

SUPREME COURT OF NIGERIA
TUESDAY 6TH MARCH, 2012. SC. 26/2012
CORAM:- F. F. TABAI, O. O. ADEKEYE, S. GALADIMA,
N. S. NGWUTA, O. ARIWOOLA, JJSC

1. MOHAMMED DELE BELGORE, SAN
2. ENGINEER JOSHUA BABATUNDE
ADEYINKA APPELLANTS
3. ACTION CONGRESS OF NIGERIA

AND

1. ABDULFATAH AHMED
2. PETER KISHIRA
3. PEOPLES DEMOCRATIC PARTY RESPONDENTS
4. INDEPENDENT NATIONAL
ELECTORAL COMMISSION

ELECTIONS - Statutes - Breach - Consequence - Breach of provisions of 1st sch. to Electoral Act - Does not raise issue of jurisdiction (H1)

ELECTIONS - Statutes - Interpretation - Principles of - Amendment by introduction of para. 12(5) of 1st sch. Electoral Act - Must be construed liberally - So as to reduce the mischief sought to be remedied (H2)

PLEADINGS - Requirements of - Although pleadings contain only material facts - Yet such facts must be specific - So as to elicit vital answers from opponent - And eliminate element of surprise (H3)

APPEALS - Issues - Competence of - There is no need for deliberation on the issue of proper certification of INEC documents - As same was not part of ratio decidendi of the case (H4)

EVIDENCE - Evaluation - Duty of - Belongs to trial Court that hears and watches demeanour of witnesses - Thus appellate Court does not interfere with findings arising therefrom - Save when such are

4010 Belgore v. Ahmed (2016) 9-12 KLR (pt. 391) 4009; (2013)
perverse (H5)

DOCUMENTS - Tendering of - Principles - Proper person to tender document is its maker who can be cross examined on it - Otherwise Court will not attach probative value to the document (H6)

ELECTION PETITIONS - Documents - Proof - Decision to tender mass documents at trial due to exigency of time - Does not diminish duty on petitioner to prove his case as required by law (H7)

FACTS

Before the Governorship Election Petition Tribunal sitting in Ilorin, Kwara State, petitioners/appellants filed this petition challenging the declaration and return of 1st and 2nd respondents as the Governor and Deputy Governor of Kwara State, respectively. Appellants further prayed the Tribunal to declare them the winners of the election and/or in alternative cancel the election and order for the conduct of a fresh gubernatorial election in the State. The dispute in the matter arose following the conduct of gubernatorial election for the State on 26th April, 2011. 1st and 2nd appellants were candidates and contested the said election under the sponsorship of 3rd appellant. 1st and 2nd respondents were also candidates and contested the same election under the sponsorship of 3rd respondents.

At the end of the election, 4th respondent declared and returned 1st and 2nd respondents as the Governor and Deputy Governor of the State, having secured the majority of the votes cast. This prompted the filing of the petition at the Tribunal by appellants. Respondents filed their various replies to the petition and objections, seeking for a dismissal of the petition on the ground that same has not been specifically proved and thus, incompetent. At the end of the hearing in the matter, the Tribunal dismissed the petition and upheld the return of 1st and 2nd respondents as the Governor and Deputy Governor of the State, respectively. Dissatisfied, appellants appealed to the Court of Appeal, Ilorin Division. The Court dismissed the appeal and upheld the judgment of the Tribunal. Aggrieved further, appellants have appealed to the Supreme Court.

ISSUES FOR DETERMINATION

“5.1 Whether the Court of Appeal ought to have considered the merits of the complaint of the appellants regarding certification of public documents and reverse the decision of the Tribunal which held that the said documents were inadmissible.

5.2 Whether the Court of Appeal ought to have given effect to the undisputed evidence of the 21,192 ballot papers/vote discrepancy and in so doing cancelled the election results in the areas being challenged, the integrity of the said election results having been impugned and gravely compromised.

5.3 Whether the Court of Appeal considered the appellants’ complaints and adopted the right approach in the evaluation of documentary evidence and gave proper effect to the said documents.

HELD (Unanimously dismissing the appeal per

TABAI JSC)

Statutes - Breach - Consequence

1. In articulating their respective positions, both the appellants and the respondents have relied mainly on the provision of the 1st Schedule to the, Electoral Act, 2010 (as amended) and the Federal High Court (Civil Procedure) Rules and both sides have described the controversy generated as an issue of jurisdiction. With respect, both sides missed the point by referring to the issue as one of jurisdiction. The 1st Schedule to the Electoral Act represents the Rules of Procedure for election petitions. And in the conduct of election petitions, the Federal High Court (Civil Procedure) Rules shall also apply with such modifications as may be necessary to render the provisions of the 1st Schedule applicable. And as I stated in the recent decision of this court in SC. 21/2012, *Haruna Yunusa Sa’eed & Anor v. Partick Ibrahim Yakowa & Anor* (Unreported) delivered on the 8th of February, 2012, now reported in (2013) 7 NWLR (Pt. 1352) 124, the 1st Schedule being rules of procedure do not confer jurisdiction, Jurisdiction is only donated by the Constitution and/or statutes. It follows therefore that a party’s breach of the provisions of the 1st Schedule

to the Electoral Act and/or the Federal High Court Rules does not raise an issue of jurisdiction. Rather, the consequences of such breaches of the 1st Schedule are specifically provided for in paragraph 53 thereof.

(p. 4032 F)

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Statutes - Interpretation - Principles of

2. By this amendment time is thus of essence in an election petition. And for the purpose of meeting the clear dictates of the Constitution, the Legislature introduced paragraph 12(5) of the 1st Schedule to the Electoral Act. It provides thus:-

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“A respondent who has an objection to the hearing of the petition shall file his reply and state the objection therein and the objection shall be heard along with the substantive petition.”

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Going by the guiding principles of interpretation of statutes, the amendment has to be construed liberally and beneficially so as to promote the suppression of the mischief clearly sought to be remedied. Thus, the provisions of paragraph 53(2) and (5) of the 1st Schedule notwithstanding, full effect must be given to paragraph 12(5) of the first Schedule.

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On this question of whether by virtue of the provisions of paragraph 12(5) of the 1st Schedule to the Electoral Act, the respondents rightly raised the objection to certain paragraphs of the petition at the time they did, I hold that the decision of the Tribunal and affirmed by the court below is unsustainable. The result is that I resolve the appellants’ issue 8 (which is the same as the 1st and 2nd respondent issue 1, the 3rd respondent’s issue 2 and the 4th respondent’s issue 6) against the appellant. (p. 4034 C)

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PLEADINGS - Requirements of

3. Pleadings in an action are the written statements of the parties wherein they set forth the summary of the material facts on which each relies either in proof of his claim or his defence as the case may be and by means of which the real matters was controversy between the parties and to be adjudicated upon are clearly identified. Although only material facts are

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required to be pleaded and in a summary form, they must nevertheless be sufficiently specific and comprehensive to elicit the necessary answers from the opponent. They must contain such details as to eliminate any element of surprise to the opposing party. In this case where the dispute involves the election in as many as 895 polling units the pleadings in the petition which alleged electoral malpractices, non-compliances and/or offences in some polling units”, “many polling 1 units”, “most polling units” or “several polling units” cannot be said to have met the requirements of pleadings as stipulated in paragraph 4(1)(d) of the 1st Schedule” of the Electoral Act and/or Order 13 rules 4(1), 5 and 6(1) of the Federal High Court (Civil Procedure) Rule, 2009. The result is that this issue is also resolved against the appellants.
(p. 4036 H)

APPEALS - Issues - Competence of

4. It is my view that there is no need for any serious deliberation upon the question of proper certification and admissibility of the various INEC documents tendered and admitted in evidence. I hold this view because the question of proper certification and thus admissibility of the documents does not form the principle or part of the principles upon which the case was decided. It does not form part of the ratio decidendi of the case.

What is more, this argument is even academic for notwithstanding its rejection of the documents, the tribunal still made copious use of them in its judgment. The result is that the appellant suffered no miscarriage of justice since the documents were still made use of.

The foregoing reasoning cannot be faulted and which I fully endorse. The issue therefore is that of the probable value of these documents, and not their admissibility. The trial tribunal in apparent appreciation of this state of affairs embarked upon a detailed evaluation of the evidence including the assessment of the probative value of the documents in the light of the matters pleaded. It started, rightly in my view, with the 4th and crucial issue of whether the petitioners proved the

various criminal allegations of electoral malpractices and offences.

(pp. 4038 E/4039 A)

EVIDENCE - Evaluation - Duty of

- B **5. I have no reason to interfere with the concurrent findings of the two courts. The settled principle of law is that evaluation is primarily the function of the trial court. It is the trial court that has the singular advantage of hearing and watching the demeanour of witnesses in the course of their testimonies.**
 C **And an appellate court would not ordinarily therefore interfere with the findings of the trial court I unless the findings are perverse.** (p. 4041 A)

D *DOCUMENTS - Tendering of - Principles*

- 6. With respect to the volume of documentary evidence, I wish to state at the risk of repetition that they were merely tendered across the Bar by learned counsel for the petitioners at the trial. He did not and was, in fact, not in a position to answer questions or otherwise speak on any of them. Their makers were not called. In such circumstances was the trial tribunal bound to ascribe probative value to them? I shall answer this question in the negative.**

- F **In *Flash Fixed Odds Ltd. v. Akatugba* (2001) 9 NWLR (Pt. 717) 46 at 63, the Court of Appeal re-emphasised the principle that the proper person to tender a document is its maker who alone can be crossexamined on it; and that where a person who did not make it tenders it, the court ought not to attach probative value to it since the witness cannot be cross-examined on it. This principle applies with equal force in this case. The trial tribunal had no duty to accord probative value to the mass of documents, their status as certified public documents notwithstanding.** (p. 4041 D)

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Documents - Proof

7. There is no doubt that the petitioners' decision to tender the mass of documentary evidence at the trial was prompted by the urgency dictated by Section 285(6) of the 1999 Con-

stitution (as amended). That however does not diminish the petitioners/appellants burden and standard of proof of the petition. They had a duty to prove their petition according to law. I agree with and respectfully adopt the concurrent findings of the two courts below that the petitioners/appellants failed to prove their petition as required by law. The result is that I resolve all remaining issues against the appellants. B
(p. 4041 H)

NOTABLE POINT OF INTEREST C

NGWUTA JSC

1. Documents – Certification of

Engraved signature on documents meant to be subscribed to or to be certified or authenticated by anyone cannot be presumed to be the signature of that person. In addition to the engraved signature on it, the document ought to be signed and dated in long hand. There is always the possibility that the stamp on which the signature is engraved is used on the document by an unauthorized person. D

It is my view that an engraved signature, without more, on a document meant to be certified by anyone is not proper certification by that person even if the engraved signature is his own. Therefore, the documents tendered by the appellants in proof of the petition were not certified and the consequent devastating effect on the petition cannot be ameliorated by the fact that the INEC was responsible for the non-certification. The result of the election was flawed in so far as those uncertified documents were concerned. (p. 4065 D) E F

REPRESENTATION

E. O. Sofunde, SAN; with Chief Akin Olujinmi, SAN; K. Awodein, SAN; C. Adosomwan SAN; Prof. Yemi Osibanjo, SAN; O. Eghobamien, SAN; Uwa Etigwe, SAN; D. Alimosun; Kemi Balogun M Ganiyu; M. Hanafi M. Oloriagbe L. A. Ayanwale; O. Omelodun; L. O. Akangbe; O. T. Olorunnisola; A. Aloge; T. O. Busari; Silas Onwugbanu and Akinsola Olujinmi for the Appellants. H

Yusuf Ali, SAN; with Chief Titus Ashaolu, SAN; Chief R. A. Lawal Rabana, SAN; Ayo Olanrewaju; K. K. Eleja; Tunde Olomu; Bolakale

Ajanaku; A. O. Oloriaje; Jumoke Bamigboye [Mrs.]; Wali Adeleye; S. O. Giwa; F. Soje; Patricia Ikpebu [Mrs.]; Toyosi Alasi; O. A. Useh [Miss] for the 1st and 2nd Respondents.

Adebayo Adelodun, SAN with Roland Otaru, SAN, Dr. Abdulwahab Egbewole; A. A. Ibraheem; S. U. Solagberu; Abdur-Rasheed Ahmed and K. T. Sulaiman for the 3rd Respondent.

Olajide Ayodele, SAN with Titus Oladepo; Durojaye Abdulwahab Bamidele; Tayo Douglas; Nureni Jimoh; Tunde Salako; Olusegun Balogun; Otemuyiwa Boluwatibe for the 4th Respondent.

CASES REFERRED TO

- Goodman v. J. Eban LD (1954) 1 QBD 550
D Ezeonwu v. Onyechi (1996) 3 NWLR (Pt. 438) 499
National Electoral Commission v. Wodi (1989) 2 NWLR (pt. 104) 444
Uzodinma v. Izunaso (No. 2) (2011) 17 NWLR (pt. 1275) 28
PAC v. INEC (2009) FWLR (pt. 260) 325
E Abubakar v. Yar'Adua (2005) All FWLR (pt. 457) 1
Buhari v. Obasanjo (2005) All FWLR (pt. 273) 1
Alao v. Akano (2005) 11 NWLR (pt. 935) 160
Iniama v. Akpabio (2008) 17 NWLR (pt. 1116) 225
Jekpe v. Alokwe (2001) 4 SCNJ 67
F Dada v. Ogunremi (1962) 2 SCNLR 417
Sanusi v. Ameyogun (1992) 4 NWLR (pt. 237) 527
Adegoke v. Adibi (1992) 5 NWLR (pt. 242) 410
Akpabio v. State (1994) 7 NWLR (pt. 359) 635
G Inakoju v. Adeleke (2007) 4 NWLR (Pt. 1025) 423

STATUTES REFERRED TO

- Electoral Act 2010 (as amended), s. 139(1), Para. 12(5), 53(2), (5) of 1st Sch.
H Constitution of the Federal Republic of Nigeria 1999, ss. 149, 179
Evidence Act, s. 104
Federal High Court (Civil Procedure) Rules, O. 13 r. 4(1), 5 and 6(1)

LEAD JUDGMENT BY TABAI JSC

This is an appeal against the judgment of the Ilorin Judicial Division of the Court of Appeal delivered on the 7th January, 2012 which judgment affirmed the earlier judgment of the Governorship Election Petition Tribunal delivered on the 11th November, 2011.

