

SUPREME COURT OF NIGERIA
MONDAY 15TH FEBRUARY, 2016 SC. 13/2016
CORAM:- W. S. N. ONNOGHEN, N. S. NGWUTA,
M. U. PETER-ODILI, M. D. MUHAMMAD, C. B. OGUNBIYI,
J. I. OKORO, A. SANUSI, JJSC

1. ALHAJI ADAMU MAINA WAZIRI
 2. PEOPLES DEMOCRATIC PARTY APPELLANTS
AND
 1. ALHAJI IBRAHIM GEIDAM
 2. ALL PROGRESSIVES CONGRESS
 3. INDEPENDENT NATIONAL
ELECTORAL COMMISSION RESPONDENTS
 4. THE RESIDENTIAL ELECTORAL
COMMISSIONER, YOBE STATE
 5. ASP. ZAKARI DEBA
-

APPEALS - Filing - Error - Sanction for non compliance with practice direction - In respect of transmission of records caused by officer in the court registry - Cannot be visited on innocent litigant (H1)

ELECTION PETITIONS - Parties - Joinder of - 5th respondent who was neither a candidate at the election - Nor played any role as electoral officer - Cannot be brought in as a party (H2)

ELECTION PETITIONS - Corrupt practice - Allegation of - Proof - Allegation of financial inducement of 4th respondent was not proved beyond reasonable doubt - And so it remains a mere suspicion (H3)

ELECTIONS - Non compliance with the Act - Nullification - Election shall not be invalidated - If it appears to Election Tribunal that election was conducted substantially in accordance with Electoral Act (H4)

ELECTION PETITIONS - Appeals - Grounds - Allegation of non use of card reader did not arise from any specific ground - Attacking specific finding of the lower courts (H5)

FACTS

This action was filed at the Yobe State Governorship Election Petition Tribunal by petitioners/appellants. They are questioning the election of 1st respondent as the Governor of the State. On the 11th of April 2015, 3rd respondent (INEC) conducted gubernatorial election in the State, wherein 1st appellant and 1st respondent were participants. They were sponsored by the Peoples Democratic Party and All Progressive Congress, respectively. Other political parties also sponsored candidates that also took part in the election as contestants. Upon the conclusion of the exercise at the various polling units across the State, 3rd respondent declared 1st respondent as the duly elected Governor of Yobe State having polled the majority of lawful votes cast at the election.

Appellants, being dissatisfied with the election and return of 1st respondent, filed the petition. The Grounds of the petition are inter alia, that 1st respondent was not duly elected by a majority of lawful votes cast at the election and that the election and return of 1st respondent is invalid by reasons of corrupt practices. 1st and 2nd respondents incorporated preliminary objections in their joint reply to the petition asking for the striking out and/or the dismissal of the petition. At the conclusion of hearing in the matter, the Tribunal in its judgment dismissed the petition for lacking in merit and upheld the election of 1st respondent. Dissatisfied, appellants appealed unsuccessfully to the Court of Appeal Abuja Division. Appellants have again come on appeal to the Supreme Court.

ISSUES FOR DETERMINATION

ISSUE NO. 1

Whether the Court of Appeal rightly held that the 5th Respondent is not a proper and necessary party to the petition of the Appellants at the Trial Tribunal, in the face of the overwhelming and specifically particularized allegations of corrupt practices against him and in view of this Honourable court's decision in *APC v AYODELE FAYOSE* (2015) LPELR Vol. 24587 (SC) 94.

ISSUE NO. 2

Whether the judgment of the Court of Appeal upholding dismissal of the Appellant's petition on ground of corrupt practices is not perverse, having regard to the facts of corrupt enrichment of the 4th Respondent, by the 5th Respondent acting as an agent of the 1st

Respondent, during the governorship election process held on 11th April, 2015 and which corrupt practice was confirmed by EFCC to be for the purpose of influencing the election and further supported with unassailable documentary and oral evidence adduced at the Trial Tribunal in proof of the allegations.

ISSUE NO. 3

Whether the one sided oral and documentary evidence (particularly the admission against the interest by the 3rd Respondent (INEC) Administrative Secretary - PW 4) led by the Appellants did not satisfy the evidential burden that election did not hold in the following 6 Local Government Areas of Bade, Fune, Gulani, Jakusko, Tramuwa and Yunusari, so as to warrant this Honourable Court to invoke Section 22 of the Supreme court Act, LNF, 2004, to nullify the Yobe State Governorship Election held on 11th April, 2015 for substantial non-compliance?

HELD (Unanimously dismissing the appeal per **PETER-ODILI JSC**)

APPEALS - Filing - Error

1. I agree with learned counsel for the 5th Respondent that because of the nature of election petition proceedings, the effect of non-compliance with the practice direction is fundamental as it would vitiate all the steps taken at the trial rendering all a nullity. However, can a non-compliance by an officer of court without fault of a litigant have a sanction visited upon the innocent litigant who had done his part as provided for either in the particular legislation or practice direction. My answer would be a resounding NO. This is because the Appellants as in this case having fulfilled the conditions of appeal as imposed by the Registrar of the Lower Court at the settlement of record, it is taken that the Appellants having completed their part, the duty of transmitting the record lies squarely within the domestic affair of the registry of the Court whose decision is appealed against and in this case, the Court of Appeal. (p. 2023 B)

Parties - Joinder of

- 2. From the above, I have no difficulty in going along with the submissions of the respective counsel for the Respondents that Section 137 (2) and (3) of the Electoral Act 2010 has no room for the joinder of the 5th Respondent who neither won the election nor performed any role as an electoral officer or agent of the 3rd Respondent in the election petition challenging the result of such an election and even no relief was claimed against the said 5th Respondent and indeed, he had nothing to gain or lose in the petition aforesaid. Also, the jurisdiction of the Election Petition Tribunal is circumscribed and sui generis or unique in nature and so, 5th Respondent being outside those expected within the limited provisions of the Electoral Act cannot be brought in as a party under any guise.**
- It is for the above reasons that I see no basis to fault what the Court below did in its finding that 5th Respondent was not a necessary party within the applicable law and having his name struck out. This issue is resolved against the Appellant. (p. 2029 H)**

ELECTION PETITIONS - Corrupt practice - Allegation of - Proof

- 3. Indeed, those concurrent findings are unassailable as the Appellants have failed to show the linkage between the alleged misconduct of the 4th and 5th Respondents and the said election or how the 1st respondent was connected with the lodgement of the funds or how they affected the outcome of the election in favour of the 1st respondent or that 1st respondent even authorised, the said corrupt practice.**
- Of note is that the Tribunal found and the Court below agreed that the allegation of financial inducement of the 4th respondent was not proved beyond reasonable doubt by law. This is buttressed by the fact that there were even conflicting evidence as to who exactly made those payments into the 4th respondent's account. Also, there was no proof that the 4th respondent was compromised or subverted as alleged by the petitioners. Furthermore, the pieces of evidence floating on the said deposited monies raised more questions than they answered such as the identity of the depositor, a situation which**

left the court with speculations as to what actually took place in relation to the said deposits. This has not helped clear the point as to how the said money was in any way connected with the election in dispute and if connected, how it affected the outcome of the result. This produces nothing other than mere suspicion which is now settled no matter how strong the suspicion may be, it cannot take the place of legal proof. B

The corrupt practices allegation alluded to by the Appellants in relation to the deposited monies whether Fifteen Million Naira (N15,000,000.00) or Twenty One Million Naira (N21,000,000.00) as alleged at some point have remained not proven. (p. 2034 E) C

ELECTIONS - Non compliance - Nullification

4. On the matter of the assertion by the Appellants of elections not holding in six Local Government Areas as a support for the allegation of non-compliance with the Electoral Act for which the election should be nullified, the said six Local Government Areas are Tarmuwa, Jakusco, Yunusari, Bade, Gulani and Fune. D E

Section 139(1) of the Electoral Act, 2010 (as amended) that provides that an election shall not be liable to be invalidated by that section above, has been interpreted in some cases that by reason of non-compliance with the provisions of this Act if it appears to the Election Tribunal or Court that the election was conducted substantially in accordance with the principle of this Act and that the non-compliance did not substantially affect the result of the election. F

It is difficult to go against what the Lower Court found in line with those of the trial Tribunal in that there were no supporting evidence on the pleaded facts of the areas where the elections were allegedly not held. Therefore, the conclusion available is that the Appellants could not make out a case of non- holding of the election in the said six Local Government Areas. (pp. 2035 E/2038 B) G H

Appeals - Grounds

5. On the matter of the Appellants' contention that there was

non-compliance in the conduct of the election because of an alleged non-use of card reader, I am inclined to the position of the 1st and 2nd Respondents' counsel that the card reader issue did not stem from any specific ground of appeal attacking a specific finding of both Lower Courts on the card reader.

In fact, it is a matter just floating without anchor of any sort and cannot be of assistance to the Appellants in their attempt to prove substantial non-compliance with the Electoral Act.
(p. 2038 D)

REPRESENTATION

CHIEF ADENIYI AKINTOLA SAN, ABIODUN OWONIKOKO SAN, for the Appellants and with them are: Folasade Aofolaju; O. J. Aboje, Esq., Oladele Oyelami, Esq.; Christian Okoh, Esq., Matthew W. Opukumo, Esq.

YUSUF ALI, SAN, ADEBAYO ADELODUN SAN, K.K. ELEJA SAN for the 1st and 2nd Respondents and with them are: A. K. Adeyi, Esq.; Prof. Wahab Egbewole; A.I. Ishaku, Esq.; A. Y. Idriss, Esq.; Salisu Ahmed, Esq.; Ayo Olanrewaju, Esq.; S.A. Oke, Esq.; Wahab Ismail, Esq.; Dr. M. T. Adekilekun; Alex Akoja, Esq., K. T. Sulyman-Hassan (Mrs.); Habeeb Oredola, Esq.; P.I. Ipkegnu (Mrs.); K. O. Lawal, Esq.; Safinat Lamidi (Miss); A.O. Usman, Esq.; A.B. Eleburuike, Esq.; C.N. Akuneto, Esq.; Tejumola Opejin (Miss); Musa Ahmed, Esq.; Adaobi Ike (Miss).

E. O. SOFUNDE SAN for 3rd and 4th Respondents and with him: I. O. Akangbe, Esq.; J. K. Kolawole, Esq.; M. B. Gana, Esq.; D. O. Olaleke, Esq (Miss).

