IN THE COURT OF APPEAL
HOLDEN AT ABUJA

IN THE MATTER OF THE ELECTION TO THE OFFICE OF THE PRESIDENT OF THE FEDERAL REPUBLIC OF NIGERIA HELD ON THE 23RD FEBRUARY 2019.

PETITION NO: CA/PEPC/002/2019

BETWEEN:

1. **ATIKU ABUBAKAR**
2. **PEOPLES DEMOCRATIC PARTY (PDP)**

PETITIONERS

AND

1. **INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC)**
2. **MUHAMMADU BUHARI**
3. **ALL PROGRESSIVES CONGRESS (APC)**

RESPONDENTS

PETITIONERS' FINAL WRITTEN ADDRESS IN REPLY TO THE 2ND RESPONDENT'S FINAL WRITTEN ADDRESS

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1.00 INTRODUCTION

1.01 Following the conduct of the Presidential Election on 23rd February, 2019 and the subsequent declaration and return of 2nd Respondent as the winner of the election, the Petitioners dissatisfied with the outcome, instituted this Petition challenging the return of the 2nd Respondent as the winner and sought various declaratory reliefs. See **Paragraph 409 at page 138** of the Petition. The Petition is predicated on the grounds pleaded in **paragraph 15 at pages 6 to 7** of the Petition.

1.02 Hearing of the Petition commenced on 4th July, 2019 and closed on 1st August, 2019. At the hearing, the Petitioners called a total of 62 witnesses, including subpoenaed witnesses and tendered electoral and other documents, which were admitted in evidence in proof of the Petition. While the 2nd Respondent called 7 witnesses and tendered some documents, the 1st and 3rd Respondents neither called any witness nor tendered any document.

1.03 In paragraph 1.2 of the 2nd Respondent's Reply, with respect, he made a bane and baseless allegation that "the Petition is based on assumptions, speculations and conjectures" but failed to demonstrate same. It is also rather instructive that the 2nd Respondent who called 7 witnesses, **RW1 – RW7**, abruptly closed his case in the vainglorious effort to stop the continuous and grave but irredeemable damage to his case by his witnesses under cross examination. That was like bolting the stable after the horse had clearly galloped out of it.

1.04 In paragraph 1.3 of his Address, the 2nd Respondent incredulously claimed that he "has extracted every bit of evidence needed to not only deflate the entirety of the Petitioners' case, but also to establish the facts pleaded in his reply". The Record does not bear that out. For example, in the cross examination of the Petitioners' witnesses, in respect of the 2nd Respondent's qualification, the witnesses were repeatedly asked to confirm that the 2nd Respondent could speak and write in English! Obviously, misconceiving the import and purport of the 2nd Respondent's claim in **Exhibit P1** regarding his qualifications and the Petitioners' case therefore.

2.00 ISSUES FOR DETERMINATION

2.01 The following issues call for determination in this Petition, namely:

1. Whether the 2nd Respondent was at the time of the Election not qualified to contest the Election.

2. Whether the 2nd Respondent submitted to the 1st Respondent affidavit containing false information of a fundamental nature in aid of his qualification for the said election.

3. Whether from the pleadings and evidence led it was established that the 2nd Respondent was duly elected by majority of lawful votes cast at the election.

4. Whether the Presidential Election conducted by the 1st Respondent on 23rd February 2019 was invalid by reason of corrupt practices.

5. Whether the Presidential Election conducted by the 1st Respondent on 23rd February 2019 was invalid by reason of non-compliance with the Electoral Act, 2010 (as amended) and the Electoral Guidelines 2019 and Manuals issued for the conduct of elections.

3.00 ARGUMENT IN SUPPORT OF ISSUES 1 AND 2

3.01 For convenience, the Petitioners will argue Issues 1 and 2 together.

FALSE INFORMATION OF A FUNDAMENTAL NATURE

3.02 The summary of the Petitioners' case on the pleadings in respect of the non-qualification of the 2nd Respondent is in **paragraphs 388 to 405** of the Petition. The case is that the 2nd Respondent did not possess the certificates relating to the qualifications, which he claimed in his **Form CF001**. The 2nd Respondent had listed his educational credentials in proof of his qualification to contest the election in the said form, which he then submitted to the 1st Respondent. The qualifications claimed by the 2nd Respondent were (a) **First School Leaving Certificate**; (b) **West African School Certificate (WASC)**; and (c) **Officer Cadet** (whatever that means). None of the alleged certificates was attached to **Exhibit P1**.

3.03 The Petitioners submit that the 2nd Respondent was not qualified to contest the presidential election because the 2nd Respondent failed to satisfy the mandatory requirements of Section 131 (d) of the Constitution of the Federal Republic of Nigeria, 1999, which provides that: ***"A person shall be qualified for election to the office of President if-***

(d)he has been educated up to at least School Certificate level or its equivalent".

3.04 To make the requirement clearer, Section 318 (1) of the Constitution defines "**School Certificate or its equivalent**" to mean:

"(a) a Secondary School Certificate or its equivalent, or Grade 11 Teacher's Certificate, the City and Guilds Certificate; or
(b) education up to Secondary School Certificate level; or
(c) Primary Six School Leaving Certificate or its equivalent and –

(i) Service in the public or private sector in the Federation in any capacity acceptable to the Independent National electoral Commission for a minimum of ten years and

(ii) attendance at courses and training in such institutions as may be acceptable to the Independent National Electoral Commission for periods totalling up to a minimum of one year and

(iii) the ability to read, write, understand and communicate in English language to the satisfaction of the Independent National Electoral Commission; and

(d) any other qualification acceptable by the Independent National electoral Commission".

3.05 In effect, there are 4 paths to educational qualification under Section 318(1) of the Constitution namely Section 318(1)(a) or section 318(1)(b) or Section 318(1)(c) and Section 318(1)(d). **Every candidate must choose which qualification he is relying on.** He may choose a, b, c, or d. He may choose all. In **Exhibit P1**, the 2nd Respondent chose only (a) and (c), listing the schools he attended and qualifications he obtained as "**PRIMARY SCHOOL CERTIFICATE, WASC, OFFICER CADET**". His CV was attached to show his **working experience only**. See paragraph D(i) of **Exhibit P1**.

3.06 We therefore submit that to be qualified, the 2nd Respondent must produce his **Primary School Certificate** or **Secondary School Certificate** (WASC) or "**Officer Cadet**", since those were the qualifications he claimed in his Form CF001, **Exhibit P1**. We submit that a candidate must choose the qualification or qualifications he wishes to rely on at the time of swearing to and submitting his **Form CF001**. The 2nd Respondent duly exercised that **choice** and must swim or sink with his choice.

3.07 Furthermore, Section 31(2) of the Electoral Act requires that the 2nd Respondent depose to an Affidavit (FORM CF001) indicating that he has fulfilled all the Constitutional requirements for election into the contested office. For the sake of emphasis, Section 31 (2) of the Electoral Act provides that:***"The list or information submitted by each candidate shall be accompanied by an Affidavit sworn to by the candidate at the Federal High Court, High Court of a State or the FCT, indicating that he has fulfilled all the constitutional requirements for election into that office."***

3.08 In **IKPEAZU V. OGAH** (2017) 6 NWLR (Pt. 1562) 439, the Court of Appeal held that the phrase "all the constitutional requirements for election into that office" used in Section 31 (2) of the Electoral Act, 2010 "must be considered from the narrow prism of the constitutional requirements for election into office of Governor of a State under Sections 131 and 137 of the Constitution of the Federal Republic of Nigeria, 1999." The decision of the Court of Appeal was later affirmed by the Apex Court in **OGAH V. IKPEAZU** (2017) 17 NWLR (Pt. 1594) 299. Even though the above case dealt with a Governorship election, we submit that the wording in Sections 177 and 182 is ***impari materia*** with the wording in Sections 131 and 137 of the Constitution and so the interpretation of both sets of provisions has to be the same. The 2nd Respondent is therefore required by the Constitution to disclose ALL educational qualifications that qualify him to contest for the office of the President under Sections 131 and 137 of the Constitution **by attaching the certificates**. Obviously the 2nd Respondent did not do so.

3.09 The relevant question now is, whether the 2nd Respondent, has shown in this court that he was qualified to contest the said election based on his claim? We respectfully submit that he has not done so. Rather, it is the Petitioners that have proved that he was not qualified. Before we proceed further, may we pause to briefly submit that failure to satisfy the conditions relating to qualification as stipulated in Section 131(d) of the

Constitution is a valid ground for bringing an election Petition under Section 138 (1) (a) of the Electoral Act, which provides that: ***(1) An election may be questioned on any of the following grounds, that is to say- (a) That the person whose election is questioned was, at the time of the election, not qualified to contest the elections."***

3.10 In the cases of **DINGYADI & ANOR. V. INEC & ORS.** (2010) 7-12 S.C. P.105 and **AL HASSAN & ANOR V. ISHAKU & ORS** (2016) LPELR- 40083, (SC), the Supreme Court held that the non-qualification of a candidate to contest an election can be a ground for questioning an election in an election Petition. We also refer to the case of **PDP v. INEC & ORS.** (2014) 17 NWLR (Pt. 1437) p. 525.

3.11 **Paragraphs 361 – 382** of the 2nd Respondent's response to the Petition stating that the 2nd Respondent's certificates were with the Nigerian Army, were not proved. Specifically, in paragraph 381(ii) of his Amended Reply, he claimed that the affidavit of compliance to **Exhibit P1** "**was correct in every material particular**". **No** evidence whatsoever was led to prove that claim. Rather, the Petitioners' evidence to the contrary was not contested or challenged. The Petitioners proved that the Nigerian Army had denied being in possession of the 2nd Respondent's alleged Certificates and none of the Respondents challenged that evidence.

3.12 One of the strongest evidence on the issue was given by the 2nd Respondent's own witness, **RW1**, who under cross examination by the 1st Respondent told the court firmly and unequivocally that the Army did not collect the certificates of Military Officers and added, "**there was no such thing**". In other words, **RW1's** evidence was that the 2nd Respondent had submitted an affidavit to the 1st Respondent containing false information of a **fundamental nature in aid of his qualification for the election**, when he stated in his affidavit that "ALL MY ACADEMIC QUALIFICATIONS DOCUMENTS AS FILLED IN MY PRESIDENTIAL FORM, PRESIDENT APC/001/2015 ARE CURRENTLY WITH THE SECRETARY MILITARY BOARD AS AT THE TIME OF THIS AFFIDAVIT." At the risk of repetition, **RW1** said of the above claim, "**there was no such thing.**"

3.13 We submit that there can be no better or stronger evidence of proving the giving of false information of a fundamental nature in aid of his qualification for the election than the evidence of the 2nd Respondent's own witnesses, elicited under cross examination by the 1st Respondent, who conducted the election. The evidence of the **RW1** was an admission against the interest of the 2nd Respondent which completely knocks off the claim the 2nd Respondent made against the military. See **ALFA ALAD v MEMUDU KURE & ANOR** (2000) LPELR – 10467 (CA).

