

SUPREME COURT OF NIGERIA
FRIDAY 5TH FEBRUARY, 2016. SC. 1004/2015
CORAM:- M. MOHAMMED CJN, I. T. MUHAMMAD,
K. B. AKA'AH, K. M. O. KEKERE-EKUN, J. I. OKORO,
C. C. NWEZE, A. SANUSI, JJSC

EDWARD NKWEGU OKEREKE APPELLANT
AND
1. NWEZE DAVID UMAHI
2. PEOPLES DEMOCRATIC PARTY
3. INDEPENDENT NATIONAL
ELECTORAL COMMISSION RESPONDENTS

EVIDENCE - Admissibility - Weight - As PW1 conceded that he is not the maker of exhibits GP2-42 - His tendering them without testimony of the maker - Is valueless (H1)

EVIDENCE - Expert witness - Opinion and conclusion of expert proffered in court - Must be supported by scientific analysis - Otherwise his evidence would be worthless (H2)

ELECTION PETITIONS - Card reader - Purpose of - Card reader was meant to supplement voters' register - And was never designed to supplant or displace the register (H3)

FACTS

Petitioner/appellant filed this election petition at the Ebonyi State Governorship Election Petition Tribunal, questioning the election of 1st respondent as the Governor of the State. 3rd respondent conducted election into the office of the Governor of Ebonyi State on April 11th 2015. Appellant was sponsored by the Labour Party, while 1st respondent was sponsored by 2nd respondent – Peoples Democratic Party. At the end of the poll, 3rd respondent declared 1st respondent as the winner and returned him elected as the State Governor. Dissatisfied with the above declaration, appellant and his party - the Labour Party, approached the Governorship Election Petition Tribunal with the Petition.

The basis for the petition is that the election of 1st respondent

was invalid by reason of non-compliance with the provisions of the Electoral Act 2010 (as amended) and the provisions of the Constitution of the Federal Republic of Nigeria 1999. Appellant on this basis asked the Tribunal to declare appellant as the duly elected Governor of the State or in the alternative nullify the entire results of the election and call for a fresh election. To support his case at the hearing of the petition, appellant called 8 witnesses, while 1st respondent called one witness. Three witnesses testified for 2nd respondent. One witness testified for 3rd respondent. At the end of the hearing, the Tribunal dismissed the petition and upheld the election of 1st respondent. Aggrieved, appellant appealed to the Court of Appeal Enugu Division. The appeal was heard and dismissed by the Court. Appellant has further appealed to the Supreme Court.

ISSUES FOR DETERMINATION

1. Whether the lower court was correct when it confirmed the decision of the trial Tribunal to the effect that the appellant did not establish the case of non-compliance with the provisions of the Electoral Act, 2010 (as amended)?

2. Whether the lower court was right in confirming the decision of the trial Tribunal that exhibits GP2 - GP42 all exhibit GP45 were unavailing to the appellant having been dumped on the trial Tribunal and with no witness who could be cross examined as to their contents?

3. Whether the lower court was right in holding that, having regard to the evidence of PW8, exhibit GP 45 - the Card Report - was incomplete, unreliable and incapable of proving the appellant's allegation of accreditation/over-voting?

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

EVIDENCE - Admissibility - Weight

1. PW1's evidence in relation to exhibits GP2-GP42 can best be described as documentary hearsay evidence (an obvious reference to section 37(b) of the Evidence Act, 2011) and that they were dumped on the Tribunal without the Petitioner making available any oral evidence by the person who can explain their purport.

Surely, since the witness (PW1), was not “in any polling unit in Ebonyi State on the day of election;” “I had never worked at INEC office; I did not participate in the off-loading of information from the Card Reader Machine to the INEC Data base” and “was not part of the team that came to Abakaliki for the exercise,” the lower court, rightly, affirmed the position of the trial Tribunal that no weight could be attached to his evidence for he is “ignorant of (their) content.”

As this court explained in Buhari v INEC (2008) 19 NWLR (pt 1120) 246, 311 -392, “weight can hardly be attached to a document tendered in evidence by a witness who cannot or is not in a position to answer questions on the document. Once such person the witness identifies is the one who did not make the document, such person is adjudged in the eyes of the law as “ignorant of the content of the document.” (Italics supplied for emphasis)

Interestingly as also shown above, PW1 conceded that he did not author exhibits GP2-42, the electoral Forms. The implication, therefore, is that his tendering them without the testimony of the maker or clear reasons for his absence is valueless. (p. 1816 G)

EVIDENCE - Expert witness

2. In the content of these concessions, it is difficult to resist the temptation that, instead of the lower court, it was the appellant’s counsel who misconstrued the capacity in which the PW1 testified. I say so with profound respect. For the avoidance of any doubt, although expertise, for evidential purposes, cannot be equated (sic) with scholastic knowledge or professorial attainment. An expert is, all the same a person who is specially skilled in the field he is giving evidence.

That notwithstanding, such a person, who is paraded as an expert, must furnish the court with the necessary scientific criteria for testing the accuracy of their conclusions so as to enable it (the court) to form its own independent judgement by the application of those criteria to the facts proved in evidence.

Put differently the opinion and conclusions, which such

an expert proffered before the trial court, must be supported by scientific analysis otherwise his evidence would be valueless or worthless. (p. 1822 C)

ELECTION PETITIONS - Card reader - Purpose of

- B 3. Even with the introduction of the said device, that is, the Card Reader Machine, the National Assembly, in its wisdom, did not deem it necessary to bowdlerise the said analogue procedure in section (49 *supra*) from the Act so that the Card Reader procedure would be the sole determinant of a valid accreditation process. Contrariwise, from the corrigendum No 2, made on March 28, 2015, amending paragraph 13 (b) of the Approved Guidelines, it stands to reason that the Card Reader was meant to supplement the Voters' Register and was never designed or intended to supplant, displace or supersede it.**

E Indeed, since the Guidelines and Manual (*supra*), which authorised the use and deployment of the electronic Card Reader Machine, were made in exercise of the powers conferred by the Electoral Act, the said Card Reader cannot, logically, depose or dethrone the Voters' Register whose juridical roots are, firmly, embedded or entrenched in the selfsame Electoral Act from which it (the Voter' Register), directly, derives its sustenance and currency.

F Thus, any attempt to invest it [the Card Reader Machine procedure) with such overreaching pre-eminence or superiority over the Voters' Register is like converting an auxiliary procedure - into the dominant procedure of proof, that is, proof of accreditation. This is a logical impossibility. Indeed, only recently, this court in *Shinkafi v Yari* (*supra*) confirmed the position that the Card Reader Machine has not replaced the Voters' Register and had has not supplanted the statement of results in appropriate forms; hence, the appellant still had the obligation to prove his averments in paragraphs 16, 17, 18 and 19 of his Petition relating to accreditation of voters and over-voting as enunciated in several decisions of this court which counsel for the respondents cited profusely.
(p. 1824 C)

NOTABLE POINT OF INTEREST

NWEZE JSC

1. Appeals – Court can reframe issue for clarity sake

Instructively, it is such circumstances, as shown above, that dictated and indeed underscore, the utility of the logic of judicial prescription that an appellate court has the prerogative to reframe the issues where it is of the opinion that those formulated by counsel are not succinct provided that the issues so reframed are covered by the Grounds of Appeal as canvassed by the appellant. (p. 1810 B) C

REPRESENTATION

Chief U. N. Udechukwu (SAN) with Chief Charles Umensuyi Edosomwam (SAN), Chima Ajaegbu, Edwin Arukwem, Kenneth C. Ogoto, C. A. Aiyamekhue and Ben Ejike Anwu, for the appellant D
Arthur Obi Okafor (SAN) with R. O. V. Nweze, V. C. Otaokpukpu and Okechukwu Otukwu, for the 1st Respondent
J. U. K. Igwe (SAN) with Anthony Oka, Somtochukwu Onyenenam, Ebikaboere Numa (Mrs.), for the 2nd Respondent
Dr. Onyechi Ikpeazu (SAN) with A. O. Ezeonu, O. Anumonye, Nkiru Frank-Mmegwa (Mrs.) ACLO, E. S. Nri Ezedi and Martins Nwokeocha, E
for the 3rd Respondent

CASES REFERRED TO

Honika Sawmill (Nig) Ltd v. Hoff (1994) 2 NWLR (pt 326) 252 F
Nwadike v. Ibekwe (1989) 4 NWLR (pt 67) 718
D. P. C. C Ltd v. B. P. C. Ltd. (2008) 4 NWLR (pt. 1077) 376
Oloriode v. Olebi (1984) 1 SCNLR 390
N.P.A. v. Panalpina World Transport (Nig.) Ltd. (1974) 1 NMLR 82 G
Fabiya v. Adeniyi (2000) 6 NWLR (pt. 662) 532
Olafisoye v. FRN (2004) LPELR -2553 (SC) 35
Imonikhe v. AG, Bendel State (1992) 6 NWLR (pt 248) 396
Ngilari v. Mothercat Ltd. (1993) 8 NWLR (pt. 31) 370
Musaconi Ltd. v. Aspinall (2013) LPELR -20745 (SC) 17 H
Anaeeze v. Anyaso (1993) LPELR-480 (SC)
Oloriode v. Oyebi (1984) 1 SCNLR 390
N.P.A. v. Panalpina World Transport (Nig.) Ltd. (1974) 1 NMLR 82

Fabiya v. Adeniyi (2000) 6 NWLR (pt. 662) 532

Buhari v INEC (2008) 8 NWLR (pt 1120) 246

STATUTES REFERRED TO

Constitution of the Federal Republic of Nigeria 1999, ss.

B Electoral Act 2010 (as amended), ss. 49(1)(2), 53(2)

Evidence Act 2011, s. 37(b)

LEAD JUDGMENT BY NWEZE JSC

C This court heard and dismissed this appeal on January 27, 2016. It promised to proffer its reasons for doing so on Friday, February 5, 2016, that is, today. Its reasons are set out below.

