant relied extensively on decisions of the lower court in *Ajadi V. Ajibola* (2004) 16 NWLR (Pt 898) 91 also *Oni V. Fayemi* (2009) 7 NWLR (Pt 1140) 223 without taking into consideration the peculiar facts of this case and the failure of the appellant and his candidates at the trial tribunal to establish the various acts of non-compliance.

On the question of non-accreditation and non-voting specifically, the lower court agreed with the trial tribunal that most of the appellant’s witnesses testified under cross-examination that they were accredited and they voted.

It is intriguing that the appellant who called 28 other witnesses choose to abandon their evidence and relied on PW1 squarely. The

only explanation must be as a result of the all round contradictions which are manifestly obvious on the appellant's case vis-à-vis the evidence of the other 28 witnesses it called. No wonder, the reason for the non - projection of the other 28 witnesses is not far-fetched therefore. The appellant alleged that the decision of the lower court that *"Exhibits 1 - 192, and Exhibit 201, 203 - 216 were neither tied to nor related to the appellants (petitioners) case is very perverse....."* However, it (appellant) did not go further to state how the exhibits were tendered, and why it is wrong. B

Under cross-examination further, PW1 at pages 5373 - 5378 volume 7 of the record said thus on his own document (reports). *"There are no errors in the 2 volumes I tendered"* After some errors were shown to him, he admitted as follows:- C

*"I did not tender any form EC8As before the Tribunal. Many Voters Register were also not tendered before the Tribunal... We did not use voters register or form EC8As in our analysis... I know now that I was wrong... (sic). I did not tender any document save card read Exhibit A... I was not the only one that prepared the analysis."*

A thorough review and evaluation of the totality of PW1's evidence on the judgment of the tribunal are at pages 5560 - 5564 volume 7 of the record, while his cross-examination was at pages 5564 - 5567 the same volume 7. Further evaluation of the witnesses' evidence was at pages 5598 - 5601 volume 7 of the record, and at page 5599 the tribunal held and said thus amongst others:- E

*"...; it would not be correct to say that there was no accreditation..."*

The lower court in taking another look at PW1's evidence and other pieces of evidence adduced by the appellant also came to the following conclusion:- F

*"Though the Tribunal did not bring out the contradictions and inconsistencies in the testimony of PW1, a careful study of the cross-examination of the witness would reveal same. A sample of such contradictions would suffice..... There are so many of such contradictions and wrong entries in their analysis that were brought out by counsel in cross-examination. These contradictions and inconsistencies were so many that, PW1 was forced to eat the humble pie when he admitted at a stage that he was wrong. See page 6147 of*

*the record.”*

It is on record that PW1 is the star witness to the appellant’s case. The said PW1 testified and admitted in his evidence that he made series of mistakes in the report he presented. The record has shown series of flaws and contradictions in his report; for instance, almost all the other witnesses testified that there was accreditation and that they voted. It will not be wrong to say that appellant’s claim that he proved his case before the tribunal is nothing but a figment of his imagination which, *“tell is full of fury and signifying nothing.”*

As rightly submitted by the counsel for the 1<sup>st</sup> respondent, the much touted evidence of PW1 and many of the witnesses largely went to no issue having pleaded that election did not take place at all in 10 Local Government Areas; PW1 went ahead to give evidence of election at variance with his pleadings when he tendered the electoral forms used for the election in those LGAs. The appellant as rightly submitted by the respondent is bound by the case put forward at the trial tribunal and would not be allowed to change its stance on appeal.

***The appellant also contended that the 3<sup>rd</sup> respondent did not lead any evidence to explain the established discrepancies found in the documents used for the election. The law is trite that a respondent needs not call evidence where the petitioner has failed to prove his case.*** See *Azenabor V. Bayero University Kano* (2009) 17 NWLR (Pt 1169) 96 at 115 - 116 where it was held that-

*“In civil matter, a plaintiff cannot assume that he is entitled to automatic judgment just because the other party had not adduced evidence before the trial court. See Agienoji V. CO.P. Edo State (2007) 4 NWLR (Pt 1023) 23.”*

***The plaintiff has the duty to prove his case on the balance of probability or on preponderance of evidence. The weakness of the defence will not relieve him of the responsibility. Issue No. 2 for all intents and purposes is also resolved against the appellant.***

The totality of this appeal deserves nothing less than a dismissal for lacking in merit. The appellant, asides failing to give compelling reasons why the concurrent decisions of the two lower courts should be set aside, has also conceded to various crucial findings of

the lower court as stated earlier in this judgment and has failed to appeal against same. It is also bewildering for the appellant to embark on a hurricane task of proving its case of non-compliance with Electoral Act in hundreds of polling units across 17 LGAs of Oyo State through the evidence of PW1 only. The witness' evidence is nothing but a sham for having crumbled like a loaf of bread soaked in hot water. I have no reason to depart from the unassailable judgment of the two lower courts which are well reasoned. B

In the result, I also dismiss the appeal SC. 12<sup>A</sup>/2016 as lacking in dire merit. I make a further order that each party is to bear the cost of prosecuting the appeal. C

Appeal is hereby dismissed with no order made as to costs.

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**ONNOGHEN JSC**

On the 2<sup>nd</sup> day of February, 2016 we heard the appeals and cross appeals in the substantive appeals above listed and delivered judgments in which the cross appeals in S.C/12/2016 were allowed and the rulings of the lower court dismissing the objection of the cross appellants therein were set aside and appeal No. CA/IB/EPT/GOV/31/2015 filed by Senator R.A. LADOJA dismissed for being in abuse of process. Consequently, appeal No. S.C/12/2016 arising from the decision in CA/IB/EPT/CJOV.131/2015 was also dismissed for abuse of process. D E

We also dismissed the surviving appeal No. SC/12A12015 for lack of merit in the lead judgment delivered by my learned brother, OGUNBIYI, JSC and adjourned the matter to today for reasons for the decisions to be given. Below, therefore, are some of my reasons for the decisions delivered on 2<sup>nd</sup> February, 2016. F G

I have had the opportunity of reading in draft, the lead reasons for judgment of my learned brother, OGUNBIYI, JSC just delivered and I agree with the reasons and conclusions reached therein.