CHIEF TITUS OLASUPO ASHAOLU, SAN for the 5th Respondent, and with him are: Hassan T. Fajimite, Esq.; Ayodeji Acquah, Esq.; Tunde Olomu, Esq.; Ashaolu Gbenga Ayoola, Esq.; O.G. Arinde, Esq.; C.G. Ike-Okafor, Esq.; Chinasa Sandra Ogba, Esq.

CASES REFERRED TO

- H APC v. PDP (2015) 15 NWLR (pt. 1482) 1
- Nwankwo v. Yar'Adua (2003) 12 NWLR (pt. 1209) 518
- Osasona v. Ajayi (2004) 14 NWLR (pt. 894) 527
- Omisore v. Aregbesola (2015) 15 NWLR (pt. 1482) 205
- Dakolo v. Dakolo (2011) 16 NWLR (pt. 1272) 22

Waziri v. Geidam (2016) 2 KLR Peter-Odili JSC 2013

N.N.B. PLC v. Denclag Limited (2001) 1 NWLR (pt. 695) 542

Omisore v. Aregbesola (2015) 15 NWLR (pt. 1482) 205

Nwana v. FCDA (2007) All FWLR (pt. 376) 611

Oyegun v. Nzeribe (2010) 7 NWLR (pt. 1194) 577

Famfa Oil Ltd v. A.G. Federation (2003) 18 NWLR (pt. 852) 453

Kalu v. Chukwumerije (2012) NWLR (pt. 1315) 425

Yusuf v. Obasanjo (2003) 16 NWLR (pt. 847) 544

Buhari v. Yusuf (2003) 13 NWLR (Pt. 841) 446

Oke v. Mimiko (2013) LPELR - 20645

Justice Party v. INEC (2006) All FWLR (pt. 339) 907

STATUTES & RULES REFERRED TO

Electoral Act 2010 (as amended), s. 137

Supreme Court Rules, O. 8 r. 1, r. 2(1),(2),(3),(4),(7)

LEAD JUDGMENT BY PETER-ODILI JSC

The judgment, which reasons are being proffered today was delivered on the 2nd day of February, 2016 after hearing the submissions of counsel, consideration of the Record of Appeal and the Briefs of Argument and the Court had no difficulty in dismissing the appeal.

This is an appeal against the decision of the Court of Appeal, Abuja Division, Coram: Amina Adamu Augie, Joseph T. Tur, I. T. Mbaba, S. J. Adah, A.A. Wambai JJCA delivered on the 18th day of December, 2015 in which judgment the Court of Appeal dismissed the appeal against the judgment of the Trial Tribunal.

FACTS RELEVANT TO THE APPEAL:

Governorship Election was conducted on 11th April, 2015 by the 3rd Respondent, the Independent National Electoral Commission (INEC) in Yobe State. At the said election, the 2nd Appellant sponsored the 1st Appellant, Alhaji Adamu Maina Waziri, as its candidate, while the 2nd Respondent, the All Progressives Congress (APC) sponsored the 1st Respondent, Alhaji Ibrahim Geidam, as its candidate. Other political parties also sponsored candidates that also took part in the election as contestants.

At the close of the polls, the 3rd Respondent, the Independent National Electoral Commission (INEC), declared the 1st Respondent as the duly elected Governor of Yobe State having polled the majority of lawful votes of 334,847 votes to defeat the 1st Appellant, who

polled a paltry 179,700 votes, to a second position. Having scored the majoring of the lawful votes cast and satisfied the requirements of the constitution to be declared as elected, the 3rd respondent declared the 1st Respondent as the winner of the said election and accordingly returned him as elected.

B The Appellants, being dissatisfied with the election and return of the 1st Respondent, filed a joint petition which ultimately culminated into this appeal on the 1st May, 2015. The Grounds of the Petition are set out in paragraphs 43, 44 and 45 of the petition thereof contained on pages 18-20 of Volume 1 of the Record as follows:

C *“43 Your petitioners state that:*

i. The 1st Respondent was not duly elected by a majority of lawful votes cast at the election.

ii. The election and return of the 1st respondent is invalid by reasons of corrupt practices and or non-compliance with the provisions of the Electoral Act, 2010 (as amended) on the conduct of the 11th April, 2015 governorship election in Yobe State.

iii. The 1st Petitioner was the winner of majority of lawful votes cast during the Yobe State Governorship election held on 11th April, 2015 and had not less than one-quarter or lawful votes cast in at least two-thirds of all local government areas and ought to be returned as a winner of the election.

44. Your Petitioners state that the 1st Petitioner scored the majority of lawful/valid cast in the local government where election was held and his score measured up to the minimum requisite constitutional threshold and spread across the local government areas of Yobe State; and ought therefore to have been returned by the 3rd and 4th Respondents as winner of the election.

G *45. Your Petitioners further state that the declaration made on 11th April 2015 by the 3rd Respondent that the 1st Respondent won the said election and thereby returned him as elected is a clear violation of the provisions of the Electoral Act, 2010 (as amended) because the 1st Respondent did not score a majority of lawful votes cast and that in the local Government Areas where elections did not take place or where the elections were clearly and brazenly mis-collated by the 1st 4th Respondents, assisted by officers of the Nigeria Police Force, votes were credited or allocated to the 1st respondent in a manner that suits their whims and caprices and in brazen and fla-*

grant violation of the provisions of the Electoral Act 2010 (as amended)”.

Flowing from the grounds reproduced above, the Appellants asked the trial Tribunal for the following reliefs which are set out on Paragraph 54 on pages 28-29 of the record.

“54 WHEREOF your Petitioners pray as follows:

i. That it may be determined and thus declared that the result announced and the return of the 1st Respondent, ALHAJI IBRAHIM GEIDAM, as duly elected Governor of Yobe State pursuant to the election held on 11th April 2015 are void and liable to be nullified by reason of substantial non-compliance with the Electoral Act, 2010 and INEC Election Guidelines, 2015 which non-compliance substantially affected the result of the election.

ii. That it may be determined and thus declared that the result announced and returned of the 1st respondent, ALHAJI IBRAHIM GEIDAM, as duly elected Governor Yobe State pursuant to the election held on 11th April 2015 are vitiated and liable to be nullified by reason of corrupt practices to wit-monetary inducement of the 3^d and 4th Respondents and their officials by the 1st Respondent acting through his official subordinates as an incumbent Governor of Yobe State through lodgements of money into personal accounts of officials of INEC charged with the conduct of the election in Yobe State when the election process was already ongoing.

iii. That it may be determined that going by the lawful votes cast at the said election, the 1st petitioner ought to have been returned and should be returned as the duly elected Governor of Yobe State pursuant to the election conducted by the 3^d and 4th Respondents on 11th April 2015.

iv. In addition and/ or in the alternative, that the 1st Petitioner be declared as the winner of the Yobe State Governorship election held on 11th April, 2015, judging by the results and/ or votes obtained thereat.

v. That the elections in the Local Governments, wards, units and/ or centres characterized or marred by electoral malpractices and/ or irregularities during the conduct of the Yobe State election held on 11th April, 2015 be voided and/ or set aside and a fresh election ordered by this Honourable Tribunal.

vi. That a fresh election be ordered throughout the affected

polling units in the local government areas where election did not take place as depicted above namely:- in accordance with the provisions of the Electoral Act, 2010, as amended.

vii. That it be determined consequentially that the fresh/ supplementary election to be conducted pursuant to prayers i, ii, v, vi shall not include the 1st and 2nd Respondents as participants, and shall not be supervised by the 4th Respondent. ”

The 1st and 2nd respondent incorporated Preliminary Objections in their joint Reply to the petition asking for the striking out and/or the dismissal of the Petition. It was mutually agreed that all the objections would be considered alongside the substantive petition. Hence, the objections were duly considered in the final judgment of the Tribunal.

At the conclusion of pre-trial, the Petitioners called a total of 27 witnesses, while the 1st and 2nd respondents called a total of 7 witnesses. The 3rd and 4th Respondents opted not to call any witnesses of their own but placed reliance on the oral and documentary evidence already proffered by the other parties. Written Address were subsequently filed, exchanged adopted and adumbrated upon by the learned counsel to the parties, after which judgment was reserved in the case.

In a unanimous and well considered judgment, the Tribunal dismissed in its entirety, the case of the Petitioners for lacking in merit and upheld the election and return of the 1st Respondent as the duly elected Governor of Yobe State based on the 11th April, 2015, Governorship Election held in the State. The judgment of the Tribunal would be found at pages 1448-1520 of Volume 11 of the Record.

The Petitioners dissatisfied with the judgment of the Trial Tribunal appealed to the Court of Appeal or Lower Court or Court Below for short. The Court below delivered its judgment on the 18th day of December, 2015 in which it dismissed the appeal. Aggrieved further, the appellants have come before the Supreme Court to ventilate their grievances.

On the date of hearing of the appeal being 2nd day of February, 2016, learned counsel for the Appellants, Chief Adeniyi Akintola SAN adopted their Briefs of Argument filed on the 15/1/2016, Reply Brief to 1st and 2nd Respondents filed on 22/1/2016, Reply Brief to 3rd & 4th Respondents filed on 27/1/2016 and Reply Brief to 5th Re-

spondent filed on 27/1/2016.

In the Appellants' Brief of Argument were distilled three issues for determination, viz:-

ISSUE NO. 1

Whether the Court of Appeal rightly held that the 5th Respondent is not a proper and necessary party to the petition of the Appellants at the Trial Tribunal, in the face of the overwhelming and specifically particularized allegations of corrupt practices against him and in view of this Honourable court's decision in APC v AYODELE FAYOSE (2015) LPELR Vol. 24587 (SC) 94.

ISSUE NO. 2

Whether the judgment of the Court of Appeal upholding dismissal of the Appellant's petition on ground of corrupt practices is not perverse, having regard to the facts of corrupt enrichment of the 4th Respondent, by the 5th Respondent acting as an agent of the 1st Respondent, during the governorship election process held on 11th April, 2015 and which corrupt practice was confirmed by EFCC to be for the purpose of influencing the election and further supported with unassailable documentary and oral evidence adduced at the Trial Tribunal in proof of the allegations.