On the 26th of April, 2011 the 4th respondent herein (INEC) conducted election into the offices of Governor and Deputy Governor of Kwara State. The 1st and 2nd appellants herein were candidates and contested the said election under the sponsorship of the 3rd appellant herein, the Action Congress of Nigeria, (ACN). The 1st and 2nd respondents herein were also candidates and contested for the offices of Governor and Deputy Governor respectively under the sponsorship of the Peoples Democratic Party, (PDP). Thirteen (13) other political parties participated and sponsored candidates for the offices of Governor and Deputy Governor of Kwara State.

At the end of the election, the 4th respondent declared the result wherein it credited the 1st, 2nd and 3rd respondents with 254,969 valid votes, while the appellants were credited with 152,580 valid votes.

Consequent thereupon, the 4th respondent declared and returned the 1st and 2nd respondent as winners and duly elected for the offices of Governor and Deputy Governor respectively of Kwara State.

The appellants were aggrieved by the result declared by the 4th respondent and in reaction thereto filed this petition which has culminated in this appeal. It was dated and filed on the 17th May, 2011. In paragraph 16 thereof the petitioners/appellants highlighted the votes credited to the 1st, 2nd and 3rd respondents and asserted that the said votes do not represent the lawful and valid votes. In paragraph 17 thereof, the petitioners/appellants alleged that the election in 5 Local Government Areas namely Patiki Local Government, Buruten Local Government, Edu Local Government, Ifelodun Local Government and Moro Local Government and some other specified Wards in seven other Local Government Areas namely; Ekiti Local Government, Ilorin East Local Government, Ilorin South Local Government, Ilorin West Local Government, Irepodun Local Government, Kaiama Local Government and Asa Local Government were vitiated by substantial non-compliances and which non-compliances substantially affected the validity of the votes credited to the 1st - 3rd

respondent which ought therefore to be nullified or cancelled. In paragraph 18 thereof, the petitioners/appellants alleged various electoral offences, mal-practices and non-compliances. These included non-accreditation or improper accreditation, inconclusive election, non-supply of electoral materials, improper recording of votes, recording more votes than number of accredited, multiple thumb printing and/or multiple voting in favour of the 1st - 3rd respondents, non-collation of votes. Others included disruption of the election by wide spread violence perpetrated by thugs and law enforcement agents acting in concert with chieftains and members of the 3rd respondent etc. In other paragraphs, these allegations in respect of the specified Local Government Areas and Wards were repeated with greater details. And in paragraph 65 thereof the petitioners claims 5 reliefs as follows:-

D *“Reliefs sought by the petitioners*

65. *Wherefore your petitioners pray that it may be determined as follows:*

65.1 *That votes recorded and/or returned for the 1st to 3rd respondents in the following Local Government Areas, namely, Patigi Local Government, Baruten Local Government, Edu Local Government, Ifelodun Local Government and Moro Local Government, and the following Wards in some Local Governments to wit: Isapa Ward, Koro Ward, Obbo-Aiyegunle 1 and Obbo-Aiyegunle 2 Ward in Ekiti Local Government; Agbeyangi Ward, Oke Oyi/Oke Esa/Alalubosa Ward, Akpado Ward and Marafa/Pepele Ward in Ilorin East Local Government; Akanbi I Ward and Akanbi II Ward in Ilorin ‘South Local Government; Ajikobi Ward, Ubandawaki Ward and Ojuekun Zarumi Ward in Ilorin South Local Government; Ajase Ipo I Ward, Ajase Ipo II Ward and Arandun Ward in Irepodun Local Government; Adena Ward and Bani Ward in Kaiama Local Government; Igbona Ward and Ojoku Ward in Oyun Local Government; and Adingbongbo/Awe/Orimaro Ward, Elebue/Agbona/Fata-Ward, Onire/Ode-Giwa/Alapa Ward, Efue/Berikodo Ward, Ogbodoro/Reke Ward, Afon Ward, Ila-Oja Ward and Okesho Ward in Asa-Local Government do not represent lawful votes cast in, the said Local Government Areas in the Kwara State Governorship Election held on 26 April, 2011 as same were vitiated by substantial non-compliance with the mandatory statutory requirements of the Electoral Act 2006 which*

non-compliance substantially affected the validity of the said election such that the votes credited to the 1st to 3^d respondents ought to be nullified as unlawful votes and discountenanced in determining the winner of the elections.

65.2 That votes recorded and/or returned in the following Local Government Areas for the 1st respondent, namely: Putigi Local Government, Baruten Local Government, Edu Local Government, Ifelodun Local Government and Moro Local Government, and the following Wards in some Local Governments to wit: Isapa Ward, Koro Ward, Obbo-Aiyegunle 1 and Obbo-Aiyegunle 2 Ward in Ekiti Local Government; Agbeyangi Ward, Oke Oyi/Oke Esa/Alalubosa Ward, Akpado Ward and Marafa/Pepele Ward in Ilorin East Local Government; Akanbi I Ward and Akambi II Ward in Ilorin South Local Government; Ajikobi Ward, Ubandawaki Ward and Ojuekun Zarumi Ward in Ilorin West Local Government; Ajase Ipo I Ward, Ajase Ipo II Ward and Arandun Ward in Irepodun Local Government; Adena Ward and-Bani Ward in Kaima Local Government; Igbona Ward and Ojoku Ward in Oyun Local Government; and Adingbongbo/Awe/Orimaro Ward, Elebue/Agbona/Fata Ward, Onire/Ode-Giwa/Alapa Ward, Efue/Berikodo Ward, Ogbondoro/Reke Ward, Afon Ward, Ila-Oja Ward and Okesho Ward in Asa Local Government do not represent lawful votes cast in the said Local Government Areas and stated Wards in the Kwara State Governorship election held on 26 April, 2011 and as having been obtained in vitiating circumstances of substantial non-compliance, violence and malpractices which, substantially affected the validity of those votes.

65.3 That the said Abdul Fatah Ahmed, the 1st respondent, was not duly elected by a majority of lawful votes cast in the Kwara State Governorship election held on April 26, 2011 and that this election is void.

65.4 That Mohammed Dele Belgore, SAN was duly elected and ought to have been returned having scored the highest number of votes cast in the Kwara State Governorship Election held on April 26, 2011 and having satisfied the requirements of the Section 179 Constitution of the Federal Republic of Nigeria, 1999 and the Electoral Act 2010 as amended.

66.5 That the 1st petitioner be declared validly elected or returned.”

And in paragraph 66 they claimed in the alternative the following reliefs:-

“The Petitioners pray alternatively and only in the alternative:

B *66. That the Kwara State Governorship Election held on April 26, 2011 is void on the ground that the election was not conducted substantially in accordance with the provisions of Part IV of the Electoral Act, 2010 as amended.*

C *66.1 That the said election was vitiated by substantial non-compliance with the mandatory statutory requirements which substantially affected the validity of the said elections that none of the candidates in the said election can be validly returned as having validly won the said election.*

D *66.2 That the Kwara State Governorship Election held on the 26th of April 2011 be nullified or cancelled and the 4th respondent be directed to conduct fresh elections for the office of the Governor of Kwara State.”*

E First to react to the petition was the 4th respondent. It filed its reply on the 2nd of June, 2011 wherein it denied every material allegation of electoral offences, mal-practices and non-compliances contained in the petition.

F Next to react was the 3rd respondent who -filed its reply to the petition. The said reply was dated and filed on the 10th of June, 2011. In the 218 paragraph reply, the 3rd respondent denied every material allegation of electoral offences, electoral malpractices and non-compliances. The reply also embodies its objection to votes credited to the petitioners/appellant in some specified areas.

G Then the 1st and 2nd respondent's reply to the petition and notice of preliminary objection, it was dated and filed on the 14th of June, 2011. Therein they also denied every allegation of electoral offences or criminal acts, malpractices and non-compliances. With respect to the preliminary objection, they listed the following as the grounds which rendered the petition incompetent -

H i. All the allegations contained in the petition are unspecific generic, speculative vague, un-referable omnibus and general in terms.

ii. The petition as presently constituted is defective and non-maintainable.

iii. Mandatory provisions of law were not complied with in

the preparation, presentation and filing of the petition.

iv. Necessary conditions precedent were not complied with in the filing of the petition.

v. The petition does not disclose any reasonable cause of action.

vi. The petition is incurably defective. B

vii. The petition is liable to be struck out/dismissed for incompetence.

The petitioners/appellants filed a reply to the reply of the 3rd respondent. It was dated 17th June, 2011 and filed on the 18th June, 2011. They referred to the 3rd respondents' objection to votes and asserted that the result accredited to the petitioners in Offa Local Government Area were obtained in accordance with the provisions of the law. They also filed another reply to the reply of the 1st and 2nd respondents. It was dated the 17th of June, 2011 and filed on the 18th of June, 2011. Therein they insisted that the votes earned by the 1st and 2nd petitioners were lawful and obtained in compliance with the provisions of the law. C

Thereafter, there were quite a number of motions both by the petitioners and the respondents. The parties then took a number of pre-trial steps. On the 20th of June, 2011, the petitioners filed an application for the issuance of pre-hearing conference notice. And on the 29th of June, 2011 they filed the pre-hearing information sheet. The respondents also filed their answers to the questions in pre-hearing information sheet. The petition was tried and as I have already indicated, all the parties called witnesses. E

And after the final-addresses of counsel for the parties, the Tribunal delivered its judgment on the 11th November, 2011 (See pages 2918 - 3126 vol. ix of the record). The judgment concluded as follows:- F

"1. Petition fails and it is dismissed.

2. The return of the 1st and 2nd respondents Abdul Fatah Ahmed and Kishira as Governor and Deputy Governor respectively of Kwara State by the 4th respondent is hereby upheld. H

3. No order as to cost."

The petitioners/appellants were not satisfied with the judgment and proceeded on appeal to the court below. The notice of appeal was dated the 25th November 2011 and filed on the 28th No-

vember, 2011. It raised eighteen (18) grounds of appeal. The parties through their counsel filed and exchanged their respective briefs of arguments. In its judgment delivered on the 7th of January, 2012, the appeal was dismissed.

Still dissatisfied, the petitioners have come on further appeal
 B to this court by a notice of appeal dated and filed on the 16th of January, 2012. On the 23rd of February 2012, this court granted an amendment of the said notice of appeal. The said amended notice of appeal raised eighteen (18) grounds of appeal. The reliefs sought are:-

C “1. *AN ORDER setting aside the judgment of the Court of Appeal and in turn make the following orders:*

2. *AN ORDER that the 1st and 2nd appellants be declared validly elected or returned as the Governor and Deputy Governor*
 D *respectively of Kwara State having scored the highest majority of lawful votes in the April 26th 2011 Gubernatorial election held in Kwara State.*

3. *AN ORDER that the Kwara State Gubernatorial Election held on the 26th of April, 2011 in the areas contested by the petition-*
 E *ers be nullified or cancelled and the 4th respondent be directed to conduct fresh elections in the said areas.”*

The parties have, through their counsel, filed and exchanged their briefs of arguments. The appellants’ brief dated the 1st February, 2012 and filed on the 3rd February, 2012 was prepared by a
 F team of lawyers led by Ebun O. Sofunde SAN. They also prepared appellants’ reply to the 1st, 2nd and 3rd respondents’ brief and another appellants’ brief to the 4th respondents brief. They were both dated and filed on the 17th of February, 2012.

G The 1st and 2nd respondents’ brief was prepared by a team of lawyers led by Yusuf Ali SAN. It was dated the 8th of February, 2012 and filed on the 9th of February, 2012. The brief of the 3rd respondent was prepared by Adebayo Adelodun SAN. It was also dated the 8th of February, 2012 and filed on the 9th February, 2012. The 3rd
 H respondent’s brief was also prepared by a team of lawyers led by Oladeji Ayodele SAN. It was dated the 9th of February, 2012 and filed on the 10th February, 2012. On the 23rd of February, 2012 when this appeal was heard, learned senior counsel for the various parties adopted and relied on their respective briefs as their main arguments.

They also proffered some oral submissions.