The facts of the case giving rise to the appeals have been stated in detail in the said lead reasons for judgments making it unnecessary for me to repeat them herein except as may be relevant to the point(s) being made. H

My learned brother had also dealt exhaustively with the issues relevant for the determination of the appeals leaving me with not

much to comment on except the cross appeals which raise, for the first time, an issue of abuse of process arising from the emerging trend by counsel to proliferate appeals arising from a single election petition instituted jointly by the political party and its candidate for an election, to which a single judgment was delivered by the election  
B tribunal.

Appellant in SC/12/2015, Senator R.A. LADOJA, was a gubernatorial candidate of the 4th respondent, ACCORD in the governorship election of Oyo State held on 11th day of April, 2015 which  
C the 3rd respondent, INEC, declared was won by the 1st respondent, Senator A. AJIMOBİ. Being dissatisfied with the declaration of result by the 3rd respondent, appellant and 4th respondent filed a joint election petition on the 2<sup>nd</sup> day of May, 2015, No. EPT/18/GOV/22/2015, which petition was dismissed by the tribunal in a judgment  
D delivered on the 2<sup>nd</sup> day of October, 2015.

Appellant and the 4th respondent were dissatisfied with the said judgment but rather than file a joint appeal against the decision, decided to file separate appeals against the same judgment arising from their joint petition. As a result, appellant filed appeal No. CA/IB/  
E EPT/GOV/31/2015 which gave rise to SC/12/2015 while the 4th respondent filed appeal No. CA/EPT/GOV/31A/2015 which also resulted in SC/12N2015 before this Court.

In the course of hearing of the appeals before the lower court, the cross appellants herein raised preliminary objections to the ap-  
F peals on the ground that they constitute an abuse of process as born arose from the same facts and judgment by the tribunal in a joint election filed by the parties. The objections were duly argued in the briefs of the parties and heard along with the substantive appeals. In  
G the judgments in the respective appeals, the lower court dismissed the preliminary objections giving rise to the cross appeals now under consideration.

The issue for determination in the two sets of cross appeals generated by the rulings on the objections, is as follows:-

H *“Whether the lower court was in error by dismissing appellant’s preliminary objection relating to the abusive nature of the appeal filed before it by the 1<sup>st</sup> respondent.”*

The following facts are not in dispute:

(a) that 1st and 4th respondents presented a joint election pe-



tion challenging the return of the cross appellant as the Governor of Oyo State in the governorship election held on 11th April, 2015.

(b) that the petitioners were represented by a team of legal practitioners

(c) that they relied on the same facts pleaded in the petition and witness statements; B

(d) that they called the same witnesses and presented the same address before the tribunal.

(e) that 1<sup>st</sup> and 4th cross respondents filed a joint motion before the tribunal prayer for leave to call additional witnesses dated 6<sup>th</sup> August, 2015 which application was dismissed resulting in a joint appeal to the lower court in appeal No. CA/13/EOT/GOV/06/215 which was dismissed by that court on the 14th day of October, 2015. C

(f) that the judgment of the tribunal delivered on the 27th day of October, 2015 dismissed the said joint petition. D

(g) that following the said judgment, the 1st and 4th cross respondents filed separate appeals, and,

(h) that by filing separate appeals against the same judgment given against them in a joint petition each petitioner made his co-petitioner a respondent in his own appeal against the judgment. E

It is the contention of learned Counsel for the 1st cross respondent that the submission of Counsel for cross appellant that 1st and 4th cross respondents ought to have retained a team of legal practitioner in a single appeal against the judgment is erroneous in that the *“argument overlooked the restatement of the state of the law in regard to issues in contention which cannot change at the appellate court from those submitted to the trial court...”* F

In other word, an appellant is not bound to retain all parties at the trial in his appeal. And this is more so in an election petition cases where by provision of section 137(1) of Electoral Act, 2010 as amended, provides: G

*“137(1) An election petition may be presented by one or more of the following:-*

*(a) A candidate in an election* H

*(b) A political party which participated in the election.”*

We submit that if either or both of these persons can present an election petition, nothing should constitute a clog in both persons filing separate appeals since both are recognized by the extant law.”

It is the further submission of learned Counsel that by the provisions of section 36(6) (c) and 243 (a) of the Constitution of the Federal Republic of Nigeria, 1999, as amended, the 1st and 4th respondents being parties to the election petition are constitutionally entitled to file separate appeals.

B I have to point out that the issue before the court is not whether the parties to the joint election petition did not have a right of appeal to the Court of Appeal as constitutionally provided in section 246(1) of the Constitution of the Federal Republic of Nigeria, 1999, as amended (hereinafter and referred to as the 1999 Constitution, as amended).

The above provision enacts thus:

“(1) An appeal to the Court of Appeal shall lie as of right from (c) decisions of the Governorship Election Tribunals on any D question as to whether...

(ii) any person has been validly elected to the office of a Governor or Deputy Governor, or...”

The issue is whether in the exercise of his constitutionally recognized right of appeal, a party has equal right to commit abuse of E court process in the process of exercising his right of appeal. It is settled law that rights of appeal are exercised in accordance with law, rules and procedures governing appeals. Can a right of appeal be exercised in abuse of court process?

F In any event, what do we mean by abuse of process of court? In the case of Saraki vs Kotoye, (1992) 9 NWLR (pt. 264) 156, this Court stated that the concept of abuse of judicial process is imprecise and that it involves circumstances and situations of infinite variety and conditions; that a common feature of the concept is the improper use of the judicial process by a party in litigation to interfere G with the administration of justice. At page 188 of the report, KARIBI-WHYTE, J.S.C. stated the position as follows:-

“...It is recognized that the abuse of the process may lie in both proper or improper use of the judicial process in litigation. But the H employment of judicial process is only regarded generally as an abuse of the judicial process when a party improperly uses the issue of the judicial process to the irritation and annoyance of his opponent, and the efficient and effective administration of justice.”

The court went further to state or lay down the circumstances

that will give rise to abuse of judicial process to include the following:-

(i) Instituting a multiplicity of actions on the same subject matter against the same opponent on the same issues, or a multiplicity of action on the same matter between the same parties even where there exists a right to begin the action.

(ii) Instituting different actions between the same parties simultaneously in different courts, even though on different grounds: B

(iii) Where two similar processes are used in respect of the exercise of the same right for example, a cross appeal and a respondent notice.