3.14 Still on **Exhibit P1**, the affidavit the 2nd Respondent relied on in claiming that his certificates were "**currently with the Secretary Military Board**" was deposed to on **24 November 2014**. The word "**currently**" relates to "**24 November 2014**". **More than 4 years after**, he did not state what the "**current**" situation is! His claim, among others, is self-evidently false.

3.15 The Respondents in their respective Replies had joined issues with the Petitioners on the question of the 2nd Respondent's qualification to contest the questioned election. It was averred that the 2nd Respondent possesses other credentials which obviously were not contained in the information submitted to the 1st Respondent so as to qualify him to contest the election. It is respectfully submitted that by Section 31(2) of the Electoral Act, all the information that qualifies a candidate to contest an election must be

complete in the materials submitted to the 1st Respondent under the Section. The 2nd Respondent, in the instant case was required by the 1st Respondent's Guidelines for election, to **also attach all the certificates upon which the 2nd Respondent relied as qualifying him for the election**. See **paragraph C of Exhibit P1**. He will then verify same on oath .In effect, any alleged qualification that was not contained in **Exhibit P1** is extraneous to the questioned election and cannot be countenanced in determining the 2nd Respondent's qualification or otherwise, to contest the election.

3.16 We therefore submit that all the purported evidence led by the 2nd Respondent to prove that he attended a secondary school or a primary school or that he attended some courses, is irrelevant because he did not rely on any of those purported qualifications in **Exhibit P1**. He relied on "**PRIMARY SCHOOL CERTIFICATE, WASC** and **OFFICER CADET**". Equally futile is his attempt to prove that he can speak and write in the English Language. That is all irrelevant to his inability to produce his Primary School Certificate, Secondary School Certificate or WASC and his "Officer Cadet" qualification, whatever that means. "**Officer Cadet**" is not a qualification or certificate under the Constitution and Electoral Act; nor is it known to any law. No evidence was given at the trial as to its meaning.

3.17 We must make the point here that **Form CF001 (Exhibit P1)** which requires a candidate to attach evidence of qualification to the said form has statutory backing in so far as the said Form CF001 was issued by the 1st Respondent pursuant to Section 76 of the Electoral Act. Furthermore, by Section 31(4) of the Electoral Act, the 1st Respondent is required to avail whoever applies, a copy of such information submitted by a candidate for the purpose of challenging the qualification of the candidate under both Sections 31 and 138 (1) (a) of the Act. In other words, the Electoral Act, having prescribed the mode by which a candidate must provide information regarding his qualification for election, no other mode can be used or accepted. We refer to **AMAECHI v INEC & (No. 3) ORS.** (2007) 18 NWLR (Pt. 1065) 105, on this principle. These provisions of the Electoral Act are not inconsistent with the Constitution. They are complementary. In other words, the Constitution did not make any provision as to HOW a candidate's qualifications are to be proved. It left that to the Electoral Act. We therefore urge Your Lordships to completely expunge or discountenance the entire pleadings and evidence of the 2nd Respondent with respect to the alleged qualification of the 2nd Respondent to contest the election that was not contained in the information and materials comprised in **Exhibit P1**.

3.18 We further submit that based on **Exhibit P1** and the totality of the evidence adduced with respect thereto, the 2nd Respondent completely failed to satisfy any of the academic qualification requirements prescribed by Sections 131 (d) and 318 of the Constitution of the Federal Republic of Nigeria. As had earlier been stated in this address, the 2nd Respondent in his Form CF001 tendered as **Exhibit P1**, relied on three qualifications, namely, "**Primary School Certificate, WASC** and **Officer Cadet**" (whatever "officer cadet" means) and failed to prove any or produce any.

3.19 The 2nd Respondent was required by law to furnish evidence of the claimed qualifications by attaching the certificates obtained. The 2nd Respondent failed to attach any certificate(s) to **Exhibit P1**, contrary to law. The 2nd Respondent also neither pleaded, listed nor tendered any certificate(s) at the hearing of the Petition. These purported certificates in question were supposed to belong to the 2nd Respondent and

are thus presumed by law to be in his custody. We refer to Section 167 of the Evidence Act 2011 which provides that: ***"The court may presume the existence of any fact which it deems likely to have happened regard shall be had to the common course of natural events, human conduct and public and private business, in their relationship to the facts of the particular case..."***

3.20 The point being made here is that it is natural for a person in the position of 2nd Respondent to be in custody of the certificates in respect of his purported educational qualifications. For this submission, we refer to **OGUNNIYI V. HON. MINISTER OF FCT & ANOR.** (2014) LPELR 23164 (CA). We therefore further submit that the onus is on the 2nd Respondent to prove by preponderance of evidence that he possesses the claimed qualifications by producing the certificates in question. This, the 2nd Respondent has woefully failed to do. It is instructive to also stress the point that in the instant Petition, it is the 2nd Respondent that is asserting the positive, that is to say, he made the claim of possessing the certificates that qualify him to contest the election.

3.21 The onus of proof is therefore on him to prove that positive assertion. In **NSEFIK & ORS. V. MUNA & ORS, (2007) 10 NWLR (PT. 1043) P. 502,** this court explained that: ***"It is settled law that the burden of proof rests with the party who asserts the positive and not on one who affirms the negative. The maxim "he who asserts must prove" operates thus: A man cannot be expected to prove a negative assertion. The Latin maxim sums up the matter as follows:- eiineumbit probation qui licit non qui negat; cum per naturam factum negantsprobitionulla sit. Meaning: "the proof lies upon him who affirms, not upon him who denies since, by the nature of things he who denies a fact cannot produce any proof."*** See also Section 136 of the Evidence Act, 2011.

3.22 In the bid to establish the existence of the certificates claimed by the 2nd Respondent, the 2nd Respondent swore to an affidavit which was attached to **Exhibit P1**, alleging that the said certificates were in the custody of the Secretary to the Army Board. **The 2nd Respondent who is currently the Commander-In- Chief of the Armed Forces of Nigeria did not obtain copies of the alleged certificates for production in court. The 2nd Respondent did not also subpoena the Secretary to the Army Board who is under him to produce the elusive certificates in court.**

3.23 The 2nd Respondent's witnesses all supported the case of the Petitioners. **RW1**, Paul Chabri Tarfa, a retired Major-General of the Nigerian Army who was called by the 2nd Respondent as a witness, who claimed that he was a classmate of the 2nd Respondent, when asked about the alleged submission or deposit of their certificates with the Nigerian Army, stated emphatically: ***"We did not submit our Certificates to the Nigerian Army as there was no such thing."***

3.24 The witness also testified that all **military formations** which include the Army and Secretary of the Army Board, are under the direct command of the 2nd Respondent as the Commander-in-Chief of the Armed Forces of Nigeria. See **section 130(2) of the Constitution**. It therefore necessarily follows that the 2nd Respondent was in a position to command the Secretary of the Army Board to produce his certificates and the Secretary would have no option but to obey and comply if he has them in his possession. **He did not do so and never gave the court any reason for not doing so.** The only reasonable inference is that the 2nd Respondent knows that his certificates are not with the Army and that he gave false information to the 1st Respondent when he

claimed that the Certificates were with the army. That false information was of a fundamental nature in aid of his qualification.

3.25 The 2nd Respondent never explained why it was easier to go all the way to Cambridge in the United Kingdom, to obtain a bogus document that his own witnesses say was not a certificate, instead of just driving down the street in Abuja to the Army Headquarters or placing a phone call to the Secretary of the Military Board in Abuja to hurry over with his certificate or certificates. For that matter, he did not tell the court the story he told them at Cambridge which induced them to give him the purported **Exhibit R19**. Obviously, he could not have told them that his certificates were with his own subordinates back home in Nigeria! That would have greatly scandalized the country!

3.26 **RW2**, Suleiman Isa Maiadua on cross examination by the Petitioner's counsel, stated that he did not know that the 2nd Respondent had two (2) certificates. He also falsely claimed under cross examination that 2nd Respondent was **recruited into the Army in 1961**. That claim contradicted the evidence of the **RW1** on the issue of recruitment. **RW3**, Abba Kyari and the Chief of Staff to the 2nd Respondent, during cross examination by Petitioners' Counsel, stated thus:

"..... I personally collected Exhibit R20 and R21 from Cambridge. 2nd Respondent did not mention /list any certificate (Shown Exhibit P1). His Certificate was listed in Exhibit R26. I never worked in the Military (Referred to paragraph 7 (vi) of the statement on oath). The certificate in the paragraph is not listed. I am from Borno State and not a Cameroonian. I don't have any of the Certificates claimed by the 2nd Respondent I collected the Exhibit R 19- and R20 personally and signed for them on 18th July, 2019 and not surprised that they were collected long after the petition was filed.

3.27 In other words the witness had no knowledge of the whereabouts of the 2nd Respondent's alleged certificates. By claiming that 2nd Respondent's certificate is listed in **Exhibit R26**, the **RW3** contradicted the said **Exhibit R26** and the testimony of **RW5** Mohd Sarki Abba under cross examination to the effect that no certificate is attached or mentioned in **Exhibit R26**.

3.28 During the proceedings of 30th July, 2019, **RW4**, Osirideinde H. S. Adewunmi, the subpoenaed witness, added a comical relief to an already bad defence of the 2nd Respondent when on cross examination, he stated thus:

"Exhibit R21 was issued in conjunction with the University of Cambridge and on the Exhibit 18 candidates sat for the examinations. 2nd Respondent is listed as number 2 of the Exhibit and his results are listed vertically. 2nd Respondent sat for 8 subjects and 5 credits as contained 'herein. He had aggregate 32 and was awarded Grade Two (2). I have seen WAEC for 30 years now and I confirm that any person who has a Grade Two has a Secondary School Education. 2nd Respondent is listed as number 2 on Exhibit R21 (shown Exhibit R19). Read names of candidates on Exhibit R19 and Exhibit R21- names of the 2nd Respondent. I cannot say that Exhibit R19 is a certificate since by signature is not on it. I can identify a certificate but I cannot say that a document that does not bear my signature is a certificate by me. Exhibit R19 is not from WAEC and Exhibit R21 is the foundation for the issuance of a certificate and is not a certificate. I have never worked with the Cambridge University. On Exhibit R21, 8 subjects are listed against the name of 2nd Respondent while on

Exhibit R19/ 6 subjects were listed. I know Dr. IyiUwadiabi who is the Registrar of WAEC/ and I am aware on the 2/11/2018, he gave an attestation certificate to the 2nd Respondent. The issuance of an attestation is not limited to the either loss or misplacement of a certificate".

3.29 **RW4** confirmed a startling and damaging revelation apparent on the face of each of **Exhibits R19** and R**21**. **Six** and **eight** subjects were respectively listed in the two documents. Both are purported to be in respect of same examination but are in riotous conflict.