In the appellants' brief, the following twelve (12) issues were submitted for determination:-

"5.1 Whether the Court of Appeal ought to have considered the merits of the complaint of the appellants regarding certification of public documents and reverse the decision of the Tribunal which held that the said documents were inadmissible. Ground 5 ^B

5.2 Whether the Court of Appeal ought to have given effect to the undisputed evidence of the 21,192 ballot papers/ vote discrepancy and in so doing cancelled the election results in the areas being challenged, the integrity of the said election results having been impugned and gravely compromised. Ground 6 ^C

5.3 Whether the Court of Appeal considered the appellants' complaints and adopted the right approach in the evaluation of documentary evidence and gave proper effect to the said documents. Ground 7 & 9 ^D

5.4 Whether the Court of Appeal ought to have considered the complaint of the appellants and in so doing, come to the conclusion that the tribunal ought to have ascertained the number of places where there was non-accreditation and given effect to it. Grounds 12 & 13 ^E

5.5 Whether the Court of Appeal ought to have considered the complaint of the appellant and come to the conclusion that the Tribunal was in error to have held that the presiding officers in the various polling stations ought to have been called as witnesses to prove non-accreditation given the voters' registers that had been tendered in evidence. Ground 11 ^F

5.6 Whether the Court of Appeal ought to have come to the conclusion that the Tribunal ought to have ascertained the number of places where there was non-accreditation and given effect to it. Grounds 12 & 13 ^G

5.7 Whether the Court of Appeal ought to have considered the complaint and come to the conclusion that the Tribunal was in error to have treated the address of counsel as it was not covered by evidence. Ground 15 ^H

5.8 Whether the Court of Appeal was right in affirming the decision of the Tribunal to entertain the respondents' preliminary objection. Ground 2 & 3

5.9 Whether the Court of Appeal was correct to have upheld the decision of the Tribunal that certain paragraphs of the petition were vague and general as a result of which they were discounted. Ground 4

B 5.10 Whether the Court of Appeal was correct to have upheld the decision of the Tribunal not to ascribe probative value to the evidence of PW63, PW64 and PW65. Ground 8

C 5.11 Whether the Court of Appeal ought to have considered the complaint of the appellants and pronounced that the Tribunal was in error to have held that the reports of PW63, PW64 and PW65 annexed to their witness statement an oath ought to have been separately tendered in evidence. Ground 10.

D 5.12 Having regard to the totality of the evidence, whether the 1st appellant ought to be declared the duly elected Governor of Kwara State having satisfied the requirement of Section 149 of the 1999 Constitution of the Federal Republic of Nigeria. Ground 1, 17 & 18"

The 1st and 2nd respondents formulated four issues for determination.

E The issues are stated to be:

F 1. Whether the court below did not act rightly in agreeing with and affirming the trial Tribunal's view on the correctness of the stage at which the objections to the pleadings were taken, having regard to paragraph 12(5) of the First Schedule of the Electoral Act 2010 (as amended) and also in agreeing with and discountenancing of the generic, vague nebulous and general paragraphs of the petition that did not provide particulars as provided by law and whether same has occasioned any miscarriage of justice (Grounds 2, 3 and G 4).

H 2. Whether the court below did not act correctly in agreeing with the trial Tribunal that the testimonies and reports of PWs 63, 64, and 65 were not only unreliable but did not qualify as expert evidence, having regard to the provisions of Section 68 of the Evidence Act, 2011 and the manifold vices that assailed their oral and documentary reports (Grounds 8 & 10).

3. Whether the court below was not correct in agreeing with the trial tribunal that the documents relied upon by the appellants were not duly certified in accordance with Section 104 of the Evi-

dence Act, 2011, that the rejection of the documents did not occasion any miscarriage of justice and that the documents were merely dumped on the Tribunal due to lack of oral evidence to tie the documents to relevant aspects of the appellants' case for which they were intended (Ground 5, 7 & 9)

4. Whether the court below was not right in affirming the various findings of the trial tribunal on the failure or inability of the appellants to proffer cogent, credible and believable evidence in, proof of their case and thereby sanctioning the order of dismissal of the petition by the trial tribunal. (Ground 1, 6, 11, 12, 13, 15, 16, 17 and 18) B
C

On behalf of the 1st respondent, the following four issues for determination were formulated:

"1. Whether the court below was not right in affirming the tribunal's findings to the effect that the appellants did not prove the various allegations of corrupt practices, irregularities and non-compliance that were serially levied in the petition to the standards required by law (Grounds, 1, 6, 11, 12, 13, 15, 16, 17 and 18).

2. Whether the court below correctly interpreted the provisions of paragraphs 12(5) and 53(2), and (5) of the 1st Schedule to the Electoral Act, 2010 in affirming the decision of the trial tribunal on the competence and promptitude of the preliminary objection to the appellants' pleadings (Grounds 2, 3, 4, and 14). E

3. Whether the Court of Appeal was not right in endorsing the decision of the trial tribunal that the public documents tendered before it by the appellants were not duly certified as required by law and that the appellants had a duty which they have shirked to tie mass of the said documents to the relevant areas of their case (Grounds 5, 7 and 9). F
G

4. Whether the court below was not correct in agreeing with the trial tribunal that PW63, PW64 and PW65 did not qualify in expert witnesses within the contemplation of Section 68 of the Evidence Act, 2011, that their testimonies were unreliable, and that the reports attached to their statements on oath had no probative value some having not been formally rendered (Grounds 8 and 10)." H

For the 4th respondent, seven issues for determination were submitted. They are:-

"(i) Whether the Court of Appeal was right in upholding the

findings of the Tribunal in respect of the ascription of probative value to the evidence of PW63, PW64 and PW65 (Ground 8).

(ii) *Whether the Court of Appeal was right in holding that the burden of proving that the discrepancy of 21,192 votes impugned the integrity of the election lies on the appellants and that they failed to discharged that burden (Ground 6).*

(iii) *Whether the Court of Appeal was right in the conclusion it reached in respect of all the documents including the certification of the public documents tendered in evidence at the trial before the Tribunal. (Ground 5, 7 and 9)*

(iv) *Whether the Court of Appeal was right in its conclusion on the issue of accreditation and non-accreditation put forward by the appellants before the Tribunal (Ground 11, 12 and 13).*

(v) *Whether the Court of Appeal properly appraised and evaluated the evidence before the Tribunal vis-à-vis the address of counsel, severity of the allegations of crime, non-compliance ‘with the provisions of the Electoral Act, in holding that the election was conducted in substantial compliance with the provisions of the Electoral Act 2010 (as amended) and that the appellants have not proved otherwise (Ground 1, 15, 17 and 18).*

(vi) *Whether the Court of Appeal was right in upholding the decision of the Tribunal as regard the competence of the preliminary objection raised by the respondents and that the preliminary objections of the 1st and 2nd respondents were properly argued upon the adoption of their final address at the Tribunal (Ground 2 and 3)*

(vii) *Whether the Court of Appeal was not right in upholding the decision of the Tribunal that some paragraphs of the petition were vague and general in terms and in striking out paragraphs 18.15 to 18.17 of the petition (Ground 4 and 14)”*

I state hereunder the substance of the arguments of learned senior counsel for the appellants. With respect to the appellants’ first issue, it was the submission of learned senior counsel that the documents were duly certified. That certification by signature of the certifying officer does not mean a signature by long hand contending that a mark, rubber stamp or an engraved mark meets the requirement of certification. Reliance was placed on the English case of *Goodman v. J. Eban* LD (1954) 1 QBD 550, *Strand’s Judicial Dictionary* 4th Edition, Vol. 3 at page 2547. It was their submission that although

the Tribunal considered some of documents after ruling that they were not properly certified and therefore inadmissible, the ruling had pre-judged its decision on their probative value and therefore occasioned some miscarriage of justice. It was further contended that since the 213,011 ballot papers, Form EC8AS, voters' registers and other electoral materials for the 895 polling units for the areas being challenged are all documents of and in the custody of the 4th respondent who also certified them, any inadequacy in certification ought not to be visited on the petitioner/appellants. The inadequacy in certification notwithstanding, there was substantial compliance with section 104 of the Evidence Act, learned senior counsel contended. B
C

As regards the appellants' issue two, learned senior counsel highlighted the discrepancy in the total number of valid votes in the disputed area. He pointed out that while the, total number of votes as recorded in the Forms EC8AS is 234,203, the number of ballot papers actually used in respect of the area is 213,011 creating a discrepancy of 21,192. Learned senior counsel argued that the total number of ballot papers used must of necessity tally with the figure recorded in the Forms ECSAs in the area and that the discrepancy is proof of electoral malpractices and non-compliances which are substantial enough to affect the overall result. Appellants prayed therefore that figures for the area be cancelled and the figures credited to each candidate deducted from his total scores so as to determine the person duly elected. D
E

In the appellants' brief, issues 3, 4, 5 and 6 are argued together. It is appellants' contention that the appeal does not turn on the question of credibility of witnesses. Rather, learned senior counsel argued, the evidence is mainly documentary and the question therefore is mainly that of the proper inference to be drawn from such documents. Reliance was placed on *Ezeonwu v. Onyechi* (1996) 3 NWLR (Pt. 438) 499 at 526. It was further argued that since the two courts below failed to examine the documentary evidence and draw the necessary inference, this court is in as good a position as the lower courts to examine the documents and draw the necessary inference. The appellants therefore invited us to invoke the provisions of Section 22 of the Supreme Court Act to assess the documents and accord the necessary probative value to them. F
G
H

Under these issues, the appellants extensively argued the

question of accreditation. They argued that in some units there was no accreditation and yet votes were credited to the candidates; in other places where there was accreditation the number voted for exceeded the number-accredited. There was strong documentary proof of these and which proof did not require any oral evidence, B counsel argued.

With respect to the preliminary objection taken at the Tribunal, the appellants' contention is that it was not jurisdictional which can be raised at any time. They also faulted the decision of the Tribunal on the concession of the respondents on the issue being that of C jurisdiction, contending that an issue of jurisdiction is one of law and cannot therefore be a subject of admission. Appellants referred to the provisions of paragraph 53(2) and (5) of the 1st Schedule to the Electoral Act, 2010 and contended that the respondents had waived D their right to raise the objection. It was their submission that paragraph 12(5) of the 1st Schedule to the Act does not apply as it is general as opposed to paragraph 53(2) and (5) which are specific. On this submission, they relied on *Schroder & Co. v. Major & Company (Nig.) Ltd.* (1989) 2 NWLR (Pt. 101) 1 and *Inakoju v. Adeleke* E (2007) 4 NWLR (Pt. 1025) 423 at 629.

On the merits of the preliminary objection, the appellants referred to the paragraphs of the petition struck out in the wake of the objection and submitted that they pleaded all that they were required to plead. Assuming without conceding that they were vague, F learned senior counsel for the appellants contended, the respondent ought to have sought further and better particulars as provided in paragraph 17(1) and (2) of the 1st Schedule to the Electoral Act (as amended).

G The appellants' issue 7 deals with the Tribunal's rejection of the reports prepared by the PW63, PW64 and PW65 which report were attached to their statements on oath on the ground that they were not tendered separately. The appellants' complaint here is that the Court of Appeal refused to consider the complaint. It was their H submission that the reports were properly before the Tribunal which therefore had a duty to examine them. They relied on *National Electoral Commission & 7 Ors v. Wodi & Ors* (1989) 2 NWLR (Pt. 104) 444 at 455; *Uzodinma v. Izunaso* (No. 2) (2011) 17 NWLR (Pt. 1275) 28 at 75; *PAC v. INEC* (2009) FWLR (Pt. 260) at 325.

It was their further submission that the documents attached to the statements on oath were properly before the court and ought to have been considered.

Appellants' issue 8 deals with whether from the totality of evidence on record the 1st and 2nd appellants ought not be declared I the winner for the offices of the Governor and Deputy Governor B respectively of Kwara State. In conclusion, the appellants urged that the appeal be allowed.

In the 1st and 2nd respondents' brief, Yusuf Ali SAN first addressed the issue of the preliminary objection taken at the Tribunal. On the question of whether the respondents waived their right to C argue if at the time they did, he relied on the provisions of paragraph 12(5) of the 1st Schedule to the Electoral Act, 2010 (as amended) and submitted that effect must be given to its plain meaning. He agreed with the view expressed by the Court of Appeal that the provision is a new innovation to meet the restriction of 180 days imposed by Section 285(6) of the 1999 Constitution (as amended). He referred to the jurisdictional nature of the objection conceded by the appellants, which can therefore be taken at any time. D

On the merits of the complaint, learned senior counsel argued E that the affected paragraphs were vague, unspecific and were rightly discountenanced. He relied on a number of authorities, amongst them Abubakar v. Yar'Adua (2005) All FWLR (Pt. 457) 1 at 133 and Buhari v. Obasanjo (2005) All FWLR (Pt. 273) 1 at 158- F 159, (2005) 2 NWLR (Pt. 910) 241. Learned senior counsel pointed out that despite its ruling that the paragraphs ought to be discountenanced, the Tribunal indeed considered all the issues in the petition thus occasioning thereby no miscarriage of justice to the appellants.

The 1st - 3rd respondents' issue two relates to the Tribunal's G rejection of the evidence of the PW63, PW64 and PW65 and the reports they tendered. Learned senior counsel referred to the findings of the Tribunal and affirmed by the court below against which, he argued, there was no ground of appeal. It was contended that the appellants have not established that the concurrent findings were H perverse.

The 1st - 3rd respondents' issue 3 questions whether the documents tendered met the requirements of certification under S. 104 of the Evidence Act. Learned senior counsel reproduced the provi-

sions of Section 104 of the Evidence Act and contended that the certification did not meet the requirements of the law. It was further pointed out that the documents were not linked to the specific areas of their case and submitted that in such, a situation, the Tribunal was entitled to disregard them. Reliance was placed on *Alao v. Akano* B (2005) 11 NWLR (Pt. 935) 160 at 178-179. It was further contended that it was not for the Tribunal to embark upon an investigation of the documents and come out with a result. Respondents relied on *Alao v. Akano* (supra); *Iniaya v. Akpabio* (2008) 17 NWLR (Pt. 1116) C 225 at 299-300; *Jekpe v. Alokwe* (2001) 4 SCNJ 67, (2001) 8 NWLR (Pt. 715) 252. It was further contended that though the Tribunal ruled that the documents were inadmissible on the grounds of improper certification, it nevertheless used them and made copious findings and which resulted in the nullification of the election in several D places. In such circumstances, the ruling occasioned no miscarriage of justice, learned senior counsel argued.