D The third respondent in this appeal, (Independent National Electoral Commission, INEC, for short), conducted election into the office of the Governor of Ebonyi State on April 11, 2015. The appellant in this appeal, Edward Nkwegu Okereke, was sponsored by the Labour Party.

E On his part, the first respondent, Nweze David Umahi, was the candidate of the second respondent, Peoples Democratic Party (hereinafter, simply, referred to as “PDP”).

F At the end of the poll, the third respondent declared the said Nweze David Umahi (first respondent herein) as the winner and the duly returned candidate for the said election. The said declaration was sequel to the third respondent’s finding that he (the first respondent) scored the highest number of votes cast and, in addition, satisfied the constitutional requirements apropos the election to the office of the Governor of Ebonyi State.

G Dissatisfied with the above declaration, the appellant and his party, the Labour Party, approached the Governorship Election Petition Tribunal (hereinafter, simply, called “the trial Tribunal”) with their Petition in which they challenged the declaration and return of the first respondent as the Governor of Ebonyi State.

H In passing, it may be noted here that, pursuant to its application, the trial Tribunal struck out the name of the Labour Party from the Petition; hence leaving the appellant as the sole Petitioner.

The appellant’s Petition was predicated on the Grounds set out at page 4, Vol. 1 of the record. They were framed thus:

(i) That the election of the first respondent, Nweze David Umahi,

the person whose election is questioned, was invalid by reason of non-compliance with the provisions of the Electoral Act, 2010 (as amended) and the provisions of the Constitution of the Federal Republic;

(ii) That the said election was marred by various acts of corrupt practices and irregularities; B

(iii) That the said Nweze David Umahi was not elected by the majority of the lawful votes cast at the Governorship election of Ebonyi State held on the 11th April, 2015.

For their bearing on the issues formulated by the appellant, the reliefs, which the appellant entreated from the trial Tribunal, are set out here in extenso, viz: C

(1) A Declaration that the purported election and return of the first respondent as the winner of the Governorship election in Ebonyi State held on 11th April, 2015 was marred by widespread irregularities and substantial non-compliance with the Electoral Act, 2010 (as amended) and the INEC Guidelines for the conduct of Elections, 2015 and is ipso facto null and void; D

(2) A Declaration that the discrepancies between the number of Electronic Card Reader accredited voters and the Form EC8A Result Sheets of accredited voters on polling unit basis in the 11th April 2015 Governorship election in Ebonyi State constitute irregularities or failure that substantially affected the results of the election and that the affected results be nullified accordingly; E

(3) Declaration that the first respondent Nweze David Umahi F was not duly elected by majority of lawful votes cast at the said Governorship election and did not receive 25% of votes cast in two-third of the thirteen Local Government Areas of Ebonyi State as required by the provisions of the 1999 Constitution of the Federal Republic of Nigeria (as amended); G

(4) An Order nullifying the purported election and return of the first respondent as the winner of the Governorship election for Ebonyi State held on 11th April, 2015;

(5) A Declaration that the first Petitioner was duly elected by H majority of lawful and valid votes cast at the said Governorship election held on 11th April, 2015 in Ebonyi State;

(6) In alternative to relief 5 (supra), an order nullifying the entire Governorship election held in all the polling units in Ebonyi

State on 11th April, 2015 and for fresh election to be conducted. (Italics supplied for emphasis).

In proof of the averments in the Petition, the appellant (as Petitioner) marshalled eight witnesses. While the first respondent called one witness, only three witnesses testified in favour of the second respondent. On its part, the third respondent made do with the evidence of the sole witness who testified on its behalf.

At the conclusion of the case, the Tribunal (hereinafter referred to as ‘the trial Tribunal’), in its judgement of October 16, 2015, dismissed the said Petition. The appellant’s appeal to the Court of Appeal, Enugu Division, having been dismissed by that court (Which will, hereinafter be referred to as “the lower court”), he further approached this court through his Notice and Grounds of Appeal from which he formulated three issues.

Before turning to them, however, it would only be proper to dispose of the third respondent’s preliminary objection.

THIRD RESPONDENT’S PRELIMINARY OBJECTION

At the hearing of this appeal on January 27, 2016, learned senior counsel for the third respondent, Dr. Onyechi Ikepeazu, SAN, called attention to the preliminary objection in the brief, pages 2 - 4, thereof. The said objection was framed thus:

“Take Notice that the third respondent objects to Grounds 5 and 6 of the appellant’s Grounds of Appeal on the grounds following:

(i) *Ground 5 does not arise from the judgement of the Court of Appeal as nowhere in the judgement did the Court of Appeal sustain the holding of the Tribunal to the effect that “the 2015 Guidelines and Regulations issued by the INEC cannot be said to be a subsidiary legislation as submitted by the appellant’s counsel. Therefore, it is required to be pleaded and listed to be admissible.*

(ii) *With regard to Ground 6 of the Grounds of Appeal, Ground 6 does not arise from the judgment of the Court of Appeal as the court did not hold that the appellant’s complaint of non-compliance was a voyage on academic exercise, or that there was no evidence of non-compliance with the Guidelines and Manual for the Election Officers. The initial complaint of the appellant centred on the contention that the Tribunal failed to consider his allegation of non-compliance with the Guidelines and Manual on the reason that it was not a*

subsidiary legislation, therefore, it ought to be pleaded in order to be admissible in evidence.”

In arguing the first ground of the objection, Dr. Onyechi Ikpeazu, SAN pointed out that it was perhaps in acknowledgement of the first Ground of the objection that the appellant failed to distil any issue from the said Ground 5. He cited Newswatch Communications Ltd v Atta (2000) 2 NWLR (pt 645) 592 and Ezeana v Okpara (2008) 3 SCM 50, 57 as authorities for his contention that a ground of appeal from which no issue is formulated is incompetent and ought to be struck out.

Chief U. N. Udechukwu, SAN, for the appellant’s response was simple. The issue is purely academic because the appellant in his brief did not raise any issue from that ground; meaning that Ground 5 has been abandoned.

For once, counsel are *ad idem* on an issue in this appeal. Both of them are right in their respective views that, where no issue is formulated from a Ground of Appeal, it would be deemed abandoned. This is so trite that it does not warrant the citation of any authority; albeit, the cases on the point are many.

Only one or two of such cases will be cited here, Dada v Dosunmu (2006) 18 NWLR (pt 1010) 134; Idika v Erisi (1988) 2 NWLR (pt 780) 1563; Nkado v Obioma (1997) 5 NWLR (pt 503) 32; Animasha v University College Hospital (1996) 10 NWLR (pt 472) 65; Kari v Ganaram (1997) 2 NWLR (pt 488) 380. In consequence, Ground 5, having been abandoned, is hereby struck out.

Turning Ground 6, Dr. Ikpeazu, SAN, pointed out that Ground 6 does not deal with the issue of evaluation of evidence or pleadings. In the other hand, he explained that the ground deals with the alleged finding that the appellant’s complaint as to non-compliance was a voyage on academic exercise.

He cited several authorities for the view that where incompetent Grounds of Appeal are argued with other grounds, the court has a duty to strike out both the grounds and the issues, Honika Sawmill (Nig) Ltd v Hoff (1994) 2 NWLR (pt 326) 252, 262; Nwadike v Ibekwe (1989) 4 NWLR (pt 67) 718.

On his part, Udechukwu, SAN, for the appellant, canvassed the view that Ground 6 (*supra*) complained that the lower court misdirected itself when it held that there was no evidence of non-compli-

ance with the Guidelines and Manual (supra).

My Lords, this limb of the third respondent's objection needs not delay us here. From the findings of the lower court on page 207 (last paragraph) and lines 3-5 of page 210 of Volume 5 of the record, I entertain no doubt that though, inelegantly phrased, the appellant's Ground 6 was a complaint against the lower court's finding that there was no evidence of non-compliance, as indicated above. Issue One, though imprecise and indeed verbose, actually, arose from that complaint.

Instructively, it is such circumstances, as shown above, that dictated and indeed underscore, the utility of the logic of judicial prescription that an appellate court has the prerogative to reframe the issues where it is of the opinion that those formulated by counsel are not succinct provided that the issues so reframed are covered by the Grounds of Appeal as canvassed by the appellant.

These cases vindicate this position, *D. P. C. C Ltd v B. P. C. Ltd.* (2008) 4 WLR (pt 1077) 376, 396 -397; 418 - 419; *Oloriode v. Olebi* (1984) 1 SCNLR 390; *N.P.A. v. Panalpina World Transport (Nig.) Ltd* (1974) 1 NMLR 82; *Fabiya v. Adeniyi* (2000) 6 NWLR (pt. 662) 532. I, therefore, dismiss this arm of the objection. In effect, the preliminary, only, succeeds in part; now, to the issues for determination.

ISSUES FOR DETERMINATION

As shown above, sequel to the lower court's dismissal of his appeal, the appellant further appealed to this court through his Notice and Grounds of Appeal from which he concreted three issues for this court's resolution of his grievance against the judgement of the lower court. His said three issues were framed thus:

1. Whether the finding by the Court of Appeal below that the trial Tribunal duly and properly considered and evaluated the pleadings and evidence pertaining to breach of the provisions of the Guidelines and the Manual for Election Officers in determining the question on non-compliance with the provisions of the Electoral Act, 2010 (as amended) raised by the Petitioner is correct?

2. Whether the Court of Appeal below was right when it affirmed the decision of the Tribunal of first instance to the effect that exhibits GP 2 - GP 42 and exhibit GP 45 are not legal evidence but hearsay evidence, dumped on the Tribunal without any supporting

oral evidence?

3. Whether the decision of the Court of Appeal to the effect that exhibit GP 45 was incomplete and unreliable, based on the evidence of PW8, is supportable?