ISSUE NO. 3

Whether the one sided oral and documentary evidence (particularly the admission against the interest by the 3rd Respondent (INEC) Administrative Secretary - PW 4) led by the Appellants did not satisfy the evidential burden that election did not hold in the following 6 Local Government Areas of Bade, Fune, Gulani, Jakusko, Tramuwa and Yunusari, so as to warrant this Honourable Court to invoke Section 22 of the Supreme court Act, LNF, 2004, to nullify the Yobe State Governorship Election held on 11th April, 2015 for substantial non-compliance?

Learned counsel for the 1st and 2nd respondents, Yusuf Ali SAN adopted their Brief of Argument filed on the 21/1/2016 and in it was argued their preliminary Objection. He crafted three

1. Whether the Court of Appeal was not correct In its decision that the sth Respondent who did not take any part in the election either as candidate or official was not a proper party and thereby struck out his name from the case, especially having regard to the decision of this Honourable Court in the case of APC v PDP (2015)

15 NWLR (pt. 1482) 1. (Ground 1)

2. Whether the Court below was not right in upholding the decision of the trial Tribunal on the various heads of corruption and corrupt practices and the impact of same (if any) on the conduct of the 11th April, 2015 Governorship election especially having regard
B to the concurrent findings of the two lower courts that they were not proved and that the alleged monies could have been paid by anybody. (Grounds 2 & 3)

3. Whether the Court below did not act rightly of fact made by
C the trial Tribunal on the failure of the Appellants to prove non-compliance and allegation of electoral malpractices made in the petition and in also agreeing with the trial Tribunal that the Appellants failed to prove non-holding of election in Six (6) local Government Areas. (Grounds 4 & 5)

D E. O. Sofunde SAN, learned counsel for the 3rd & 4th Respondents adopted their Brief of argument filed on the 22/1/2016. He identified three issues for determination which are thus:-

i. Whether the Court of Appeal was right in its decision that the 5th Respondent ought not to have been joined in the Petition (From
E Ground 1 of the Notice of Appeal).

ii. Whether the Court of Appeal was right in its decision that the evidence before the Tribunal merely shows that moneys were deposited into the bank accounts of the 4th Respondent and that
F absence of evidence showing how the deposits influenced the outcome of the election was fatal to the Appellants? (Grounds 2 & 3 of the Notice of Appeal)

iii. Whether the Court of Appeal correctly held that the Appellants failed to prove before the trial Tribunal that election did not
G hold in the six local Governments of Bade, Fune, Tarmuwa, Gulani, Yunusari and Jakusko (Ground 4 of the Notice of Appeal).

Learned counsel for the 5th Respondent, Chief Titus Ashaolu SAN adopted his Brief of Argument filed on the 22nd day of January, 2016 and in it, were identified two issues for determination which are
H as follows:-

1. Whether the Court of Appeal was right in its decision when it held that the 5th Respondent was not a proper party to the Appellants' petition NO. EPT /YB/GOV /01/2015? (Distilled from Ground 1)

2. Whether the Court of Appeal was right to have affirmed the decision of the trial Tribunal that the Appellants did not prove the allegation of corrupt practices against the 4th and 5th Respondents beyond reasonable doubt? (Distilled from Grounds 2 and 3)

The learned counsel to the 5th Respondent also raised a Preliminary Objection argued in the Brief of Argument. B

It needs be said that the two preliminary Objections of the 1st Respondent and that of the 5th Respondent would be tackled firstly before anything else.

NOTICE OF PRELIMINARY OBJECTION

TAKE NOTICE that the 1st and 2nd Respondents shall at the threshold of hearing of the appeal raise objection to the competence of ground 2 and its particulars contained in the Appellants' Notice of Appeal filed on the 31st of December, 2015 and shall on the premises urge the Honourable court to strike out the said ground and the issue for determination formulated therefrom, together with the arguments canvassed in support of the Appellants' Brief of Argument on the following grounds: C D

GROUND OF OBJECTION

i. The Ground and particulars in support of Ground 2 are argumentative, narrative and unwieldy. E

ii. Particulars subjoined to the ground are at variance with the said ground and qualifies as independent grounds of appeal on their own.

iii. The Ground and especially the particulars subjoined thereto offend the mandatory provisions of the Rules of this Honourable Court especially Order 8, Rule 2 (3), (4) and (7) of the Rules of this Honourable Court. F

iv. Ground 2 and its particulars subjoined thereto are liable to be struck out for incompetence. G

The Preliminary Objection of the 5th Respondent is centred on the competence and validity of the supplementary record of appeal compiled, transmitted and served by the Appellants.

The arguments in the two Objections shall be taken together. H In their Objection, learned counsel for the 1st and 2nd Respondents submitted that the complaint of the Appellants has to do with the alleged closure of the Court of Appeal's eyes to the documentary evidence on Record which allegedly let it to a perverse decision on

the issue of corrupt practices. That the particulars of the said Ground Two of the Notice of Appeal and of the Supreme Court specifically Order 8, Rules 1, 2, (1), (2) (3), (4) and (7), The Preliminary Objection of the 5th Respondent is anchored on the lack of competence and validity of the supplementary record of appeal compiled, transmitted and served by the Appellants. That it was compiled on the 11th day of January, 2016 and filed out of time in gross non-compliance with paragraph 4 of the Supreme Court Election Appeals practice Direction, 2011. He cited *Nwankwo & Ors v Alhaji Umaru Yar'Adua* (2003) 12 NWLR (Pt. 1209) 518 etc.

Responding to the objection of the 1st and 2nd Respondent, learned counsel for the Appellants stated that ground 2 of the Appellants' Notice of Appeal did not flout any of the rules of the Supreme Court while particulars A, B; F, G, I, J, K, L, M, N, P, S, T, v and Ware not argumentative. Also that the ground is not contrary to the dictates of the Rules of this Court specifically Order 8, Rule 1, Rule 2 (1), (2), (3), (4) and (7) of the Supreme Court Rules. That the particulars supplied the necessary information as to the nature of the error complained about under ground 2. He cited *Osasona v Ajayi* (2004) 14 NWLR (Pt. 894) 527, *Omisore v Aregbesola* (2015) 15 NWLR (Pt. 1482) 205 at 257, That even if the ground of appeal is argumentative or repetitive, it is not sufficient to deny the Appellant his right of appeal. He cited *Dakolo v Rewane Dakolo* (2011) 16 NWLR (Pt. 1272) 22 at 53. In reply to the 5th Respondent's Objection, learned counsel for the Appellants stated that the prescriptions of paragraph 4 of the Supreme Court Election Appeals Practice Direction 2011 is that the duty of compiling and transmitting the record of appeal lies solely with the registry of the Lower Court manned by the Registrar. That what is required of the Appellant is to make provisions for the production of the record, by fulfilling the conditions of appeal which in the instant appeal, the Appellants complied with and so to reject the supplementary record before this court is to lay the blame of failure of the registrar of the Lower Court on the Appellant. He cited *N.N.B. PLC v Denclag Limited* (2001) 1 NWLR (Pt. 695) 542 at 552.

In respect of the Preliminary Objection of the 1st and 2nd Respondents with respect to their grouse to Ground 2 of the Notice of Appeal, which learned counsel asserts the particulars went off the

complaint and was argumentative and therefore defective. The Ground 2 shall be quoted hereunder thus:-

“GROUND TWO

The Court of Appeal erred in law when it closed its eyes to the documentary evidence on the record thereby reached a perverse decision on the issue of corrupt practices alleged against the 4th and 5th Respondents”. B

The functions which particulars to a ground of appeal are required to perform are to highlight the grouse of the Appellants against the judgment on appeal. They are specifications of errors and misdirection which show the complaint the Appellants is screaming about and the line of thought the Appellants are going to canvass in their Brief of Argument. What is fundamental is that in the ground of appeal and the particulars which are really explanatory notes what is in contest is left open and exposed so that there is no attempt at an ambush or a giving of room to which the Respondent would say he was left in the dark of what he was to defend on appeal or that they are unable to understand or appreciate the complaint in the said ground. That said I would not leave it unsaid that clearly perusing the said particulars of the said Ground 2, there is verbosity, inelegance, even a degree of untidiness not to talk of a showcase of repetitiveness leading to their being properly classified as argumentative. However, such presentations cannot be used for punitive measure of a striking out of the Ground 2 as it would mean visiting the error or inelegance of counsel on a hapless litigant. In this, I rely on *Osasona v Ajayi* (2004) 14 NWLR (Pt. 894) 527; *Diamond Bank Ltd v Partnership Invest Co. Ltd & Anor* (2009) 18 NWLR (Pt. 1172) 67 at 88; My learned brother Nweze JSC had in *Omisore v Aregbesola* (2015) 15 NWLR (Pt. 1482) 205 at 257 with illumination stated thus:- D

*“The answer to the objectors’ invitation is predictable. The current mood of this court to technicalities has been depicted above. Consistent with this libertarian trend, the position now is that it bios not every failure to attend, to grounds of appeal with the fastidious details prescribed by the rules of this Court that would render such as incompetent. That is, particularly, so where sufficient particulars can be gleaned from the grounds of appeal in question and the adversary and the court are left in no doubt as to the particulars on which the grounds are founded, *Ukpong & Anor v Commissioner for Fi** E

ance and Economic Development & Anor (2006) LPELR - 3349, 19 NWLR (Pt.1013) 187; citing Hambe v Hueze (2001) 4 NWLR (Pt. 703) 372;

Even then, Courts are now encouraged to make the best they can out of a bad or inelegant ground of appeal in the interest of justice. *Dakolo & Ors v Dakolo & Ors* (2011) LPELR - 915; (2011) 16 NWLR (Pt. 1272) 22. Hence..... bad or defective particulars in ground of appeal would not, necessarily, render the ground itself incompetent”.

In an earlier decision of this Court in *Dakolo v Dakilo* (2011) 16 NWLR (Pt. 1272) 22 at 53, Adekeye JSC had stated the position of the Court in the following words: “Grounds of appeal to be differentiated from their particulars. The fact that a ground of appeal is argumentative or repetitive is not sufficient to deny the Appellant his right of appeal when on the face of the ground of appeal notable issue arises for consideration by the Court. The principal duty of the court is to do justice. The grounds of appeal and the particulars in the instant appeal might appear to be argumentative and repetitive; they equally raised triable Issues which would sustain the appeal.” The Respondents’ preliminary objection was therefore overruled and struck out.