(iv) Where an application for adjournment is sought by a party to an action to bring an application to court for leave to raise issues of fact already decided by courts below; C

(v) Where there is no iota of law supporting a court process or where it is premised on frivolity or recklessness. D

Finally, this Court held, *inter alia*, that the abuse of process lies in the multiplicity and manner of the exercise of the right rather than the exercise of the right *per se*; it consists of the intention, purpose or aim of the person exercising the right to harass, irritate and annoy the adversary, and interfere with the administration of justice; it is the inconvenience and inequities involved in the aims and purposes of the action. See also *Okorodudu vs Okoromadu* (1977) 3 S.C 21; *Oyebola vs Esso West Africa Inc* (1966) 1 All NLR 170; *Harriman vs Harriman* (1989) 5 NWLR (pt. 119)6, etc, etc. E

As stated earlier in this judgment, no one is disputing the right of 1st and 4th cross respondents to appeal against the judgment of the tribunal which was entered against them. The complaint is against the multiplicity and manner of the exercise of the right of appeal which is clearly aimed at harassing, irritating and annoying their adversely, the cross appellants herein. F G

The 1st and 4th cross respondents can exercise their right of appeal against the judgment delivered by the tribunal arising from their joint petition by filing a single appeal, not two, where the facts in the pleadings evidence by witnesses, address of counsel etc, are the same. To file separate appeals in the circumstances of the case is clearly in abuse of court process which should not be encouraged. H

The present situation in which the Supreme Court is faced with six or seven appeals arising from a single judgment of an election

tribunal in a petition jointly filed by a political party and its candidate for an election is very worrisome and in bad taste having regard to the time within which the court is to hear and determine all the appeals vis-à-vis the other matters within its jurisdiction.

I hold the strong view that what should be the concern of the parties and the courts is whether the decision/judgment of the lower courts is/are right having regards to the pleadings, grounds for challenging the election, evidence adduced in proof of same, addresses of counsel and the law(s) applicable thereto. In the instant case, the grounds for challenging the election, facts pleaded and evidence etc by the petitioners remained the same. The judgment of the tribunal is also based on the above scenario. Suddenly, the 1st and 4th respondents felt that their case on appeal, though based on the same issues as quoted earlier from the submission of counsel for 1st and 4th cross respondents, what matters is the parties!! This is very erroneous. By filing a single or joint appeal, appellant and 4th respondent would still be exercising their right of appeal and be acting within the provisions of section 137 of the Electoral Act, 2010 as amended. Secondly, by having two appeals arising from a judgment by two co-petitioners, it means and in fact, one or each of the co-petitioners is made a respondent to each other's appeal. How can a respondent in such an appeal, as in this case, perform the traditional role of a respondent, which is defending the judgment appealed against?

In any event, the interest of appellant herein is adequately protected by appellant in SC/12N2015 as both parties share common interest and have the same issues for resolution by the appellate court arising from the decision of the tribunal. To allow the current trend to continue may one day lead to this Court or the Court of Appeal giving conflicting judgments on the appeals arising from the same judgment in a case jointly instituted by the appellants which would do the judiciary no good.

It is for the above and the more detailed reasons given in the lead reasons for judgment by my learned brother, OGUNBIYI, JSC, that I too allowed the cross appeals in SC/12/2016 and made the earlier reproduced consequential orders related thereto.

Having so allowed the cross appeals in S.C.112/2016, it follows that the cross appeals in SC 12A12016 have become spent and consequently discountenanced.

On the surviving main appeal No. S.C/12A12015, the main issue in contention by the appellant centers around the weight to be attached to the testimony of PW1 and exhibits 1 - 193 and 201 - 217 tendered through him (PW1).

Much weather has been made about the evidence of PW1 and exhibits PW1 - 192, "201 - 217" by learned Counsel for appellant. B

It is not in dispute that in the lower court, appellant did not appeal against the findings of the tribunal that the inspection conducted by PW1 involved the exercise of specialized knowledge of scientific and technical nature, which PW1 did not possess. In reaction to this, the lower court held that the non-appeal against the said finding meant that the findings were conceded by appellant. In fact learned Counsel for appellant, in oral argument before the court on 2<sup>nd</sup> February, 2016 conceded that PW1 was in no time presented as D an expert witness but that the evidence of PW1 and the exhibits generated by his inspection of the electoral materials are I am of the strong view that the question/issue of admissibility of the report of the inspection so ordered by the tribunal or court and weight to be attached thereto is governed by the Law of Evidence as contained in E the provisions of the Evidence Act, 2011 and principles of the law pronounced by the courts.

Learned Counsel for appellant haven argued that the case of appellant, as regard admissibility of the evidence of PW1 and the exhibits generated by him upon inspection of the documents was not F based on PW1 being an expert, it follows that the admissibility and weight to be attached to the evidence of PW1 and the exhibits in question are to be governed by the Law of Evidence relating thereto. In other words, since PW1 is admittedly not an expert, he cannot G give evidence as, nor can he be treated as, an expert by the court. He is, therefore, an ordinary witnesses who can only give direct evidence as to what he saw, heard, did, etc.

It is in evidence that PW1 was not present in all the polling H units in the local governments in dispute which means his evidence or testimony in respect of polling units other than the one he was present, is clearly hearsay and consequently inadmissible. Not being admissible evidence, it follows that it has no weight at all in law. This is trite law.

However, in the instant case, though the evidence of PW1 was rightly found to be inadmissible, the tribunal admitted and evaluated same before coming to its conclusion in the matter and the lower court equally reviewed the issue and affirmed the conclusion of the tribunal.

B The findings and holdings of the lower courts on PW1 and the exhibits concerned being as above and having regard to the fact that the said evidence of PW1 and the exhibits concerned constitute the pivots of the petition of appellant, it follows that the petition of appellant, in the circumstances had nothing to support it - it lacked evidence and as such liable to be dismissed.

C The woes of appellant do not end there. It extends to the issue of dumping of the documents admitted as exhibits PW1 - 192 & 201-217, which simply means that appellant did not lead his witness(es) to link the documents to each and related ground for challenging the election, polling unit by polling unit, in all the 33 local government areas of Oyo State being in contention.

It is for the above reasons and the more detailed reasons contained in the lead reasons for judgment of my learned brother, E OGUNBIYI, JSC, that I too dismissed the appeal in S.C/12A/2015.

I abide by consequential orders made in the lead reasons for judgment including the order as to costs.

Appeal dismissed.

F \_\_\_\_\_

### **NGWUTA JSC**

The Court heard the appeals and cross appeals listed above on 2/2/2016. My learned brother, Ogunbiyi, JSC pronounced the lead judgment and reserved the reason for the judgment to 15/2/2016. I delivered my judgment in which I agreed with the lead judgment and reserved my reasons to 15/2/2016.