The 4th issue of the 1st and 2nd respondents pertains to whether there was adequate evaluation of the oral and mass of documentary evidence. Much of the argument, under this issue had been canvassed under the other issues? To buttress this assertion that the Tribunal adequately evaluated, learned senior counsel referred to some passages from the judgment of the Tribunal. It was further contended that the address of counsel cannot be substituted for the evidence in the case. E

F It was 1st and 2nd respondent's further submission that stuffing of ballot boxes with ballot papers, thuggery and violent disruption of election, allegations of corrupt practices, mutilation' or falsification of result, and multiple voting are all criminal acts the proof of G which must be beyond reasonable doubt. Reference was made to the Tribunals' restatement of this principle of law at page 2989 of the record and contended that the Tribunal embarked upon, a painstaking evaluation. It was further contended on behalf of the respondents that the nullification of the results in the five Local Government H Areas and 28 Wards in seven other Local Government Areas sought by the appellants if granted would affect the constitutional requirement of spread.

In conclusion, it was, argued that the appellants have not established their entitlement to either the main or the alternative re-

liefs and urged therefore that the appeal be dismissed.

The arguments of Adebayo Adelodun SAN in the 3rd respondent's brief are substantially to the same effect as those in the 1st and 2nd respondent's brief. He also made copious references to the judgment of the trial tribunal and submitted that it properly evaluated and that all the crucial findings of the two courts below are supported by the evidence on record. B

In the 4th respondent's brief, Olajide Ayodele SAN argued to the same effect as the arguments of the other respondents. In the seven issues formulated from the eighteen grounds of appeal learned senior counsel made submission in support of the concurrent findings of the two courts below. C

In their reply to the 1st, 2nd and 3rd respondents' brief, the appellants referred to the issue of concurrent findings of facts and submitted that the findings were not supported by the facts on record. D It was submitted that the 21,192 figure between the ballot papers actually used and those entered in the Form EC8As shows that the election in the affected areas was discredited and impugned and which results ought to be cancelled. In their reply brief to the 4th respondent's brief, they argued that the 21,192 votes discrepancy shows first that E the election was not conducted substantially in accordance with the principles of the Electoral Act and second that, the non-compliance substantially affected the result in the affected 5 Local Government Areas and 28 Wards of 7 Local Government Areas of the State. F

In conclusion, the appellants urged that the appeal be allowed.

I have considered the pleadings in the petition, the replies of the respondents, the judgments of the two courts below, the issues raised in this appeal and the addresses of counsel for the parties. G Because of time constraints I shall discuss as briefly as possible the various issues raised in this appeal. I shall first attend to the preliminary objection of the 1st and 2nd respondents at the Tribunal. I shall then consider whether the paragraphs of the petition complained of did in fact offend the rules of pleadings. I shall finally consider the H issues of burden and standard of proof.

First is the issue of the preliminary objection. As I stated earlier in this judgment, it was embodied in the 1st and 2nd respondents' reply filed on the 14th of June, 2011. The main ground of the objec-

tion is that all the allegations in the petition were unspecific, generic, speculative, vague, un-referable, omnibus and general in terms. It was however not argued immediately. The 1st and 2nd respondents filed their final written address on the 4th of October, 2011 wherein the preliminary objection was argued. (See pages 2577-2616 Vol. B VIII of the record). The petitioners/appellants reacted to this in their final written address dated the 14th October, 2011 (See pages 2698-2735 Vol. VIII of the record).

In what looked like an objection to the 1st and 2nd respondents' right to argue their preliminary objection embodied in their reply filed on the 14th June, 2011 filed on the 14th of June, 2011, the contention of the petitioners/appellants was that for not raising and arguing the objection before the filing of their reply and in view of the various steps they had taken in their defence of the petition, they D (1st and 2nd respondents) should be held to have waived their right to object through their said final address. They relied on the provisions of paragraph 53(2) and (5) of the 1st Schedule to the Electoral Act, 2010 (as amended). It was their further submission that paragraph 12(5) of the 1st Schedule to the Act does not apply, its being a general provision as opposed to paragraph 53(2) and (5) which are specific provisions. They submitted that the issue is one of jurisdiction which cannot therefore be overlooked. They relied on *Schroder & Co. v. Major & Company (Nig.) Ltd.* (1989) 2 NWLR (Pt. 101) 1 at 11, 12 and 13; *Inakoju v. Adeleke* (2007) 4 NWLR (Pt. 1025) 423 at F 629. This was also the substance of the arguments they canvassed at the court below. I have earlier given the substance of the arguments of the respondents before us on the issue.

In articulating their respective positions, both the appellants and the respondents have relied mainly on the provision of the 1st Schedule to the, Electoral Act, 2010 (as amended) and the Federal High Court (Civil Procedure) Rules and both sides have described the controversy generated as an issue of jurisdiction. With respect, both sides missed the point by referring to the issue as one of jurisdiction. The 1st Schedule to the Electoral Act represents the Rules of Procedure for election petitions. And in the conduct of election petitions, the Federal High Court (Civil Procedure) Rules shall also apply with such modifications as may be necessary to

render the provisions of the 1st Schedule applicable. And as I stated in the recent decision of this court in SC. 21/2012, Haruna Yunusa Sa'eed & Anor v. Partrick Ibrahim Yakowa & Anor (Unreported) delivered on the 8th of February, 2012, now reported in (2013) 7 NWLR (Pt. 1352) 124, the 1st Schedule being rules of procedure do not confer jurisdiction, Jurisdiction is only donated by the Constitution and/or statutes. See Ogunremi & Ors v. Dada & Ors A (1962) NSCC 419 at 422, reported as Dada v. Ogunremi (1962) 2 SCNLR 417. It follows therefore that a party's breach of the provisions of the 1st Schedule to the Electoral Act and/or the Federal High Court Rules does not raise an issue of jurisdiction. Rather, the consequences of such breaches of the 1st Schedule are specifically provided for in paragraph 53 thereof.

On the question of whether paragraph 12(5) of the 1st Schedule to the Electoral Act is authority for-the 1st and 2nd respondents' preliminary objection being embodied and argued in their brief and argument, it is necessary to highlight the state of the law before its coming into being.

The 1999 Constitution before its amendment had no stipulation as to the time within which an election petition was to be disposed of. Similarly, the 2006 Electoral Act made pursuant thereto had no limitation as to time within which an election petition was to be finally determined. The consequence was that election petitions suffered undue delays. It is on record that some election petitions could not be decided until the four year term of the elective office that was contested in the litigation expired. The rules of procedure for challenging the competence of an election petition or any part thereof were simply identical with paragraph 53 of the 1st Schedule to the current 2010 Electoral Act (as amended). Of relevance are paragraphs 53(2) and (5) and they provide:-

"53(2) An application to set aside an election or a proceeding resulting there from for irregularity or for being a nullity shall not be allowed unless made within a reasonable time and when the party making the application has not taken any fresh step in the proceedings after knowledge of the defect."

"53(5) An objection challenging the regularity or competence of an election petition shall be heard and determined after the close

of pleadings.”

As I pointed out, both the 1999 Constitution in its original form and the Electoral Acts, made pursuant thereto contained no provisions limiting the lifespan of an election petition. I have also spoken on the consequential delays. There was thus that patent mischief both in the Constitution and the Electoral Act. In apparent bid to suppress and possibly remedy the mischief, makers of Constitution caused an amendment through Section 285(6) of the 1999 Constitution which states:-

“An Election Tribunal shall deliver its judgment in writing within 180 days from the date of the filing of the petition.”

By this amendment time is thus of essence in an election petition. And for the purpose of meeting the clear dictates of the Constitution, the Legislature introduced paragraph 12(5) of the 1st Schedule to the Electoral Act. It provides thus:-

“A respondent who has an objection to the hearing of the petition shall file his reply and state the objection therein and the objection shall be heard along with the substantive petition.”

Going by the guiding principles of interpretation of statutes, the amendment has to be construed liberally and beneficially so as to promote the suppression of the mischief clearly sought to be remedied. Thus, the provisions of paragraph 53(2) and (5) of the 1st Schedule notwithstanding, full effect must be given to paragraph 12(5) of the first Schedule.

On this question of whether by virtue of the provisions of paragraph 12(5) of the 1st Schedule to the Electoral Act, the respondents rightly raised the objection to certain paragraphs of the petition at the time they did, I hold that the decision of the Tribunal and affirmed by the court below is unsustainable. The result is that I resolve the appellants’ issue 8 (which is the same as the 1st and 2nd respondent issue 1, the 3rd respondent’s issue 2 and the 4th respondent’s issue 6) against the appellant.

This takes me to the appellants’ issue 9 of whether the Court of Appeal was correct to have upheld the Tribunal’s decision to discountenance certain paragraphs of the petition on the ground that they were vague and general. This issue of the appellants is the same

as the 1st and 2nd respondents' issue 1 and the 4th respondent's issue 7. On this issue of whether there was in the petition inadequacy of pleadings, paragraph 4(1)(d) of the First Schedule to the 2010 Electoral Act (as amended) is relevant. It provides in substance that an Election Petition shall state clearly the facts of the election and the grounds on which the petition is based and the reliefs sought. And as I have earlier mentioned, in the hearing and determination of election petitions, the Federal High Court (Civil Procedure) Rules also apply with such modifications as may be necessary by virtue of the provisions of paragraph 54 of the 1st Schedule to the Electoral Act. With respect to the necessary contents of pleadings, Order 1-3 rule 4(1), 5 and 6(1) of the Federal High Court (Civil Procedure) Rules are relevant. They provide:-

"(1) Every pleading shall contain a statement in a summary form of the material facts on which the party pleading relies for his claim or defence as the case may be but riot the evidence by which they are to be proved, and shall when necessary be divided into paragraphs and numbered consecutively."

"5. In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, willful default or undue influence and in all other cases in which particulars may be necessary, particulars (with dates and items if necessary) shall be stated in the pleadings."

"6(1) A party shall plead specifically any matter (for example performance release, any relevant statute of limitation, fraud or any fact showing illegality) which if not specifically pleaded might take the opposite party by surprise."

In its judgment, the Tribunal, relying on the above provisions of the paragraph 4(1)(d) of the 1st Schedule to the Electoral Act and Order 13 rule 4(1), 5 and 6(1) of the Federal High Court (Civil Procedure) Rules, referred to the manner of pleadings in some specified paragraphs of the petition and held that they ought to be discounted on the ground that they did not meet the mandatory requirements of the Rules of Procedures. At page 2971 of the record, the Tribunal highlighted the rather unspecific character of the pleadings in the affected paragraphs as follows:-

"In many polling units in the aforementioned five Local Government Areas and stated wards ..."

“In most polling units in the aforementioned five Local Government Areas and the stated wards ...”

There was no compliance with chapters 3, 4 and 5 of the Manual for Election Officials 2011 in particular paragraphs 3.1, 3.2, 3.3 and 3.4 of the Manual was not complied with, in that (a) voters were not properly accredited within the appointed time or at all ... The petitioners shall contend that this failure impaired the integrity of the decision fundamentally such that no election properly so called could be said to have been held in the affected polling units.”

“In same units the number of accredited voters were deliberately inflated”

“There was misapplication of votes.”

“Elections were disrupted by acts of violence in several polling units and wards aforementioned ...”

“There was no concluded election in must of the polling units in the Local Government.”

The Tribunal then expressed its opinion on the quality of the pleadings at the same page 2071 of the record in the following terms:-

“Such averments cannot be said to be in compliance with the mandatory dictates of the provisions of paragraph 4(1)(d) of the 1st Schedule to the instance Electoral Act, Order 13 rule 4(1), 5 and 6(1) of the Federal High Court (Civil Procedure) Rules, 2009 which used the word “shall”. The grounds of the petition and the reliefs were stated but the facts as stated are mostly general in nature.” And at page 2975 of the record, the Tribunal identified and specified the paragraphs which, in its view, offended the rules of pleadings and that the objection of the respondents was sustainable.

In its judgment, the court below upheld the reasoning and conclusion of the Tribunal (see page 3690 - 3691 of the record). The question before us as whether the court below was right to endorse the findings and conclusion of the Tribunal. I shall answer this question in the affirmative. The averments such as *“in many polling units”, “in most polling units,” “in some polling units”* and *“in several polling units”* were rather imprecise and general in terms to elicit specific responses from the respondents in their replies to the petition.

Pleadings in an action are the written statements of the parties wherein they set forth the summary of the material facts- on which each relies either in proof of his claim or his

defence as the case may be and by means of which the real matters was controversy between the parties and to be adjudicated upon are clearly identified. Although only material facts are required to be pleaded and in a summary form, they must nevertheless be sufficiently specific and comprehensive to elicit the necessary answers from the opponent. See Ashiru Noibi v. Fikolati & Others (1987) 3 SC 105 at 119, (1987) 1 NWLR (Pt. 52) 619 and Omorhirhi v. Enatevwere (1988) 1 NWLR (Pt. 73) 746. ***They must contain such details as to eliminate any element of surprise to the opposing party. In this case where the dispute involves the election in as many as 895 polling units the pleadings in the petition which alleged electoral malpractices, non-compliances and/or offences in some polling units”, “many polling 1 units”, “most polling units” or “several polling units” cannot be said to have met the requirements of pleadings as stipulated in paragraph 4(1)(d) of the 1st Schedule” of the Electoral Act and/or Order 13 rules 4(1), 5 and 6(1) of the Federal High Court (Civil Procedure) Rule, 2009. The result is that this issue is also resolved against the appellants.***

Next is the issue of proper certification of the public documents admitted in evidence and their value to the case of the appellants. This is the appellant’s issue one and three and the respondents’ issue three. The documents are the 4th respondent’s (INEC) electoral materials and they include 213,011 ballot papers and Form EC8As and voters registers for each of the 895 polling units being challenged. At the trial these were tendered across the Bar by learned senior counsel for the petitioners/appellants and same were admitted without objection by counsel for the respondents. Apparently, because of the large quantity of the documents and the demands of urgency dictated by the new provisions of Section 285 (5), (6) and (7) of the Constitution, learned counsel for the respondents all indicated their rights to raise the issue of admissibility of these documents at the address stage. (See pages 1726 – 1761 of the record). And this they did.