In support of Adekeye JSC is the dictum of Galadima JSC in the same *Dakolo* (supra) pages 58-59 as follows:-

“The Supreme Court will always make the best that it can, out of a bad or inelegant ground or brief, in the interest of justice. In the instant case, although, the grounds were inelegantly couched and prolix, the substances of the Appellants’ complaints were clear, and were against the ratio of the judgment of the Court of Appeal.”

As I stated earlier, the said particulars are inelegant, verbose and far from attractive, that would certainly not translate to incompetence of the Ground 2 since the substance of the complaint is available and not opaque or unclear in what the grievance is. The technicality which this preliminary objection is seeking to enthrone to the detriment of substantial justice is a bait that just will not catch a prey. It flies off the handle and the Appellants meeting the requirements of Order 8, Rule 1 and Rule 2 (1) (2) (3) (4) & (7) of the Supreme Court Rules, the objection is dismissed for lacking in merit.

Now, to the Preliminary Objection of the 5th Respondent which

is sitting on the lateness of the filing of the Supplementary Record for which, learned counsel for the 5th Respondent is calling on this Court to reject that record. I shall refer to paragraph 4 of the Supreme Court Election Appeals Practice Direction, 2011. It stipulates as follows:-

“The registrar shall within a period of not more than 10 days of the receipt of the Notice of Appeal, cause to be compiled and served on all the parties, the record of proceedings and transmit same to the Supreme Court”.

I agree with learned counsel for the 5th Respondent that because of the nature of election petition proceedings, the effect of non-compliance with the practice direction is fundamental as it would vitiate all the steps taken at the trial rendering all a nullity. However, can a non-compliance by an officer of court without fault of a litigant have a sanction visited upon the innocent litigant who had done his part as provided for either in the particular legislation or practice direction. My answer would be a resounding NO. This is because the Appellants as in this case having fulfilled the conditions of appeal as imposed by the Registrar of the Lower Court at the settlement of record, it is taken that the Appellants having completed their part, the duty of transmitting the record lies squarely within the domestic affair of the registry of the Court whose decision is appealed against and in this case, the Court of Appeal. In similar presentation Chukwuma-Eneh JSC had in *Nwana v FCDA* (2007) All FWLR (Pt.376) 611 at 627 stated thus:-

“However, with respect, the respondent has totally misconceived the import of Rules 13 and 21 (5) of Orders 3 of the Court of Appeal Rules, 2002, which have specifically imposed on the trial Court the duty to transmit the record of appeal to the Court below after preparing it In accordance with the provisions of Order 3, Rule 9 of the Court of Appeal Rules, 2002”.

He stated further at pages 28:

“The Appellant having done all that he is required under the rules, the rest is left to the trial Court to carry out its responsibility of transmitting the record and the said exhibits to the court below. Anything more will be onerous.... The failure to transmit the exhibits is entirely that of the trial Court and the blame should not be visited on

the Appellant. This being the case, the Appellant should not be made to bear the brunt of the trial Court's failure in this regard".

See also N.N.B. PLC v DENCLAG LIMITED (2002) 1 NWLR (Pt. 695) P.542 at 552, paras. A-B per Muhammad JCA, as he then was said:

B *"What is paramount in the process of compilation of record of appeal is for the Appellant to make provision for the production of the record. Once he has done so, what remains is within the domestic affair of the registry of the Court whose decision is appealed against.*
C *In the instant case, going by the conditions of appeal laid down by the registrar of the trial Court, the Applicant, having satisfied all the conditions imposed on him, had successfully complied with the conditions of the appeal".*

Having the support of the precedents above in apposite situations and taking along what is before us, the Appellants having done their part in fulfilling the conditions of appeal and the supplementary record complained of by the 5th Respondent containing the documents tendered in evidence and admitted as exhibits before the trial tribunal which the Registrar of the Court below failed to transmit with the earlier volumes 1 and 2 of the Record of Appeal, it stands to reason that there is no foundation on which what is sought by the sth Respondent in this Preliminary Objection can be taken with favour, especially as what the Objector is seeking is a visitation of a grave penalty on a litigant when the mistake is that of the registry of the Court. It is an administrative error of the registrar of the Court and cannot be described as anything else. See Oyegun v. Nzeribe (2010) 7 NWLR (Pt. 1194) 577 at 596 per Muhammad JSC (as he then was) and the case of Famfa Oil Ltd v A.G. Federation (2003) 18 NWLR (Pt. 852) 453 at 469 per Belgore JSC (as he then was).

From the foregoing, this Preliminary Objection has no leg to stand on and I have no difficulty in dismissing it. It is hereby dismissed.

I shall now proceed to the appeal which is properly before this court.

I shall utilise the issues as crafted by the Appellants for ease of reference and convenience.

ISSUE NO.1:

This issue raises the question as whether the Court of Appeal

was right in its decision when it held that the 5th Respondent was not a proper party to the Appellants' Petition.

Chief Akintola SAN, for the Appellant submitted that by virtue of Section 137 (2) of the Electoral Act, 2010 (as amended), the only mandatory statutory respondents to an election petition are INEC and the party as well as the candidate whose return is being challenged and so officials of INEC need not be joined to prove acts that are statutorily charged to be performed by the electoral umpire through its officials and staff including ad hoc staff. However, where an agent who did not participate in the conduct of the election as an official but is alleged to have committed corrupt practices in the conduct of the election is impleaded his non-joinder will lead to breach of fair hearing as the tribunal will be handicapped and deprived of jurisdiction to determine his culpability in absentia and without being heard. Learned Senior Counsel cited the case of APC v PDP & Ayo Fayose (2015) LPELR Vol.24 587 94; Egolum v Obasanjo (1999) 7 NWLR (Pt. 611) 353; Kalu v Chukwumerije (2012) NWLR (Pt. 1315) 425 at 459.

Chief Akintola SAN said it is for compliance to the principle of fair hearing that the 5th Respondent was a necessary party and so the Court below was wrong to hold otherwise considering the facts and circumstances proffered in evidence through PW2 and PW3 which proved corrupt practices. He cited Yusuf v Obasanjo (2003) 16 NWLR (Pt. 847) 544.

For the 1st and 2nd Respondents Yusuf Ali SAN contended that the list of persons qualified to be made Respondents is not at large and so Appellants' argument on the principle of fair hearing is misplaced since no person is put on trial in an election petition and no adverse relief to the interest of a non-party on record can be granted by an election tribunal or Court dealing with an election. That the sui generis nature of an Election Petition has made reliefs grantable limited by statute just like parties that can sue and be sued. He relied on Buhari v Yusuf (2003) 13 NWLR (Pt. 841) 446 at 508; APC v PDP (2015) 15 NWLR (Pt. 1481) 1 at 60 - 61.

That the forum to probe the alleged conduct of the 5th Respondent is the regular Court within the dictates of the law and so the Court below was right in its decision that the 5th Respondent was not a necessary party.

Learned counsel for the 3rd and 4th Respondents argued along the same lines as 1st and 2nd Respondents on the ground that 5th Respondent was not a necessary party. He cited Section 124 (6) of the Electoral Act, 2010 (as amended); Yusuf v Obasanjo (2005) 18 NWLR (Pt. 956) 96 etc.

B Chief Titus Ashaolu SAN, learned counsel for the s” Respondent submitted that the Appellants foray into the principle of fair hearing or constitutional right to fair hearing to justify s” Respondent being made a party is misconceived and untenable in law as the jurisdiction of an Election Petition Tribunal is circumscribed and sui generis. C He cited Oke v Mimiko & Ors (2013) LPELR - 20645 (SC). That where a statute has specifically prescribed parties to an action, the common law principle of joinder of a necessary or desirable party takes back seat.

D Faced with the question above posed, the Court below or Lower Court stated at pages 1903 - 1905 as follows:-

“The question is whether the 5th Respondent was properly joined in the proceedings in the Tribunal in view of the provisions of Section 137 of the Electoral Act, 2010 as amended which reads as follows:-

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

(a) A candidate in an election;

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

F *2. A person whose election is complained of is, in this Bill, referred to as the Respondent.*

3. If the petitioner complains of the conduct of an Electoral Officer, a Presiding or Returning Officer, it shall not be necessary to join such officers or persons notwithstanding the nature of the complaint and the Commission shall, in this instance, be:-

G *(a) Made Respondent; and*

(b) Deemed to be defending the petition for itself and on behalf its officers (sic) or such other persons”.

H There are many judicial interpretations of the above provisions. In the case of PDP v APC (2015) LPELR - 29340 (CA), the issue whether Inspector General of Police and Chief of Army Staff, who were joined in the case (because of the unsavoury roles of some Policemen and Army Officers in the conduct of the election) were proper parties in the case, was resolved in the ...Even when it was

hold that soldiers played some unsavoury roles in the election, the joinder of the Inspector General of Police and Chief of Army Staff were held to be improper and the decision to strike out their names properly taken by the Tribunal. See pages 76-78 thereof. See also Yusuf v Obasanjo (2005) 18 NWLR (Pt. 956) 96.

Appellants may have thought that the joinder of 5th Respondent in this suit was crucial, because of the infamous role he played in paying questionable monies into the accounts of the 4th Respondent about 3 days to the conduct of the April 11, 2015 Elections (maybe to give him opportunity to defend himself over the accusation), but that did not and could not have made the 5th Respondent a credible and necessary party in the suit, going by the Electoral Act which delimits who can be a Respondent in election matters. B
C

The 5th Respondent is not a staff of the Commission. Neither did the Appellants show that he voted or participated at the election held on 11th April, 2015. The 5th Respondent ought not to have been joined in the petition. If the appellants had any grievances, the Tribunal was not the forum to probe the conduct of the 5th Respondent. The Preliminary Objection and the cross-appeal by the 5th Respondent are hereby struck out". D
E

The matter of the surfacing of the 5th respondent in the petition and all the way here is because the petitioners and now appellants is that the corrupt practices pointed against the 5th respondent which appellants say they have established are because the 5th respondent as agent of 1st respondent is deemed to have been perpetuated by the 1st Respondent himself under section 124(6) of the Electoral Act, 2010 (as amended). In fact, it is based on that, that the Appellants are invoking Section 149 of the Electoral Act to have the Supreme Court under Section 22 of the Supreme Court Act LFN G 2004 to rehear the petition and do that which the Tribunal and Court of Appeal should have done. F
G

Rejecting that position, 1st and 2nd Respondents are of the view that the Lower Court was right in holding that the 5th Respondent was not properly joined as a party to the Petition. The instance is similar to that of the 3rd and 4th Respondents and acceptable to the 5th Respondent. H

In taking a position, I shall first go to the provisions of Section 137 of the Elect Act, 2010 (as amended) as to who qualifies as a

party to an election petition. It provides:-

Section 137:

(1) An election petition may be presented by one or more of the following persons -

(a) a candidate in an election;

B (b) a political party which participated in the election.