3.30 **RW5** Moh'd Sarki Abba on cross examination stated thus:

"I was never a School mate to the 2nd Respondent or his classmate. My statement on oath is from the available records and the CV of the 2nd Respondent. (shown Exhibit R26) this Exhibit is not a certificate (shown Exhibit R26) it is one of the document Form which I gathered the facts in my statement on oath and no certificate is attached or mentioned in Exhibit R26. (Shown Exhibit P1) no certificate is attached or mentioned in Exhibit 1. (Paragraph C of the Exhibit P1 read) the certificates mentioned therein are not attached."

3.31 These admissions were not only damaging to the pleadings of the Respondents, but amply supported the Petitioners' pleadings on the non-qualification of the 2nd Respondent and his giving of false information of a fundamental nature in aid of his qualification under section 138(1) (e) of the Electoral Act.

3.32 The alleged interview of **Justice Umar Adbullahi** and **Ibrahim Comassie (Exhibit R.23)** were hearsay evidence as none of them was called to testify. With due respect, the document is legally worthless. Secondly, result sheets are not certificates, as admitted by the 2nd Respondent's own witnesses, including the witness from the West African Examinations Council. The statement of results mentioned therein and alleged to be from Government College Katsina and Katsina State Ministry of Education were not tendered.

3.33 In **Exhibit R23**, is statement that even supports the Petitioners' **Exhibit P24** and **Exhibit P80** while demolishing the 2nd Respondent's claim of his certificates being with the Army. It is as follows:

"The spokesperson of the Army, Olajide Laleye, said "Neither the original copy, certified true copy (CTC) nor statement of result of Major-Gen. Mohammadu Buhari's WASC result is in his personal file." He said while it is the practice in the Nigerian Army that before candidates are shortlisted for commissioning into the officers' cadre of the service, the selection board verifies the original copies of credentials as presented. "There is no available record to show that this process was followed in the 1960s." The military's comments came after the retired general had said that his lost copies of results were with the Army, an explanation he gave ahead of elections February 14."

3.34 The 2nd Respondent will swim and sink with **Exhibit R23**. In **A.G., ENUGU STATE v AVOP PLC.** (1995) 6 NWLR (Pt. 399) 90 at 121 para A, Tobi, JCA (as he then was) held:

"A party who has tendered a document in a court of law and admitted as an exhibit, will, at the end of the litigation, either sail joyfully with it in the boat of

victory or sink sorrowfully with it in the boat of defeat. He cannot be a beneficiary of both at the same time".

3.35 We humbly further submit that the purported Certified True Copy of the Confidential Result Sheet which was allegedly issued by the West African Examination Council was made on the **18th of July 2019**, during the pendency of this Petition. It is therefore inadmissible. In **NICHOLAS OGIDI & ORS V. CHIEF DANIEL EGBA & ORS** (1999) 10 NWLR (Pt. 621) 42 at 69 it was stated that: ***"It is against the provisions of Section 90(3) now 83(3) of the Evidence Act to admit in evidence a document made by an interested party to a suit during the pendency of the suit."*** **The said result sheet was not also pleaded.**

3.36 In the case of **UTC (NIG.) PLC V LAWAL** (2013) LPELR-23002(SC) at page 27 paras A-F, the Supreme Court, per Ariwoola J.S.C, held as follows: ***"The interest that is envisaged by the law which disqualifies is a personal interest not merely interest in an official capacity...It does not mean an interest in the sense of intellectual observation or an interest purely due to sympathy. It means an interest in the legal sense, which imports something to be gained or lost."***

3.37 A comparison of the purported Cambridge Assessment International Education Certifying Statement of the purported West African Examinations Council Certificate and the Certified True Copy of the purported Confidential Result Sheet of the University of Cambridge West Africa School Certificate of 1961 for the Provincial Secondary School Kastina reveals many discrepancies in the supposed results. One listed **eight subjects** that the candidate therein mentioned one "**Mohamed Buhari**" allegedly sat for, the other, **six subjects**. **Both documents are therefore unreliable as both cannot be correct**. The contradiction must count against the 2nd Respondent. The documents tendered by the 2nd Respondent should be ascribed no weight.

3.38 On the **24th of November, 2014,** the 2nd Respondent in a stale affidavit, deposed to and sworn by him at the High Court of F.C.T, **Exhibit P1,** declared that all his certificates as filed in his presidential form, are with the Secretary of the Military Board as at the time of his deposing to the affidavit. On the 8th of October 2018, the 2nd Respondent deposed in his affidavit FORM CF001, claiming that his certificates were with the Secretary, Army Board. The statement that has been shown to be false. The corroborated testimonies of **RW3-RW5** contradicted the oath on which the 2nd Respondent deposed to in his FORM CF001. The 2nd Respondent knew that he had no school certificate and he knew that he gave false information of a fundamental nature when he claimed that he had a **Secondary School Certificate**, **Primary School Certificate** and "**Officer Cadet**". We respectfully invite Your Lordships to so hold.

3.39 In addition to the above, the Petitioners had pleaded and tendered public statements made by the Secretary to the Army Board both in the electronic and print media, which were tendered in evidence as **Exhibits P24** and **P80**, where he emphatically denied the claim of the 2nd Respondent that his certificates were with the Secretary to the Army Board. This sufficiently shifted the evidential burden to the 2nd Respondent. **None of the witnesses called by the 2nd Respondent on this issue had ever seen the alleged certificates of the 2nd Respondent. None said they had ever seen them. None said he had them**. For that matter, none of the 2nd Respondent's classmates tendered their own certificates and none said they had any certificates themselves, a strong indication that they too do not have any. The documents tendered by the 2nd Respondent on this

point as **Exhibits R 19-R 26** did not help his case at all because none of those documents is a certificate and they bear the strange first name "**Mohamed**", which is not the 2nd Respondent's name. The 2nd Respondent never pleaded that he is also known as "**Mohamed Buhari**". The 2nd Respondent's name as clearly shown in **Exhibit P1** is **Muhammadu Buhari**. Worse still, the 2nd Respondent did not testify or tender any document that shows that he was formerly known as "**Mohamed Buhari**". No witness of his claimed that he was formerly known as "**Mohamed Buhari**". The documents though not pleaded, altogether have no relevance and thus command no probative value.

3.40 Again, the 2nd Respondent in the search for an academic qualification to counter the Petitioners' case, had copiously and extensively pleaded and given evidence of his supposed public service, military courses and training attended as well as the 2nd Respondent's ability to read, write, understand and communicate in English language. We submit with respect that in so doing, the 2nd Respondent completely misconceived the relevant grounds of the Petition and the case made by the Petitioners.

3.41 We submit with due respect that before the qualifying criteria stipulated under sub-paragraphs 318 (1)(c)(i), (ii) and (iii) as reproduced herein above can enure to the benefit of a candidate such as the 2nd Respondent, **such a candidate must first possess the Primary Six School Leaving Certificate or its equivalent**. This is because the Constitution has employed the word "**and**" under "(c)" in relation to the sub-provisions in "(i), (ii) and (iii)" which is conjunctive unlike the use of "or' which is disjunctive. We refer to **ABUBAKAR V. YAR'ADUA** (2008) 19 NWLR (Pt. 1120) and **P.I OGUNYADE V. OSHUNKEYE** (2007) 15 NWLR (Pt.1057) 218 (1) at 245. In other words, the requirements stipulated under clauses (i), (ii) and (iii) above are in addition to the candidate also having the Primary Six School Leaving Certificate or its equivalent.

3.42 We have already shown that from the totality of the evidence before the court, the 2nd Respondent did not even possess the Primary Six School Leaving Certificate or its equivalent. He did not tender it. Consequently, all the purported evidence that was led in supposed satisfaction of the requirements under section 318 (1) sub-sections (c)(i), (ii) and (iii) is of no relevance to this Petition and must accordingly be discountenanced. We respectfully urge Your Lordships to so hold.

3.43 We further submit on this point, the Petitioners are not unmindful of the provision of the last limb of the definition of the term "School Certificate or its Equivalent" numbered (d) in Section 318 of the Constitution which provides: ***"(d) any other qualification acceptable by the Independent National Electoral Commission."*** We submit that for the 2nd Respondent to take refuge under "any other qualification acceptable to the Independent National Electoral Commission", **he must specifically disclose and state the qualification under part C of the 2nd Respondent's Form CF001** (which is in evidence as **Exhibit P1**), in the column where provision is made for **"SCHOOLS ATTENDED/EDUCATIONAL QUALIFICATIONS WITH DATES"**.

3.44 The evidence (certificate) of such other qualification must also be mentioned and attached to the Form. Evidently, **Exhibit P1** clearly shows all the educational qualifications claimed by the 2nd Respondent and **no evidence** whatsoever of any other qualification was attached. No educational certificate has also been pleaded in this Petition and none has been tendered in court. It is of course basic common sense that the Independent National Electoral Commission cannot consider or accept a

qualification which a candidate has not disclosed. **The only window for the disclosure of such qualification is in the candidate's Form CF001**, which in this Petition is **Exhibit P1**. We consequently pray Your Lordships to hold that the qualification of the 2nd Respondent to contest the questioned election cannot also be founded under the provision "(d)" under consideration.

3.45 Another false claim by the 2nd Respondent that is contained in the affidavit attached to **Exhibit P1** is that he attended "**Elementary School Daura and Maia duwa 1948-52**". Elementary School Daura is totally different from Elementary School, Mai aduwa. There locations are totally different. He also claimed he entered Middle School Katsina in 1953. By 1953, the Middle School System had been abolished in Northern Region of Nigeria. See paragraphs 384 respectively of the Petition and the deposition of **PW62** and **Exhibit P30**.

3.46 It must also be mentioned that as an act of unusual desperation, the 2nd Respondent in **paragraph 4.16** of his address tagged his **Form CF001 "mysterious"** in order to water down its effect on his claim to having certificates, although, the 2nd Respondent stated at the point of tendering that he objected to the Form and would give his reasons later. That objection is deemed abandoned in so far as he did not advance any reason for his objection against the **Form CF001** of the 2nd Respondent in his Final Address hereof. Though, the 2nd Respondent copiously pleaded and listed the said Form, he did not tender it in evidence.

INEC'S REFUSAL OR FAILURE TO CALL WITNESSES OR PRODUCE ANY EVIDENCE

3.47 Without prejudice to the submissions, earlier made, it is further contended that the 1st Respondent had pleaded in paragraph 98 (ii) of its Reply to the Petition that it found the 2nd Respondent's educational qualification acceptable. Surprisingly at the trial, the 1st Respondent abandoned its pleadings and did not call any of the witnesses it had listed, or any other. Nobody testified to the alleged acceptability of the 2nd Respondent's qualification. Where no evidence is led in support of a party's pleadings, the pleadings are deemed abandoned. We refer to the case of **AKINBADE V. BABATUNDE** (2018) 7 NWLR (Pt. 1618) 366 at 392 Paras. F – G, wherein the court held that: ***"The principle remains that mere averments without evidence in proof of pleaded facts go to no issue. The lower court therefore is right in its finding that the plaintiffs/appellants who have failed to lead evidence in proof of their pleadings on the source of their title to the land in dispute, on the authorities, must be deemed to have abandoned their claims."*** See also **BUHARI v OBASANJO** (2005) 2 NWLR (Pt. 910) 241 and **ODULAJA v HADDAD CO. LTD** (1973) 11 SC 357.