While learned senior counsel for the first and second respondents adopted the above three issues in their tenor, learned senior counsel for the third respondent, Dr. Onyechi Ikpeazu, SAN, adopted the same issues but in a more succinct and gripping phraseology in tandem with the posture of this court in several cases, two of which are cited here, *Olafisoye v FRN* (2004) LPER -2553 (SC) 35, A- C; *Imonikhe v AG, Bendel State* (1992) 6 NWLR (pt 248) 396; *Ngilari v Mothercat Ltd* (1993) 8 NWLR (pt 31) 370. The golden rule has, always, been that parties must endeavour to avoid verbosity, *Musaconi Ltd. V Aspinall* (2013) LPELR -20745 (SC) 17, A- B; *Anaeze v Anyaso* (1993) LPELR-480 (SC).

I am enamoured of the issues of the third respondent because, as I have already pointed out above, they are couched in a more succinct and gripping phraseology in tandem with the posture of this court in several cases that parties must endeavour to avoid verbosity in the issues they frame. For their precision, therefore, I adopt the said issues of the third respondent in the determination of this appeal.

After all, this court has the prerogative to reframe the issues where it is of the opinion that the issues formulated by counsel are in succinct provided that the issues so reframed are covered by the grounds of appeal as canvassed by the appellant, *D. P. C. C Ltd v B. P. C Ltd* (2008) 4 NWLR (pt 1077) 376, 396 -397 418 - 419; *Oloriode v. Oyebe* (1984) 1 SCNLR 390; *N.P.A. v. Panalpina World Transport (Nig.) Ltd.* (1974) 1 NMLR 82; *Fabiyyi v. Adeniyi* (2000) 6 NWLR (pt. 662) 532.

Thus, the three issues for the resolution of this appeal are:

1. Whether the lower court was correct when it confirmed the decision of the trial Tribunal to the effect that the appellant did not establish the case of non-compliance with the provisions of the Electoral Act, 2010 (as amended)?

2. Whether the lower court was right in confirming the decision of the trial Tribunal that exhibits GP2 - GP42 all exhibit GP45 were unavailing to the appellant having been dumped on the trial

Tribunal and with no witness who could be cross examined as to their contents?

3. Whether the lower court was right in holding that, having regard to the evidence of PW8, exhibit GP 45 - the Card Report - was incomplete, unreliable and incapable of proving the appellant's allegation of accreditation/over-voting?

Furthermore, I am, even, of the view that, having regard to the thematic affinity between the first and third issues, they could be taken together; hence their coalescence into one issue with two-pronged limbs. They would, thus, be considered together.

ISSUES FOR DETERMINATION - ISSUE ONE

Whether the lower court was correct when it confirm the decision of the trial Tribunal to the effect that the appellant did not establish the case of non-compliance with the provisions of the Electoral Act, 2010 (as amended)?

AND

Whether the lower court was right in holding that, having regard to the evidence of PW8, exhibit GP 45 - the Card Report - was incomplete, unreliable and incapable of proving the appellant's allegation of improper accreditation/ over -voting?

When this appeal was heard on January 27, 2016, Chief U.N. Udechukwu, SAN, who with Charles Uwensuyi-Edosonwan, SAN, appeared for the appellant with other counsel, whose names appear in the Counsel's List, adopted the appellant's brief of argument filed on January 1, 2016. He, equally, adopted the appellant's reply brief filed on January 22, 2016. He placed reliance on the arguments in both briefs in support of his entreaty that this court should allow the appeal and favour the appellant with the reliefs sought.

The first limb of this issue was the complaint that impugned the propriety of the lower court's finding that the appellant failed to establish his claim of non-compliance with the Electoral Act and INEC's Guidelines and Manual for Election Officers. The arguments her were hinged on the following premises.

It was first contended that the lower court, wrongly, held that the trial Tribunal duly and properly considered exhibits GP2 - GP 42 and P45. Counsel canvassed the view that the lower court did not appreciate the Petitioner's case, namely, that election took place in all polling units in Ebonyi State; nay more, that accreditation was suc-

cessfully done with the Electronic Card Reader Machine which functioned at every polling unit.

The court has been enjoined to take judicial notice of paragraph 13; together with the Corrigendum No 2 made on March 28, 2015, amending paragraph 13 (b); paragraph 28 of the Approved Guide for 2015 General Elections. Counsel pointed out that the respondent's case was that the said Card Reader failed in some places which prompted the resort to manual accreditation. Counsel maintained that exhibits GP2- GP42 and GP 45 were not evaluated with a view to making findings whether paragraph 13 (supra) was breached.

The finding of the lower court that the trial Tribunal "kept faith with its decision to consider the pleadings and evidence adduced by the appellant in line with the provisions of the Guidelines and Manual (supra) ..." was pilloried as being erroneous.

Arthur Obi Okafor, SAN, for the first respondent, adopted the brief filed on January 19, 2016. In the said brief, paragraphs 4.01-4.01, pages 6-17, were devoted to a rebuttal of the arguments of the appellant. In the main, the crux of his rebuttal argument was that the appellant did not call the makers of the said exhibits G2- GP42 and GP45 as witnesses so that they could not only be cross examined as to their contents but, equally, tie them to the specific aspects of the appellant's case. Attention was drawn to the testimonies of PW1; PW2 -7 and PW8 and how they fare under cross examination.

Counsel maintained that the lower courts evaluated the said exhibits G 12-GP42 and GP45. He pointed out that, though the appellant sought to prove over-voting, he did not tender a voter's register, citing Shinkafi and Anor v Yari and Ors (Appeal No SC.907/2015 delivered on January 8, 2016). Above all, he contended, the appellant failed to relate the documents to the specific aspects of his case.

In his view, since the appellant's Petition entreated the court for declaratory reliefs, he must succeed on the strength of his case irrespective of whatever weaknesses bedevil the respondents' case, as the lower court found: findings which were not appealed against, citing PDP v INEC and Ors (2012) 49 NSCQR 1897; even then he (the appellant) had a burden to prove all the grounds upon which he brought his Petition, Buhari v INEC (2008) 8 NWLR (pt 1120) 246, 350. He urged the court to resolve this issue against the appellant.

For the second respondent, J. U. K. Igwe, SAN, adopted the brief filed on January 18, 2016. He canvassed the view that the evidence of PW1 was hearsay evidence that was dumped on the trial Tribunal, paragraphs 4. 3. 2 -4.4, pages 6 -20 of the second respondent's brief. He pointed out that exhibit GP45 was an incomplete and unreliable document, also, dumped on the trial Tribunal, paragraphs 4. 4.1 -4. 4. 23, pages 20 -27 of the brief.

He pointed out that, from pages 1130-1154 of Vol 2 of the record, the evidence of PW1, which the appellant's counsel claimed were discoverable from the electoral forms, have their foundation in several paragraphs of the Petition which the trial Tribunal had struck out on October 16, 2015, yet there was no appeal against that order striking out those paragraphs. He maintained that all said and done, the evidence of PW1 (including exhibit GP45, which he tendered) was not predicated on any foundation, He, too, urged the court to resolve this issue against the appellant.

Last, but, really, not the least, Dr. Onyechi Ikpeazu, SAN, adopted the third respondent's brief filed on January 20, 2016. He sought to dismantle the foundation on which the appellant's first issue was erected. Citing pages 16-17 of the judgement of lower court, learned senior counsel pointed out that, since the appellant did not appeal against the finding which affirmed the trial Tribunal's consideration of the merit of his Petition in line with the Guidelines and Manual (supra), he was bound by it and so, he was foreclosed from, further, pursuing that point in this court.

He, therefore, contended that, since the first issue was still anchored on that finding, the entire arguments predicated on the alleged non-compliance with the Electoral Act must crumble, citing *Ogunya e v Oshunkeye* (2007) 15 NWLR (pt 1057) 218, 257; *M. C. Inv. Ltd v C. I. And C M. Ltd* (2012) 12 NWLR (pt 13130 1, 17.

As a logical corollary, he maintained that the lower court, rightly, proceeded to consider the question whether, in fact, the trial Tribunal embarked upon due evaluation of the appellant's evidence apropos the allegation of non-compliance, citing page 18 of the judgement of the lower court. He returned an affirmative answer placing reliance on the finding of the trial Tribunal at page 1431 of the record, which was affirmed by the lower court, at age 18 of its judgement.

What is more, the appellant failed to show that the concurrent

findings on the alleged non-compliance (supra) was either perverse or had occasioned a miscarriage of justice. Even then, the appellant must demonstrate the existence of special circumstances to warrant this court's interference with those findings, *Akeredolu v Akinremi* (1986) 2 NWLR (pt 250) 710; *Ogunbiyi v Adewunmi* (1988) 5 NWLR (pt 93) 215. B

On the allegation of improper accreditation based on the Card Reader Report, (exhibit GP45), counsel maintained that the appellant failed to puncture the trial Tribunal's reliance on the evidence of PW8 whose testimony was to the effect that exhibit GP45 was inconclusive. C

Since the Petition was not anchored on over-voting by reference to the Register of Voters, it would be improper now to canvass a case of non-compliance predicated on the breach of section 49(1) and (2) of the Electoral Act, 2010 (as amended). He, too, urge the court to resolve this issue against the appellant. D

In the Reply brief, feeble responses were made with regard to the testimony of PW1; exhibits GP2 -GP42 and GP45, paragraph 9. This court was invited to reconsider its recent decision in *Shinkafi v Yari* (supra). E

RESOLUTION OF THE ISSUE

As already indicated above, in an attempt to prove his Petition, the appellant (as Petitioner) called PW1 as his star witness. He testified. Exhibits GP2-GP42, results of the election from the Polling Units, with respect to the Local Government Areas which the appellant (as F
Petitioner) challenged were tendered through him.