(2) A person whose election is complained of is, in this Act, referred to as the Respondent.

(3) If the petitioner complains of the conduct of a Electoral Officer, a Presiding or Returning Officer, it shall not be necessary to join such officers or persons notwithstanding the nature of the complaint and the Commission shall, in this instance, be -

(a) Made a respondent; and

D (b) Deemed to be defending the petition for itself and on behalf of its officers or such other persons.

In this case, the 5th Respondent, ASP Zakari Deba, the Aid-De-Camp of the 1st Respondent has been made a party. The Court below held he was wrongly joined in the petition as he did not fall within the category of persons eligible to be so brought in an election petition. This Court refused a joinder in the case of APC v PDP (2015) 15 NWLR (Pt.1481) 1 where the Chief of Army Staff and the Inspector General of Police were made Respondents in an election petition even though allegations of wrong doing had been levelled against certain soldiers and police officers challenging the result of the June 21 SC 2014 election in Ekiti State.

F My learned brother, Ngwuta JSC had held thus at page 61 thus:-

G *“In my view, the 4th and 5th Respondents (Chief of Army Staff and Inspector General of Police) are not within the class of the Commission’s office or “such other persons” who may have been employed as permanent staff or ad hoc staff in the Commission. In other words, the 4th and 5th Respondents at all material times were neither “officers” of the Commission nor were they “such other persons” engaged by the commission and it therefore follows that they are not necessary or even parties to the petition challenging the result of the June 21st, 2014 election in Ekiti State. But assuming without conceding that the 4th and 5th Respondents are necessary parties to the petition what is the claim against them? The issue of relief sought*

against either or both of them does not arise in view of the fact that in election, the usual relief is an order to declare the petitioner winner or to nullify the election and order a fresh election in the area involved.

Appellant has not shown the basis of holding the 4th and 5th Respondents vicariously liable for the criminal acts of the un-named soldiers. But as I said earlier the Respondent in an election petition under the Electoral Act 2010 as amended are those persons who are officers and such other persons in the service of the Commission. The 4th and 5th Respondents are neither “officers” nor “such other persons” employed by the Commission for the conduct of the election”.

Indeed, those views well stated in APC v PDP (supra) of Ngwuta JSC are adopted for my purpose herein as they explain in clear terms what Section 137 of the Electoral Act has stipulated and what is expected as to who the proper parties should be. It even explains what has been provided for in Section 124 (6) of the same Electoral Act as to the culpability of the main man or the candidate in an election petition where allegations of offences Section 124 (6) committed in the course of the disputed election arise. It provides thus:-

“For the purpose of this Act, a candidate shall be deemed to have committed an offence if it was committed with his knowledge and consent or the knowledge and consent of a person who is acting under the general or special authority of the candidate with reference to the election”.

Taking that Section alongside what the Court Below stated at page 1905 thus:-

“The 5th Respondent is not a staff of the Commission. Neither did the Appellants show that he voted or participated at the election held on 11th April, 2015. The 5th Respondent ought not to have been joined in the petition. If the Appellants had any grievances, the Tribunal was not the forum to probe the conduct of the 5th Respondent”.

From the above, I have no difficulty in going along with the submissions of the respective counsel for the Respondents that Section 137 (2) and (3) of the Electoral Act 2010 has no room for the joinder of the 5th Respondent who neither won the election nor performed any role as an electoral officer or

agent of the 3rd Respondent in the election petition challenging the result of such an election and even no relief was claimed against the said 5th Respondent and indeed, he had nothing to gain or lose in the petition aforesaid. Also, the jurisdiction of the Election Petition Tribunal is circumscribed and sui generis or unique in nature and so, 5th Respondent being outside those expected within the limited provisions of the Electoral Act cannot be brought in as a party under any guise. See Oke & Anor v Mimiko & Ors (2013) LPELR - 20645; Yusuf v Obasanjo (2003) 16 NWLR (Pt.847) 554 at 617; Justice Party v INEC (2006) All FWLR (Pt. 339) 907 at 940.

It is for the above reasons that I see no basis to fault what the Court below did in its finding that 5th Respondent was not a necessary party within the applicable law and having his name struck out. This issue is resolved against the Appellant.

ISSUES 2 & 3:

These issues raise the poser whether the Court of Appeal was right to have affirmed the decision of the trial Tribunal that the Appellants did not prove the allegation of corrupt practices against the 4th and 5th Respondents beyond reasonable doubt. Also, if the admission against interest by the PW4 did not justify the nullification of the election for substantial non-compliance.

Learned Senior Counsel for the Appellant stated that it is trite that the Supreme Court will not normally disturb the concurrent findings of two Lower Courts except it shown that it has occasioned a miscarriage of justice or it is perversely arrived at. He cited Gbileve & Anor v Adingi & Anor LER (2014) SC 193/2012. He contended that the judgment being contested is one awash with improper evaluation of evidence and so needs this Court's intervention. He referred to the evidence PW2, PW3, PW25 and PW27 and other pieces of evidence.

He cited Oruwari v Osier (2013) 5 NWLR (Pt. 1348) 535 at 545; Bassil v Fajebe (2001) 21 WRN 68; Ramonu Atolagbe v Korede Olayemi Shorun Vol. 16 (1985) NSCC (Pt.1) 472; (1985) 1 NWLR (Pt.2) 360.

Chief Akintola SAN for the Appellant contended that the use of the card readers for accreditation is crucial and Exhibit AA50 is the

report on which validity of result was tested against failure of accreditation as well as AA48 (the INEC Guideline) which makes the use of card readers mandatory. That card readers are the only valid way of accrediting voting during the 11th April Governorship Election. That in this, the Respondents failed to justify accreditation and the votes touted but the majority of lawful votes is not enough to return the 1st Respondent as Governorship. B

For the 1st and 2nd Respondents, Yusuf Ali SAN contended that the two Courts below were correct in their findings that the Appellants did not prove beyond reasonable doubt that the alleged monies in issue were paid into the account of 4th Respondent by the 5th Respondent and also that the alleged payment influenced the outcome of the election in any way to lead to a nullification of the election of the 1st Respondent. That there was no basis for the interference of this Court in those concurrent findings. He cited *Gbafé v Gbafé* (1996) 6 NWLR (Pt. 455) 417 at 436; *Nwosu v Board of Customs & Excise* (1998) 12 se (Pt.1121) 77 at 88. C D

That it was not shown that 1st respondent authorised, approved for the alleged deposit be made into the account of the 4th Respondent for whatever purpose. E

Learned Senior Advocate further submitted for the 1st and 2nd respondents that the evaluation of the evidence and ascription of probative value to same is pre-eminently the responsibility of the trial court because of its peculiar advantage of seeing and hearing the witnesses testify and where this has been properly done as in this case an appellate court ought not to embark on an unnecessary exercise of re-evaluating that even if this court is to re-evaluate the evidence led on the allegation of corrupt practice, it would be seen that the testimonies of PW2, PW3, PW25 and PW27 together with the Exhibits did not prove the allegation beyond reasonable doubt. He cited *Omisore v Aregbesola* (2015) 15 NWLR (Pt. 1482) 205 at 323. F G

Yusuf Ali SAN went on to contend that the Appellants as petitioners failed to clearly plead with particulars the allotment of votes as an act of electoral malpractice in an election petition. That allegation of allocation of votes is criminal in nature and so must be proved beyond reasonable doubt. He referred to *Ogu v Ekweremadu* (2006) 1 NWLR (Pt.961) 25. That the Appellants needed to call witnesses to give direct oral evidence in support of the allegation that election did H

not hold in the polling units and wards of the six Local Government Areas to prove substantial non-compliance. He cited Section 139 of the Electoral Act, 2010 (as amended); *Doma v INEC* (2012) 13 NWLR (Pt. 1317) 297 at 327; *Ucha v Elechi* (2012) 13 NWLR (Pt. 1317) 330 at 358 etc.

B That the Tribunal found and supported by the Record that the evidence of PW4 confirmed that election held in the six Local Government Areas alluded to. Also, that the Appellants failed to show by credible evidence that card readers were not used.

C It was further submitted for 1st and 2nd Respondents that assuming there was any form of infraction of the provisions of the Electoral Act, the Appellants failed to establish that the alleged non-compliance was substantial to be used as a basis for nullification of the election. He relied on *Akeredolu v Mimiko* (2013) LPELR - 21413
D SC. Mr. E. O. Sofunde SAN of counsel for the 3rd and 4th Respondents made submissions tallying with those for the 1st and 2nd Respondents contending that the corrupt practices alluded to were not shown to involve the 1st Respondent or ratified by him or shown that it substantially affected the outcome of the election. He cited *Audu v INEC & 2 Ors (NO.2)* (2010) 13 NWLR (Pt.1212) 456 at 544; *Buhari v Obasanjo* (2005) 13 NWLR (Pt. 941) 1 at 23.

For the 5th Respondent, Chief Titus Ashaolu SAN submitted that the conclusion reached by the Economic and Financial Crimes Commission (EFCC) in Exhibit AA44 compounded the woes of the
F Appellants as it showed that apart from being inchoate and inclusive, nothing in the report established any attempt to bribe the 4th Respondent and the AA44 did not link the 1st Respondent to the alleged deposit of money by the 5th Respondent into the accounts of
G the 4th Respondent. That it is trite that a party alleging corrupt practices has an added obligation to prove; affected the outcome of the election and in this, the Appellants failed. He relied on *Nwole v Iwuagwu* (2006) All FWLR (Pt. 316) 325 at 343 - 344; *Obun v Ebu* (2006) All FWLR (Pt. 327) 429 at 450; *Anazodo v Audu* (1999) 4
H NWLR Pt. 600 530 at 546.

That the Appellants failed to discharge the burden of proof of the particular facts alleged.