3.48 The burden therefore remained squarely on the 2nd Respondent to prove his qualification under Sections 318(1) (a) and (b) since limbs (c) and (d), which are anchored on evidence of acceptability to the 1st Respondent, were abandoned at the trial. The Final Written Address of the 1st Respondent is not the place to prove that the 1st Respondent was "**satisfied**" with the 2nd Respondent's qualifications. The address of counsel, no matter how brilliant, cannot take the place of evidence. We refer to the cases of **EDWARD OKWEJIMINOR v G.GBAKEJI & ANOR** (2008) LPELR – 2537 (SC) and **OLAGUNJU v ADESONYE & ANOR** (2009) LPELR – 2555 (SC). In any case, the 2nd Respondent having exercised his education option in **Exhibit P1**, is bound by it.

3.49 It was contended by the 2nd Respondent, as pleaded in paragraph 364 of his Amended Reply to the Petition, that the Petitioners have all along acquiesced to the fact that the 2nd Respondent possesses the requisite constitutional and educational qualifications to contest the election and consequently, that the Petitioners have waived their rights to challenge the non-qualification of the 2nd Respondent. Our simple answer is twofold. First, there is no proof of the alleged waiver. Secondly, the right of the Petitioners to question the qualification of the 2nd Respondent is clearly statutory. We refer to Sections 137 (1) and 138 (1) (a) of the Electoral Act. We also refer to the decision of this Court in **OYAMA & ANOR v AGIBE & ORS (2015) LPELR-40600 (CA)** where it was held that the right to challenge non-compliance with a fundamental statutory provision cannot be waived. We also rely on the case of **A-G OF BENDEL STATE v A-G OF THE FEDERATION & ORS (1981) 10 S.C. 1,** where the Supreme Court specifically held that: ***"When the observance of the provision of a statute is required on the grounds of public policy or for the benefit of the public, it cannot be waived by an individual".***

3.50 In the instant case, the situation is much worse for the 2nd Respondent because the statutory provision said to have been waived is not only fundamental but it is also constitutional. The principle of waiver, we respectfully submit, can therefore not apply, as no one is permitted to contract out of or waive a constitutional requirement or stipulation: **IBRAHIM v LAWAL & ORS (2015) LPELR-24736(SC).**

3.51 It has also been lamely contended that the issue of qualification of a candidate is a pre-election matter and cannot be a ground for bringing an election petition. In addition to our earlier submission in this address, our simple response is that it is now very well settled that the non-qualification of a candidate to contest an election is both a pre-election matter as well as a good and valid ground for bringing an election petition. We refer to the cases of **PDP v AYEDATIWA & ORS** (2015) LPELR- 41800(CA), **CHUKWUEGBO V. AGU & ORS.** (2015) LPELR- 25578 (CA) and **ALHASSAN & ANOR v ISHAKU & ORS.** (2016) LPELR- 40083 (SC).

3.52 Relying on all the foregoing submissions, we urge Your Lordships to find that this ground of the Petition is proved and to hold that the 2nd Respondent does not possess the requisite constitutional educational qualification to contest the questioned election and that he also gave false information of a fundamental nature to the 1st Respondent in aid of his qualification.

3.53 Similarly the lengthy treatise in his paragraph 4.5 on the doctrine of covering the field is a mere academic excursion as it bears no relationship to the issues in this case. The 2nd Respondent has not identified the statutory provision that should be considered void for inconsistency with the Constitution. Cases should not be cited simply for fun. They should relate to live issues in the litigation. With respect, the cases cited in the 2nd Respondent's paragraph 4.5 are entirely pointless and should respectfully be disregarded by this Honourable Court.

3.54 As for the evidence and the exhibits discussed in the 2nd Respondent's paragraph 4.8, they are mostly hearsay. **Exhibits R19** and **R21** were produced by a party interested at a time when proceedings were pending, contrary to Section 83(3) of the Evidence Act. **Exhibit R25**, said to be a letter from some commandant in the United States Army to the Chief of Defence Staff was hearsay, neither the writer nor recipient having been called as a witness.

3.55 On the flip side, the production and tendering of **Exhibit R25** throws into bold relief, the 2nd Respondent's inability to produce and tender his certificates from the same Army Records from which **Exhibit R25** was supposedly produced. This proves even more emphatically that the 2nd Respondent's certificates are not with the army, again dramatizing the giving of false information by the 2nd Respondent to the 1st Respondent. Moreover, the evidence so led is irrelevant to this case as the evidence does not establish that the 2nd Respondent has a **Primary or Secondary School Certificate** and does not prove that the certificates are with the Army as he unfortunately claims.

3.56 The decision in Appeal No. CA/A/2004/2019, **ADELEKE v REHEEM,** relied upon by the 2nd Respondent is easily distinguishable from this case. In the first place, **ADELEKE'S** case was a pre-election matter, while this is an election petition. Secondly, in that case, Sen. Adeleke was accused of forgery, which was not proved. In our case, there is no unproven allegation of forgery. Rather the Petitioners have proved to the hilt that the 2nd Respondent gave false information of a fundamental nature in aid of his qualification, with plenty of help from the 2nd Respondent's own witnesses.

3.57 The 2nd Respondent has also cited the case of **AGI v PDP** (2017) 17 NWLR (Pt. 1595) 386 and submitted that a person is not to be disqualified for giving false information to the 1st Respondent if he is otherwise qualified to contest the election. We rely on the following passages from the leading judgment in that case, delivered by Ogunbiyi, JSC: ***"Therefore where there is a matter of alleged falsification of a document or rendering of a false statement as alleged in this case, it must relate to a qualifying of disqualifying factor, by virtue of the Constitution of the Federal Republic of Nigeria ..."***

3.58 The case supports this Petition as it actually decides that where the false information relates to a **qualifying or disqualifying factor** as it does in this case, it can be ground for a Petition. The only reason the false information did not disqualify the candidate in that case was because, in the words of the Supreme Court, "the appellant did not allege an infraction of any of the subsections enumerated in section 177 of the Constitution". Section 177 of the Constitution is to a governorship election, what section 131 is to a Presidential election. In the present case, the Petitioners have expressly and very clearly alleged that the 2nd Respondent was not qualified to contest the election and that the false information he gave was of a fundamental nature to aid his qualification. The situation here is therefore quite different from **AGI v PDP**. There, the Supreme Court held that: ***"To disqualify a candidate for falsification, the information must relate to the very point on which the qualification depends. Thus, where the alleged falsified document is not a qualifying factor under the Constitution of Nigeria, its presentation cannot disqualify an otherwise qualified person".***

3.59 By the above holding, where, as in our present case, the false information was given for the specific purpose of making the unqualified 2nd Respondent appear qualified, this Honourable Court can pronounce the 2nd Respondent disqualified or unqualified for the election he contested. We respectfully and strongly urge Yours Lordships to apply the law firmly and hold that the 2nd Respondent gave false information of a fundamental nature to the 2nd Respondent in aid of his qualification and stood disqualified for the election. We further submit that the ability to speak, read and write in English is not a qualification to contest for the position of President. Such a claim amounts to a

monumental trivialization of the qualification to be a presidential candidate more so when a false claim was made.

3.60 There is an aspect of the 2nd Respondent's Address that is with respect shocking. In paragraphs 4.12-4.14 of the Address, the 2nd Respondent contends that his status and antecedents should be taken into consideration in determining his qualification. Fortunately, that is not the law. May we remind him of the 16th Century goddess of justice often depicted wearing a blindfold. It shows that justice is dispensed regardless of identity, status, power, etc. With respect, status cannot in a law court guarantee immunity to any person who violates the law.

THE CONSEQUENCES OF THE FALSE INFORMATION IN FORM CF001

3.61 The cumulative effect of the evidence led by the Petitioners on the claimed qualification of the 2nd Respondent and supported by the 2nd Respondent's witnesses is that **Exhibit P1** contains **false** information of a fundamental nature in aid of the qualification of the 2nd Respondent. Perhaps, the definition of the word "**false**" will help in easily coming to the conclusion that 2nd Respondent stands disqualified.

3.62 In the recent unreported decision of the apex court in **ABDULRAUF ABDULKADIR MODIBBO v MUSTAPHA USMAN & ORS**, SUIT NO. SC790/2019 delivered on 30 July 2019, Ejembi Eko, JSC who delivered the lead judgment said:

*According to Webster's II New Reverside University Dictionary the adjective "**false**" connotes an act done to deceive, or doing, or **asserting that which is contrary to truth or fact**. A false information should mean an information, statement or document that is **untrue, lying** or **deceitful**. That also means an assertion, information or document that is **not genuine** or **inauthentic**.*

3.63 The Noble Lord went on to hold in an unmistakable term that:

*Having thus stated I came to the conclusion that the attestation of INEC form CF001 where the candidate made the following declaration on oath in paragraph F thereof, that is- "I hereby declare that all the answers, facts and particulars I have given in this form are true and correct and I have to the best of my knowledge **fulfilled all the requirement for qualification into the office I am seeking to be elected. is itself a certificate".***

3.64 According to His Lordship:

*.... the deliberate attestation of false contents or particulars of the candidate's INEC Form CF 001 amounts to making of false statement with intent or knowledge that it may be used a genuine document. In the instant case the presentation of INEC CF001 made by the Appellant wherein he verified the same to be true, even though they were **false** or **untrue** tantamount his presenting false certificate to INEC in terms of section 66(1)(i) of the constitution as amended.*

3.65 His Lordship also held as follows:

He did not testify nor explain the circumstances warranting the necessity for him, alone, to have two certificates certifying that he attended and left primary school in 1998 and 2005-7 years apart and each of them bearing two years of birth namely 1985 and 1986

respectively. It is trite and commonsensical that facts not disputed are taken as admitted and therefore established.

3.66 His Lordship further held:

I agree with the learned Counsel for the 1st Respondent, on authority of ***OLOFU v ITODO (2011)*** *ALL FWLR (Pt 572) at 1665, that parties are presumed to intend what they have in fact said, or set down in a written document.* ***It becomes stronger when such representation in a document is purportedly verified by a solemn declaration on oath that such statement or document is true: CHUKWU v NWOYE &*** *ORS (2011) ALL FWLR (Pt 553) 1942 CA Per Ariwoola, JCA (as he then was).*

3.67 In the instant case, the claim that the 2nd Respondent's certificates were with the Military Secretary was verified on oath by him. He is presumed to have intended what he put down in writing. And which representation he verified on oath.