I have read the reasons for judgments of my learned brother, Ogunbiyi, JSC just delivered. I entirely agree with the reasons adduced and it is for these reasons I also allow the cross appeals in SC.12/2016 and discountenance the cross appeals in SC.12A/2016 as having become spent. And I also dismiss the appeal in SC.12A/2016.

I adopt the consequential orders made in the lead reasons for

judgment including order as to costs.

Appeal dismissed.

### **PETER-ODILI JSC**

I am in total agreement with the reasons for judgment delivered by my learned brother, Clara Bata Ogunbiyi JSC, which judgment was delivered on the 2nd day of February, 2016 in which the appeal was dismissed and the decision of the Court of Appeal affirmed. To underscore my support I shall make some comments. B

The appeals against the judgment of the Court of Appeal, Ibadan Division Coram: Ogunwumiju, Tsammani, Onyemenam, Oyewole and Shuaibu, JJCA delivered on the 17th day of December, 2015 which affirmed the decision of the trial tribunal which dismissed the petition challenging the declaration of 1<sup>st</sup> respondent as winner and returned as Governor of Oyo State by the 3<sup>rd</sup> respondent, INEC. C

Learned counsel for the appellant on the 2<sup>nd</sup> day of February, 2016 adopted its Brief of argument settled by Aderemi Olatubora and filed on the 18/1/2016. He distilled four issues for determination which are stated hereunder, viz: D

1. Having regard to the record of proceedings and process placed before the court below and the court below's own record of the hearing of the appeal, whether its conclusion that documents admitted in evidence were not demonstrated in open court but remained in vehicles and containers in which they were produced outside the court room was not perverse and occasioned a miscarriage of justice. (Ground 1) E

2. Having regards to the grounds of appeal and issue No. 1 submitted for the consideration of the court below by the appellant, whether the court below was not wrong to have held that the decision of the tribunal to the effect that inspection and analysis conducted by PW1 involved specialized and knowledge of scientific and technical nature was not appealed against. (Ground 3) F

3. Having regard to the facts of this case, the state of the law, particularly the decisions of the court below in similar cases, whether the court below in similar cases, whether the court below was wrong to have excluded the evidence of PW1 and for failing to evaluate certificate true copies of election documents Exhibits 1 to 192, on H

which PW1's evidence is based. (Grounds 2, 4 and 4)

4. Having regard to the facts of the case and the evidence led at the hearing of the petition, whether the court below was not wrong to have dismissed the appeal of the appellant and affirmed the decision of the tribunal that the petition was not proved. (Grounds 6, 7, B 8, 9, 10, and 11)

For the 1<sup>st</sup> Respondent, learned counsel adopted the Brief of Argument settled by Olabode Olanipekun Esq. and filed on the 29/1/2016. He crafted therein, two issues for determination which are C as follows:

1. Having regard to the nature of the evidence of PW1, whether in affirming the decision of the trial tribunal discountenancing his evidence in its entirety. (Ground 2, 3, 4, 5, 6 and 11)

2. Considering the facts of this case and the evidence before D the lower court, whether the lower court was wrong when it affirmed the decision of the trial tribunal dismissing the petition as having not been proven. (Grounds 1, 7, 8, 9 and 10)

For the 2<sup>nd</sup> respondent, learned counsel adopted its Brief of Argument settled by Chief Akin Olujinmi SAN and adopted the four E issues of formulated by the appellant.

Prof. Wahab Egbewole of counsel for the 3<sup>rd</sup> respondent adopted the Brief of Argument filed on the 22/1/2016 and in it framed two issues for determination which are thus:

#### ISSUE 1:

F Whether the court below was not right in endorsing, agreeing with and confirming the decision of the trial tribunal on the worthlessness of the testimony of PW1 and lack of probative value of Exhibits 1-192 tendered through the witness who gave evidence as a G member of Accord and a farmer. (Ground 3, 4, 5, and 11)

#### ISSUE 2:

H Whether the court below was not right in holding that the trial tribunal properly evaluated and ascribed proper probative value to the testimony of all the witness fielded by the appellant and properly evaluated all the documentary evidence especially exhibits 1-192 tendered by the appellant at the trial tribunal. (Grounds 1, 2, 7, 8, 9, 10.)

Learned counsel for the appellant also adopted the Reply Brief in answer to the 1<sup>st</sup> respondent, filed on 1/2/2016, Reply Brief to 2<sup>nd</sup>



respondent filed on 26/1/2016.

I find it convenient to use the issues as identified by the appellant.

### ISSUES NOs 1, 2, & 3

1. Having regard to the record of proceedings and process placed before the court below and the court below's own record of the hearing of the appeal, whether its conclusion that documents admitted in evidence were not demonstrated in open court but remained in vehicles and containers in which they were produced outside the court room was not perverse and occasioned a miscarriage of justice. B  
C

2. Having regards to the grounds of appeal and issue No. 1 submitted for the consideration of the court below by the appellant, whether the court below was not wrong to have held that the decision of the tribunal to the effect that inspection and analysis conducted by PW1 involved specialized and knowledge of scientific and technical nature was not appealed against. D

3. Having regard to the facts of this case, the state of the law, particularly the decisions of the court below in similar cases, whether the court below in similar cases, whether the court below was wrong to have excluded the evidence of PW1 and for failing to evaluate certificate true copies of election documents Exhibits 1 to 192, on which PW1's evidence is based. E

The appellant drew attention to grounds 1-3 of the Notice of Appeal to buttress that the issue of the inspection and analysis conducted by PW1 was appealed against and that the court below was wrong in its conclusion that the matter was outside the record. He cited *Oguntayo v Adelaja* (2009) 15 NWLR (Pt. 1163) 150. F

On the matter of the conclusion of the court below that PW1 was not qualified as a expert, the appellant contended that the lower court came to that decision from outside the case presented by the appellant and so perverse. He cited *INEC v Ifeanyi* (2010) 1 NWLR (Pt. 1174) 76 at 86. G

Learned counsel for the appellant submitted that the documentary evidence tendered in the tribunal were those pleaded and listed in the petition and in respect of which PW1-PW26 contrary to the conclusion of the court below. That exhibits 1 to 192 are certified true copies (CTCS) of guidelines, regulations and manual for the elec- H

tions, Forms EC 8A, Register of Voters, Card Readers Data etc of the disputed polling units and that each of those exhibits were tendered in evidence through PW1. He referred to the proceedings of 11<sup>th</sup> Augustine 2015 in the tribunal and shown at pages 5287 to 5371 volume 7 of the Record of Appeal. That the conclusion of the court below that the documents relied upon were left in vehicles and containers outside the court room and were not demonstrated, is not supported by the record and so the conclusion on the point by the court below perverse. He cited *Oguntayo v Adelaja* (2009) 15 NWLR (pt. 1163) 150 at 190-191; *Adebesin v State* (2014) 9 NWLR (Pt. 1413) 609 at 646; *Ogolo v Fubara* (2003) 11 NWLR (Pt. 831) 231 at 264.