In its judgment, the Tribunal referred to a number of authorities and relying particularly on the meaning of the word “*subscription*”, in Black’s Law Dictionary 7th Edition had this to say:-

“From the way the documents were certified with everything

stated therein engraved in a stamp form, will the officer be said to have dated and subscribed his name and his official title on the said documents in accordance with the dictates of Section 104(1) and (2) of the Evidence Act, 2011. We think not. At the very minimum his signature and date should have been in long hand for one to start talking of substantial compliance. Subscription as the above meaning shows is the act of signing ones name on a document. As the signature on these documents are engraved it cannot be said to have been subscribed or signed by the officer.” (See page 2987 of the record).

Based on the above, the Tribunal ruled that the documents were inadmissible. And at page 2988 of the record the Tribunal relying on a number of authorities cited by counsel for the 1st and 2nd respondent stated:-

“Although these documents were admitted in evidence but now found to be inadmissible in evidence, the law is to the effect that they should either be expunged or that they should not be taken into consideration in the determination of the case.”

And then at page 2989 of the record, the Tribunal, in an apparent bid to obviate a possible miscarriage of justice said:-

“However, assuming we are wrong in our determination that these documents are inadmissible, we shall go on to consider them.”

It is my view that there is no need for any serious deliberation upon the question of proper certification and admissibility of the various INEC documents tendered and admitted in evidence. I hold this view because the question of proper certification and thus admissibility of the documents does not form the principle or part of the principles upon which the case was decided. It does not form part of the ratio decidendi of the case. On this issue of proper certification and/or admissibility of the documents, the court below at page 3692 of record reasoned as follows:-

“The Law is settled that where a court or tribunal wrongly admitted a document in the cause of its proceeding, it would be perfectly entitled not to attach any weight to it in its decision. The documents in controversy were those of the fourth respondent INEC which, by law, are public documents. The fourth respondent itself was present in court when the documents were being tendered but did not raise

any objection to their admissibility.”

What is more, this argument is even academic for notwithstanding its rejection of the documents, the tribunal still made copious use of them in its judgment. The result is that the appellant suffered no miscarriage of justice since the documents were still made use of.

The foregoing reasoning cannot be faulted and which I fully endorse. The issue therefore is that of the probable value of these documents, and not their admissibility. The trial tribunal in apparent appreciation of this state of affairs embarked upon a detailed evaluation of the evidence including the assessment of the probative value of the documents in the light of the matters pleaded. It started, rightly in my view, with the 4th and crucial issue of whether the petitioners proved the various criminal allegations of electoral malpractices and offences. After examining the evidence of the various witnesses on this issue in considerable details, the tribunal found as follows:-

“As we said earlier, the petitioners’ witnesses did not make out any prima facie case that will necessitate the respondents to give evidence in rebuttal. Those criminal allegations contained in the pleadings have not been proved beyond reasonable doubt as required by law.” (See page 3012 of the record).

It then proceeded to consider the evidence in support of allegations that are civil in nature. This exercise alone spanned some 91 pages of the judgment (see pages 3012 -1303 of the record).

Therein the trial-tribunal meticulously examined the evidence of numerous witnesses and the mass of INEC documents. It is perhaps appropriate to reiterate that at the trial, these INEC documents, comprising 213,011 ballot papers and Form EC8As and Voters Registers for each of the 895 polling units were just tendered across the Bar by learned counsel for the petitioners. At the end of this evaluation exercise, the tribunal at page 3102 of the record found as follows:-

“Going back to the issue under discuss we hold that the petitioners have not proved their allegation of non-compliance and that the non-compliance if any did not substantially affect the election. It therefore follows that INEC, the 4th respondent conducted the Kwara State Governorship election in the five Local Governments and the

words being challenged in, substantial compliance with the Electoral Act, 2010 (As amended) as attested by their witnesses.”

And with respect to the probative value of the volume of documentary evidence, the tribunal reasoned and concluded as follows:-

B *“That brings to the fore the point that documents tendered must have a purpose and it must be demonstrated in open court what use it is meant for. Merely tendering documents without more because they are certified true copies is not enough and more .im-*
C *portantly the law has always remained resolute that questions cannot be asked a witness on a document he did not make.*

From all we said the petitioners through their witnesses did not establish the various allegations in the pleadings both bordering on criminality and some civil.”

D What was the attitude of the court below to the foregoing findings of the trial tribunal? The court below found no basis for interfering with the findings and conclusions of the trial tribunal. At page 3697 it reasoned and found as follows:-

“The respondents contended that the tribunal was correct in
E *its findings and, in subsequently dismissing the petition on the ground that the appellants did not prove the allegation of crime beyond rea-*
F *sonable doubt as required by law. Even then this court can only interfere with such findings where they are found to be perverse. We are in agreement with the submission that, ordinarily, an appellate*
F *court will not interfere with findings of facts by lower court except if such findings are proved to be perverse. Abidoye v. Alawode (2001) FWLR (Pt. 43) 322, (2001) 6 NWLR (Pt. 709) 463 and University of Lagos v. Olaniyan (1985) 1 NWLR (Pt. 1) 56.*

G *In the instant appeal, the appellants did not show that the said findings of the tribunal were perverse finding.”*

On the same page the court below made references to some case law authorities on burden to proof and concluded thus:-

H *“The petitioners, in the present appeal did not discharge that duty. The tribunal could not do that for them. Since the tribunal found that those criminal allegations were not proved beyond rea-*
H *sonable doubt, and were left as integral parts of the petition at the time of its decision, this court will not interfere with those findings of facts.”*

I have no reason to interfere with the concurrent findings of the two courts. The settled principle of law is that evaluation is primarily the function of the trial court. It is the trial court that has the singular advantage of hearing and watching the demeanour of witnesses in the course of their testimonies. And an appellate court would not ordinarily therefore interfere with the findings of the trial court I unless the findings are perverse. See Sanusi v. Ameyogun (1992) 4 NWLR (Pt. 237) 527; Adegoke v. Adibi (1992) 5 NWLR (Pt. 242) 410; Akpabio v. State (1994) 7 NWLR (Pt. 359) 635. B

As I pointed out earlier in this judgment, the trial tribunal meticulously appraised the evidence, oral and documentary, and made its findings. The findings are, in my view amply supported by the evidence on record. The court below therefore had no reason to disturb the findings. By that self same reason, I also see no reason to interfere with the findings particularly when they are concurrent. C D

With respect to the volume of documentary evidence, I wish to state at the risk of repetition that they were merely tendered across the Bar by learned counsel for the petitioners at the trial. He did not and was, in fact, not in a position to answer questions or otherwise speak on any of them. Their makers were not called. In such circumstances was the trial tribunal bound to ascribe probative value to them? I shall answer this question in the negative. E

In Flash Fixed Odds Ltd. v. Akatugba (2001) 9 NWLR (Pt. 717) 46 at 63, the Court of Appeal re-emphasised the principle that the proper person to tender a document is its maker who alone can be cross examined on it; and that where a person who did not make it tenders it, the court ought not to attach probative value to it since the witness cannot be cross-examined on it. See also Gregory Okonkwo v. The State (1998) 8 NWLR (Pt. 561) 210 at 258. ***This principle applies with equal force in this case. The trial tribunal had no duty to accord probative value to the mass of documents, their status as certified public documents notwithstanding.*** F G H

There is no doubt that the petitioners' decision to tender the mass of documentary evidence at the trial was prompted by the urgency dictated by Section 285(6) of the

1999 Constitution (as amended). That however does not diminish the petitioners/appellants burden and standard of proof of the petition. They had a duty to prove their petition according to law. I agree with and respectfully adopt the concurrent findings of the two courts below that the petitioners/appellants failed to prove their petition as required by law. The result is that I resolve all remaining issues against the appellants.

For the foregoing reasons, I hold in conclusion that the appeal fails and same is accordingly dismissed.

ADEKEYE JSC

I was privileged to read before now the judgment just rendered by my learned brother F.F. Tabai J.S.C. I agree with his reasoning and conclusion that regardless of the avalanche of documentary evidence tendered by the petitioners/ appellants, they failed to meet up with the burden and standard of proof required by law to satisfy the court in their petition. I also agree that the appeal is unmeritorious. I dismiss it accordingly.

GALADIMA JSC

This is a further appeal against the decision of the Court of Appeal, Ilorin Division delivered on 7/1/2012 which upheld the decision of the Kwara State Governorship Election Petition Tribunal's judgment of 11/11/2011. The court affirmed the dismissal of the petition of the petitioners, hereinafter referred to as the "appellants".

Dissatisfied, the petitioner filed a notice of appeal containing 18 grounds of appeal on 16/1/2011. However, on 23/2/2012 when this appeal came up for hearing our attention was drawn to the motion on notice of the appellants filed on 17/2/2012, seeking leave and order of this court to amend their notice and grounds of appeal dated and filed on 16/1/2012. Without any objection from the learned counsel for the respondents, the notice and grounds of appeal were amended in terms of the proposed amendments contained in exhibit "LOA1", so as to bring out the issues in controversy in this appeal, very clearly. The amendments sought consist only in reformulating

the complaints in the grounds of appeal affected as their particulars of errors. The amendments of the notice and the grounds of appeal do not require any further amendment to the appellants' brief of argument or that of the respondents.

Also on the 23/2/2012, learned senior counsel for the 4th respondent, on 10/2/2012, filed a motion praying for extension of time within which to file the 4th respondent's brief of argument. Same was deemed duly filed and served. B

Briefs having been filed and exchanged, we took the appeal on 23/2/2012. C

In their brief of argument filed on 3/2/2012 the appellants formulated the following issues for determination.

1. Whether the Court of Appeal ought to have considered the merits of the complaint of the appellants regarding certification of public documents and reverse the decision of the tribunal which held that the said documents were inadmissible Ground 5. D

2. Whether the Court of Appeal ought to have given effect to the undisputed evidence of the 21,192 ballot papers vote discrepancy and in so doing cancelled the election results in the areas being challenged, the integrity of the said election results having been impugned and gravely compromised Ground 6. E

3. Whether the Court of Appeal considered the appellants' complaints and adopted the right approach in the evaluation of documentary evidence and gave proper effect to the said documents. Grounds 7 & 9. F

4. Whether the Court of Appeal ought to have considered the complaint of the appellants and in so doing, come to the conclusion that the tribunal ought to have ascertained the number of places where there was non-accreditation and given effect to it. Grounds 12 & 13. G

5. Whether the Court of Appeal ought to have considered the complaint of the appellant and come to the conclusion that the tribunal was in error to have been called witnesses to prove non-accreditation given the voters registers that had been tendered in evidence. Ground 11. H

6. Whether the Court of Appeal ought to have come to the conclusion that the tribunal ought to have ascertained the number of places where there was non-accreditation and given effect to it.

Ground 12 & 13.

7. Whether the Court of Appeal ought to have considered the complaint and come to the conclusion that the tribunal was in error to have treated the address of counsel as it was not covered by evidence. Ground 15.

B 8. Whether the Court of Appeal was right in affirming the decision of the tribunal to entertain the respondent's preliminary objection. Ground 2 & 3.

C 9. Whether the Court of Appeal was correct to have upheld the decision of the tribunal to entertain paragraphs of the petition were vague and general as a result of which they were discountenanced. Ground 4.

D 10. Whether the Court of Appeal was correct to have upheld the decision of the tribunal not to ascribe probative value to the evidence of PW 63, PW 64 and PW 65. Ground 8.

E 11. Whether the Court of Appeal ought to have considered the complaint of the appellants and pronounced that tribunal was in error to have held that the reports of PW 63, PW 64 and PW... annexed to their witness statement on oath ought to have been separately tendered in evidence. Ground 10.

F 12. Having regard to the totality of the evidence, whether the 1st appellant ought to be declared the duly elected Governor of Kwara State having satisfied the requirement of Section 149 of the 1999 Constitution of the Federal Republic of Nigeria. Grounds 1, 17 & 18.

The 4 issues broadly formulated by the 1st and 2nd respondents for determination of the appeal are as follows:

G 1. Whether the court below did not act rightly in agreeing with and affirming the trial tribunal's view on the correctness of the stage, at which the objections to the pleadings were taken, having regard to paragraph 12(5) of the First Schedule of the Electoral Act, 2010 (as amended) and also in agreeing with the discountenancing of the generic, vague, nebulous and general paragraphs of the petition that did not provide particulars as provided by law and whether same has occasioned any miscarriage of justice (Ground 2, 3, and 4).

H 2. Whether the court below did not act correctly in agreeing with the trial tribunal that the testimonies and reports of PWs 63, 64 and 65 were not only unreliable but did not qualify as expert evi-

dence, having regard to the provisions of Section 68 of the Evidence Act, 2011 and manifold vices that assailed their oral and documentary reports. (Grounds 8 & 10).

3. Whether the court below was not correct in agreeing with the trial tribunal that the documents relied upon by the appellants were not duly certified in accordance with Section 104 of the Evidence Act, 2011, that the rejection of the documents did not occasion any miscarriage of justice and that the documents were merely dumped on the tribunal due to lack of oral evidence to tie the documents to relevant aspects of the appellants' case for which they were intended (Grounds 5, 7 & 9). B
C

4. Whether the court below was not right in affirming the various findings of the trial tribunal on the failure or inability of the appellants to proffer cogent, credible and believable evidence in proof of their case and thereby sanctioning the order of dismissal of the petition by the trial tribunal. (Grounds 1, 6, 11, 12, 13, 15, 16, 17 and 18).