Curiously, learned senior counsel for the appellant would seem not to have thoroughly, acquainted himself with the import of the testimony of PW1. At page 13, (paragraph 4.2 of the appellant's G
brief), he contended that the *"Court of Appeal fell into error partly because it misconstrued the capacity in which PW1 testified. The Tribunal below had made an order allowing the Petitioner and his representatives to take part in a joint inspection of the electoral materials and obtain a report. PW1 took part in the inspection as representative/nominee of the Petitioner. It was in this capacity that PW1 received exhibits GP2 -GP42 and 45..."* (italics supplied). H

With profound respect, this contention, surely, flies in the face of the ipse dixit of the self-same PW1 who, in answer to a question by

J. U. K. Igwe, SAN, in cross examination, at page 1182 of Vol 2 of he record, conceded that *“I was not part of the team that came to Abakaliki for the exercise but I already had the working documents ...”*

Be that as it may, the responses elicited from PW1 under the fusillade of cross examination did not bolster the appellant’s case. Only one example of his fumbling reactions to questions in cross examination, which has a direct bearing on the findings of the lower court may be cited here. Indeed, his responses to Dr. Onyechi Ikpeazu, SAN’s questions under cross examination exposed the ineffectuality of his testimony. Hear him:

“I read page, middle paragraph where it stated that we die not take cognisance of individual results of political parties... nor the number of votes cast at the election. I still stand by the report. I see page 4 again. The statement in the middle paragraph is of election. It is not true to say that I relied on some ballot papers as they were discountenanced, I have never worked at INEC. I did not operate a Card Reader Machine. I did not participate in the off-loading of information from the Card Reader Machine to the INEC Data base, I see page 34, paragraph 4, 3, 1. I have not heard of the word voting point. We only made our observations known on the facts contains (sic) on page 34, we did not discredit any result based on that. There is (a) difference between the analysis of a photocopy of a document and the analysis of an original copy. The documents given to me for analysis were Certified True Copies of photocopies...” (Italics supplied for emphasis)

Little wonder then why, at pages 1420-1421 of the record, the trial Tribunal derided the above viva voce testimony in these apt words:

PW1’s evidence in relation to exhibits GP2-GP42 can best be described as documentary hearsay evidence (an obvious reference to section 37(b) of the Evidence Act, 2011) and that they were dumped on the Tribunal without the Petitioner making available any oral evidence by the person who can explain their purport.

Surely, since the witness (PW1), was not “in any polling unit in Ebonyi State on the day of election;” “I had never worked at INEC office; I did not participate in the off-loading

of information from the Card Reader Machine to the INEC Data base” and “was not part of the team that came to Abakaliki for the exercise,” the lower court, rightly, affirmed the position of the trial Tribunal that no weight could be attached to his evidence for he is “ignorant of (their) content.”

As this court explained in Buhari v INEC (2008) 19 NWLR (pt 1120) 246, 311 -392, “weight can hardly be attached to a document tendered in evidence by a witness who cannot or is not in a position to answer questions on the document. Once such person the witness identifies is the one who did not make the document, such person is adjudged in the eyes of the law as “ignorant of the content of the document.” (Italics supplied for emphasis)

Interestingly as also shown above, PW1 conceded that he did not author exhibits GP2-42, the electoral Forms. The implication, therefore, is that his tendering them without the testimony of the maker or clear reasons for his absence is valueless. Haruna v Modibo (supra), Buhari v Obasanjo (supra).

What is more, the appellant anchored his case on exhibits GP2 -GP42. As Dr. Onyechi Ikpeazu, SAN, rightly, pointed out at paragraph 7.04, page 15 of the third respondent’s brief, the “essence of the evidence of PW1, through whom exhibits GP2- GP42, were tendered was to substantiate the alleged irregularities and non-compliance with respect to the entries in the result sheets, with the dictates of the Electoral Act, 2010 (as amended).”

That notwithstanding, in the words of the lower court, “these document , GP2 -GP42 were before the trial Tribunal tightly bound an dumped in a corner... “ Expectedly, the trial Tribunal characterised the evidence of PW1 as hearsay evidence and that the said documents were merely dumped on it, pages 1417 -1421, Vol 2 of the record. The lower court, un-hesitantly endorsed the approach of the trial Tribunal and affirmed that:

“Apart from PW1 whose testimony was bereft of credibility, not other witnesses of the appellant made any attempt to relate the documents in issue to the relevant portions of his Petition. The documents, GP2 -GP42 were before the trial Tribunal tightly bound and dumped in a corner. These “documents were” entries in electoral forms which ordinarily require oral evidence of someone conversant

with the said entries to relate them to the disputed score and thereby them to life. Such evidence could not emanate from PW1 who only worked on received copies of the said documents. His later activities could not by any stretch validate or give life to what he never knew about. He was simply put, a stranger to the entries contained in those
B documents...” (Italics supplied for emphasis)

Given his un-inspiring performance at cross examination, the lower court concluded that “with the above answers, no fair fair-minded tribunal would accord any probative value to the witness, PW1.” Like the PW1, whose evidence lacked probative value, the
C PW1-PW7, unfortunately, did not fare better under cross examination prompting the trial Tribunal’s findings, affirmed by the lower court, that:

“All we can say here is that the evidence of PW2-PW7 consid-
D ered above cannot be relied upon by the Petitioner in proof of the burden placed on him to prove the allegation of non-compliance with the Electoral Act, 2010 (as amended) or the Manual and Guidelines for the 2015 Election. The witnesses as restated [that is, PW1-PW7] have been so discredited under cross examination that no probative value can be ascribed to their evidence...” (Italics supplied for
E emphasis, page 1431 of the record)

The next witness was PW8, who was subpoenaed at the instance of the appellant, (pages 1185 -1188 of Vol 2 of the record.)
F Regrettably too, her testimony, rather than add the required fillip to the allegation of the Petitioner, torpedoed the very basis of the Petitioner’s anchorage of his allegations on the Card Reader. Hear the account of the irreparable damage of the testimony of this witness to the case of the Petitioner, pages 548 -551 of Vol 2 of the record:

“I am I a staff of (INEC) and the HOU (ICT Data management
G at INEC Headquarters ... The Card Reader performs two roles, I namely, the verification of the PVC and the authentication of the fingerprint...I generated a Card Reader Machines Report for Ebonyi State Governorship Election That the Card Reader (sic, Report) I
H generated ... was not a complete report covering all the details of Polling Units in Ebonyi State as some Polling Units were not then uploaded and thus not included in that report However, to meet the application request of the Petitioner’s counsel, the Commission issued him with the CTC of what was available at the time of his appli-

cation. Subsequently, following the application of the Petitioners, the uploaded data available at the time of instruction by the Chairman of INEC to shut down the server was delivered to the Petitioners ... from the record available to us at ICT Department, INEC Headquarters, Abuja, there were some Pus where the database server at ICT Department (INEC Headquarters) recorded zero/nil for the Card Reader Machine Report for the Governorship ... election .. It may to where Card Readers were used but the data captured were not uploaded.” (Italics supplied)

If only learned senior counsel for the appellant had taken the time and trouble to intimate himself of the gamut of the responses of the answers elicited from the PW8 in cross examination, he should have thought twice before contemplating an appeal against the concurrent findings of the lower courts on this exhibit. Nothing could better vindicate these concurrent findings on this exhibit than her (PW8’s) responses to questions under cross examination at pages 11186 -1187 of Vol 2 of the record.

Her trenchant responses, clearly, demonstrate that the Card Reader Machine Reports were neither inviolable nor sacrosanct as a host of intervening mischievous human variables could impinge on their reliability. It would, perhaps, be better to hear from her lips:

“There are some factors that will affect the uploading of information from the Card Reader Machines to the INEC Data Base. It is correct to say that the uploading process is not automatic. A person must initiate the uploading process. Where information contained in the Card Reader Machine is not initiated, it will not get into the INEC data base. Where a Card Reader is stolen or destroyed the information is (sic, in) that Card Reader will not get into the INEC Data base. When there is no network, the information cannot get to the INEC Data base. A PVC that is damaged cannot be identified by a Card Reader Machine. There is a high possibility of the Card Reader Machine not being able to capture a dirty finger. If there is scar on the thumb, the possibility of a Card Reader Machine capturing the finger print is very low. If accreditation is done manually, it will not reflect in the INEC Data base.” (pages 1186 -1187 of Volume 2 of the record, italics supplied for emphasis)

Unfortunately, learned senior counsel persisted in challenging the concurrent findings of the lower courts, firmly, anchored on the

available evidence. My Lords, I can do no more than refer to the unassailable position of the lower court, in affirmation of the findings of the trial Tribunal: both of which findings I have no warrant to interfere with against the background of the state of unchallenged evidence:

B “...PW8 had alluded to the fact that from the record available
to them at (the) ICT Department of INEC Headquarter, Abuja, there
were some polling units where the data server at the department
recorded zero/nil for the Card Reader Machines and that It might be
attributable to where (the) Card Readers were used but the data
C captured were not loaded. From this evidence/ it is safe for us to
conclude that exhibit GP45 is not accurate/sufficient and compre-
hensive enough to be relied on in proof of the allegation of non-
compliance with the Electoral Act (as amended)”. (pages 205 -206
D of the report, italics supplied)

Against the background of the testimonies of PW8, it is, actu-
ally, surprising, that learned senior counsel for the appellant chose
not to utilise the Voters’ Register, to show the entire gamut of the
voters. Haruna v Modibbo (2004) 16 NWLR (pt 900) 487; Audu v
E INEC (No 2) [2010] 13 NWLR (pt 1212) 456, but rather built his
case of what, in the unanswerable words of the lower court was an
exhibit (GP45) that was not accurate, sufficient and comprehensive
enough to be relied upon in proof of the allegation of non-compli-
ance with the Electoral Act, 2010 (as amended).

F It is in this connection that I endorse the invitation of J. U. K.
Igwe, SAN, for the second respondent, to invoke section 167 (d) of
the Evidence Act, 2011 against the appellant. That is to say that the
appellant (as Petitioner) failed to weave his case on the Voters’ Regis-
G ters and a fortiori did not produce such registers because if he had
produced them, their contents would have been unfavourable to the
allegations he made in the Petition and hence his decision to with-
hold them.