The issue herein has to do with the lodgement of the sum of fifteen million naira (N15,000,000.00) into the accounts of 4th Re-

spondent by the 5th Respondent around the critical period of the election in dispute. Also, that the 4th respondent had withdrawn part of the money. The Court below had its reaction captured at pages 1929 - 1934 of the Record, thus:-

"From PW2's evidence, one may arrive at the conclusion that any other person apart from the 5th respondent would had access to these accounts preparatory to the eve of the election of 11th April, 2015 could have deposited the monies into those accounts for whatever purpose. The intention could be to frame it on any of the respondents so as to disqualify the 1st and 2nd Respondents from participation at the election. The purpose could also be to smear or tarnish the name and image of the 3^d and 5th Respondents". (See pages 1929 to 1930, Volume 11 of the Record)

"The evidence further shows that any other person can deposit money in an account since the identity of the depositor may not be known, that is to say, any person could have deposited the monies into the two accounts and pretend to be the 5th Respondent or the depositor could be the 5th Respondent".

The position of the Appellants that those facts of the lodgement of the said amount and the fact of the 4th respondent making a withdrawal from the said monies established the corrupt practices upon which a nullification of the election of the 1st respondent would be supported. The finding of the Court of Appeal did not agree with that opinion as put across by the appellants and it said so in these words and as follows at page 1043:-

"The concept of election denotes a process constituting accreditation, voting, collation, recording of all relevant INEC forms and declaration of results. See the case of Fayemi & Anor v Oni & Ors (2010) LPELR - 4145 where this Court added that the collation of all results of the polling units making up the Wards and the declaration of results are the constituent elements of an election known to law. If we may ask, at what point did the 4th Respondent influence or tamper with any of these processes constituting an election. Obviously, there is no evidence whatsoever to link the said undue influence on the part of the 4th Respondent in any of the stages of the said election".

Clearly, the finding and conclusion of the Court below in affirmation of that of the trial Tribunal are such as cannot be interfered with in the prevailing circumstances. This is because of the provisions

of Section 124 (1) of the Electoral Act, 2010 (as amended) which prescribed thus:-

“Any person who does any of the following-

(a) directly or indirectly by himself or by any other person on his behalf given, lends, or agrees to give or lend, or offers any money
 B *or valuable consideration;*

(b) directly or indirectly, by himself or by any other person on his behalf, corruptly makes any gift, loan, offer, promise, procurement or agreement ...person to procure or to endeavour to procure
 C *the return of any person as a member of a legislative house or to an elective office or the votes of any voter at any election;*

(c) upon or in consequence of any gift, loan, offer, promise, procurement or agreement corruptly procures or engages or promises or endeavours to procure the return of any person as a member
 D *of a legislative house or to an elective office or the vote of any voter at an election;*

(d) advances or cause to be paid any money to or for the use of any other person with the intent that such money or any part thereof shall be expended in bribery at any election, or who knowingly
 E *pays or causes to be paid any money to any person in discharge or in repayment of any money wholly or in part expended in bribery at any election”.*

Indeed, those concurrent findings are unassailable as the Appellants have failed to show the linkage between the alleged misconduct of the 4th and 5th Respondents and the said election or how the 1st respondent was connected with the lodgement of the funds or how they affected the outcome of the election in favour of the 1st respondent or that 1st respondent even authorised, the said corrupt practice.
 F
 G *See Nwobodo v Onoh - (1984) 1 SCNLR 1 at 27 - 28; Gundiri v Nyako (2014) 2 NWLR (Pt. 1391) 211 at 255; Omisore & Ors v Aregbesola & Ors (20.15) 15 NWLR (Pt. 1482) 205 at 281.*

Of note is that the Tribunal found and the Court below
 H ***agreed that the allegation of financial inducement of the 4th respondent was not proved beyond reasonable doubt by law. This is buttressed by the fact that there were even conflicting evidence as to who exactly made those payments into the 4th respondent’s account. Also, there was no proof that the 4th***

respondent was compromised or subverted as alleged by the petitioners. Furthermore, the pieces of evidence floating on the said deposited monies raised more questions than they answered such as the identity of the depositor, a situation which left the court with speculations as to what actually took place in relation to the said deposits. This has not helped clear the point as to how the said money was in any way connected with the election in dispute and if connected, how it affected the outcome of the result. This produces nothing other than mere suspicion which is now settled no matter how strong the suspicion may be, it cannot take the place of legal proof. I rely on *State v Ogunbunjo* (2001) 2 NWLR (Pt. 698) 576 at 607; *Njovens v The State* (1972) 1 NWLR 331; *Williams v State* (1992) 8 NWLR (Pt. 261) 515 at 521.

The corrupt practices allegation alluded to by the Appellants in relation to the deposited monies whether Fifteen Million Naira (N15,000,000.00) or Twenty One Million Naira (N21,000,000.00) as alleged at some point have remained not proven.

On the matter of the assertion by the Appellants of elections not holding in six Local Government Areas as a support for the allegation of non-compliance with the Electoral Act for which the election should be nullified, the said six Local Government Areas are Tarmuwa, Jakusco, Yunusari, Bade, Gulani and Fune.

Section 139(1) of the Electoral Act, 2010 (as amended) has provided that an election shall not be liable to be invalidated by that section above, has been interpreted in some cases reason of non-compliance with the provisions of this Act if it appears to the Election Tribunal or Court that the election was conducted substantially in accordance with the principle of this Act and that the non-compliance did not substantially affect the result of the election.

That section above has been interpreted in some cases before this Court such as the following, *Doma v INEC* (2012) 13 NWLR (Pt. 1317) 297 at 327 thus:-

“All the same, the burden remained on the Appellants to prove that not only were the elections invalidated by reasons of non-

compliance, but that the non-compliance with the Electoral Act was so substantial that the results of the election had been affected thereby. This requirement of proof vested on the appellants is in line with the decisions of this Court in several cases of this court including *Buhari v INEC (2008) 4 NWLR (Pt.1078) 546*; *Abubakar v INEC (2004) 1 NWLR (Pt. 854) 207* and *Buhari v Obasanjo (2005) 2 NWLR (Pt. 910) 241*. The Court below was therefore on very strong grounds in coming to the conclusion that the Appellants have failed to prove their case to justify granting them the reliefs sought". See also the Supreme Court case of *Ucha v Elechi (2012) 13 NWLR (Pt. 1317) 330 at 358, 361, 363.*"

The Court below at pages 1505 - 1507 of the Record held:

"Contrary to the submission of the learned silk for the petitioners that PW4 gave evidence that election did not take place in six local Government Areas, what he said was that he could not produce the EC25 Forms in respect of Bade, Tarmuwa, Fune, Gulani, Yunusar and Jakusco local Government Area. The witness had explained that this EC25 series are forms filled by Presiding Officers for election and returning election materials and that Form EC8A series are products of EC25 series that generate the EC8A. Without the EC25 series, there could be no EC8A series. The petitioners themselves have already tendered the EC8A forms In respect of these six local Government areas;

- i. BADE Exhibits A628-A705
- ii. FUNE Exhibits A1036-A1201
- iii. TARMUWA Exhibits A104-A11
- iv. GULANI Exhibits A845-A944
- v. YUNUSARI Exhibits A287-A389
- vi. JAKUSCO Exhibits A112-A211

PW27 also in Exhibit AA49 listed five of these IGAs as areas where he saw the electoral materials used and the reason he could not see the others was for time constraint. The only one of these six local Government Areas not analyzed in Exhibit AA49 is Tarmuwa. The Presumption weighs heavily against the contention that there was no election in these six local Government Areas. PW4 stated that the gubernatorial election for Yobe State was free and fair and conducted in accordance with the electoral guidelines..... This finding is further fortified by the last document tendered from the bar by the

petitioners, to wit Exhibit A850 being the Card Reader Print-out of INEC for the April 2015 Yobe State Governorship Election. Contrary to the submission of the learned silk for the petitioners that Exhibit A850 did not capture the six local Government Areas, it clearly captures then and shows that election actually took place In all these local Government Areas and can be found thereon as follows:- B

- i. BADE Pages 1-3*
- ii. FUNE..... Pages 12-17*
- iii. GULANIPages 23-26*
- iv. JAKUSCO Pages 26- 29*
- v. TARMUWA Pages 46-47* C
- vi. YUNUSA ... Pages 47-50*

It cannot therefore be submitted that election did not take place in these local Government Areas and that some - people were disenfranchised”. D

The Court of Appeal had stated further at pages 1937 - 1939 and 1928 as follows:-

“The evidence of PW4 completely destroyed the petition presented by the Appellants in the Tribunal. The evidence further rubished paragraphs 8 to 12 of the petition that election did not hold in “many” E or “most” of the polling units in the 17 local Government Areas in Yobe State”.

The evidence of PW4, PW25 and PW27 further destroyed completely the Appellants’ case in the Tribunal that election did not hold in many or most of the local Government Areas in Yobe State. F

“Pleaded facts do not constitute evidence. Oral or documentary evidence is the source or foundation for proving pleaded facts. Paragraphs 8-12 of the petition tabulates the votes credited to the appellants and the 1st and 2nd respondents at the election held on the 11th April 2015. The question any reasonable person reading paragraphs 8 to 12 of the petition may ask is: where did the appellants obtain the votes and result forms pleaded from paragraphs 8 to 12 of their joint petition if election did not hold in “many” or “most” of the polling units in the 17 Local Government Areas of Yobe State? H That is the poser. There is no answer.

Every petition constitutes an advance notice of the case an appellant intends to canvass in the Tribunal. See Obmiami Brick and

Stones Ltd (1992) 3 SCNJ at 35 and Umegba v Attorney General of Bendel State (1986) 1 NWLR (Pt.16) 303 at 317. My humble opinion is that the election held in all the seventeen Local Government Areas in Yobe State. If elections did not hold, the appellants could not have pleaded the votes secured by each candidate and his political party that sponsored him at the election held on the 11th of April 2015".

It is difficult to go against what the Lower Court found in line with those of the trial Tribunal in that there were no supporting evidence on the pleaded facts of the areas where the elections were allegedly not held. Therefore, the conclusion available is that the Appellants could not make out a case of non- holding of the election in the said six Local Government Areas.