3.68 Regarding the consequences of finding that a candidate gave false information in **Form CF001** and the nature of the order to be made, His Lordship slated:

As a recap: once a process of becoming a candidate or nomination of a candidate, now regulated by Section 87 of the Electoral Act, is defective in law; the defect strikes at the root of the nomination. The person with such fundamentally defective nomination cannot, in law, be regarded as candidate produced upon or by due process of law, and therefore cannot be placed on the ballot, as he is not qualified to be so placed, nor can be said to have been elected subsequently at an election.

The courts are bound to ensure that political parties comply with the law, particularly, the law on how each political party fields its candidate in an election: ***EHILANWO v INEC*** *(2009) 2 EPR 494, (2008) 16 NWLR (Pt 1113) 357. Laws are made to be obeyed by all concerned including political parties:* ***BUHARI v INEC*** *(2008) 4 NWLR (Pt 1078) 546.*

Accordingly, the law shall take its course where a political party fails, neglects or refuses to comply with the mandatory provisions of the Electoral Act on nomination and submission of the names of its candidates for a general election such a political party will be deemed or taken in law to have fielded no candidate in that particular election: ***APC v KARFI*** *(supra);* ***APC v MARAFA & ORS*** *(unreported SC. 377/2019 of 25th May, 2019).*

3.69 His Lordship finally ordered as follows:

Having found and held that the 2nd Respondent (APC) had no candidate, in law, at the general election conducted on 23rd February, 2019 to elect the member in the House of Representatives to represent Yola/North South/Girei Federal Constituency Adamawa State; the 3rd Respondent (INEC) is hereby ordered to declare and return as elected the candidate (other than the APC "candidate") who polled the majority of lawful voted cast in said election.

3.70 With respect, the 3rd Respondent having with its eyes wide open, fielded the 2nd Respondent as its candidate for the Presidential election notwithstanding his non-qualification to contest the said election, the 3rd Respondent is bound to accept the consequences of its action. Since the 2nd Respondent stands disqualified, the 1st Petitioner who won the majority of the lawful votes at the said election, with respect,

has to be declared and returned as the elected Presidential candidate. We so respectfully pray.

3.71 We humbly urge the Honourable Court to resolve **Issues 1** and **2** hereof in favour of the Petitioners.

4.00 ARGUMENT ON ISSUE 3

4.01 The Petitioners crave the indulgence of the Honourable Court to preface the treatment of this issue with the consideration of the legal position relating to the burden of proof on the Petitioners contesting the legality or validity of votes cast in an election.

4.02 The law is trite that there is a rebuttable presumption of law that the results of an election as declared by the electoral body are correct until proved otherwise by the Petitioners. In **NWOBODO v ONOH** (1984) 1 SCNLR 1, this principle was laid down when the Supreme Court held as follows: *"There is a rebuttable presumption that the results of any election declared by the returning officer is correct and authentic by virtue of Ss. 115, 148(c) and 149(d) of the Evidence Act and the burden is on the person who denies the correctness and authenticity of the return to rebut the presumption."* See also **HASHIDU v GOJE** (2003) 15 NWLR (Pt. 842) 352 at 386; **ABUBAKAR v YAR'ADUA** (2008) 18 NWLR (Pt. 1120) 1 and **NGIGE v INEC** (2015) 1 NWLR (Pt.1440) 281 at 317.

4.03 It is clear that the Petitioners have the initial burden of leading evidence to show that the return of the 2nd Respondent is wrong. In **BUHARI v. OBASANJO** (2005) 13 NWLR (Pt.941) 1 at 122 paras C-D the Supreme Court, per Uwais, CJN laid down the standard of proof required for election petitions in these words:

"In general, in a civil case, the party that asserts in its pleadings the existence of a particular fact is required to prove such fact by adducing credible evidence. If the party fails to do so, its case will fail. ***On the other hand, if the party succeeds in adducing evidence to prove the pleaded fact, it is said to have discharged the burden of proof that rests on it. The burden is then said to have shifted to the party's adversary to prove that fact established by the evidence adduced, could not on the preponderance of the evidence, result in the Court giving judgment in favour of the party."***

4.04 It is respectfully submitted that what is required of the Petitioners contesting the legality or lawfulness of the votes cast at an election and the subsequent result of the election has been clearly settled in a long line of decided cases which include the following: **AMOSUN v. INEC & ORS.** (2010) LPELR-4943 (CA); **OBAFEMI & ANOR V. PDP** & ORS (2012) LPELR-8034(CA), **EJIOGU V. IRONA** (2009) 4 NWLR (PT. 1131) 513 P.560, PARAS A-B; **PDP & ANOR V. INEC & ORS** (2012) LPELR-8424(CA); MUSA & **ANOR V. ADAJI & ORS** (2015) LPELR-41776(CA); (2008) 19 NWLR (PT. 1120) PG.246; and **BUHARI V. INEC & ORS** (2008) LPELR-814(SC).

4.05 This Honourable Court has also held in the case of **AGBOM & ANOR V. AZA & ORS** (2015) LPELR-40534(CA) that:

"It is part of resolution of election disputes to cancel unlawfully credited votes in appropriate circumstances. It is also a normal exercise to nullify the result of an election and set aside the declaration and return of a candidate who did not score a majority of lawful votes in an election.....It is indeed correct and unassailable that

where in an election matter an objection is taken as to the validity of votes credited to a party and such an objection was upheld, any votes credited must be declared as invalid and illegal votes. It is also a natural and logical sequence that any Election Tribunal that declared votes as illegal, according to the facts evidence and the law, must proceed to the next step by exercising its duty to deduct and take away all such votes from the total votes scored and credited to the affected candidates."

4.06 Applying the foregoing principles and authorities to the case at hand, it is submitted that the Petitioners clearly averred in paragraph 18 of the Petition that the 1st Respondent wrongly and unlawfully credited the 2nd Respondent with votes which were not valid or lawful at various stages of the election, from Polling Units to State Collating Centres, with the result that the 2nd Respondent was wrongly returned when the said 2nd Respondent did not score majority of lawful votes.

4.07 To establish this ground, the Petitioners humbly invite Your Lordships to two areas of evidence adduced, to wit:
(1) **The Votes in the servers inputted through the Smart Card Reader; and (2) Analysis of Votes/Results obtained as reflected in Certified True Copies of Forms EC8A, EC8B, EC8C and EC8D from the 11 focal States, namely: Kaduna, Katsina, Kebbi, Kano, Bauchi, Borno, Gombe, Jigawa, Niger, Yobe and Zamfara States.**

RESULTS BASED ON THE TRANSMISSION TO INEC SERVER.

4.08 The Votes in the Server inputted through the Smart Card Readers (SCR): Paragraphs 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105 and 106 of the Petition detailed out facts in support of the issue hereof.

4.09 The facts pleaded above include the results inputted directly into the 1st Respondent's server through the use of the Smart Card Reader by the trained and authorized handlers of the Card Reader during the election who were the Presiding Officers (POs) and or Assistant Presiding Officers (APOs). The table in Paragraph 21 (**Exhibits P87, P88 and P89**) and the evidence of **PW59** of the Petition clearly show the votes inputted into the 1st Respondent's server through the Smart Card Readers from 35 States and the FCT excepting Rivers State. The figures from the 35 States and the FCT show that the 1st Petitioner scored a total of **18, 356, 732** valid votes while the 2nd Respondent scored **16, 741, 430** votes. By this, the 1st Petitioner won the election with a margin of **1, 615, 302** lawful votes. If the final votes from Rivers State are added to the scores of the 1st Petitioner and the 2nd Respondent, the 1st Petitioner's votes will be 18, 356, 732 + 473, 971 = 18, 830, 703 while 2nd Respondent's votes will be 16, 741, 430 + 150, 710 = **16, 892, 140**.

4.10 **The victory margin from the above is 1, 938, 563 in favour of the Petitioners.** The Petitioners specifically pleaded and led evidence on the data from the 1st Respondent's Server and contended that upon a proper collation and summation of scores of candidates electronically transmitted to and contained in the 1st Respondent's Server, pursuant to the provisions and directives contained in **Exhibit P33** (INEC Manual on Elections Technologies (Use, Troubleshooting and Maintenance 2019), it was the 1st Petitioner who indeed scored the majority of lawful votes cast and thereby satisfied the

mandatory Constitutional threshold and spread across the Federation and ought to have been declared winner and returned as duly elected President of the Federal Republic of Nigeria at the said election. See **Exhibits P87, P88, P89** and the evidence of **PW59**.

4.11 In further proof, the Petitioners called **PW2** (Registration Area Technician – RATECH), **PW3, PW4, PW16, PW17** and **PW36** who were Presiding Officers and Assistant Presiding Officers of the 1st Respondent who gave unchallenged evidence that they electronically transmitted results of the Presidential Election that held on 23rd February, 2019 to the 1st Respondent's Server and **PW59**, an expert who testified to the existence of the server belonging to the 1st Respondent, thereby proving not only the existence of the 1st Respondent's Server, but also the authenticity of its contents and the election results contained therein.

4.12 The 2nd Respondent led no evidence to support his denial of this fact and it is settled law that where a party fails to lead evidence in his pleading, the pleading is deemed to be abandoned. See: **ILODIBA v NIGERIAN CEMENT COMPANY LTD** (1997) LPELR – 1494(SC); **ATAGBOR v OKPO & ORS** (2013) LPELR – 20207 (CA); and **UBN PLC v EMOLE** (2001) LPELR – 3392 (SC); This simply means that even the denial of the existence of a server by the 1st Respondent, among other whimsical denials, are abandoned, leaving the Petitioners' assertion not traversed.

THE CLAIM THAT THE ELECTORAL ACT PROHIBITED ELECTRONIC ELECTION

4.13 The 2nd Respondent like the 1st Respondent was of the misconceived and perverted view that the Electoral Act prohibited the **use of Electronic voting machine**. He embarrassingly relied on section 51 of the Electoral Act. That submission is utterly wrong and gravely misleading. No such provision exists in section 51 of the Electoral Act. Rather it was in section 52 (2) of the Electoral Act 2010 before it was amended by the Electoral (Amendment) Act 2015. See Federal Republic of Nigeria Official Gazettee No. 41 Vol. 102, Government Notice No. 26 of **31 March 2015**. In other words the aforesaid provision was legally dead more than **4 years ago**!

4.14 The Electoral (Amendment) Act, 2015 amended section 52 (2) of the Electoral Act 2010 by substituting same with a new subsection "2" as follows:
"Voting at an election under this Act shall be in accordance with the procedure determined by the Independent National Electoral Commission."Consequent upon the amendment, the prohibitive clause against electronic voting machine which by the way is only a part of electoral election was remove from Nigeria's electoral jurisprudence". All the submissions on the purported prohibition of electronic transmission in paragraphs 5.40 – 5.46 of the 2nd Respondent's Final Address are grossly misconceived.