This position is so well-settled to warrant the citation of au-
H thorities. All the same, some of the cases include, S. S. G. M. HH v T.
D. Industries Ltd (2010) 11 NWLR (pt 1206) 589 (Amadi 1566);
Buhari a d Anor v Obasanjo and Ors [2005] 12 NWLR (pt 941) 1;
Aremu v Adetoro (2007) 49 WRN 1, 16; Onuwaje v Ogbeide (1991)
3 NWLR (pt 178) 147; UBA Ltd v Ibhafidion (1994) 1 NWLR (pt

318) 90; Tsokwa Motors Nig) Ltd v Awonlji (1999) 1 NWLR (pt 586) 199; Agbi and Anor v Ogbe and Ors (2007) 10 WRN 144, 197-198; J. Amadi, Contemporary Law of Evidence in Nigeria (Vol. 11) (Port Harcourt: Pearl Publishers Ltd, 2012) 1566. 1567.

My Lords, permit me to make two further points on this issue. As shown above, the trial Tribunal's assessment of the oral testimonies of PW1 and PW2-PW7 turned on their credibility (or lack thereof) of these witnesses of the appellant since they were thoroughly discredited in cross examination, as affirmed by the lower court, pages 1417 - 421 Vol. 2 (for PW1 and 1431 (for PW1 -PW7).

Thus, the appellant laboured in vain in the spirited attempt he made before this court to have the findings of the lower court vacated. He was, indeed, attempting the impossible given the anaemic evidence he adduced. In my view, the lower court, rightly, affirmed the findings of the trial Tribunal in this regard.

What was in issue was the finding on the credibility of the oral evidence of the appellants' witnesses. The appellant could not advance any strong reason for inviting the lower court to interfere. In my view, it (the lower court), rightly, declined the invitation to do so. Akpapuna v Nzeka (supra); Ebba v Ogodo [1984] 4 SC 84; Popoola v Adeyemi (1992) 8 NWLR (pt 257) 1; Abogede v State 1996) 5 NWLR (pt 448) 270.

Let me, equally, address, even if cursorily, the issue of the PW1's capacity. It 13, paragraph 4.2, of the appellant's brief, it was contended that the lower court "*fell into an error partly because it misconstrued the capacity in which PW1 testified. The Tribunal below had made an order allowing the Petitioner and his representatives to take part in a joint inspection of the electoral materials and obtain a report. PW1 took part in the inspection as representative/nominee of the Petitioner. It was in that capacity that PW1 receive exhibits GP2 - GP42 and GP 45 and worked with them*". (italics supplied).

Could this be a deliberate and disingenuous ploy to distort the testimony of the witness, PW1? To resolve this conundrum, the PW1 will, now, be invited here to restate his answer under cross examination. At page 1812 of Vol 2 of the record, in answer to a question, he conceded that "*I was not part of the team that came to Abakaliki for the exercise ...*" On the Card Reader Machine, he was equally, honest enough to admit that "*...I did not operate a Card Reader Ma-*

chine. I did not participate in the offloading of information from the Card Reader Machine to the INEC Data base...”

More, importantly, at pages 1181 -1183 of Volume, he conceded that the exercise in question merely required a plain and simple statistical analysis which could have been undertaken by anybody who looked at the documents. In effect, his concession was that the effect that he did not exert any scientific criteria in his report. What is more, he also acknowledged the fact that in making his report, he did not refer to any research material, be it local or international.

In the content of these concessions, it is difficult to resist the temptation that, instead of the lower court, it was the appellant’s counsel who misconstrued the capacity in which the PW1 testified. I say so with profound respect. For the avoidance of any doubt, although expertise, for evidential purposes, cannot be equirated (sic) with scholastic knowledge or professorial attainment. R. v Silverlock (1894) 2 Q. B. 766; AG, Federation v Abubakar (2007) All FWLR (pt 375) 405, 555; Azu v State (1993) 7 SCNJ pt 1 151; Sowemimo v State (2004) All FWLR pt 203 951. ***An expert is, all the same a person who is specially skilled in the field he is giving evidence.*** A.G. Federation v. Abubakar (supra).

For this purpose, formal learning on the subject is discounted on affirmative responses are returned to Lord Russell’s Trinitarian posers in R. v Silverlock (supra), namely, “is he peritus? Is he skilled? Has he adequate knowledge? Oguonzee v State [1998] NWLR (pt 551) 60; Sowemimo v State (supra); 1. H. Dennis, The Law of Evidence (Second Edition) (London: Maxwell, 2002) 702 -710.

That notwithstanding, such a person, who is paraded as an expert, must furnish the court with the necessary scientific criteria for testing the accuracy of their conclusions so as to enable it (the court) to form its own independent judgement by the application of those criteria to the facts proved in evidence. Phipson on Evidence (12th Edition), paragraph 1227, page 497; David v Edinburg Magistrates (1953) SC 34, 40.

Put differently the opinion and conclusions, which such an expert proffered before the trial court, must be supported by scientific analysis otherwise his evidence would be value-

less or worthless. SPDC Ltd v Farah and Ors (1995) 3 NWLR (pt 382) 148; SPDC v Otoko (1990) 6 NWLR (pt 159) 693; Ogiale v SPDC (Nig) Ltd (1997) NWLR (pt 480) 165.

It cannot be otherwise for, as Lawton LJ, observed in Turner (1975) Q. B. 834, 841: an observation which I adopt as part of my reasoning in his appeal: B

“An expert’s opinion is admissible to furnish the court with scientific information which is likely to be outside the experience and knowledge of a Jury... If on the proven facts, a Judge... can form (his) own conclusions without help, then the opinion of an expert is unnecessary.” C

See also, M. Redmayne, Expert Evidence and Criminal Justice (Oxford: U. P., 2001) 140 -149, in I. H. Dennis, The Law of Evidence supra) 702. I need not say more on this except to re-iterate the point that the appellant’s impeachment of the conclusion of the lower court on the viva voce evidence is not only uncharitable but, also, unwarranted. D

Next is the question of the Card Reader Machine itself. At page 10, paragraph 3.2 of the appellant’s brief, it was contended that the *“use of the Electronic Card Reader Machine for accreditation of voters was provided for in the Approved Guidelines and regulations for the conduct of the 2015 General elections, Citing paragraph 13 of the Approved Guidelines and Regulations.”* E

True, indeed, the Card Reader Machine traces its paternity to the above guidelines and Regulations. Regrettably, its probative pedestal in the vocabulary of electoral jurisprudence has generated conflicting interpretations from their Lordships of the different Divisions of the Court of Appeal: divergent interpretations I have, judicially noticed. F G

However, with the intervention of this court, in its recent decision in Shinkafi v Yari (supra), it is hoped that practitioners and all other courts will begin to appreciate the position of the said the Card Reader Machine, and the Reports generated therefrom, in litigation.

According to Wikipedia, the Free Encyclopaedia, the INEC card H reader is a portable electronic voter authentication device. Designed, specifically, for the accreditation process for the authentication of eligible voters before voting, the machine was configured to read only the PVCs of a particular polling unit and can only work on election

day, Wikipedia, the Free Encyclopaedia, (last accessed on January 30, 2016).

Prior to the authorisation of its use by the Guidelines and Manual (supra), the Electoral Act, 2010 (as amended), in sections 49 (1) and (2) had ordained an analogue procedure for the accreditation process. As a corollary to the procedure outline above, section 53 (2) of the said Act (that is, the Electoral Act) enshrined the consequences for the breach, negation or violation of the sanctity of the actual Poll sequel to the consummation of the accreditation procedure in section 49 (supra). With the advantage of hindsight, INEC, pursuant to its powers under the said Electoral act, authorised the deployment of the said Card Readers.

Even with the introduction of the said device, that is, the Card Reader Machine, the National Assembly, in its wisdom, did not deem it necessary to bowdlerise the said analogue procedure in section (49 supra) from the Act so that the Card Reader procedure would be the sole determinant of a valid accreditation process. Contrariwise, from the Corrigendum No 2, made on March 28, 2015, amending paragraph 13 (b) of the Approved Guidelines, it stands to reason that the Card Reader was meant to supplement the Voters' Register and was never designed or intended to supplant, displace or supersede it.

Indeed, since the Guidelines and Manual (supra), which authorised the use and deployment of the electronic Card Reader Machine, were made in exercise of the powers conferred by the Electoral Act, the said Card Reader cannot, logically, depose or dethrone the Voters' Register whose juridical roots are, firmly, embedded or entrenched in the selfsame Electoral Act from which it (the Voter' Register), directly, derives its sustenance and currency.

Thus, any attempt to invest it [the Card Reader Machine procedure) with such overarching pre-eminence or superiority over the Voters' Register is like converting an auxiliary procedure - into the dominant procedure of proof, that is, proof of accreditation. This is a logical impossibility. Indeed, only recently, this court in Shinkafi v Yari (supra) confirmed the position that the Card Reader Machine has not replaced the

Voters' Register and had has not supplanted the statement of results in appropriate forms; hence, the appellant still had the obligation to prove his averments in paragraphs 16, 17, 18 and 19 of his Petition relating to accreditation of voters and over-voting as enunciated in several decisions of this court which counsel for the respondents cited profusely. B

In all, against the background of the excerpts from the judgement of the lower court, earlier set out in this judgement, affirming the approach of the trial Tribunal, the learned senior counsel for the appellant was most uncharitable when he contended, on page 11, paragraph 3.4 of the appellant's brief, that there "is no part of the Judgment of the Tribunal of first instance where the Tribunal evaluated exhibits GP2-GP42 and GP45 to make a finding whether paragraph 13 of the Guidelines or indeed any other provision of the Guidelines was complied with." C

The second limb of issue one (appellant's original issue three) which is, inextricably, tied to the probative value of the evidence of PW8, was: D

Whether the lower court was right in holding that, having regard to the evidence of PW8, exhibit GP 45 - the card Report - was incomplete, unreliable and incapable of proving the appellant's allegation of improper accreditation over -voting? E

Learned senior counsel for the appellant devoted paragraphs 5.1-58: pages 21-24 of the brief to his arguments on this issue. He pointed out that exhibit GP45 was the electronic Card reader report which the third respondent issued. In his view, the evidence elicited from the PW8, under cross examination, was inadmissible since it was not in tandem with the pleadings of the respondent, citing paragraph 9 (b), (c), (d) and (e) of the third respondent's reply (page 22 of appellant), and, *Dina v New Nigerian Newspapers* (1986) 2 NWLR (pt 22) 353, 364; *Omisoro v Aregbesola* (2015) 5 NWLR (pt 1482) 205, 281; *Okwejimor v Gbakeji* (2008) 5 NWLR (pt: 1079) 172, 212- 213. F

In his view, by the third respondent's act of issuing exhibit GP45 to the appellant, it was estopped from claiming that exhibit GP45 is incomplete. He maintained that the said exhibit (GP45), which the third respondent made through its officer assigned with the responsibility to issue it as part of the conduct of the questioned election, H

completely, relieved the appellant (as Petitioner) of the onus of proving the facts stated in the exhibit because it amounted to an admission against interest, *Adusei v Adebayo* (2012) NWLR (pt 1288) 334, 558. He contended that the respondent did not plead the incompleteness of the said exhibit. He urge the court to resolve this issue in
 B favour of the appellant.