On their part, the 3rd respondents formulated 4 issues for determination of the appeal in the following terms:-

1. Whether the court below was not right in affirming the tribunal's findings to the effect that the appellant did not prove the various allegations of corrupt practices, irregularities and non-compliance that was serially levied in the petition to the standards required by law (Grounds 1, 6, 11, 12, 13, 15, 16, 17 and 18). E

2. Whether the court below correctly interpreted the provisions of paragraphs 12(5) and 53(2) and (5) of the 1st Schedule to the Electoral Act, 2010 in affirming the decision of the trial tribunal on the competence and promptitude of the preliminary objections to the appellants' pleading (Grounds 2, 3, 4, and 14). F
G

3. Whether the Court of Appeal was not right in endorsing the decision of the trial tribunal that the public documents tendered before it by the appellant were not duly certified as required by law and that the appellants had a duty which they have shirked to tie mass of the said documents to the relevant areas of their case (Grounds 5, 7 and 9). H

4. Whether the court below was not correct in agreeing with the trial tribunal that PW63, PW64 and PW65 did not qualify as expert witnesses within the contemplation of Section 68 of the Evi-

dence Act, 2011, that their testimonies were unreliable, and that the reports attached to their statements on oath had no probative value same having not been formally tendered (Grounds 8 and 10).

The 4th respondents formulated 7 issues for determination of the appeal as follows:

B (i) Whether the Court of Appeal was right in upholding the findings of the tribunal in respect of the ascription of probative value to the evidence of PW63, PW64 and PW65 (Ground 8 and 10).

C (ii) Whether the Court of Appeal was right in holding that the burden of proving that the discrepancy of 21,192 votes impugned the integrity of the election lies on the appellants and that they failed to discharge that burden. (Ground 6).

(iii) Whether the Court of Appeal was right in the conclusion it reached in respect of all the documents including the certification of D the public documents tendered in evidence at the trial before the tribunal. (Ground 5, 7 and 9).

(iv) Whether the Court of Appeal was right in its conclusion on the issue of accreditation put forward by the appellants before the tribunal. (Ground 11, 12 and 13).

E (v) Whether the Court of Appeal properly appraised and evaluated the evidence before the tribunal vis-a-vis the address of counsel, severity of the allegations of crime, non-compliance with the provisions of the Electoral Act, in holding that the election was conducted in substantial compliance with the provisions of the Electoral F Act, 2010 (as amended) and that the appellants have not prove other wise. (Grounds 1, 15, 17 and 18).

(vi) Whether the Court of Appeal was right in upholding the decision of the tribunal as regard the competence of the preliminary G objections raised by the respondents and that the preliminary objections of the 1st and 2nd respondents were properly argued upon the adoption of their final address at the tribunal (Grounds 2 and 3).

(vii) Whether the Court of Appeal was not right in upholding the decision of the tribunal that some paragraphs of the petition were H vague and general in terms and in striking out paragraphs 18.15 to 18.17 of the petition (Grounds 4 and 14).

Learned senior counsel for the appellants having identified the brief of argument filed on their behalf has urged us to allow the appeal. He however highlighted the arguments canvassed in issue 1.

It is submitted that on the totality of the evidence before the court, judgment ought to be entered in their favour. That the appellants had canvassed sufficient argument in this issue to entitle them to the relief.

And that the resolution of issue 1 should ordinarily determine the appeal. The appellants however, maintained that there were numerous other irregularities and malpractices that equally entitle this court to declare the appellants the duly elected Governor of Kwara State. In other wards should issue 1 be resolved in favour of the appellants there would be no need to consider all other acts of malpractices.

On issue 2, the appellants' argument is that it is those 21,192 disagreeing votes that have impugned on, the credibility and integrity of the election results in all the challenged areas, and as such the said votes recorded for the respondents and the appellants are to be cancelled and deducted from their votes.

It is submitted that if this singular issue is resolved in favour of the appellants and the results from the areas being challenged are cancelled from the total score of each candidate, the 1st appellant will emerge as candidate with the higher number, of lawful votes cast. The total scores by INEC for the parties are not in dispute. Therefore, by deducting the total votes of the 1st appellant and the respondents, we would arrive at a final result with the 1st appellant scoring the highest votes at 111,237 as against the 1st respondents 111,369, that physical count of all the votes of all the discrepancy is 21,192 votes. Reliance was placed on the case of Ireti Kingibe v. Isa Maina & Ors. (2004) FWLR (Pt. 191) 155.

Yusuf O. Ali (SAN) learned senior counsel for 1st and 2nd respondents leading his other learned, silk and other colleagues identified his brief of argument and duly adopted same. He has placed reliance on his list of additional authorities of P.D.P v. I.N.E.C. & 3 Ors. (Unreported) Appeal No.SC.6/2012 delivered on 17/2/2012 now reported in (2012) 7 NWLR (Pt. 1300) 538 and Pada Chabasaya v. Joe Anwasi (2010) 10 NWLR (Pt.1201) 163 at 189.

He referred to issue 2 of the 1st and 2nd respondents and issues 5.10 and 5.11 argued on pp. 24-31 of the appellants' brief. That this issue deals with the reflection of the evidence of PW63,

PW64, PW65 and non-reliance on the reports which were-annexed to the respective written statements on oath. That the trial tribunal found that they were not experts under S.68 of the Evidence Act and that the report is afflicted with glaring errors during cross-examination.

B He refers to p. 3092 of the records.

On issue 4, which he contended, covers appellants' issues 5.3, 5.5, 5.6, 5.7 and 5.17, it is submitted that both the trial tribunal and the Court of Appeal in their concurrent findings held that the allegation of discrepancy of 21,192 votes in the ballot papers used had not been established and proved; that with the rejection of evidence of PW65 the bottom has been knocked off of the appellant's contention of the existence of the discrepancy of votes. It is submitted that there was no evidence of number of ballot papers actually collected from INEC just as there was no evidence of who did the packaging of the certified true copies of ballot papers into the envelopes in which they were tendered before the tribunal. That there was no evidence of who did the sorting of the contents of various envelopes.

E Learned senior counsel has submitted the issue of discrepancy of 21, 192 votes did not arise or derive from the pleading of the appellants as there was no where it was stated in the petition that there was discrepancy of 21,192 votes or any quantity of ballot papers or votes for that matter. On that ground of pleading, the allegation is liable to fail. It is submitted that the decision in *I.N.E.C. v. Oshiomhole* (2009) 4 NWLR (Pt.1132) 607 relied on by the appellant is not applicable to this case. That a party relying on documents in proving his case must relate each or such documents to the specific

F areas of his case in respect of which the document is being tendered and as such there must be a link between his case and document. He refers to the case of *Jalingo v. Nyame* (1992) 3 NWLR (Pt.231) 538 at 590 and *Hashidu v. Goje* (2003) 15 NWLR (Pt.843) 352. It is submitted that there is no where the appellants pretended to link any of the documents to the case presented to the court, and where a party failed to link documents tendered by him to his case as in this case, the court will be entitled to disregard such documents: He relies on *Alao v. Akano* (2005) 11 NWLR (Pt.935) 160 at 178 -179; *Terab v. Lawan* (1992) 3 NWLR (Pt. 231) 569 and *Chime v. Ezea* (2009) 2

NWLR (Pt.1125) 263 at 250 - 381.

Learned senior counsel contended that though the documents relied upon by the appellants were merely dumped on the trial tribunal, all the same it made conscious use of them in its judgment as was held by the tribunal on page 3692 of the record.

On his part, learned senior counsel for the 3rd respondent adopted and relied on their brief of argument filed on 9/2/2012. He has urged us to dismiss the appeal. He completely associated himself with the arguments and submissions of the learned senior counsel for the 1st and 2nd respondents; particularly on his submissions on issues 3 herein before.

Learned senior counsel for the 4th respondent identified their brief filed on 10/2/2012. But deemed filed on 23/2/2012. He adopted it and urged us to dismiss the appeal.

On issue of discrepancy of 21,192 votes complained of in the appellants issue 2 and 4th respondent's issue 2 respectively, learned senior counsel has submitted that it is erroneous to contend as the appellants did, that the discrepancy of 21,192 votes can nullify the election across the areas complained of. He gave two reasons. First, because the contention is not supported by the provisions of S.139(1) of the Electoral Act, 2010 as amended, showing that by provisions of the law quoted that irregularities and/or malpractices took place during the election. That they must also show that these irregularities and malpractices substantially affected the results of the election.

Learned senior counsel has submitted that the proposition of the principle that if the appellants can show that in a few places or polling units, irregularities, malpractices and/or non-compliance with the provisions of the Electoral Act such as to impugn the integrity of the election then the election would be vitiated is not the law. He relied on *Buhari v. Obasanjo* (2005) 13 NWLR (Pt.941) 1 at 191 See also *Ojukwu v. Onwudiwe* (supra).

As earlier stated, in answer to the points of law raised in the two sets of briefs filed by the 1st, 2nd, 3rd and 4th respondents, the appellants filed two sets of reply briefs separately for the 1st, 2nd and 3rd respondents and for the 4th respondents. It is conceded by the appellants that on the concurrent findings of fact, the appellate court will be reluctant to interfere but the evidence on record does not support the findings of the trial tribunal as affirmed by the Court of

Appeal, contrary to the respondents' submission that there were accreditation.

B In response to the issue relating to the allegation that there was palpable want of evidence as to what quantum actually came from which polling unit, the appellants maintain that this question reveals a misunderstanding of the nature of the complaint by the appellants. They maintain that when the total valid votes cast recorded in the cumulative forms EC8AS in the affected areas was compared with a physical count of the ballot papers used to cast the votes, there was a discrepancy of 21,192 ballot papers. The learned C senior counsel submitted that because of this, the integrity of the election in the affected areas was impugned and all the votes cast and credited to all the parties must be cancelled. That the case of *Ojukwu v. Onwudiwe* (supra) is apposite here.

D On the question of certification of the public documents tendered before the tribunal, the appellants repeat their contention that the said documents were properly certified in accordance with S. 104 of the Evidence Act, 2011.

E On the appellants' reply brief in answer to 4th respondent's brief of argument, learned counsel has submitted that both the cases of *Buhari v. Obasanjo* (supra) and *Ojukwu v. Obasanjo* (supra) cited by the 4th respondent rather than contradict the appellants position, do in fact support the appellants' case. Learned senior counsel explained that both cases show that there was first substantial non-compliance, in *Buhari* with the election in *Ogun State* and in *Onwudiwe* in 52 polling units); so the petitioners therein passed the first test that on the second test when the result of those compliance (in *Ogun State* and the 52 polling units respectively) were nullified, the result F of the entire election was not substantially affected. In other words, even after nullifying the results in those areas, the petitioner still did not have majority votes to be declared the winner. This is the context in which the appellants want us to look into those cases and the very same context the case is presented to the court.

H The appellants herein raised 18 grounds of appeal and in its amended notice of appeal distilled 12 issues for determination from those grounds. The appellants' case essentially, before the Court of Appeal was substantially documentary, even so here, since the trial tribunal had rejected the public documents tendered and did not

ascribe any probative value to the appellants' witnesses (whose reports were based exclusively on those documents). The appellants had invited the Court of Appeal to properly admit the said documents, ascribe probative value to them and then draw the necessary inferences for the just determination of the appellants' case. The invitation was not accepted by the Court of Appeal; it dismissed the appeal and hinged or rested its decision broadly on two main grounds, namely:

- (i) That the trial tribunal was in a better position to observe the demeanour of the witnesses and
- (ii) That the result declared were clothed with a presumption of "*regularity, correctness and authenticity*" despite the manifest irregularity on the face of the documents.

As earlier stated, the appellants filed 18 proliferated grounds and distilled 12 copious issues therefrom. I don't need all those to determine this appeal. I am of the firm view that appellants issues 1, 2, 3, suffice and are adequate to determine the appeal. These are specifically set out as follows:

"1. Whether the Court of Appeal ought to have considered the merits of the complaints of the appellants regarding certification of the public documents and reversed the decision of the tribunal which held that the said documents were inadmissible. Ground 6.

2. Whether the Court of Appeal ought to have given effect to the undisputed evidence of 21,192 ballot papers/vote discrepancy and in so doing cancelled the election results in the areas being challenged, the integrity of the said election results having been impugned and gravely compromised. Ground 6.

3. Whether the Court of Appeal considered the appellants' complaints and adopted the right approach in the evaluation of documentary evidence and gave proper effect to the said documents. Grounds 7 and 9."

The observations of the learned senior counsel for the 1st, 2nd and 3rd appellants in their "*addendum*" to their brief are apt. these will assist in developing our jurisprudence. I am however, not persuaded and these observations will not prejudice my desire to take this appeal on the merit.

The observations are that most of the 18 grounds of appeal filed in this appeal are couched more as complaints against the judg-

ment of the trial tribunal. A cursory glance at the particulars will testify to this. By virtue of S.240 of the Constitution, an appeal against the trial tribunal's judgment lies to the Court of Appeal while that against the Court of Appeal lies to this court by virtues of S. 233(2). Where, as it is in this case, the appellants are appearing against the decision of the court below, it will be invidious for the ground of appeal to talk of the decision of the trial tribunal as in this case. I have glanced through grounds 1, 5, 9, 12, 13, 15, 16 and 16 of the grounds of appeal, strictly speaking, the particulars subjoining to the grounds should not relate to the decision of the trial tribunal. However, I have as I have said these observations do not affect my decision to condense the 12 issues of the appellants to three main issues set out below.

Now to the consideration of these 3 issues, appellant's issue D 1 corresponds with issue 3 of the 1st and 2nd respondents, issue 3 of the 3rd respondent and issue 3 of 4th respondent. I shall discuss these 3 issues in great detail; so as to bring out the arguments and submission of respective counsel out clearly.