4.15 Section 52 (2) of the Electoral Act 2010 (as amended) now unequivocally clothes the 1st Respondent with full discretion to determine the procedure for voting during an election under the Electoral Act. In very clear terms, section 160 of the 1999 Constitution, as amended, enacts as follows:
"Subject to subsection (2) of this section, any of the bodies may, with the approval of the president, by rules or otherwise regulate its own procedure or confer powers and impose duties on any officer or authority for the purpose of discharging its functions, provided ***that in the case of the Independent National Electoral Commission, its powers to***

make its own rules or otherwise regulate its own procedure shall not be subject to the approval or control of the President.

4.16 Section 153 of the Electoral Act, 2010 (As amended) enacts as follows:

"The Commission may subject to the provisions of this Act, issue regulations, guidelines, or Manuals for the purpose of giving effect to the provisions of this Act and its administration thereof."

4.17 It is pursuant to the above provisions that the 1st Respondent prescribed elaborate procedures for electronic collation and electronic transmission of results for the 2019 elections. It is clear that the 1st Respondent under the heading "Accreditation and Voting Procedure at Elections" in its 2019 Guidelines (**Exhibit P27**), made elaborate provisions on the use of Voters Registers and Card Readers in the accreditation of voters and voting procedure. See paragraphs 8, 10, 11, 12 and 13 of **Exhibit P27**. It is noteworthy that the scope covered by the above procedure is wider than the Guidelines for the 2015 general elections. See also pages 23 – 28 of the Manual for Election Officials 2019 **(Exhibit P28)**.

4.18 The 1st Respondent's **Manual on Elections Technologies (Use, Troubleshooting and Maintenance)** 2019 **(Exhibit P33)** makes copious provisions on the responsibilities of the election officials with regard to the Use of Smart Card Reader for Electronic Collation and Transmission of Results. See pages 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31 and 32 of the said Manual **(Exhibit 33)**.

4.19 The issue now is whether having regard to sections 52 (2) 73 and 153 of the Electoral Act, 2010 (as amended) and section 160 (1) of the 1999 Constitution (as amended), it can rightly be argued that the provisions and procedure adopted by the 1st Respondent in its' Guidelines and Manuals on e-collation and e-transmission are not legal?

4.20 In **FALEKE v INEC** (2016) 18 NWLR (Pt 1543) 61, declaration of result after the Governorship election in Kogi State was made based on the provisions of Chapter 3 paragraph 3.11, step 14 of 1st Respondent's Manual for Election Officials. The argument canvassed by the senior counsel for the Appellant was that the provisions of the Manual could not be employed to amend or augment the provisions of the Constitution. At page 120 paras E-G, Kekere-Ekun, JSC in the lead judgment held as follows:

"It is not disputed that pursuant to section 160(1) of the Constitution, INEC has the constitutional power to regulate its own procedure or confer powers and impose duties on its Officers for the purpose of discharging its functions. Section 73 empowers the Commission to publish in the Gazette, Guidelines for Elections "which shall make provisions for the step by step recording of the poll in the electoral forms as may be prescribed..." while section 153 empowers the Commission to issue regulations, guidelines or manuals for the purpose of giving effect to the provisions of the Electoral Act and for its administration. I ***agree with the finding of the lower court at page 1608 of the record that the above provisions give statutory backing to the Manual as a subsidiary legislation and that where it is found to be relevant, its provisions must be invoked, applied and enforced."***

4.21 In arriving at the decision above, Kereke-Ekun, JSC relied on the pronouncement of Adekeye, JSC in **CPC v INEC** (2011) 18 NWLR (Pt. 1279) 493 at 542 paras G-H that:

"By force of law, the Independent National Electoral Commission has the duty of conducting elections. Besides the constitutional provisions, it is guided by the Electoral Act, 2010 (as amended) and the Election Guidelines and Manual issued for its officials in accordance with the Act. These documents embody all steps to comply with in the conduct of a free, fair and hitch free election."

4.22 In **FALEKE v INEC** (supra), at page 156 paras D-F, Ogunbiyi, JSC (as he then was), while relying on section 160(1) of the 1999 Constitution (as amended), held thus:

"Isolated and special recognition is indulged the INEC specifically. Also and following from the foregoing provision, it is not out of place to say authoritatively therefore that the Manuals for Election Officials 2015 (Updated Version) ***issued by INEC are not mere instructions or directions; rather, they are subsidiary legislations which have the force of law. They have their origin from the Constitution and the Electoral Act."***

4.23 In the circumstance, we submit that **Exhibits P27, P28** and **P33** are subsidiary legislations which have the force of law and ought to be applied and enforced. It is also submitted that the Electoral Guidelines/Manuals, **Exhibits P27, P28** and **P33** were unequivocal in stating that card readers were not just for **authentication** and **accreditation** but also for e-collation and transmission of results. It is therefore false and misleading when the 1st Respondent stated in paragraph 19 of its Reply to the Petition that card reader was used for "**only authentication**" thereby contradicting its Guidelines and Manuals on election.

4.24 However, in paragraph 75 of its Reply to the Petition, the 1st Respondent did an embarrassing summersault and stated as follows - "**the 1st Respondent avers that even though it only used the Card Readers for the purpose of accreditation, its Card Reader Data will always show that the votes recorded by the 1st Respondent truly reflect valid accreditation of voters in each of the Polling Units all over the Federation**".

4.25 We submit that this is an admission against interest regarding card reader data, the recording of votes and the accreditation of voters covering each of the polling units in the country. In **MIFORD EDOSOMWAN v KENNETH OGBEYFUN** (1996) LPELR-1019(SC) it was held thus, per Wali, JSC, (page 25, paras: A-C): *"The general principle of law on the issue is that a statement oral or written (expressed or implied) made by a party in civil proceedings and which statement is adverse to his case, is admissible against him on the truth of the facts asserted in the Statement: SEISMOGRAPH SERVICE (NIGERIA) LTD v CHIEF KEKE OGBENEGWEKE EYUAFE (1976) 9 and 10 S.C 135 at 146 and SLATTERIE v POOLY 151 Exch. 579."*

4.26 Under cross examination by the 3rd Respondent, the **RW7** unequivocally said "**Smart Card Readers were used for accreditation**" further rubbishing the 1st Respondent's case.

4.27 Again, Festus Okoye, Esq. who is 1st Respondent's National Commissioner and Chairman, Information and Voter Education Committee in a Press Release (**Exhibit P82**), said in respect of Smart Card Reader inter alia thus:
"The use of the Smart Card Reader is not only mandatory but its deliberate non-use attracts the sanction of possible prosecution of erring officials in accordance with the INEC Regulations and Guidelines for the conduct of elections. This is in addition to the

voiding of any result emanating from such units or areas as was done in the Presidential *and National Assembly elections of February 23, 2019."*

4.28 He further added that:

"The general public and all officials engaged for the election are hereby informed that the Commission is not reconsidering the use of these Smart Card Readers which has greatly improved the credibility of our elections and instilled a high level of public trust in them".

4.29 In conclusion, Mr. Okoye said:

"To clear any doubt or ambiguity, we wish to state that the deployment and mandatory use Smart Card Readers in Saturday's elections will only be uniform but also universal, and the provisions of the Regulations and Guidelines will be strictly and vigorously enforced. All Stakeholders are to note and be guided accordingly, please." (See also Paragraph 10 (a & b) of **Exhibit P27**)

4.30 We further refer to **Exhibits P74, P75, P76, P77, P78, P79** and **P80** all being transcripts of videos tendered in evidence corroborating the mandatory use of the Smart Card Reader for the accreditation of voters, e-collation and transmission of results.

4.31 The desperate denial by the 2nd Respondent and other Respondents of the fact that there were e-collation and e-transmission of results on the false premise that the Electoral Act prohibits it, is with deep respect baseless.

THE RESPONDENTS' DENIAL OF THE EXISTENCE OF INEC SERVER

4.32 In an undoubted failed effort to deny the fact of e-collation and e-transmission of results, the Respondents made contradictory and inconsistent claims in their unconvincing efforts to deny the existence of INEC Server(s) or Central Server. If they had appreciated what a **sever** is, they should not have wasted valuable time denying what is obvious or making inconsistent claims.

4.33 We refer to the following definitions of a server. "In computing, **a server** is a computer program or a device that provides functionality for other programs or devices, called "clients"... Typically servers are **database servers**, file servers, mail servers, print servers...": **en.m.wikipedia.org**, accessed 15 March, 2019. On the other hand, a server has been described as "**a computer, a device or a program that is dedicated to managing network resources**": **Technopedia.com**, accessed on 15 March, 2019.

4.34 In **Oxford Advanced Learner's Dictionary**, Oxford University Press 2010, at P1349, **Server** is defined as "**a computer program that controls or supplies information to several computers connected in a network".**

4.35 The 2nd Respondent in paragraph 1.3 of his Address said "that the proverbial **sever** heavily relied on by the Petitioners" is among others "**fictitious**". In paragraph 5.47, he inconsistently submitted that "the content of a server cannot be given by the oral evidence, **but the production of the server itself**" which he earlier described as "**fictitious**". On its part, the 1st Respondent described the "central server" as being "**illusory**". See paragraph 30 of its Address.

4.36 It will be necessary to know how the Evidence Act 2011 defines the word **computer**. In section 258(1) of the Act it defines **computer** as follows: *"Computer means **any device** for storing and processing information, and any reference to information being derived from other information is a reference to its being derived from it by calculation, comparison or any other process".*

4.37 The definition of computer in the above provision is wide and generous. It certainly accommodates a **server** which is a computer programme or device that provides functionality for other programmes or devices.

4.38 Again the 1st Respondent who in paragraph 75 of its Reply to the Petition pleaded **Card Reader Data** failed to state that such **data** could only have been stored in a storage device, a computer, which is **server**. It equally did not say where the **data** from PVCs was stored other than in computer(s).

ANALYSIS OF RESULTS FROM 11 FOCAL STATES

4.39 Analysis of Votes/Results obtained as reflected in Certified True Copies of Forms EC8A, EC8B and EC8C from the 11 focal States, namely: Kaduna, Katsina, Kebbi, Kano, Bauchi, Borno, Gombe, Jigawa, Niger, Yobe and Zamfara States as pleaded in Paragraph 113 to 363 of the Petition.

4.40 The 1st Respondent wrongly and unlawfully credited the 2nd Respondent with votes which were not valid or lawful in the above listed focal States at the election, namely, at the polling units, the ward collating centres, local government collating centre.

4.41 The results of the election as announced by the 1st Respondent and especially the votes credited to the 2nd Respondent do not represent the lawful votes cast. The scores credited the 2nd Respondent were not the products of actual votes validly cast at the polling units. From the above, it is clear that the collated results as contained in the tendered Certified True Copies of Forms EC8A from the polling units are irreconcilably different from the electronically collated results that were transmitted or inputted to the 1stRespondent's Server from the Smart Card Reader deployed by the 1st Respondent for the purpose of accreditation of voters and transmission of results to the 1st Respondent's Central Server.