Learned counsel for the 1<sup>st</sup> respondent contended that since the PW1 was the only witness by which the appellant sought to prove malpractices in the 17 Local Government Areas which amount to nothing less than hearsay and contrary to Section 115 (1) and (2) of the Evidence Act. He cited *Bamaiyi v State* (2001) 8 NWLR (pt. 715) 270 at 289 etc. That the evidence of PW1 is totally forbidden by law as he admitted preparing the witness statement to meet the target of the petition, clearly working to the answer. That the interest of the maker in the outcome of the proceeding is unquantifiable. He was not an expert, but a party deeply involved. He referred to *NSITFMB v Klifco Nig. Ltd* (2010) 13 NWLR (Pt. 1211) 307 at 324; *Guar v Adeole* (2003) 3 NWLR (Pt. 808) 516 at 531.

For the 1<sup>st</sup> respondent it was stated that promised on the unasailable and detained evaluation of the evidence of PW1 by the lower court, it is submitted that the lower court was right to have affirmed the decision of the trial tribunal rejecting the report/analysis qua opinion of PW1.

For the 2<sup>nd</sup> respondent, it was submitted that the tribunal held that the document were dumped which the court below agreed with and since there was no specific decision by either court on the irrelevant non-issue of where the dumped documents were kept. He cited *Ogunbiyi v Ishola* (1996) 6 NWLR (Pt. 452); *Buhari v Obasanjo* (2005) 13 NWLR (Pt. 941) 1 at 158; (*Adelekan v Ecu-line NV* (2006) 14 LRCN 2290 at 2305 etc.

Learned counsel for the 3<sup>rd</sup> respondent canvassing the point of view of the respondent said the evidence of PW1 on the analysis of

the election materials used for the conduct of the election as contained in his statement on oath which includes the Report of Inspection is an opinion evidence and having not been an expert in that field his evidence is not admissible. He cited sections 67 and 68 of the Evidence Act 2011. He cited *Dagayga v State* (2006) ALL FWLR (Pt. 308) 1212 at 1231. B

That PW1 is somebody who had pecuniary or other material things to gain in the success of the appellant and 4<sup>th</sup> respondent at the trial and so a person interest in the petition filed before the tribunal those evidence was rightly rejected. He relied on section 83(3) of the Evidence Act, 2011; *Anyaebosei & Ors v R. T. Briscoe Nig. Ltd* (1987) 2 NSCC 805 at 823. C

In a nutshell the case of the appellant is that the decision of the court below was wrong in refusing to set aside the decision of the trial tribunal that the evidence of PW1 is opinion evidence, evidence of party interested and evidence thoroughly discredited under cross-examination and there for inadmissible, worthless and not worthy of being ascribed probative value. Also contested by the appellant as erroneous is that the court below in affirming the decision of the trial tribunal that exhibits 1-192 were not tied to the case of the appellants having been dumped on the tribunal and so deserved no probative value or to be made use of in arriving at a decision in favour of the appellant. D

The stance of the respondent is that PW1 whose evidence appellant wants the court below to ascribe probative value, testified before the trial tribunal as a member of the team that analysed the election material and made various comments and analysis in both the Report of the Inspection and his statement on oath adopted as Evidence-in-Chief. Also exhibits 1-192 were also tendered and admitted though the same PW1. E F

The appellant was unhappy with the concurrent findings of the tow courts in relation to the evidence of PW1 who in effect was put as an expert while in reality, his evidence was that of party interested and not qualified to be pushed forward as an expert whose expertise could be utilized in the analysis of the relevant specialized documents. G H

In regard to this matter of expert opinion and what the law is as to how it is to be received and what to do with it, I am at one with

learned counsel for the 3<sup>rd</sup> respondent that it is only the opinion of a person specially, or professionally skilled in the area that is admissible. Indeed the court is not allowed to accommodate any other opinion except that of a skilled person and not that of any other witness.

The reasons given by the court below in excluding the testimony of PW1 was that he was not an expert. In paragraphs 1, 2, 3, 6, 7 and 8 of this statement on oath, PW1 testified as follows:

1. *"I am a member of the Accord, the 1<sup>st</sup> petitioner in this petition.*

2. *I am the leader of the team of inspectors that inspected all election documents in the Independent National Electoral Commission's Headquarters in Abuja; in Oyo State Headquarters and the 33 offices in the 33 Local Government Areas of Oyo State, Ibadan office pursuant to the order of this honourable tribunal dated 28<sup>th</sup> April, 2015. Other members of the petitioner's said inspection team are...*

3. *In carrying out the inspection, our team studied the petition of the petitions carefully and we strictly confined our inspection to the complaints contained in the petition and the documents the petitioners pleaded and gave notice of in the petition that they well rely upon at the hearing of the said petition.*

6. *In our inspection and rendition of report, we followed the chronological arrangement of polling units, words and local government areas as contained in paragraphs 11, 12, 13, 14, 15, 16, 17, 18, 19, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, and 39 of the petition.*

7. *In this report, our team among other things, analysed the number of PVCs or Voters purportedly captured by card readers in each disputed polling units; number of voters purportedly accredited in the voters register claimed to have been used in each of the disputed polling units; number of purported voters accredited in voters register; number of purported votes case in the voters' register according to the ticking of the appropriate boxes provided in the said voters' register and purported number of voters accredited valid votes, rejecting votes and total votes cast according to the entries in each of the forms EC.8A in respect of each of the disputed polling units.*

8. *The focus of our inspection was to establish the case made in respect of each of the disputed polling units."*