For the first respondent, Arthur Obi Okafor, SAN, pointed out that the appellant not only tendered the Card Reader Report for the purpose of proving the allegation of over-voting but also called PW8
 C to prove that the said exhibit was the only means of lawful accreditation during the said election and that the exhibit contains the entire record of all accredited voters who voted in the said election. He therefore, contended that, given the state of pleadings and evidence led by the appellant, the respondents were entitled to cross examine
 D PW8 on the said exhibit to determine its veracity, reliability and completeness as the record of all the accredited voters who voted.

In effect, the appellant's contention on the propriety of the respondents' cross examination of the witness is misconceived since the fact of the exhibit's unreliability and incompleteness go to the
 E weight lobe attached to it and is not expected to be pleaded. He drew attention to the concurrent findings of the lower courts in his regard.

J. U. K. Igwe, SAN, for the second respondent, in paragraphs 41-4.4.23, pages 20 -27 of his brief argued along the same line. In
 F particular, he drew attention to paragraphs 1-11 of the PW8' statement on oath of July 25, 2015, page 548, Vol 2 of the record, and her cross examination, pages 186 -1187 of Vol 2 of the record, where she confirmed the incompleteness of the said exhibit (pages 21 -22,
 G JUK, Igwe).

Learned Senior Counsel observed that, although PW8 was subpoenaed at the appellant's instance, pages 1185 -1188 of Vol 2 of the record he [appellant] did not declare her a hostile witness. He maintained that exhibit PW45 is a documentary hearsay and an in-
 H complete and unreliable document for the purpose of confirming all the verified PVCs and all the authenticated fingerprints in the said election. He called attention to paragraph 7 of the witness's statement on oath, paragraph 4.4.10, page 22, JUK Igwe)

He contend d that, by not producing the Register of voters,

section 167 (d) if the Evidence Act, 2011 should be invoked against the appellant since he had to burden of producing complete evidence in proof of all averments in paragraphs 16, 17, 18 and 19 of the Petition relating to accreditation of voters and over-voting, citing *Buhari v Obasanjo* (2005) 2 NWLR (pt 241; CPC INEC (2011) 12 AC (pt 4) 80, 131 -136. B

He, also, relied on *Shinkafi v Yari* (supra), also, referring to the view of the trial Tribunal on pages 1424 -1425 of Vol 2 (page 24 JUK, Iqwe): views affirmed by the lower court, page 210 Vol 5 of the record concurrent findings firmly anchored on the evidence, pp 1110 -1150, VOL 2 where PW1 dumped the exhibit and pages 1185 1188 C of vol. 2 for the evidence of PW8. He drew attention to the concurrent findings that PW1 was not an expert, para 4.4.17.

On this issue, Dr. Onyechi Ikpeazu, SAN, first drew attention the aspects of the lower court's decisions that were not appealed against, namely, that his case of undue accreditation was only hinged D on exhibit P45, Page 224, (Ikpeazu 8.02) over-voting (Ikpeazu, 8.03); finding that evidence of PW2 -PW7 cannot be relied upon to prove allegation of non-compliance with either Electoral Act or The Guidelines and Manual, Ikpeazu, 8.04, citing *Shinkafi v Yari* (supra). E

Ikpeazu at page 4 et seq on over-voting; PU by PU, page 29 (Ikpeazu)

RESOLUTION OF THE ISSUE

The evidence of the PW8 in examination-in-chief and cross examination had been set out above. For their bearing on the resolution of this issue, I would, even if ad nauseam, set them out again if F only to demonstrate the vacuity of the attempt to impeach the approach of the lower court to the said witness (PW8) and the exhibit he tendered (exhibit GP48). G

"That the Card Reader (sic, Report) I generated ... was not a complete report covering all the details of Polling Units in Ebonyi State as some Polling Units were not then uploaded and thus not included in that report However, to meet the application request of the Petitioner's counsel, the Commission issued him with the CTC of H what was available at the time of his application. Subsequently, following the application of the Petitioners, the uploaded data available at the time of instruction by the Chairman of INEC to shut down the server was delivered to the Petitioners ... from the record available to

us at ICT Department, INEC Headquarters, Abuja, there were some Pus where the database server at ICT Department (INEC Headquarters) recorded zero/nil for the Card Reader Machine Report for the Governorship... election... It may be attributable to where Card Readers well used but the data captured were not uploaded.” (Italics supplied)

Further that:

“There are some factors that will affect the uploading of information from the Card Reader Machines to the INEC Data Base. It is correct to say that the uploading process is not automatic. A person must initiate the uploading process. Where information contained In the Card Reader Machine is not initiated, it will not get into the INEC data base. Where a Card Reader is stolen or destroyed the information is (sic, in) that Card Reader will not get into the INEC Data base. When there is no network the information cannot get to the INEC Data base. A PVC that is damaged cannot be identified by a Card Reader Machine. There is a high possibility of the Card Reader Machine not being able to capture a dirty finger. If there is scar on the thumb, the possibility of a Card Reader Machine capturing the finger print is very low. If accreditation is done manually, it will not reflect’ the INEC Data base. (pages 1186 -1187 of Volume 2 of the record, italics supplied for emphasis)

It was the above evidence that prompted the finding that:

“From his evidence, it is safe for us to conclude that exhibit GP45 is not accurate sufficient and comprehensive enough to be relied on in proof of the allegation of non-compliance with the Electoral Act (as amended).” (pages 205 -206 of the report, italics supplied)

Put differently, what the lower court was saying in effect, was that the appellant failed to prove his allegations of non-compliance because he did not tender the Voters’ Register; Statement of Results in the appropriate forms which would show the number of registered accredited voters and the number of actual voters; and he did not relate each of the documents to the specific areas of his case in respect of which the documents were tendered and show that the figures representing the over-voting, if removed, would result in his victory, *Haruna v Modibo* (supra); *Audu v INEC* (supra) etc.

My Lords, having adequately dealt with this issue while consid-

ering the first limb, it would suffice if I take the liberty to adopt my earlier reasoning on this question in the resolution of this limb of the coalesced issue one. The answer to the question, therefore, is that the lower court was right in holding that, having regard to the evidence of PW8, exhibit GP45-The Card Reader Report was incomplete, unreliable and incapable of proving the appellant's allegation of improper accreditation/over-voting. B

One final point. Learned senior counsel for the appellant would, even, seem to forget that it is such factors which impinge on the reliability, of such digitally-generated evidence as exhibit GP45, as the P I 8 identified above, that warranted "the weight provision" in sec ion 34 (1) (b) of the Evidence Act, 2011. C

It provides thus:

"34 (1) In estimating the weight, if any, to be attached to a statement rendered admissible as evidence by this Act, regard shall be had to all the circumstances from which any inference can reasonably be drawn as to accuracy or otherwise of the statement and in particular-

(a) ...

(b) In the case of a statement contained in a document produced by a computer-

(i) the question whether or not the information which the statement contained, reproduces or is derived from, was supplied to it contemporaneously with the Occurrence or existence of the acts dealt with in that information, and F

(ii) the question whether or not any person concerned with the supply of information to the computer or with the operation of that computer or any equipment by means of which the document containing he statement was produced by it had any incentive to conceal or misrepresent facts." (Italics supplied for emphasis) G

In all, the law on the proof of improper accreditation and over-voting has remained inexorable and has not been whittled down by INEC's approval of the deployment of the Card Reader Machine procedure. I, therefore, resolve these coalesced issues against the H appellant.

The outstanding issue two broaches an issue that has been dealt with, most) extensively, in this court. It is the question whether:

Whether the Court of Appeal was correct when their lordships

confirmed the decision of the Tribunal that exhibits P2 -GP42 and GP45 were documents unavailing to the appellant having been dumped on the Tribunal and no witness who could be cross-examined as to their contents?

The appellant's counsel devoted pages 13 -21, paragraphs 411-B 4.22 to this issue. The first respondent's reaction to these arguments could be found on pages 17-28 of' the brief, whilst the second and third respondents dealt with it on pages 6 et seq and 13 -20 of their briefs, respectively.

My Lords, it is worrisome, that learned senior counsel keep C inundating this apex court with questions it has, most admirably, dealt with in a chiaroscuro of its decisions. What emerge from these decisions is that there is a standing prescription against "dumping of documents" on trial courts. In this appeal, without any sufficient warrant, D senior counsel for the appellant has invited this court to vacate all such decisions.

Coincidentally, the same invitation was extended to this court in APGA v. Al-Makura (unreported decision in SC.983/2015 delivered on January 25, 2016): an invitation that was, most politely, E turned down. Again, the present invitation is appeal to overrule all the decisions on this point shall, with all politeness, be turned down.