Issue 1

E The trial tribunal at pages 2981-2989 of the record dealt with this issue and concluded that the certified true copies of the electoral documents tendered by the appellants were not certified as required by section 104 of the Evidence Act, 2011. The signatures on the documents were engraved and for this reason were held to be inadmissible. This had formed the basis for appeal to the Court of Appeal. That court simply held that the question is academic notwithstanding the rejection of the document, the tribunal still made copious use of them in its judgment. Appellants did not agree that F the question is academic nor did the appellants not suffer a miscarriage. It is submitted that although the tribunal claimed to have considered the documents, once it had decided that the documents were inadmissible, it prejudged its consideration in according probative value to any of the documents. An appellant proceeded to give a G number of LGAs where it was alleged the trial tribunal failed to consider the documents and accord them probative value - namely Ilorin West, LGA, Ilorin East LGA, Moro LGA, Ekiti LGA and Ifelodun LGA and Edu LGA. It is contended by the appellants however, that the H tribunal was wrong in that signature on a document does not have to

be in long hand. That it is sufficient if it is a mark, rubber stamp, or engraved mark, that meets the satisfaction of signature and certification of a document. Reliance was placed on English case of *Goodman v. J. Eban* L.D. (1954) 1 QBD 550, also *Straud's Judicial Dictionary*, page 2547 Vol. 3, 4th Ed, Encyclopaedia of Evidence Law and Practice 1st Ed. By T.A. Nwamara and the case of *Tsalibawa v. Habiba* (1991) 2 NWLR (Pt. 174) 461 at 475-476 and *Kotoye v. Saraki & Anor* (1994) 7 NWLR (Pt. 357) 414. B

Learned senior counsel further submitted that even if there was no full compliance with the provision of Section 104 of the Evidence Act 2011, given the sui generis nature of election petitions, in which time is of essence, it was not possible or practical for documents to be certified in long hand given the short time available. That in this case the ballot papers alone presented for certification were 213,011 apart from ECS AS, voters Registers and other electoral documents in 895 polling units all being challenged. Appellants have submitted that they have fully complied or at the very least substantially complied with the provisions of section 104 of Evidence Act. It is urged that the tribunal's decision ought to be set aside and for this court to hold that the documents are admissible and to give effect to them. C D E

It is the contention of the 1st and 2nd respondents that the Court of Appeal was right in endorsing the position of the trial tribunal concerning the admissibility of the documents tendered by the appellants. It is submitted that the documents tendered from the bar by the counsel to the appellants and owing to the urgent nature of election petition, the respondents at every stage of tendering them had indicated their intention to contest their admissibility. That being electoral forms, the document are public documents and must conform to the provision of section 104 of the Evidence Act, 2011: That this provision which is in pari materia with S. 111(1) of the Evidence Act, Cap. 112 Laws of the Federation, 1990 had been given judicial interpretation in the case of *I.N.E.C. v. Ray* (2004) 14 NWLR (Pt. 892) 92 at 186 -187, see also *Tsalibawa v. Habiba* (1991) 2 NWLR (Pt.174) 4; *Adefarasin v. Dayekh* (2007) All FWLR (Pt.348) 911 @ 930, (2007) 11 NWLR (Pt. 1044) 89. F G H

It is further submitted that apart from failure by the appel-

lants to comply with the mandatory provision of section 104 of the Evidence Act, the documents in contention were merely dumped on the tribunal without being tied to the case of the appellants. Reference was made to the decision of the lower court on page

3692 of the record and the cases of *Alao v. Akano* (2005) 11 NWLR (Pt.935) 160 at 178 -179; *Jalingo v. Nyame* (1992) 3 NWLR (Pt. 231) 538 at 590 and *Hashidu v. Goje* (2003) 15 NWLR (Pt.843) 352. Also *Terab v. Lawan* (1992) 3 NWLR (Pt.231) 569 at 592.

It is finally submitted that despite the fact that the documents were rejected as being inadmissible on the ground of non-certification, the tribunal went ahead to consider the documents that were tied to the case thus leading to the nullification of result Shinawu/Tumbuya ward of Baruten Local Government as well as Awe/Orimoro/Adiagbangbo ward. Thus the tribunal evaluated the documents tendered by the appellants on which they presented some arguments on the issue of admissibility. They submitted that in spite of its ruling that the documents tendered by the appellants are inadmissible, the tribunal still examined the documents in order to find out if they proved the allegations made by them before the trial tribunal.

Appellants' issue 1 is the same as issue 3 argued by the respective respondents (1st and 2nd, 3rd and 4th) respectively. The appellants herein tendered from the bar, Electoral Forms and other electoral materials variously marked as exhibits numbering 213,011 from well over 895 polling units. All sets of respondents herein asserted unequivocally and without mincing words that they were not opposing the tendering of these forms and election materials at the stage of hearing but subject to their right to challenge their admissibility at the address stage. This position which was clearly canvassed by all the respondents on pages 1726-1761 of the record was indeed conceded by the appellants in paragraph 6.8 of their brief of argument. The 1st and 2nd respondents and 3rd respondents in line with their desire and declaration to-challenge the admissibility of the documents at the address stage, incorporated the objection in their final written addresses, wherein they canvassed and prayed tribunal to discountenance or expunge the documents on account of non-certification in accordance with section 104 (1) and (2) of the Evidence Act, 2011 and that same documents were merely dumped on the trial tribunal without tying them to their case. There is no disputing the fact that

these documents are public documents under S.102 Evidence Act and must conform to the provision of S.104. While the first section defines what are public documents, the latter provides what qualifies as “*a public document*.” This is a direct reproduction of S. 111 (1) of the Evidence Act, Cap. 112, Laws of the Federation, 1990, which had been given judicial interpretation in a number of decisions of this court. See *I.N.E.C. v. Ray* (2004) 14 NWLR (Pt. 892) 92 at 186-187. It is argued that the offending documents merely bore a stamp impression with engraved characters that were offered as the signature of a certifying officer. In case of *Okiki v. Jagun* (2000) 5 NWLR (Pt. 655) 19 at 26; *PD.P v. Sidi-Ali* (2004) All FWLR (Pt. 220) 1384 at 1385, the provisions of S.111 of the 1990 Act, which is in *pari materia* with S. 104 of 2011 Act, what constitutes “certification” was explained. The question is, whether a stamp impression with engraved characters constitute signature of the officer certifying public documents. This does not, because section 104(2) Evidence Act provides:

“The certificate mentioned in subsection (1) of this section *shall be dated and subscribed by such officer with his name and his official title and shall be sealed* whenever such officer is authorized by law to make use of a seal, and such copies so certified shall *be called certified copies*. (Italics for emphasis). E

According to Black’s Law Dictionary, 9th Edition at page 1564 to “*subscribe*” means,

“*The act of signing ones name on a document; the signature so affixed.*” See *Nwabuoku v. Onwordi* (2006) All FWLR (Pt. 331) 1236 at 1251. F

With due respect to the submissions and contention expressed by the learned senior counsel for the appellants, Ss. 104(1) and 2, Evidence Act, does not contemplate an engraved stamp impression on a document. See *Tsalibawa v. Habiba* (1991) 2 NWLR (Pt.174) 461 at 475-416; *Adefarasin v. Dayekh* (2007) All FWLR (Pt. 348) 911 at 930, (2007) 11 NWLR (Pt. 1044) 89. G

The trial tribunal was quite critical and dissatisfied with the manner in which the documents obtained from the 4th respondent were “*certified*”. The tribunal expressed its misgivings at Vol. 9 pp. 2981-2990 thus:

“*From the way the documents were certified with everything*

stated therein engraved in a stamp form,” will the officer be said to have dated and subscribed his name and his official title on the said documents in accordance with the dictates of section 104 (1) and (2) of the Evidence Act 2011? We think not. At the very minimum his signature and the date should have been in long hand for one to start talking of substantial compliance. Subscription as the meaning above shows is the act of signing ones name on a document. As the signature on those documents are engraved, it cannot be said to have been subscribed by the officer.”

In appellant’s reply brief to the briefs of the 1st, 2nd and 3rd respondents paragraph 2.15, learned counsel took on the respondents on their argument for rejecting the documents on the ground of non-certification. He submitted that even if the said documents were not properly certified, the proper order for the tribunal to make was not to render them inadmissible by reason of improper certification, but to order that the documents be properly certified. Citing the case of *Tabik Invest. Ltd. v. GT Bank Plc (2011) 17 NWLR (Pt. 1276) 240 at 258-259*, counsel submitted that this option accords with the ends of Justice. Learned counsel has taken a simplistic position on this issue. Perhaps that position accords with ends of justice in *Tabik v. GT Bank* case (supra) in which this court having found that fees due on Certified True Copies (C.T.C.) had not been paid contrary to the express provisions of the Evidence Act that required payment, refused to accept the argument that the said documents be rendered inadmissible as was urged upon the court. Instead this court in line with doing “substantial justice” ordered that the requisite payment which ought to have been made should be made. In this case, this option was never strenuously pursued at the trial tribunal. The appellants have consistently and repeatedly contended in paragraphs 6.2 - 6.14 of their Brief that the offending documents were properly certified in accordance with S.104 of the Evidence Act, 2011. They had rather pessimistically expressed the impossibility or impracticability of certifying 213,011 electoral documents, not to talk of the EC8As, voters registers and other electoral materials for 895 polling units. The trial tribunal, however, made a point in its judgment which the appellants have glossed over and thereby giving the tribunal a lee-way, realizing that it is not the final court on the matter. It stated as at page 2990 of vol.9 of the record thus:

“However assuming we are wrong in our determination that these documents are inadmissible, we shall go to consider them.”

The point being made by the tribunal is that in the event it is found that its decision on the admissibility of these documents is wrong, it has gone ahead to examine them for the purposes for which they were tendered. B

The appellants have complained that it was this decision that prejudiced the tribunal to give appropriate consideration to the documents they tendered. It is however, clear that the tribunal later on, throughout its judgment, left no parties in doubt that it carried out an examination of the massive documentary evidence, though considered dumped by the appellants for the purpose of proving particular facts in the case; such as accreditation, overvoting and other elements of non-compliance. With the relevant provisions of the Electoral Act 2010 (as amended). It is in the light of this that the Court of Appeal remarked in its judgment that:- C D

“What is more, this argument is even academic for notwithstanding its rejection of the said documents, the tribunal still made copious use of them in its judgment, see pages 3004-3010; 3010; 3019 and 3020 of the record. (See also pages 476-481; 524 and 554 amongst other of the record). It was this that gave it the impetus to nullify the elections in the affected wards. The result is that the appellants suffered no miscarriage of justice since the documents were still made use of as shown above. We uphold the decision of the tribunal that the appellants had the duty to tie those INEC documents to their case”. E F

I have however noted, that the electoral documents tendered from the bar by counsel to the appellants were simply dumped without adducing oral testimony by the petitioners. The law is clear that where documents are simply dumped on a court or tribunal without adducing oral testimony, the said documents cannot be accorded any probative value. In *Duriminiya v. C.O.P.* (1961) NRNLR 70 at 73-74 it was held:

“A party is under obligation to tie his document to facts or evidence or admitted facts in open court and not through counsel’s address written or oral. This is because it is not part of the duty of a court or tribunal to embark on cloistered justice by making enquiry into case outside the court, not even examination of documents which H

were in evidence when the documents have not been examined in open court.”

It was more pointedly put by this court in *Alao v. Akano* (2005) 11 NWLR (Pt. 935) 160 at 178-179, paras. D-E thus:

“It must be noted that several documents were tendered pursuant to the claim, but it must be borne in mind that admitted documents useful as they could be, would not be of much assistance to the court in the absence of admissible oral evidence of persons who could explain their purport.”

See also *Jalingo v. Nyame* (supra); *Hashidu v. Goje* (supra); *Terab v. Lawan* (supra); *Jekpe v. Alokwe* (2001) 4 SCNJ 67, (2001) 8 NWLR (PT. 715) 252 and *Eze v. Okoloagu* (2010) 3 NWLR (Pt. 1180)183 at 211.

The respondents, have demonstrated variously in their briefs, though not conceding that the offending documents were not dumped, that the tribunal made copious use of them in its judgment as was held on page 3692 of the record. Reference can also easily be made to pp. 3009-3010 and 3017 of the record. The records show that the tribunal considered exhibits 524, 476-481 and 644 and so on, to resolve the election in Pategi Local Government. Also exhibit 1081 being Form EC8As, some of the main documents relied upon the 4th respondent herein to nullify the result in Adigbongbo/Awe Onmoro ward. See pages 3083 and 3084 of the records. Similarly, exhibits 209 (Form EC8A) was part of the documents rejected by the tribunal, but was relied upon to cancel the election for Somansu polling unit (See page 3067 of the records). In the same vein, the result of Shinawal/Timbulya ward of Buruten Local Government was nullified upon consideration of Form EC8B (Exhibit 9).

It would appear to me that the tribunal considered and took holistic review and evaluation of the documents properly put before the tribunal and tied to the case of the party tendering them. I agree with the learned senior counsel for respondents that no miscarriage of justice has been suffered by the appellants owing to the rejection of documents on ground of improper certification or the view of the lower courts on dumping of the documents. The issue of admissibility and evaluation of evidence had been dealt with by both the trial tribunal and the lower court. It has not been shown that the findings are perverse and baseless or occasioning any miscarriage of justice.