See pages 3170 to 3173, Vol. 4 of the Record of Appeal. At

the trial tribunal, PW1 testified giving opinion on the report of the inspection team of the electoral material used during the said election. While the appellant took the position that PW1 was competent to so testify the respondents refuse to go along the same lines saying the only opinion acceptable to a court or tribunal to be so used can only that of an expert which PW1 was not. In this I cite the case of: A.C. N. v Nyako (2013) ALL FWLR (Pt. 686) page 424 at 462 paras E. G. on this proposition of law held as follows

“Where a court or tribunal requires to form an opinion upon a point specified thereunder, the opinion of persons specially skilled is needed. It is a condition precedent to the admissibility of the opinion tendered to enable the court form its own opinion that it is that of a person specially skilled in the area the court or tribunal is required to form its opinion on a point. The qualification, experience and depth of the person’s learning are invariably the criteria which entitle him to tender his opinion in order to aid the court or tribunal. The person so qualified under the section is called an expert. His opinion is necessary and so admissible because same is outside the experience and knowledge of the judge as a judge of fact. It is the court’s prerogative to determine that the person being called as a witness, by his qualification and learning on the subject in which the court requires his opinion and the reasons for the opinion, is indeed specially skilled”. This court had taken the same view in Dogayya v. State (2006) ALL FWLR (Pt. 308) 1212 at 1231 in which was expatiated that an opinion is what a person thinks about something based on the person’s personal judgment rather than actual facts. An opinion also means what in general people think about something. It connotes or conveys a professional judgment on part of a professional or expert”.

It is therefore in keeping with the stated positions of the law with regard to opinion evidence that the Court of Appeal in this instance had this to say when confirming, agreeing with and affirming the decision of the trial tribunal held in its judgment at pages 6112-6113 of volume 8 of the Record of Appeal, that PW1 having not been an expert which PW admitted not to be held as follows:

*“As stated earlier in the course of this judgment, the issue whether or not PW1 is an expert is not in contention in this appeal. Indeed, the appellant has conceded that they did not put forward the PW1 as an expert. In that respect, there is not need for a decision*

*for a decision here as to whether or not PW1 based on the Inspection and conclusions are inadmissible by virtue of section 67 of the Evidence Act 2011, PW1 not being an expert. The PW1 was not projected by the appellant before the tribunal as a person who has acquired specialized qualifications, experience knowledge or testimony in the act of establishing the electoral irregularities, analysis of electoral forms, card readers, voters' cards, and other electoral materials or documents, his evidence materials or documents, his evidence is irrelevant and inadmissible in forming its opinion on the issues in contest."*

The Court below went further at pages 6142-6143 of the record of appeal thus:

*"Further, his statement on which he relies on as his evidence in chief was full of opinions and conclusions on the contents of the exhibits tendered. For example, PW1 deposed in paragraphs 8 and 9 at page 3525 of Vol. 5 of the report as follows:*

*"The focus of our inspection was to establish the case made, in respect of each of the disputed polling units.*

*9. In each and every of the disputed polling units, our team found that there was substantial non-compliance as a result of unlawful use of incident forms and inconsistently found in all the above listed documents on entries as to the number of voters accredited by Card Readers, number of votes accredited in Voters Register total number of votes cast according to the ticking in the appropriate boxes in the voters Register; and the number of purported votes cast in form EC8A, EC8C and C8D."*

The evidence of PW1 at pages 4397 and 4398 are relevant here and thus:

*"From the result of analysis which are already contained in the main report, the gubernatorial candidate of ACCORD, Senator Rashidi Adewole Ladoja having scored the highest number of lawful votes as stated above also scored not less than 25% of the votes cast in 22 Local Government which is the 2/3 of the 33 Local Government Area of Oyo State ought to and should be declared as WINNER of the Governorship Election held on 11<sup>th</sup> April, 2015....."*

*From the foregoing therefore, the analysis of our discoveries during inspection no doubt lend credence to our allegation, as contained in our petition that the 1<sup>st</sup> and 2<sup>nd</sup> respondent did not win the*

*majority of lawful votes in the said election and the petitioners were indeed the winner of the election having scored the majority of lawful votes cast and not less than 25% of votes cast in at least 2/3 of the Local Government Areas in the state. See table 13”.*

The above records of what transpired in the tribunal and the summon of the Court of Appeal showcase why the concurrent findings and rejection of the evidence of PW1 witness who admitted under cross-examination of having campaigned for the appellant and its candidate at the election which result brought about the petition, subject matter of this appeal. Also not in dispute is the fact of being a member of the appellant party and so cannot have his opinion evidence of the Report of the Inspection of voting materials he participated in translated to the opinion of an expert who ought to be non-partisan aside from having the requisite professional expertise for the analytical projections that are called for in line with section 83(3) of the Evidence Act 2011. In respect of what is referred to as a person interested. I shall refer to the cases of: *Nigeria Social Insurance Trust v Klifco Nigeria Ltd* (2010) LPLR 22-23 paras C-E as follows:

*“As regards the phrase “a person interested” “I agree with the respondent that the phrase has been examined in the case of Evan v Noble (1949) 1 KB 222 at 225 where a person not interested in the outcome of action has been described as, ‘a person who has no temptation to depart from the truth one side or the other; a person not swayed by personal interest but completely detached, judicial, impartial, independent’. In other words, it contemplates that the person must be detached, independent and non-partisan and really not interested which way in the context the case goes. Normally, a person who is performing an act in official capacity cannot be a person interested under section 91(3). I think the phrase ‘a person interested’ ever moreso has been quite definitively put in the case of Holton v Holton (1946) 2 AER 534 at 535 to mean ‘a person who has pecuniary or other material interest in the result of the proceeding – a person whose interest is affected by the result of the proceedings, and therefore by the result of the proceedings, and, therefore would have no temptation to pervert the truth to serve his personal or private ends. It does not mean an interest in the sense of intellectual observation or an interest purely due to sympathy. It means an interest in the legal sense, which imports something to be gained or lost.”*

C.P.C. V Ombugadu (2013) ALL FWLR (Pt. 706) 406 at 472-473 para H-B when considering and determining who is a person interested under section 91(3) of the Evidence Act 2011 held thus:

B *“By the provision of section 91(3), Evidence Act, a person interested is a person who has a pecuniary or other material interest and is affected by the result of the proceedings and therefore would have a temptation to pervert the truth to serve his personal or private ends. It does not mean an interest purely due to sympathy. It means an interest in the legal sense which imports something be gained or lost.”*

C For effect section 83(3) of the Evidence Act 2011 stipulates thus:

D 83(3) “Nothing in this section shall render admissible as evidence any statement made by a person interested at a time when proceedings were pending or anticipated involving a dispute as to any fact which the statement might tend to establish.”