Just as counsel have continued to canvass the issue of "dumping of documents" with nauseating and irksome regularity, this court has continued to maintain its position with unremitting consistency. F As such, it would serve no useful purpose dissipating further judicial energy on it in this appeal. Incidentally, the same issue of "dumping of documents" as, extensively, canvassed, and dealt with, in the said recent decision in AGPA v Al-Makura (supra).

G That decision was, just, handed down less than a fortnight ago, precisely, on January 25, 2016. Against this background, I entreat my Lords to bear with me as I intend to dispose of this question by paraphrasing a popular expression in the Christian Bible: sufficient unto the issue of dumping of documents is the evil thereof!

H I shall, therefore, do no more than catalogue a handful of the decisions of this court on this issue, Ivienagbor v. Bazuaye (1999) 9 NWLR (pt 620) 552; (1999) 6 SCNJ 235, 243; Owe v. Oshinbanjo (1965) 1 All NLR 72 at 75; Bornu Holding Co. Ltd. v. Alhaji Hassan Bogoco (1971) 1 All NLR 324 at 333; Alhaji Onibudo & Ors v Alhaji

Akilu & Ors (1982) 7 SC 60, 62; Nwaga v Registered Trustees Recreation Club Nwaga v Registered Trustees Recreation Club (2004) FWLR (pt 190) 1360, 1380-1381.

Others include, Jalingo v Nyame (1992) 3 NWLR (pt 231) 538; Ugochukwu v Co-operative Bank (1996) 7 SCNJ 22; WAB v Savanah Ventures [2002] FWLR (pt 112) 53, 72; Obasi Brothers Ltd v MBA Securities Ltd (2005) 2 SC (pt 1) 51, 68, ANPP v INEC (2010) 13 NWLR (pt 1212) 549; Ucha and Anor v Elechi and Ors (2012) 13 NWLR (pt 1317) 330, 360; Ucha v Elechi (2012) All FWLR (pt 625) 237, 259; AC v Lamido (2012) 8 NWLR (pt 1303) 560, 584 -585.

The most recent decisions include: Omisore v Aregbesola (2115) 15 NWLR (pt 1482) 202, 323-324; APG4 v Al-Makura and Ors (Unreported decision of this court in App al No SC. 983/2015 OF January 25, 2016). There are many others. They need not detain us further.

The above reasons prompted my dismissal of the appellant's appeal on January, 27, 2016 and the affirmation of the concurrent findings of the lower courts that the first respondent in this appeal was, duly, elected and returned as the Governor of Ebonyi State having won the majority votes in the said election and having satisfied the relevant constitutional requirements.

Appeal dismissed. Parties are to bear their respective costs.

MOHAMMED CJN

This appeal was heard by this Court on Wednesday 27th January 2016. On the same day, lead Judgment of the Court was delivered by my learned brother Nweze, JSC in which this appeal was dismissed and the Judgment of the Court of Appeal delivered on 11th day of December, 2015, dismissing the Appellant's appeal against the Judgment of the Governorship Election Tribunal Ebonyi State delivered on 16th day of October, 2015, was affirmed. On that same 27th January, 2016, I also delivered my own judgment dismissing the appeal and undertook to give my own reasons for doing so today.

I have been privileged before today of reading in draft the reasons given by my learned brother Nweze, JSC., for dismissing this

appeal and I entirely agree with them. I therefore entirely agree with the comprehensive reasons given by my learned brother Nweze, JSC in the reasons for dismissing the appeal and I adopt them as mine. I do not have anything useful to add onto it. The appeal remains dismissed by me with no order on costs.

B

MUHAMMAD JSC

On Wednesday, the 27th of January, 2016, I delivered my judgment on this appeal, where in I dismissed the appeal. I promised to deliver my reasons for the dismissal today.

I have had the advantage of reading in advance, the lead Reasons delivered just now, by my learned brother, Nweze, JSC, for dismissing the appeal. My learned brother has adequately covered all the reasons I would want proffer. I do not think I need to add anything more. I therefore, adopt his reasoning process as mine. I am still at one with him in dismissing the appeal. Parties in this appeal are to bear their respective costs.

E

AKA'AHS JSC

I have had before now a preview of the reasons for dismissing the appeal which was delivered by my Lord, Nweze JSC with which I am in complete agreement. It is for the same reasons that I dismissed the appeal on 27th January, 2016. I have nothing useful to add.

The appeal lacks merit and it is accordingly dismissed. I make no order on cost.

G

KEKERE-EKUN JSC

This appeal was heard on Wednesday, 27th January 2016. I concurred with the lead judgment of my learned brother, Nweze, JSC in dismissing the appeal and promised to give my reasons for dismissing the appeal today.

I have had the privilege of reading in draft the lucid and comprehensive reasons advanced by my learned brother, Nweze, JSC for dismissing this appeal. I agree entirely with the said reasons which

I adopt. In, further support I wish to make a few comments on the probative value of the evidence of PW1 (the appellant's main witness) and PW8 vis a vis the documentary evidence relied upon by the appellant to prove his case.

The appellant herein challenged the return of the 1st respondent as the duly elected Governor of Ebonyi State on the ground, inter alia that the election held on 11th April 2015 was invalid by reason of non-compliance with the provisions of the Electoral Act 2010 (as amended) and the provisions of the 1999 Constitution (as amended).

Specifically, the appellant sought declaration (among others) that the election was marred by widespread irregularities including over voting, purportedly revealed by discrepancies between the number of Electronic Card Reader accredited voters and the Form EC8A result sheets of accredited voters on polling unit basis. It was his contention that he identified irregularities substantially affected the outcome of the election.

These irregularities were sought to be established mainly through PW1 who tendered Exhibits GP2 - GP42 (electoral forms) and Exhibit GP45 (the Card Reader Report). Unfortunately, the evidence of this witness could not advance the appellant's case.

It has been settled by a long list of authorities of this court that:

(1) where party seeks declaratory reliefs, the burden is on him to establish his claim. He must succeed on the strength of his own case and not on the weakness of the defence (if any), Such reliefs will not be granted even on the admission of the defendant. *See: Emenike Vs P.D.P. (2012) LPELR – SC 443/2011 P. 27 D-G; Dumez Ltd. Vs Nwachoba (2008) 18 NWLR (Pt. 119) 361 @ 373-374; Omisore Vs Aregbesola (2015) 15 NWLR (Pt. 1482) 297-298 F-A; Ucha Vs. Elechi (2012) 13 NWLR (Pt. 1317) 230.*

(2) Documentary evidence relied upon by a party must be specifically linked to the aspect of his case to which it relates. A party cannot dump a bundle of documentary evidence on a court or Tribunal and expect the court to conduct an independent enquiry to provide the link in the recess of its chambers. This would no doubt amount to a breach of the principle of fair hearing. *See: Ucha Vs. Elechi (supra); Iniama Vs. Akpabio (2012) 17 NWLR (Pt. 1116) 255 @ 299 D-F; Awuse Vs. Odili (2005) 16 NWLR (Pt. 952) 416; A. N. P.*

P. Vs INEC (2010) 13 NWLR (Pt. 1212) 549.

(3) Hearsay evidence, oral or documentary, is inadmissible and lacks probative value. See Section 37 of the Evidence Act, 2011 particularly sub-section (b). See: Buhari Vs. Obasanjo (2005) 13 NWLR (Pt.941) 1 @ 317; Doma Vs INEC (2012) ALL FWLR (Pt. 628) B 813@ 829.

PW1 under cross-examination admitted that he was not part of the team that visited Abakaliki for the inspection of electoral materials. He also admitted that he was not at any polling unit on the day of the election and did not operate any card reader machine or participate in off-loading the data from the machine to INEC's data base. No other witness was called to testify in respect of Exhibits GP2 - GP42 or to link them to the specific allegations of non-compliance in the appellant's case. The voters register, which has been held by this court to be indispensable in proving allegations also not tendered. See: Shinkafi Vs Yari (unreported) SC. 907/2015 delivered on 8th January 2016; ACN Vs. Lamido & Ors (2012) LPELR – 782 (SC); Ucha Vs. Elechi (supra); Haruna Vs. Modibo (2004) 16 NWLR (Pt. 900) 487.

The evidence of PW1 on the said exhibits amounted to documentary hearsay. It could not avail the appellant. Contrary to the appellant's contention that the trial Tribunal failed to consider the evidence of non-compliance led by him, the record clearly shows that the said Tribunal afforded the evidence adduced the required scrutiny and made findings thereon. The lower court so found at pages 205 and 206 of the record. Having dumped documents on the Tribunal by a person who was not the maker and the failure of the appellant to tie the documents to specific aspects of his case, the evidence of PW1 was rightly rejected by the Tribunal and the court below was in order when it affirmed the decision.

Furthermore, PW8 an official of INEC who testified on subpoena on the application of the appellant admitted that Exhibit GP45 (the Card Reader Report) was an incomplete document, as data from some polling units had not been uploaded to the INEC data base as at the time the report was made. The document was therefore unreliable and lacking in any evidential value. Again the Tribunal rightly rejected the report and the court below was right to have affirmed the rejection. On these findings alone, the petition was bound to fail.

It was for these and the more elaborate reasons well marshalled in the lead judgment that I dismissed this appeal and affirmed the decision of the court below.

OKORO JSC

B

On Wednesday, the 27th day of January, 2016 when this appeal was heard, both senior and other counsel representing all parties to this appeal adopted their various briefs and made oral submissions in support of their divergent positions. Later that day my learned brother, C. C. Nweze, JSC delivered the lead judgment of the Court wherein this appeal was adjudged to be devoid of any scintilla of merit and was accordingly dismissed. This court, in the same token affirmed the judgment of the Court of Appeal delivered on 11th December, 2015 which also upheld the judgment of the Governorship Election Tribunal Ebonyi State delivered on 16th October, 2015. On the same 27th January, 2016, I also delivered my own judgment wherein I dismissed the appeal and promised to give reasons for the decision today. I shall proceed to state the reasons aforesaid.

C

D

In so doing, let me acknowledge the illuminating lead judgment of my brother, Nweze, JSC which I was privileged to read in draft particularly the reasons marshalled to reach the conclusion we made on 27th January, 2016. Without much ado, I agree entirely with those reasons. My Lords, permit me to adopt them as mine. I so do.