4.42 **Even so, the Petitioners went on to establish that based on the lawful votes from the Manual Collations, the Petitioners still scored the majority of lawful votes cast.**

4.43 The Petitioners called **PW60** who is a statistician and an expert whose reports were admitted as **Exhibits P90A-K** (being the analysis of exhibits: **PNG1 - PNG3464** (Niger State); **PYB1 – PYB1731** (Yobe State); **PKT1 – PKT 3377** (Katsina State); **PKB1 – PKB2105** (Kebbi State); **PBO1 – PBO3471** (Borno State); **PJG1 – PJG 3161** (Jigawa State); **PGB1 – PGB 1911** (Gombe State); **PBC1 – PBC 3598** (Bauchi State); **PKD1 – PKD3334** (Kaduna State); **PKN1 – PKN 7159** (Kano State) AND **PZF1 –PZF1000** (Zamfara State)).

4.44 These reports (**P90A-K**) are unchallenged and remained so as none of the Respondents controverted the detailed analysis of unlawful votes extracted from Exhibits PNG1 - **PNG3464; PYB1 – PYB1731; PKT1 – PKT 3377; PKB1 – PKB2105; PBO1 –**

PBO3471; PJG1 – PJG 3161; PGB1 – PGB 1911; PBC1 – PBC 3598; PKD1 – PKD3334; PKN1 – PKN 7159 AND PZF1 –PZF1000 as summarized hereunder: For **Forms EC8A**, the focus was on the following:

a) Number of voters exceeding accredited voters as stated on Form EC8A
b) Polling units where Forms EC8A did not have any accredited voters at all
c) Polling units where number of voters exceeded the number of registered voters
d) Polling units where Forms EC8A were not signed by INEC Presiding Officer
e) Polling units where Forms EC8A were not stamped by INEC Presiding Officer
f) Polling units where Forms EC8A were altered or tampered with to reflect new votes/ scores.

4.45 With regard to Forms EC8B and EC8C (collation Forms), the focus was on the following:

a) Difference in total votes between the Forms EC8A and Forms EC8B for each polling unit
b) Difference between the total votes between Forms EC8A and Forms EC8C for each ward.
c) Difference in votes credited to the Petitioners, the 2nd and 3rd Respondents and other parties on Forms EC8A, EC8B and EC8C.
d) Difference in the number of accredited voters between Forms EC8A, EC8B and EC8C.

4.46 It is submitted most respectfully, that flowing from the foregoing, the affected votes are of two categories, namely; (1) Votes from errors on Forms EC8A and (2) votes from collation errors (Forms EC8B and EC8C). The summary of such votes for each of the 11 focal States is as contained in the table below:

BAUCHI	**PDP**	**APC**	**OTHERS**
EC8A Errors	**100,965**	**432,465**	**8,301**
Collation Error	**10,567**	**40,781**	**866**
BORNO	**PDP**	**APC**	**OTHERS**
EC8A Errors	**35,985**	**402,546**	**6,405**
Collation Error	**6,852**	**76,637**	**978**
GOMBE	**PDP**	**APC**	**OTHERS**
EC8A Errors	**88,315**	**250,931**	**8,483**
Collation Error	**14,038**	**35,405**	**2,297**
JIGAWA	**PDP**	**APC**	**OTHERS**
EC8A Errors	**142,590**	**376,586**	**8,650**
Collation Error	**117,736**	**312,857**	**7,199**
KADUNA	**PDP**	**APC**	**OTHERS**
EC8A ERROR	**385,779**	**594,987**	**14,439**
COLLATION ERROR	**49,814**	**82,572**	**3,716**

KANO	PDP	APC	OTHERS
EC8A Errors	250, 174	926, 258	21,693
Collation Error	34, 649	113, 623	6,929
KATSINA	PDP	APC	OTHERS
EC8A Error	165,556	683,582	9,346
Collation Error	26,032	95,947	1,301
KEBBI	PDP	APC	OTHERS
EC8A Error	98,692	396,728	12,194
Collation Error	14,790	59,618	6,308
NIGER	PDP	APC	OTHERS
EC8A Error	144,650	416,735	13,884
Collation Error	21,778	59,414	13,052
YOBE	PDP	APC	OTHERS
EC8A Error	27,029	278,612	5,116
Collation Error	4,859	50,497	874
GRAND TOTAL	1,740, 850	5,686,781	152, 031

4.47 Adding the figures derived from Zamfara State whose analysis was premised upon pink copies of results, i.e. **Exhibits PZF 1 – PZF 1000** (which also form part of **Exhibits PZF 1001- PZF4901**, being Certified True Copies of the entire Result sheets for Zamfara State), the collation errors are as captured in the table below:

ZAMFARA	PDP	APC	OTHERS
Collation Error	96,046	301,316	

4.48 **Therefore, with the addition of the figures derived from the analysis of Results Sheets from Zamfara State, the new overall void votes are as shown in the table below:**

PDP	APC
1,836, 896	5,988, 097

4.49 It is submitted that when the votes credited to the Parties on account of various errors listed in paragraph 4.54 (a) – (f) and 4.55 (a) – (d), respectively above are deducted from the results declared in the 11 focal States, the under-listed figures now represent the overall lawful votes cast in the Presidential Election held on 23rd February, 2019 across Nigeria:

	PDP	APC
ELECTION RESULT	11,262,978	15,191,847
VOID VOTES	- 1,836, 896	- 5,988, 097
NEW RESULT	= 9,426,082	= 9,203,750

Margin of lead	PDP Lead with 222, 332 votes

4.50 It is submitted that while the onus of proof in an Election Petition is on the Petitioner, howbeit, the onus is not static. It shifts from one side to the other and vice versa. It eventually rests on the party who would fail if no further evidence is adduced on either side. See **NDUKWE V. ACHA** (1998) 6 NWLR (PT. 552) 25134; **AWUSE V. ODILI** (2004) ALL FWWLR (PT. 212) 1611 and **HASKE V. MAGAJI** (2009) ALL FWLR (PT. 461) 887.

4. 51 It is further submitted that an Election Petition being of the nature of civil proceedings, the standard of proof required is liberal and lighter proof on the balance of probabilities or on the preponderance of evidence. See **OKEKE v EJEZIE** (2011) ALL FWLR (PT. 603) 1811 and **ARISE v ADETUNBI** (2011) ALL FWLR (PT. 558) 941.

4.52 It is noteworthy that the 1st and 3rd Respondents did not call any witness or tender any document. The witnesses called by the 2nd Respondent and documents tendered on the other hand did not controvert the pleadings and evidence of the Petitioners adduced to prove this issue. Apart from the fact that minimal proof is required of the Petitioners under the circumstances, the Petitioners evidence remained unchallenged. It is submitted that since the 1st and 3rd Respondents led no evidence in support of their pleadings, the averments contained therein are deemed abandoned and the Petitioners are under no duty to disprove such abandoned averments that had not been proved. See the following cases: **NWOKAFOR V. NWANKOR UDEGBI** (1963) 1 SCNLR 184 and **KATE ENT. LTD. V. DAEWOO (NIG.) LTD** (1985) 2 NWLR (PT. 5) 116.

4.53 In **EMMANUEL V. UMANA** (2016) ALL FWLR (PT. 856) 214, the Supreme Court held thus: *"A pleading of averments in proof of which no evidence is offered, virtually serves no useful purpose. Averments in pleadings, which are unsupported by evidence, are unavailing to the pleader as they go to no issue, and so must be discountenanced. An averment in a pleading is not evidence and cannot be substituted for evidence. Such an averment does not therefore amount to proof unless it is admitted. In the instant case, where the 1st and 2nd Respondents failed to substantiate their averments in their petition by evidence, the lower courts erred by dismissing same."*

4.54 It is respectfully submitted that this Honourable Court is bound to accept the credible evidence adduced by the Petitioners since the Respondents have failed to challenge the same. See **YUSUF V. OBASANJO** (2005) 18 NWLR (PT. 956) 96. Again, all the documentary evidence tendered which have not been impugned supports the oral testimonies of the witnesses called by the Petitioners, rendering such oral testimonies more credible as documentary evidence serves as a hanger from which to assess oral testimonies. See: **NDAYAKO V. MOHAMMED** (2006) 4 NWLR (PT. 1009) 655; **INEC V. OSHIOMOLE** (2009) 4 NWLR (PT. 1132) 607 and **KIMDEY V. MIL. GOV. GONGOLA STATE** (1988) 2 NWLR (PT. 77) 445.

4.55 It is further submitted that the evidence of **PW59** and **PW60** who are experts and **Exhibits P87, 89** and **Exhibits P90A-K** relating to the existence of the 1st Respondent's server and the election results contained therein are detailed, self-explanatory and illustrative. The expertise and evidence of **PW59** and **PW60** as stated in their report sand oral testimonies during their evidence-in-chief were not contradicted under cross-examination by the Respondents. There is therefore no reason with respect, why their reports should not be believed and acted upon by this Honourable Court.

4.56 In **MIA & SONS v FHA** (1991) 8 NWLR (PT. 209) SC 295 @ 331, PARAS E-H, the Supreme Court held thus: "Where an expert is not contradicted... and his credibility remains untainted due to failure to elicit any evidence adverse to his opinion, that expert must be believed by the court". See also **NJIOKWUEMENI V. OCHE (2004) 15 NWLR (PT. 895) CA 196 @ 227.**

4.57 **The Supreme Court has also warned in SPDC V. ISAIAH (1997) 6 NWLR (PT. 508) 236 @ 249-251 that: "It could be risky for a court to simply ignore or waive aside an expert opinion expressed by an expert in the field concerned... To reject an expert opinion as the court did, it needs to have very cogent reasons for doing so, that is where there is contrary and reliable expert opinion on the same subject".**

4.58 The Respondents, it is submitted have not placed any such cogent reasons before this Honourable Court. The 2nd Respondent particularly was uncharitable to the **PW59** and used denigrating language against him in his address such as "**imported witness**" and "**imported man**". See paragraphs 5.18 – 5.19 thereof.

4.59 Again, the Respondents did not object the votes pleaded by the Petitioners above as they failed to plead their own scores, thereby admitting the votes pleaded by the Petitioners as correct. See Paragraph 15 of the First Schedule to the Electoral Act, 2010 (As amended) which provides thus: *"When the Petitioner claims the seat alleging that he had the highest number of valid votes cast at the election, the Party defending the election or return at the election shall set out clearly in his reply, particulars of the votes, if any, which he objects to and the reasons for his objection against such votes, showing how he intends to prove at the hearing that the Petitioner is not entitled to succeed."*

4.60 In the case of **AGAGU V MIMIKO** (2009) 7 NWKR (pt.1140) page 342 at 414 to 415 paras. H-B, it was held thus:

"The consequence of neglect or failure of the respondent to comply with the provisions of paragraph 15 of the 1st Schedule to the Electoral Act is that the result tendered by the Petitioner is deemed not challenged or controverted. See ***Hassan V. Yumu*** *(1999) 10 NWLR (pt.624)700,710 and 712. I have carefully examined the respondent's reply, which is in Vol. vi at pages 2541 – 2620 of the printed record of proceeding and cannot locate any averment satisfying the conditions set out in paragraph 15 of the First Schedule to the Electoral Act, No.2 of 2006. The refusal, neglect or failure of the appellant to satisfy the provisions of the said paragraph has the effect that the result tendered by the petitioner/first respondent herein, is unchallenged and uncontroverted."*

4.61 Flowing from the above, it is instructive to state that the Petitioners tendered **Exhibit P3**, being Form EC8E (final National Collation of the Presidential Election), as evidence of unlawful allocation of votes which was pleaded in Paragraphs 4 and 5 of the Petitioners' Reply to the 1st Respondent's Reply to the Petition and deposed to by **PW62** in Paragraphs 8 and 9 of his statement on oath attached to the said Petitioners Reply. However, none of the Respondents objected to its admissibility, thereby, without more, admitting that the declared result is unlawful.