E In concluding it needs be stated in keeping with section 83(3) of the Evidence Act 2011 and judicial authorities which abound that as a general rule or principle, a document made by a party to a litigation or person interested when proceedings are pending or is anticipated as in the case at hand, such evidence is not admissible. See Highgrade Maritime Services Ltd v F.B.N. Ltd (1991) 1 NSCC 199 at 135; Anyaebosi & Ors v R. T. Briscoe Nig. Ltd (1987) 2 NSCC 805 at 823.

F Therefore the evidence of the PW1 was not covered by what is provided for under section 15(1) of the Electoral Act, 2010 (as amended) as admissible evidence since the provision is a specialized provision for admissibility of electoral documents or other evidence G discovered pursuant to order of the tribunal for inspection of documents. The findings of the courts below are rock solid backed by the relevant legislation and judicial authorise and there cannot be interference into them now. The issues are resolved against the Appellants.

H **ISSUE NO 4**

Having regard to the facts of the case and the evidence led at the hearing of the petition, whether the court below was not wrong to have dismissed the appeal of the appellant and affirmed the decision of the tribunal that the petition was not proved.



Learned counsel for the appellant submitted that where an election is conducted in violation of the regulations in its guidelines that in itself amounts to no election or voided election ab initio. He cited Ajadi v Ajibola (20014) 16 NWLR (Pt. 898) 91; Oni v Fayemi (2009) 7 NWLR (Pt. 1140) 223.

That the appellant's allegation that there was no election in this petition is consistent with averments that election was not conducted in compliance with election regulations or guidelines. He cited Agagu v Mimiko (2009) 7 NWLR (Pt. 1140) 342 Omoboriowo v Ajasin (1984) 1 SCNLR. That this court should re-hear the case by re-examining the evidence tendered before the tribunal and later the Court of Appeal and to exercise all its powers under section 22 of the Supreme Court Act and deal with this case in the manner the two courts below should have dealt with it. He cited Inakoju v Adeleke (2007) 4 NWLR (PT. 1025) 227; Jadesinmi v Okotie-Eboh (1986) 1 NWLR D (Pt. 16) 264; Igweshi v Atu (1993) 6 NWLR (Pt. 300) 484 Kokoro Owo v Ogunbambi (1993) 8 NWLR (Pt. 313) 627.

For the 1<sup>st</sup> respondent, it was contended that the most crucial electoral documents which must be tendered by a petitioner in proof of allegations of over-voting are voters' register in the challenged election and Forms EC8A and these documents on the admission of appellant through its PW1 admitted they did not tender. That the admission is one against interest and this court should so hold. He on Ipinlaiye II v Olukotun (1996) 6 NWLR (Pt. 453) 140 at 165.

For the 2<sup>nd</sup> respondent, it was contended that the two courts below were right to hold that no evidential value could be placed on Exhibits 1-192b because they were not linked to the case of the appellant.

In the case of the 3<sup>rd</sup> respondent, it was submitted that the evaluation of evidence is the exclusive preserve of a trial court and an appellate court has no role to play unless the evaluation is shown to be perverse and that is not the case in the instant appeal. He cited Gabriel Iwuoha & Anor. v. Nigeria Postal Services Ltd (2003) 4 SCNJ 258 at 254.

In respect of the question herein raised I shall refer to page 5599 volume 7 of the record and thus:

*"Under cross-examination, PW1... has stated that he joined Accord Party in December, 2010 and has participated actively in the*

campaign of the 1<sup>st</sup> petitioner and wanted him to win and said he won. And inexplicable and unexplained errors were fully demonstrated. It suffice it to state that the difference between the votes in Atiba Local Government Ward 1, Unit 1 in Exhibit 5A and the one of the PW1 analysis as contained in page 85 is 90, and that of Atiba Local Government Ward 1, Unit 4 in Exhibit 5D on page 85 of the analysis is 12. Furthermore, it was elicited from him that contrary to the allegations that there was no accreditation, it would not be correct to say that there was no accreditation. He also stated that he and his team of inspectors did not use voters registers of Form EC8A in their analysis which is contrary to what he stated when he clearly said that their analysis was based on available documents, card readers, PVCs collected, register of voters, Form EC8A and Incident Forms.”

D These findings were confirmed by the court below.

The court below with regard to the documents tendered by the appellant at the trial tribunal stated at pages 6138-6140 thus:

E “It is therefore obvious that the trial tribunal declined to give any weight or probative value to the documentary evidence tendered by the appellant and admitted in evidence, on the ground that the appellant led to evidence to demonstrate the purpose of the documents, but merely dumped them on the tribunal”

And at page 6139 of the Record as follows:

F “It is therefore settled by the Supreme Court, which is the highest court in the contrary that the tendering of the electoral documents without adducing evidence, which link the document with the particular complaint of the petitioner is fatal. This is because, it is not the duty of the tribunal to examine the documents, outside the court and tie them with the particular complaints of the petitioner”

G The court below referred to the following cases:

George Abi v CBN & Ors (2012) 3 NWLR (Pt. 1286) 1 at 28-29.

Senator Julius A. Ucha & Anor. v Chief Martin N. Elechi & Ors. (2012) 13 NWLR (Pt. 1317) 330 at 369.

H That appellate court below stated on at page 6140 as follows:

“In the instant case, the documents, Exhibits 1-192, 201 and 203-216 were tendered either from the bar or through PW1. A careful reading of the proceedings in which the documents were tendered through PW1 would show that, the witness was simply asked

*to look at the documents and tell the court whether the documents are the documents he used in his analysis in the inspection in report, to which he answered in the affirmative. The documents were then tendered, admitted and marked as exhibits. His attention was never drawn to the specific complaints in respect of the particular polling unit for which the document was tendered. The documents therefore remained dormant in the archive of the tribunal..... the tribunal was therefore right when it held that the appellant dumped the exhibits on it, without leading or adducing evidence linking or relating the specific allegation in the petition”*

Bearing the above in mind, it is clear that the court below was right in upholding the decision of the tribunal which held that no evidential value could be placed on Exhibits 1-192b because they were not linked to the case of the appellant. Those documents were indeed dumped at the tribunal and it is now trite that it is not the duty of a court to speculate or work out either mathematically or scientifically a method of arriving at an answer on an issue which could only be elicited by credible evidence and tested evidence at trial. See Senator Julius A. Ucha & Anor. v Chief Martin N. Elechi & Ors. (2012) 13 NWLR (Pt. 1317) 330 at 369, ANPP v INEC (2010) 13 NWLR (Pt. 1212) 549. The more recent case of this court in the unreported. SC.907/2015- Mahmud Aliyu Shinkafi & Anor v Abdulazeez Abubakar Yari & Ors. delivered on 8<sup>th</sup> January, 2016.