E

F

Be that as it may, I wish to comment, albeit briefly on the evidence of PW8 and Exhibit GP45, the Card Reader Report for which so much dust has been raised.

On pages 205 - 206 of Vol. 5 of the record of appeal, the court below relied and affirmed the judgment of the trial tribunal which inter alia held as follows:

“...as stated earlier, his own witness PW8, had alluded to the fact that from the record available to them at ICT department of INEC Headquarters, Abuja, there were some polling units where the data base server at the department recorded zero/nil for the card reader machine and that it ought to be attributable to where card readers were used but the data captured were not uploaded.

H

From this evidence, it is safe for us to conclude that Exhibit

GP45 is not accurate, sufficient and comprehensive enough to be relied on in proof of the allegation of non compliance with the Electoral Act (as amended)”

The first issue which plays out here is that PW8 stated clearly that the card reader report was incomplete and this evidence has not been controverted. My view is that the court below was right to affirm the decision of the trial Tribunal in respect of Exhibit GP45. It is improper for a court of law to enter judgment for a party on incomplete and inconclusive facts or evidence. A party ought to place all relevant facts before the court to assist it to arrive at a fair and reasonable conclusion. See *FELIX NYOYE ADIM V. NIGERIAN BOTTLING COMPANY PLC & ANOR.* (2010) 9 NWLR (pt. 1200) 543. As it turns out, it is clear that Exhibit GP45 - the card reader report was incomplete, unreliable and incapable of proving appellant's allegation of improper accreditation/over-voting.

Earlier this year, in *MAHMUD ALIYU SHINEKAFI & ANOR V. ABDULAZEEZ ABUBAKAR YARI & 2 ORS* (unreported) – Appeal No. SC. 907/2015, delivered on 8th January, 2016, I stated on page 30 of the judgment as follows:-

“My understanding of the function of the Card Reader Machine is to authenticate the owner of a voters’ card and to prevent multi-voting by a voter. I am not aware that the reader machine has replaced the voter’s register or taken the place of statement of results in appropriate form.”

The position has not changed. Parties seeking to prove over voting must tender the voter's register and a complete card reader report in the election amongst other requirements. Any failure to tender the voter's register is fatal to the case of the petitioner. See *HARUNA V. MODIBO* (2004)16 NWLR (pt 900) 487, *KALGO V. KALGO* (1999) 6 NWLR (pt. 606) 639 and *AUDU V. INEC (NO. 2)* (2010) 13 NWLR, (pt. 1212) 456.

Based on the above reasons and the fuller ones given in the lead judgment, I reaffirm my position that the appeal remains dismissed. I make no order as to cost.

SANUSI JSC

On 27th January, 2016, this court took argument of learned

counsel to the parties in this appeal. Subsequently, the court delivered its judgment, wherein it dismissed the appeal filed by the appellant herein and promised to give reasons for the judgment on Friday 5th of February, 2016. Below are my reasons for the judgment.

The lead judgment prepared by my lord Chima Centus Nweze, JSC was made available to me before now. Having perused same, I am in complete agreement with the reasons and conclusions arrived at to justify the outright dismissal of the appeal because it is lacking in merit. That notwithstanding, I would wish to make few comments hereunder, on some of the points or issues canvassed by learned counsel to the parties. On perusing the Briefs of argument variously filed by parties learned counsel in this appeal, I am attracted by the issues raised in the Appellant's Brief of argument which I will reproduce later. The issues raised therein, are elegantly framed and have encapsulated all the various issues raised in the brief of argument filed by other parties learned counsel. The three issues for determination which I consider germane to the determination of this appeal were also I adopted by the first and other respondents and they read as below:-

(1) Whether the finding by the Court of Appeal below) that the trial tribunal duly and properly considered and evaluated the pleadings and evidence pertaining to breach of the provisions of the Guidelines and the Manu I for Election Officers in determining the question of non-compliance with the provisions of the Electoral Act 2010 as amended, raised by the petitioner, is correct (Grounds 1&6)

(2) Whether the court of Appeal below was right when it affirmed the decision of the Tribunal of first instance to the effect that exhibits GP2-GP42 and GP45 are not legal evidence but hearsay evidence, dumped on the Tribunal without any supporting oral evidence (Grounds 2, 3, 7, 8, and 9).

(3) Whether the decision of the Court of Appeal to the effect that Exhibit GP45 was incomplete and unreliable, based on the evidence of PW8, is supportable (Ground 4).

It would seem to me, that the grouse of the appellant in this issue basically relates to alleged failure of the tribunal to valueate the evidence adduced before it by the petitioner later appellant in both the court below and later this court. It is the contention of the appellant that non-evaluation of the evidence basically centres on the tri-

bunal's Manual and Guidelines in evidence. He opined that having rejected the Manual and Guidelines, the tribunal could not later turn back to consider and evaluate other documents. He similarly blamed the court below for affirming the findings of the tribunal and also or not evaluating the evidence itself since the tribunal ailed to do so. It is noted by me, that despite the stance of the tribunal on the Manual and Guidelines, the tribunal still later went ahead to consider the merit of the appeal when it stated thus:-

“Assuming we are held wrong, we shall proceed to consider the merit of the petition in line with the facts pleaded and the evidence given by the parties as they relate to the Guidelines and Manual for Electoral Officers 2015.”

The tribunal then went ahead to evaluate the testimonies of each of the witnesses called by the petitioner before it later reached the following conclusion as shown on page 1427 line 28 and lines 1-7 of page 1428 of the record when it stated as follows:-

“We have considered the totality of the evidence provided by the petitioner before the Tribunal and we find that the Petitioner who alleges non-compliance with the Electoral Act 2010 (as amended) concentrated on acts of non-compliance with INEC Manual and Guidelines in the area accreditation of voters and in doing so, he placed reliance on only the accreditation as recorded in the Card Ready Report (Exhibit GP45) of the witnesses called by the petitioner gave credit of the evidence of the accreditation process at the various polling units in Ebonyi State.”

Then later, the tribunal went ahead to evaluate the oral testimonies of each of the witnessed called by the petitioner/appellant before it later found that the non-compliance allegation was not established by the petitioner/appellant. From the surrounding circumstances of t is appeal as highlighted above, it will be wrong to say that the tribunal did not evaluate the evidence adduced by the petitioner. This is because, even though the tribunal rejected the Manual and Guidelines, it still went ahead to carefully consider the evidence led by the petitioner and even the Manual & Guidelines it had earlier rejected just to trek on the path of caution. The lower court is also right in its finding that the said evidence was duly evaluated by the trial tribunal. As the petitioner, the appellant who alleges non-compliance has the burden to prove his petition by calling credible wit-

nesses to prove to the satisfaction of the court/tribunal not only on the conduct of the election, but also I hat the non-compliance had affected the result of the election. That is not the case here, because the petitioner now appellant, failed to fulfil such condition.

It is not in dispute that PW1 was the star-witness for the petitioner/appellant through whom Exhibits GP2 to GP42 were tendered by simply dumping them at the tribunal. PW1 was in the first place, not the maker of such documents. Similarly, no Voters Register was tendered by the petitioners at the tribunal even though over-voting was on of the grounds upon which he filed his petition against the respondent. Now on the issue of dumping of these documents on the tribunal, this court decided in replete of numerous authorities to the effect that in any case whether election or non-election matter, any party tendering documentary evidence has the task of linking such documents to the specific aspects of his case for which such documents so tendered be leading evidence of the purport of the document in relation to the aspect of his case. In other words, he should not merely dump the, in the court or tribunal and expect the tribunal or curt to embark on speculation in determining the purport for which it was tendered or to which aspect of the case such document relates, without being guided by oral evidence led in open court. In fact, this court In the case of Action Congress of Nigeria (ACN) vs Lamido & others (2012) LPELR 782 (SC had this to say at page 38 per Fabiyi JSC:-

“It is not in doubt that the stated Exhibits were not demonstrated in the open court. They were the type of documents which this court affirmed as rightly expunged by the Court of Appeal in Buhari v INEC (2008) 19 NWLR (pt 1120) 246 at 414. This ii so, as there is a dichotomy between admissibility of documents and the probative value to be based on relevance, probative value depends not only on relevant but also on proof. Evidence has probative value if it tends to prove an issue”.

I must say, that it is not the duty of a court or tribunal to act within the real of conjuncture in determining what a document so tendered relates to, or for what purpose it was meant to serve by tendering it, or to proceed to embark on making inquiry into the case outside the court not even by examining of such documents which are in evidence but not examined in open court. A judge is an

adjudicator and not an investigator. See *Queen vs Wilcox* (1961) 1 SCNLR 296; (1961) 1 All NLR 633, *Dennis Iviengbor v Henry Osala Bazuaye* (1999) 6 SCNJ 235 at 243 *Fawehinmi v Akinlaja* (2010) LPELR 8963. The petitioner's/appellant's failure to lead oral evidence to link the documents with what he pleaded in the petition therefore
B justifies the tribunal to refuse to act on them as it is not the tribunal's function to speculate on what such documents were meant to specifically establish or prove. The court below was, in my view correct when it held that the documents which were entries in electoral forms which ordinarily require oral evidence of someone conversant with
C the said document or someone's entries to relate them to the disputed scores and thereby to bring them to life. By not leading such oral evidence, it will therefore not be out of place, to regard such documents as documentary hearsay or not being legal evidence as
D held by the court below. The issues are therefore resolved against the appellant.

Thus, in view of these few comments of mine for the detailed reasons given in the lead reasons for judgment advanced by my learned brother Chima Centus Nweze JSC which I am in full agree-
E ment with and also adopt them as mine, I also see no merit in this appeal. The appeal therefore deserves to be dismissed and accordingly so dismiss it for being lacking in merit. I affirm the judgment of the court below which also affirmed the decision of the trial tribunal.
F I abide by the consequential order made therein.

G

H