On the matter of the Appellants' contention that there was non-compliance in the conduct of the election because of an alleged non-use of card reader, I am inclined to the position of the 1st and 2nd Respondents' counsel that the card reader issue did not stem from any specific ground of appeal attacking a specific finding of both Lower Courts on the card reader. In fact, it is a matter just floating without anchor of any sort and cannot be of assistance to the Appellants in their attempt to prove substantial non-compliance with the Electoral Act.

See *Akeredolu v Mimiko (2013) LPELR - 21413*, a judgment of the Supreme Court per Alagoa JSC.

In the end, the Appellants have failed to discharge the burden placed on them by law on this allegation of non-holding of election in the six Local Government Areas. I also find these issues resolved against the Appellants.

With all issues effectively resolved against the Appellants, it is with ease that I found this appeal unmeritorious for which it was dismissed on the 2nd day of February 2016 and I have now stated the reasons for that decision.

ONNOGHEN JSC

On the 2nd day of February, 2016, we heard this appeal and in a lead judgment delivered by my learned brother PETER-ODILI JSC,

the appeal was dismissed with an order that parties bear their costs. The reasons for the Judgment were adjourned to today. Below, therefore, are my reasons for agreeing that the appeal has no merit and should be dismissed.

My learned brother PETER-ODILI JSC has dealt, in detail, with the facts of the case and issues for determination. I will not repeat the facts herein except as may be needed for the point being made by me.

The issues for determination are as follows:-

“1. Whether the Court of Appeal rightly held that the 5th respondent is not a proper and necessary party to the petition of the appellants at the trial tribunal, in the face of the overwhelming and specifically particularized allegations of corrupt practices against him and in view of this Honourable Court decision in APC VS PDP and AYODELE FAYOSE (2015) LPELR Vol. 24587 (S.C.) 94.

2 Whether the Judgment of the Court of Appeal upholding dismissal of the appellants’ petition on ground of corrupt practices is not perverse, having regard to the facts of corrupt enrichment of the 4th respondent by the 5th respondent acting as agent of the r, during the governorship election process held on 11th April, 2015 and which corrupt practice was confirmed by EFCC to be for the purpose of influencing the election and further supported with un-assailed documentary and oral evidence adduced at the trial tribunal in proof of the allegations.

3. Whether the one sided oral and documentary evidence (particularly the admission against interest by the 3rd respondent (INEC) Administrative Secretary - PW4 led by the appellants did not satisfy the evidential burden that election did not hold in the following 6 local government areas of Bade, Fune, Gulani, Jekuoko, Tramuwa and Yunusari, so as to warrant this Honourable Court to invoke section 22 of the Supreme Court Act, 2004, to nullify the Yobe State Governorship Election held on 11th April, 2015 for substantial non-compliance?”

On issue 1, learned senior counsel for appellants submitted that though section 137 (2) of the Electoral Act, 2010, as amended, provides for the mandatory parties to an election petition, the 5th respondent, who does not fall within the parties so listed, is made a His contention, however, is that the 5th respondent was joined be-

cause there were allegations of corrupt practices against him which could not, be proved in his absence as a party in the proceedings because to do so would breach 5th respondent's right to fair hearing. It is clear that 5th respondent not having been recognized as a necessary party under the provisions of section 137 of the Electoral Act, 2010, as amended, *supra*, for the purpose of an election petition proceedings, he remains a non-party or necessary party particularly as no relief was claimed against him, as can be seen from the record of proceedings I hold the considered view that the argument on breach of fair hearing in relation to s" respondent does not exist at all as 5th respondent is not a recognized party in the proceedings and there is no claim against him neither was he put on trial before the tribunal.

From the facts of the case, the petition can be decided by the tribunal effectively without the presence of the 5th respondent thereby making him not to be a necessary party in the proceedings - See A.P.C. VS. P.D.P (2015) 15 NWLR (Pt. 1481) at 60-61. Having regard to the state of the law, I am of the strong view that the lower court was right in holding that the 5th respondent was not a necessary party in the proceedings.

In respect of issue 2, it is the case of appellants that the 5th respondent induced the 4th respondent financially by depositing certain sums of money in the 4th respondent's bank account with a view to induce him to influence the election in favour of the 1st respondent, who was his boss. The tribunal found that the allegation was not proved beyond reasonable doubt, which finding was affirmed by the lower court. The lower court also held that appellants failed to show how the money deposited in the said account of the 4th respondent influenced the outcome of the election in question and that the failure was fatal to the case of appellants which holding cannot be faulted. In the case of Omisore Vs Aregbesola (2015) 15 NWLR (Pt. 1482) 205 at 234-235, this court has this to say:

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

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

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

(3) that the corrupt practice substantially affected the outcome of the election and how it affected it.”

From the record, it is clear that appellants did not satisfy all the requirements stated supra and I have no reason whatsoever to disturb the concurrent finding of facts in that respect by the lower courts as same had not been demonstrated satisfactorily to be perverse.

It is for the above reasons and the more detailed reasons contained in the lead reasons for the Judgment delivered by my learned brother MARY UKAEGO PETER-ODILI JSC, that I too find no merit whatsoever in the appeal and consequently dismissed same.

I abide by the consequential orders made therein including the order as to costs.

Appeal dismissed.

NGWUTA JSC

On the 2nd February, 2016 the Court heard this appeal and on the same day my learned brother, Mary Ukaego Peter-Odili, JSC delivered his lead judgment in which His Lordship dismissed the appeal, reserving reasons for the judgment to 15/2/2016. I also delivered my judgment concurring with the lead judgment and reserved my reasons for the same date 15/2/2016.

Here are my reasons. I read before now the comprehensive reasons adduced by my learned brother for dismissing the appeal and affirming the concurrent findings of fact by the trial Tribunal and the Court below. I adopt in their entirety the well articulated lead reasons as my reasons for concurring with the lead judgment.

In addition to the reasons I have adopted and at the risk of repeating what has been adequately dealt with in the lead reasoning, I wish to chip in a word or two on the propriety *vel non* of joinder of the s” Respondent in the election petition.

Section 137 (1) of the Electoral Act 2010, as amended, makes

provision for persons who are entitled to present election petitions. It is hereunder reproduced:

“5.137 (1): An election petition may be presented by one or more of the following persons:

- (a) a candidate in an election;*
- B *(b) a political party which participated in the election.*
- (2) A person whose election is complained of is, in this Act, referred to as the Respondent.*
- (3) If the petitioner complain of the conduct of an electoral officer, a Presiding or Returning Officer, it shall not be necessary to join such*
- C *officers or persons notwithstanding the nature of the complaint and the Commission shall in this instance be,*
- (a) made respondent; and*
- (b) deemed to be defending the petition of its officers, or such other*
- D *persons.”*

In addition to stating who may present an election petition, the section also limits the respondents to such petition to the person whose election is questioned, Electoral Officer, a Presiding or Returning Officer.

- E These officers or persons are agents of the Commission and their disclosed principal, the Commission, which shall be made a respondent will be deemed to defend the petition for itself and its named agents. The agents for whom the Commission will defend the petition will include “such other persons” as the Commission may have
- F engaged in the conduct of the questioned election.

- The 5th respondent is not the person whose election is questioned, nor is he an Electoral Officer, a Presiding or Returning Officer or is among “such other persons” on behalf of whom the Commission shall be deemed to defend the petition.
- G

In *APC v PDP (2015) 15 NWLR (Pt. 1486) p.1 at 62A*, this Court held (per Ngwuta, JSC) that:

- “In my view the 4th and 5th Respondent (Chief of Army Staff and Inspector-General of Police) are not within the class of the*
- H *Commission’s officers or ‘such other persons’ who may have been employed as permanent or ad hoc staff in the Commission. In other words, the words the 4th and 5th Respondents at all “material terms were neither officers of the Commission nor were they ‘such other persons’ engaged by the Commission and it therefore follows that*

they are not necessary, or any parties to the election...”

This dictum was cited and relied on by the learned Senior Counsel for the 3rd and 4th Respondent, rightly in my view. If the facts the appellant alleged against the 5th Respondent are true, then the matter can be addressed by Section 124 of the Act (*supra*) sub-section 4:

“Any person who commits the offence of bribery is liable on conviction to a maximum fine of 500,000 or imprisonment for 12 months or both.”

This is a matter for the regular Courts as the 5th Respondent is neither the person whose election is questioned nor among those on behalf of whom the Commission, a necessary respondent, shall be deemed to defend the petition. If he is among “such other persons” within the terms of Section 137 (3) (a) of the Act (*supra*), it is not necessary to join him as the Commission shall defend the petition for itself and “such other persons”.

The above and the fuller reasons adduced by my learned brother, Mary Ukaego Peter-Odili, JSC are my adopted reasons for also dismissing the appeal and affirming of the Court below.

MUHAMMAD JSC

I read in draft the lead judgment of my learned brother Odili, JSC, whose reasoning and conclusion I hereby adopt in dismissing the unmeritorious appeal. I abide by the consequential orders made in the lead judgment.

OGUNBIYI JSC

This court heard and dismissed the appeal in the lead judgment of my learned brother Peter-Odili, JSC, on February 2, 2016 with no order made as to costs. The court also promised to give its reasons for doing so on February 15, 2016 and in my contribution to the judgment, I hereby proffer my reasons for dismissing same as follows:

The facts of the case are all stated in the lead judgment. The appellants’ petition was contested principally on grounds of:-

(1) Failure of 1st respondent to win majority of votes cast at the

election.

(2) Predicated on allegations of corrupt practices and non-compliance with the Electoral Act 2010 (as amended) which substantially affected the result of the election.

From the grounds of appeal filed by the appellants, it is obvious that the substratum of their complaints relate to the concurrent findings of both the Tribunal and the lower court. The law is trite in favour of such findings which are not to be interfered with except on exceptional reasons.

There are three issues formulated by the appellant for determination and reproduced in the lead judgment of my brother which I will not repeat.

The 1st and 2nd respondents raised a preliminary objection on the competence of grounds (i) - (iv) of the grounds of appeal and which resolution should in my view be overruled. This I say because as rightly submitted by the appellant's counsel, the particular given in support of the grounds had sufficiently supplied the information in stating the nature of the error complained of by the appellant which should suffice in the interest of justice. Courts should avoid technicalities and determine causes on the merit. Defect in particulars should not necessarily translate to the entire ground and rendering same incompetent: the question is, whether the ground of appeal communicates a complaint arising from the *ratio decidendi* of the judgment. In a nutshell, the defects alluded to ground 2 of the appellant's ground of appeal should not operate so as to render the said ground incompetent. The preliminary objection is, in my view, overruled.