This issue is also resolved against the appellant and from the foregoing and the better reasoned lead judgment. I had no difficulty in also dismissing this appeal.

### **OKORO JSC**

I agreed entirely with the lead judgment of my learned brother, Ogunbiyi, JSC delivered on 2nd February, 2016 when this court dismissed this appeal and adjourned the matter for reasons to be given today 15<sup>th</sup> February, 2016. I also promised to give my reasons today. I now proceed to state the reasons aforesaid.

Let me acknowledge the fact that I was obliged a copy of the illuminating lead reasons for judgment just delivered by my learned brother, Ogunbiyi, JSC. The facts of this case- have been ably set out in the lead judgment. Equally, my learned brother has admirably

resolved all the issues nominated for the determination of this appeal, including the preliminary issues thrown up in the appeal. I adopt the reasons so advanced to reach the conclusion that this appeal is devoid of any scintilla of merit and that it be dismissed in its entirety. I shall however chip in a few words of mine in support.

B A recent trend of events which has become so worrisome in our procedural law is the issue of multiplicity of appeals perpetrated by litigants, particularly in election related appeals. More often than not, petitioners who filed a joint petition at the Tribunal, suddenly  
C part ways when they have cause to file appeal against the decision of the tribunal. They perpetrate this trend not only at the Court of Appeal but up to this court.

In this appeal, the appellant and the 4th respondent were joint petitioners at the trial Tribunal. At the end of trial, the judgment was  
D against them. Each of them filed separate appeals to the Court of Appeal. An objection to the said practice was turned down by the court below as found on page 6090 of Vol. 8 of the record of appeal which states:-

E *“While practices such as this are not to be encouraged, as courts do not appreciate proliferation of cases, a fundamental point raised by Mr. Olatubora, as to the right of appeal of each party. He referred to Section 246 (1) (b) (ii) of the Constitution of the Federal Republic of Nigeria (as amended).... The rights of appeal thereby created by  
F the constitution should not be circumscribed in any form or manner.”*

The learned counsel for the cross-appellant contended that the multiplicity of the appeals is an abuse of court process, citing and relying on the cases of DINGYADI V. INEC. NO. 2 (2010) 18 NWLR  
G (pt. 1224) 1 at 23, ARUBO V. ANJELERU (1993) 3 NWLR (pt. 280) 126 at 142, ONYEABUCHI INEC (2002) 8 NWLR (pt. 1001) 76 at 121.

In the case of AGWASIM V. OJICHIE (2004) 10 NWLR (pt. 882) 613 at 622 - 623, this Court stated instances which may constitute an abuse of court process. It states:

*“The abuse of judicial process is the improper use of the judicial process by a party in litigation. It may occur in various ways such as:*

*(a) instituting a multiplicity of actions on the same subject-*

*matter against the same opponent on the same issue; or*

*(b) instituting a multiplicity of actions on the same matter between the same parties; or*

*(c) instituting different actions between the same parties simultaneously in different courts even though on different grounds, or*

*(d) where two similar processes are used in respect of the exercise of the same right.”* B

In the instant appeal, appellant and 4th respondent in SC 12/2016 were joint petitioners at the trial Tribunal and obtained one judgment. In se. 12A/2016, the appellant (Accord) and the 4th respondent (Ladoja) were also together in the petition giving birth to this appeal. Needless to say that an appeal is a continuation of the hearing of the case at the court below including the trial court. In the process of hearing this matter, parties have swapped positions as petitioners, appellants and respondents, all pursuing the same issues. As it turns out there is left for us a multiplicity of appeals arising from the same facts and judgment. There can be no abuse of court process more than this. The court possesses inherent powers to stop any abuse of its process whenever it arises. C

There is no doubt that the appellants have a right of appeal guaranteed under Section 246(1) of the 1999 Constitution of the Federal Republic of Nigeria (as amended). Nobody intends to curtail that right. The issue here is that the appellants have used the said right via the judicial process to annoy and irritate the respondents by filing a multiplicity of appeals not minding the cost implication and the time used to prepare for each appeal. Parties need to be reminded that election appeals in this country are now time bound. Courts need time to hear these appeals and write judgments. Where there are, in some instances nine (9) appeals from one judgment, this leaves much to be desired. D

It is on the above reasons and the fuller ones in the lead reasons for judgment of my learned brother, Ogunbiyi, JSC that I agreed that the cross appeal in SC. 12/16 be allowed and that appeal No. SC. 12/2016 be struck out for being an abused of court process. I also agreed that cross appeal in SC. 12A/2016 be struck out in view of the success of the other cross appeal. E

My Lords, as regards the remaining appeal No. SC. 12A/2016, I adopt the reasons for judgment clearly set out in the lead judgment F

of my learned brother, Ogunbiyi, JSC as mine. I abide by all consequential orders made therein, that relating to costs, inclusive.

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***SANUSI JSC***

B These two appeals were heard and dismissed for want of merit on 2<sup>nd</sup> February, 2016. After the dismissal of the appeals I promised to give my reasons for dismissing the appeal on Monday 15<sup>th</sup> of February, 2016.

C I have been availed before now, with a copy of the lead reasons for judgment in the two appeals prepared by my learned brother Clara Bata Ogunbiyi JSC. Having perused same, I agree with the reasons for judgment advanced in the reasons for judgment of Clara Bata Ogunbiyi JSC dismissing these appeals for want of merit. I adopt  
D the reasons for judgment given as mine. I am convinced that look at the facts of the two appeals, the oral submissions by counsel to the parties and the submissions in their respective briefs. I am also of the view that the two appeals are together and inseparable. For that reason I am convinced that appeal NO. SC.12/2016 should obviously  
E abide the decision in the sister case i.e. SC. 12A/2016 and such fate of both appeal is that both appeals devoid of any merit. I accordingly so hold. I abide by the consequential orders made including one on costs.

F

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