In the light of what have been said above, this issue is resolved in favour of the respondents. Issue No. 2

The second issue as set out above is all about the appellants' Complaint that there were misuse and misapplication of ballot papers in the 5 Local Government Areas and 28 wards. The petitioners contended that there was a discrepancy of 21,192 votes/ballot papers between what was recorded and what was actually used. In other words, the results recorded in Form EC8As (the polling unit result sheets) in the areas being challenged did not tally with the number of ballot papers actually used in those areas. This is the evidence by PW65 in exhibit AAO/109, his witness statement on oath. It is the contention of the appellants that this discrepancy in the number of ballot papers used at the election had been established by them. Both the trial tribunal and the Court of Appeal agreed and found concurrently that the allegation was not established. The trial tribunal at page 3098 of the record gave reasons for holding that the allegation was not proved. Tribunal put it thus:

"In the same vein, none of the witnesses of the petitioners who gave evidence of misuse and misapplication of ballot papers told the court how that happened rather most of them stated under cross examination that they did not know the serial numbers of the ballot papers. None of the witnesses was shown the ballot papers to say anything on them rather the petitioners brought them in "Ghana must go" bag packaged in envelopes according to their wards with their numbers and tendered them as exhibits. The controversy generated when they sought to tender them with the ascribed numbers made the court direct that the Registry should recount them to confirm whether the number they gave was correct or not with the liberty of any of the parties who want to be present. The secretary later during the final addresses told the court that the number given by the petitioners was correct. The petitioners' contention is that by the evidence of PW64 and PW65 that they have established that there was misuse and misapplication of ballot papers. And said there was discrepancy of 21,192 ballot papers. It must be said that having rejected the report of PW64 and PW65 that argument cannot hold water and as we said, the witnesses did not show how the ballot papers were misused or misapplied.

The documents tendered by the petitioners i.e. the INEC Forms and

other electoral materials are their documents having tendered them. The documents show the results of the election in the various Forms EC8As and EC8Bs, their voters registers show evidence that results generated from the election were collated in FormEC88s”.

The findings above notwithstanding, the trial tribunal proceeded and painstakingly, considered and evaluated the evidence of witnesses called by the appellants as well as respondents, with respect to each of the allegations made by the appellants as regards each Local Government Area, and reacting, made copious findings before reaching its conclusion that the allegations were not proved. After it concluded the consideration of the evidence, Local Government Area by Local Government Area, the tribunal then proceeded to an extensive consideration of the evidence of the appellants’ 3 principal witnesses that is PW63, PW64, and PW65 and the documents prepared by them. See pp.3085 - 3095 of the record. It however concluded that the testimonies of PW63, PW64 and PW65 were completely unreliable.

At the Court of Appeal, the appellants contended that the tribunal was wrong in its evaluation of the evidence and conclusion. But the Court of Appeal duly considered the arguments of the appellants and rejected them, on the grounds that the findings of the trial tribunal on this issue were correct and the appellants failed to show that they were perverse’ relying on *Omoboriowo v. Ajasin (1984) 1 SCNLR 108* and *Fayemi v. Oni (supra)* the court agreed that the appellants failed to prove criminal allegations (made in their petition) beyond reasonable doubt and that it would not interfere with the findings of the tribunal. See page 3697 of the record. The Court of Appeal also endorsed the evaluation of evidence PW63, PW64 and PW65 by the trial tribunal and affirmed its findings on the evidence of those witnesses. See pp. 3693-3695 and 3697 of the record.

With the rejection of the evidence of PW65, particularly, the bottom has been knocked off the appellants’ contention of the existence of discrepancy of votes. It is important to stress that there was no evidence of the number of ballot papers actually collected from INEC just as there was no evidence of who did the packaging of the certified copies of the ballot papers into the envelopes in which they were tendered before the tribunal. There should be evidence of the person who did the sorting of the ballot papers in order to obviate

the possibility of any mix up. Nobody came to the trial tribunal to give any credible evidence on this all important point.

Contrary to the appellants' contention in their brief that there was no elections held in the polling units which the alleged discrepancy occurred, it is my view that apart from not establishing the alleged discrepancy, the appellants also failed to show by evidence where the alleged discrepancies occurred. Another point that can be made is that this issue did not arise or derive from the pleading as there was nowhere it was stated in the petition that there was discrepancy of 21,192 votes or any quantity of ballot papers or votes. For this reason, this allegation must fail.

The appellants contended in this issue that the court below ought to have ascertained the number of places where there was no accreditation and give effect to it. The contention of the appellants is tantamount to asking the court to conduct an "*investigation*" which is not within the purview or the duty of the court below or this court for that matter, to do.

On the issue of non-accreditation the appellants must prove by showing precisely where there was no such accreditation. The appellants' contention is that there was no accreditation. On the contrary, the tribunal had held that there was accreditation in the Local Government and wards in contention. There were pieces of evidence of accreditation established. See the finding of the tribunal at page 3098 vol. 9 of the record. See also pp. 3018 - 3099 of the record Vol. 9. Therefore, the assertions of the appellants in paragraph 8.21, 8.22, 8.23, 8.24 and 8.25; on the allegation of lack of accreditation is fallacious.

It must be noted that the appellants sought before the tribunal to use their final address to fill in the gap in the evidence they failed to render. The respondents raised objection to such practice on the basis of the settled position of the law that a counsel's final address, no matter how brilliantly articulated, cannot be a substitute for evidence which ought to be tendered by parties in the open court. The trial tribunal rightly refused to allow address of appellant's counsel to be used as a substitute for evidence. The tribunal eloquently expressed its displeasure at page 3104 of vol. 11 of the record. The Court of Appeal expressed similar view. It held that the demonstration made by the appellants in their final

address before the tribunal was not supported by evidence. The appellants, notwithstanding the foregoing have again in their brief before this court trying to use their final address as a substitute for evidence which had expressly been declared lacking specificity. See paragraphs 8.34-8.43 at pp. 16-17 of the appellants' brief. They have
B gone into the realm of giving evidence. This they cannot do.

In affirming the decision of the trial tribunal, the court below was quite mindful of the position of the law that an appeal court does not ordinarily interfere with the findings of a trial court or tribunal
C except where the findings are perverse or are not borne out of the evidence on record or have led to a substantial miscarriage of justice. The appellants failed to show any of these in findings of the tribunal, and the Court of Appeal was quite right not to disturb same: See *Abidoye v. Alawode* (2001) FWLR (Pt.43) 322 at 332, (2001) 6
D NWLR (Pt. 709) 463.

The appellants under their issue 8 have argued that they are entitled to be declared as the winners of the questioned election and from pages 32 to 24 of their brief they have embarked on an exercise of drawing charts and tables to support their contention. I must
E observe that the chart of the appellant is their handiwork. It is not based on any evidence before the court. No witness gave evidence before the tribunal as to the state of the results from the areas being challenged at any point, not even PW65 embarked on such exercise. The charts as captured at paragraphs 15.5 and 15.6 are therefore
F not products of demonstrable and tested evidence before the tribunal. There was no pleading as to what the result and position of the parties would be if the result in any ward was to be cancelled or nullified. Worse still, the percentage ascription as done by the appellants at paragraph 15.7 of their brief is entirely counsel's coinage. I
G am not impressed by this calculation. It lacks any legal basis.

In the light of the foregoing, the main and the alternative reliefs of the appellants are liable to be dismissed as done by the trial tribunal and the appeal court. In sum, this issue is resolved in favour
H of the respondents.

Issue 3.

This issue corresponds with 1st, 2nd respondent issue 2, 3rd respondent issue 4 and 4th respondents' issue 1. Appellants argued this issue in their issue 10. The appellant has contended that the tri-

bunal did not properly evaluate the evidence of PW63, PW64 and PW65. PW63 was a member of the information technology personal that conducted the inspection of electoral documents at INEC. The essential feature of evidence of PW63 was that he gathered and collated the documents that were used for analysis by PW64 and PW65. It is submitted that none of the respondents have contended that the documents delivered by PW63 to PW64 and PW65 were not documents that emanated from INEC nor did any of them challenged the authority of the said documents. That even if they did, this could have been verified by the documents that were before the court. That these were the same documents that the 1st and 2nd respondent relied upon to be declared Governor of Kwara State.

PW64 is an Information System Exporter and Data Analyst. His evidence related to the appellants' allegation that there was a misuse and misapplication of ballot papers during the election. It is contended that had the tribunal adverted its mind to the explanatory note by which PW64 explained his methodology, the tribunal would have found that PW64's analysis were based on ballot paper information recorded by the 4th respondent in Form EC8AS. Exhibit TA 1 pp.2016 and 2018 respectively of the record referred.

The learned justices of the Court of Appeal for the same reason advanced by the tribunal, rejected the testimony of PW65 and refused to accord any probative value on his evidence.

It is instructive to note that at pp.3088 - 3089, the tribunal highlighted crucial reasons why the evidence of PW63 and his report could not be relied upon. It did the same with the PW64 at pp.3089-3091, while some of the discrepancies and shortcomings in the evidence and reports of the PW65 were dealt with at page 3091-3094 of the record. At page 3095 of the record, the tribunal summed up its position concerning the reports of the witnesses as follows:

"Even if this tribunal by forceful argument of the learned Silk had waived their right to object having cross examined on them, the other observations/findings we made about the reports are enough for us to accept them and even if accepted not to attach any weight to them. For all the reasons given, we will not accept nor act on the report of PW63, PW64 and PW65."

It is trite law that the evaluation and ascription of probative

value to the evidence of witnesses is the function of the trial court. Where therefore as in this case, a trial court performs its primary duty and function of assessing the evidence of the witnesses and unquestionably evaluates the evidence and justifiably appraises the facts, the appellate court will not proceed to substitute its own views for those of the trial court. From cross-examination of PW63 the following facts had emerged: The fact that PW63 is not a forensic expert; he could not remember the number of polling units that he scanned and delivered to the principal witness, he did not remember the number of EC8A that were certified by the 4th respondent, he could not remember the number of voters' Register and the other forms given to them by the 4th respondent (INEC).

As for PW64 who can be described as an experienced IT Expert from the cross-examination, the following facts emerged: He had no logbook of the documents PW63 got from the 4th respondent (INEC) which was presented to him; he agreed that the serial numbers of the ballot papers which were lacking, are very crucial to the exercise he had conducted; that there were no serial numbers of the ballot papers he used in the analysis in the chart or table; that the ballot papers in the 360 units were not stated in the table.

On page 3090 and 3091 the trial tribunal stated other reasons. It was stated that PW64 and PW65 were not expert witnesses under section 68 of the Evidence Act. The tribunal rejected the reports of these witnesses on oath and stated that these cannot be regarded as exhibits in the proceeding. The tribunal then concluded that it would not accept nor act on the report of PW63, PW64 and PW65.

This appeal is an invitation on the part of the appellants praying the court below and indeed this court to substitute its view for the findings of the trial tribunal. This is totally against grain of settled position of the law and plethora of decisions of this court.

These so-called expert witnesses were so discredited by the trial tribunal. Moreso, that their reports were not tendered before the court. Thus, the trial tribunal and the lower court had nothing to believe or fall on, neither has this court been given one. The appellants in paragraphs 15.11 of their brief came up with charts with figures which have no bases. A petition is not like a mathematical formula, assisting in working to an answer, but rather a function of

evidence. The only way the appellants can show that they are entitled to the reliefs sought is only by credible evidence and not juggling with figures as done herein in paragraphs 15.5 and 15.6.

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

In sum, I agree with my learned brother, Tabai, JSC that the appeal be dismissed for lacking in merit. The judgment of the Court of Appeal is affirmed. I make no order as to costs.

NGWUTA JSC

I had the privilege of reading in draft the lead judgment just delivered by My Lord, Tabai, JSC. While adopting the reasoning and conclusion therein, I make a few comments by way of contribution.

Engraved signature on documents meant to be subscribed to or to be certified or authenticated by anyone cannot be presumed to be the signature of that person. In addition to the engraved signature on it, the document ought to be signed and dated in long hand. There is always the possibility that the stamp on which the signature is engraved is used on the document by an unauthorized person.

It is my view that an engraved signature, without more, on a document meant to be certified by anyone is not proper certification by that person even if the engraved signature is his own. Therefore, the documents tendered by the appellants in proof of the petition were not certified and the consequent devastating effect on the petition cannot be ameliorated by the fact that the INEC was responsible for the non-certification. The result of the election was flawed in so far as those uncertified documents were concerned.

The following phrases are employed in the pleading in matters which are crucial to the petitioners/appellants' case at the Tribunal:

"In many polling units ... in most polling units ... in some units ... in most of the polling units ..."

My Lords, the appellants complained that the election in the Local Government Areas and some Wards in seven other Local Government vitiated by substantial non-compliance with the provisions of the relevant statutes. The phrases reproduced above are too general and imprecise to found a challenge to the validity of the election

results.

The object of pleading is to alert the other side of the case it would meet at the trial. See *George v. UBA Ltd.* (1972) 8-9 SC 264.

It can hardly be said that pleading built on the said phrases contains pungent and direct statements of material facts on which the rights and obligations of the parties can be determined. See *Olale v. Ekwelendu* (1989) 4 NWLR (Pt. 115) 326; *HMS Ltd. v. First Bank* (1991) 1 NWLR (Pt. 167) 290. Appellants' pleading contravened Order 13 rules 4 (1) 5, and-6 (1) of the Federal High Court (Civil Procedure) Rules, 2009.

Allegations of thuggery, stuffing of ballot boxes, violent disruption of election, allegation of corrupt practices, mutilation and falsification of election results and multiple voting are all criminal acts which require proof beyond reasonable doubt to sustain them. See Section 138 (1) and (2) of the Evidence Act hereunder reproduced:

"S.138(1) if the commission of crime by a party to any proceeding is directly in issue in any proceeding civil or criminal, it must be proved beyond reasonable doubt.

"(2) The burden of proving that any person has been guilty of a crime or wrongful act is, subject to the provisions of S.141 of this Act, on the person who asserts it, whether the commission of such act is or is not directly an issue in the action."

Section 141 of the Act cannot apply to excuse the failure of the appellants to comply with S.138 (1) and (2) of the Evidence Act. The appellants' petition, even shorn of allegation of criminal acts which were not proved, was not proved.

For the above and the fuller reasons in the lead judgment, I hold that the appeal lacks merit. Consequently, I also dismiss same. I order that parties bear their respective costs.

Appeal dismissed.

ARIWOOLA JSC

(His contribution could not be obtained at the time of this publication.)