ISSUE 1 RESOLUTION

The lower court in its judgment held that the 5th respondent was not a proper or necessary party to the petition and therefore ought not to have been joined as a party thereto.

The 5th respondent's joinder is in respect of the corrupt practices pleaded in the petition. The tribunal dismissed the objections to the joinder and he cross appealed. Court of Appeal in its judgment found merit in the objection and related extensively to Section 137 of the Electoral Act 2010 (as amended), as to who qualifies as a respondent in an Election petition. The said 5th respondent was struck out accordingly. It is pertinent to state that the allegation against the 5th respondent was the purported influence on the 4th respondent in

the conduct of the election. There was no relief sought against the said respondent in the petition, either personally or on behalf on any other person. The allegation against him is also criminal in nature and in respect of which the tribunal has no jurisdiction to try him.

The communal reading of the evidence of PW1, PW2, PW3 and even PW25 relied upon by the appellant did not disclose any criminal allegation against the 1st respondent who is alleged to be the principal actor. The appellant as rightly submitted by 1st and 2nd respondents have not established the various allegations of corrupt practices and financial inducement of the 4th respondent by the 5th respondent herein.

The 5th respondent I hold cannot in the circumstance be a proper party as rightly held by the lower court and I so hold. ISSUES 2 & 3 were taken together by the appellants.

The appellant in proof of the allegation of corrupt practices sought to reply on the evidence of PW2, PW3, PW25 and PW27.

The two lower courts held concurrently that the allegation of financial inducement of the 4th respondent allegedly by the 5th respondent was not proved as required by law. In other words there must be a connection or linkage between the 1st respondent on the alleged act of inducement and that the alleged inducement affected the outcome of the election.

The appellants relied extensively on the evidence of PW4 and PW27 at pages 1346 & 1420 of vol. 2 of the record to prove that the result declared was affected substantially by irregularities in that election did not hold in Six Local Government Areas of Yobe State to wit: Bade, Fune, Jakusco, Gulani, Tarmuma and Yunusari. It is intriguing to say further that notwithstanding this weighty allegation of non-election, the appellants still went ahead to tender results of the election especially forms ECA8, EC8B and EC8C from the said same local government areas complained of. See pages 1334 - 1335 of the record which shows that 4,276 Manual Voters' Register for Bade local government area was tendered as Exhibit V; 6,288 for Fune was admitted as Exhibit Y; 2,975, Manual Voters' Register for Gulani LGA as Exhibit AA2; 3,884, manual voters' register for Jakusco admitted as Exh. AA3; 1,445 for Tarmuwa admitted as Exh. AA8 and 3,788 also admitted as Exh. AA9 for Yunusari LGA.

Also page 1330 of the record of appeal shows that form EC8A

for all the LGAs of Yobe State inclusive of the ones for the Six LGAs complained of were tendered by the appellants' senior counsel and admitted as Exhibits before the commencement of trial. A perusal of pages 1330 - 1331 of the record will reveal that forms EC8B and EC8C for the LGA in issue were also tendered and admitted by the B tribunal.

With all said and done, it is not correct to say that election was not held in all the LGA of Yobe State of Nigeria.

C Appellants placed heavy reliance on the evidence of PW27 and the charts/table produced by him; also the evidence of PW4 especially his inability to produce some forms EC25A for the said LGAs and construed same as an admission of non-holding of election in the said LGAs.

D For the appellants/petitioners to succeed on their allegation of non-compliance, they must plead clearly in their petition, the heads of non-compliance, give cogent and credible evidence of such non-compliance and also demonstrate the effect thereof on the election. Section 139(1) of the Electoral Act 2010 (as amended) is in support.

E By this section, the petitioners are to prove, not only the evidence of the non-compliance but further that it substantially affected the result of the election. The judgment of the tribunal is apt at pages 1505-1507 of the record where it rejected the appellants' submission which rated PW4's evidence as an admission. The lower court while endorsing the trial Tribunal's findings held in tandem that the F evidence of PW4 did not, in any way, constitute an admission of non-holding of election in the Six LGAs of Yobe State contrary to the submission by appellants' counsel. Consequently, the reliance placed on PW27 and Exh. AA49 are not helpful to the appellants. This is G because the witness was confined within Postiskum LGA, on the day of election. Any evidence outside the area is therefore a hearsay, with Exh. AA49 also predicated thereon.

ALLEGED NON-USE Of CARD READER

H Appellant argued extensively that there was non-compliance in the conduct of election because of an alleged non-use of Card Reader. As rightly submitted by the 1st and 2nd respondents, the argument advanced pertaining to non-use of card reader cannot be countenanced in this appeal because there is no specific ground of appeal complaining against the specific findings of the two lower courts. In

taking the argument further, even if the use of card reader is countenanced, the onus lies on the appellants to show by credible evidence that card readers were not in fact used. There was certainly no evidence in this wise. Furthermore, neither PW26 nor the document Exhibit M50 tendered by the appellants attempted to prove this assertion.

B

Appellants on the totality did not prove before the two lower courts and also this court that there was substantial non-compliance in the conduct of the elections complained of or that the alleged non-compliance substantially affected the elections.

C

The concurrent findings of the two lower courts are in my view unassailable and I hereby affirm same and also dismiss this appeal as lacking in merit in terms of the lead judgment of my learned brother Peter-Odili, JSC inclusive of the order made as to costs.

D

OKORO JSC

Judgment in this appeal was delivered on 2nd February, 2016 immediately the appeal was heard on the same date. In the lead judgment delivered by my learned brother, Mary Ukaego Peter-Odili, JSC, this appeal was adjudged unmeritorious and dismissed. An order that parties should bear their respective costs was also made. I agreed entirely with the lead judgment and promised to give reasons today for coming to that conclusion. I shall now proceed to give reasons for dismissing the appeal.

F

I was obliged before now the lead reasons for judgment just given by my learned brother, Peter-Odili, JSC. The law Lord has meticulously and quite efficiently resolved all the salient issues in this appeal. My Lords, I beg to adopt the reasons given in the lead judgment as mine. Let me however make a few comments to strengthen the judgment.

G

The main contention of the appellants as petitioners in this case is that the 5th respondent induced the 4th respondent who was the Resident Electoral Commissioner for - Yobe State by depositing certain sums of money into his account with a view to causing him to influence the election in favour of the 1st respondent.

Apart from the fact that by Section 137 of the Electoral Act, 2010 (as amended), the 5th respondent, ASP Zakari Deba is not one

of the persons who should be made a party in an election petition as held by this court in APC VS PDP (2015) 15 NWLR (pt. 1481) 60, the appellants failed to prove that the payments had any link with the conduct of the election. Secondly, the said allegation, being criminal in nature should be proved beyond reasonable doubt. This, he failed
 B to do. I need to emphasize that to bribe an INEC Official in order to induce a favourable result in an election is a criminal offence. It must be established beyond reasonable doubt that the 1st respondent perpetrated it or that he clearly authorized it. See PDP V. INEC (2008) LPELR - 8597, OMISORE V. AREGBESOLA (2015) 15 NWLR (pt. 1482) 205 at 234 - 235.
 C

In this case, the appellants failed to show how the payments affected the result of the election. For me, the issue concerning the payments did not help the case of the appellants at all as the said
 D payments (if any) was not shown to have been unknown by 1st respondent or that it affected the outcome of the election.

Based on the above reasons and the further ones enunciated in the lead reasons for judgment, that I also dismiss this appeal. I abide by the consequential orders made therein, that relating to costs,
 E inclusive.

SANUSI JSC

I delivered judgment in this appeal on 2nd February, 2016 when
 F we heard the appeal and dismissed the appeal for want of merit. I, on that day, promised to deliver my reasons from dismissing the appeal today, Monday, the 15th day of February, 2016.

Before now, I was availed with the lead reasons fro judgment
 G advanced by my learned brother Mary Ukaego Peter-Odili JSC. I am in entire agreement with the reasons she advanced therein, to buttress the fact that this appeal is devoid of merit and deserves to be dismissed. I adopt her reasons for judgment dismissing the appeal. I shall however comment on some of the salient issues canvassed by
 H parties learned senior counsel in this appeal. My noble lord Mary Ukaego Peter-Odili JSC had summarised the facts which gave rise to this appeal and the submissions of learned counsel to the parties, hence they need not be reproduced there again.

Three issues for determination were raised in the appellant's

and 1st and 2nd respondents joint briefs which are apt for the determination of this appeal. They have also been extensively reproduced in the lead reasons for judgment and to avoid being repetitive I will also not bother to reproduce them here again. I must say that the said issues for determination of appellant's and other respondents are also similar except the difference in the wordings in which they were couched. B

The first issue queries whether the 5th respondent was a proper party or necessary party that ought to be joined in the petition. The law is settled, that if a petitioner complains of the conduct of an electoral officer of presiding officer, or retiring officer or any person who took part in the conduct of the election, such officer or person shall be deemed to be a respondent and shall be joined in the election petition in his official status or as necessary party. There is no gain saying that the 5th Respondent is not a proper or necessary party D since he did not participate in the conduct of the election held on 11th April, 2015. As could be seen from the Record of Appeal, the 5th Respondent was not sued in his official capacity and that pre-supposes that he was not a necessary party. See *Obasanjo vs Yusuf* (2004) 5 SC (Pt 1) 27; *Buhari vs Obasanjo* (2007) 7 SC (pt 1) 1. The 5th E Respondent was therefore not a necessary party.

Another ground for the petitioner/appellant against the respondent had to do with allegation of corruption and corrupt practices. Here it must be emphasised, that even in election petition, allegation of bribery or corruption must be proved by the accuser beyond reasonable doubt. Evidence must be led to show that the voters were bribed. In this instant case, the evidence led is short of proof of such allegation beyond reasonable doubt. See *Nyako v Balewa* (1965) NWLR 257; *Alega vs Edun* (1960-98) LRECN 241. F G

Thus, with these few comments and for the fuller reasons advanced in the lead reasons for judgment of *Mary Peter-Odili JSC*, I also see no merit in this appeal. I accordingly dismiss it and affirm the decision of the court below which had also dismissed the appeal against the judgment of the trial tribunal. I abide by the consequential order H made therein, including one on costs.