4.62 It is most humbly submitted that the Respondents did not utilize the opportunity they had of impugning the oral and documentary evidence led by the Petitioners to prove their case under this issue. Therefore, having regard to the totality of the sufficient credible evidence adduced by the Petitioners through their witnesses, the contents of

the exhibits tendered which were profusely linked to their case, the Petitioners are entitled to judgment on this issue.

THE ALLEGATION OF DUMPING OF DOCUMENTS

4.63 The sing-song of the Respondents in this Petition is that the Petitioners dumped documents without demonstrating them. They deliberately failed to identify those documents that were so dumped! A critical examination of the evidence of the witnesses called by the Petitioners showed that the documents that were tendered were demonstrated in diverse ways. The Respondents also participated in demonstrating them through cross examination. The **PW62** who had 4 deposition linked all the results to his depositions by demonstrating them in evidence. In chief, he specifically identified **Exhibits P130 - P137, P1, P3, P17 – 25, P29 – 35**. The **PW60** identified **Exhibits P90 – K**. He also confirmed that result sheets were made available to him for his work.

4.64 The **PW40** tendered **Exhibits P36 – 83**. Before concluding his evidence in chief, he further specifically identified **Exhibits P74 – 78, 80** and **84. Exhibits P74, P76** and **P80** were played in open court. The Petitioners later applied that all the **Exhibits** the **PW40** tendered be deemed as read.

4.65 The recent decision of the apex court in **MTN v CORPORATE COMMUNICATION INVESTMENT LTD** (2019) LPELR- 47042(SC) turned on the issue of the demonstration of evidence which has been elevated to almost an abstract and technical jargon by Respondents in Election Petitions. Kekere-Eku, JSC at page 36 paras. A-B, held that in so far as the terms of agreement embodied in **Exhibit A** were pleaded and **Exhibit A** was before the court to support the pleading along with the deposition of the witness and his cross examination, "**it is therefore not correct to contend that the terms of Exhibit A were not demonstrated before the court**".

4.66 The Honourable Court is therefore respectfully urged to resolve this issue in favour of the Petitioners.

5.00 ARGUMENT ON ISSUES 4 AND 5

5.01 The first issue hereof is borne out of Paragraph 15(b) of the Petition is simply that the election of the 2nd Respondent is invalid by reason of corrupt practices. The averments in relation to corrupt practices are at Paragraphs 364 – 387, pages 121 – 130, Vol. 1 of the Petition. The particulars of corrupt practices pleaded in the Petition impugn on compromised printing/production of Election materials, manipulation/misuse of state resources, manipulation of security agencies and militarisation of Election, manipulation of Card Readers, manipulation of accreditation and collation processes, manipulation of election materials/delivery, massive multiple thumb-printing of Ballot papers as well as arbitrary arrest and detention of Petitioners' members and supporters. Granted, the Respondents joined issues with the Petitioners on the pleadings with respect to Ground of corrupt practices. In this regard, Paragraphs 92 – 97, pages 62 – 63 of 1st Respondent's Reply to the Petition, Paragraphs 325 – 360, pages 87 – 101 of 2nd Respondent's Reply to the Petition and Paragraphs 458 – 479, pages 189 – 194 of 3rd Respondent's Amended Reply to the Petition are all relevant. Similarly,

Paragraph 11, page 10 of Petitioners' Reply to 2nd Respondent's Reply is germane with respect to allegation of corrupt practices.

5.02 Beyond averments in their Petition, the Petitioners called several witnesses in support of their case on corrupt practices and substantial noncompliance by reason of which the election and return of the 2nd Respondent should be invalidated. For ease of reference, we set out hereunder the summaries particulars of evidence led in support of this aspect of the Petitioners case, showing as well the spread of electoral malpractices across 11 focal States and substantial non-compliance across the country as demonstrated by **PW 40, PW60** and **PW61,** among other witnesses.

4.38 On 4/7/2019, 5/7/2019, 8/7/2019 and 19/7/2019 Petitioner tendered documents (Certified True Copies, Originals and Computer generated documents) among which were: CTCs of EC8C, EC8Bs and EC8As, for Niger State, together with receipt of payment for certification, were tendered and admitted as **Exhibits PNG1** to **PNG3465**; **Exhibit PYB1** to **PYB1732** in respect of Yobe State. CTCs of EC8C, EC8Bs and EC8As, together with receipts of payments for certification, were tendered for Kastina, Kebbi, Borno, Jigawa and Gombe as **Exhibit PKT 1** to **PKT 3377**, **Exhibit PKB 1** to **PKT 2105, Exhibit PBO 1** to **PBO 3,471, Exhibit PJG 1** to **PJG 3,161** and **Exhibit PGB 1** to **Exhibit PGB 1911** ; while CTC of EC8Bs and EC8As were equally tendered for Bauchi State as **Exhibit PBC 1** to **Exhibit PBC 3598** and CTCs of EC8C, EC8Bs and EC8As for Kaduna were equally tendered and admitted in evidence as **Exhibit PKD 1** to **Exhibit PKD 3334**. The tendering of CTCs of EC8C, EC8Bs and EC8As for Kano started on 5/7/2019 and were concluded on 8/7/2019 and same were admitted as **Exhibit PKN 1** to **Exhibit PKN 5806** and on same date Pink copies of EC8C, EC8Bs and EC8As for 1st Respondent Zamfara State Headquaters were tendered and admitted as **Exhibit PZF 1** to **Exhibit PZF 1000**. Additional CTCs of EC8Bs and EC8As together with receipt of payments for certification were tendered and admitted for Kano State as **Exhibits PKN 507** to **PKN 7196**. Lastly, CTCs of EC8As, EC8Bs and EC8Cs, as subpoenaed from Zamfara, were tendered together with receipt of payments for certification and admitted as **Exhibit PZF1001** to **PZF4901**. Likewise, CTCs of EC8Ds, EC8D(A), EC40G (2), Form EC40G (3), Report of Card Reader Accreditation for 2019 Election, Report on all PVCs used for the 2019 Elections from Card Reader 1-29, 053, as subpoenaed from the 1st Respondent's Headquarters, were tendered together with receipt of payments for certification and admitted as **Exhibit P93-129, P130, P131-166, P167, P168, P169, P170-172, P173** and **P174**.

5.04 **JIGAWA**

PW5 and PW6 gave evidence on non-distribution of election materials, non-accreditation, non-voting, intimidation and harassment, militarization and falsification of results in Polling Units Mai Angwa Yelwa Polling Unit 008, ZandamNagogo Ward, Gwaram LGA and FarinDutse Ward, Gwaram LGA Jigawa State. (Please see page 691, Vol. 2 of the Petition and page 702, Vol. 2 of the Petition respectively).

5.05 **NIGER**

PW7 , PW12, PW13, PW14 and **PW15** all gave evidence on unlawful arrest; stuffing of ballot boxes at Ipandu polling unit, Muburya Ward, Magira LGA; intimidation of voters and disruption of voting in Mokwa LGA by thugs at the instance of the Deputy Governor of Niger an associate of the 2nd and 3rd Respondents; disruption of voting at RabbaGari polling units in Kura Ward, Magama LGA; arbitral allocation of votes; unstamped results sheets; non-accreditation; malfunctioning as well as non-deployment card reader in TankoKuta I polling unit 009. Similar incidents occurred at Ebbo/Gbachinko and other wards of Lapai. Cancellation of results occurred also in Sarkin Noma, Chikaji, Lokope

and Kushaka polling units of Kurebe/Kushaka in Shiroro Local Government Area, all of Niger State. (Please see pages 406-407, Vol. 2 of the Petition, page 402, Vol. 2 of the Petition, page 409, Vol. 2 of the Petition and page 415, Vol. 2 of the Petition respectively). **RW6** during cross examination lend credence to Petitioners complaint of electoral malpractices when confronted with Exhibit PNG 595 to 605, documents duly certified by the 1st Respondents, which contains alterations for which he knew not when such alterations were made.

5.06 **KASTINA**

PW8, PW9, PW10, PW11 and **PW55** all gave evidence of over-voting and appropriation of votes as well as replacement of 1st Respondent's trained staffs with agents of the 2nd and 3rd Respondents who manipulated the election in the entire Kastina State. Over voting was also established in outlined polling units in Funtua and Kafur Local Government. (See page 578, Vol. 2 of the Petition, page 584, Vol. 2 of the Petition, page 533, Vol. 2 of the Petition, page 565, Vol. 2 of the Petition and page 554, Vol. 2 of the Petition respectively)

5.07 **BAUCHI**

PW18, PW19, PW30 and **PW32** gave evidence of voters' intimidation in Jama'are LGA. Also at Dass, Zaki and Ningi LGA were cases of vote buying, guided voting, non-deployment of card readers, illegal thumb printing of ballot papers in favour of 2nd Respondent by thugs of the 2nd and 3rd Respondents took place. It is also in evidence that overvoting and snatching of ballot papers were also orchestrated by the 2nd and 3rd Respondents' agents all of which took place in Bauchi State (See page 309, Vol. 2 of the Petition, page 300, Vol. 2 of the Petition, page 319, Vol. 2 of the Petition and page 322, Vol. 2 of the Petition).

5.08 **KADUNA**

PW20, PW21, PW22, PW24 and **PW25** all gave evidence from Kaduna State. They testified of non-deployment of card readers, indiscriminate allotment of votes, cancellation of results, overvoting, voters intimidation and harassment among other corrupt practice in Makera , Tudun Wada South, Wada North and TudunNupawa Ward were affected. Several other wards were also affected, as evidenced by them, in Zaria, Kaduna North and Sanga LGA of Kaduna (See pages 1054 to 1055, Vol. 3 of the Petition, pages 1051 to 1052, Vol. 3 of the Petition, page 973, Vol. 3 of the Petition, pages 1028 to 1030, Vol. 3 of the Petition and pages 1028 to 1030, Vol. 3 of the Petition).

5.09 **BORNO**

PW23, PW26, PW27, PW28, PW34, PW35, PW37, PW38, PW54 and **PW56** gave evidence of overvoting, non-deployment and malfunctioning of card readers, indiscriminate allotment of votes in face of bomb blasts and insurgency unrest, vote buying, uttering and alteration of election results by the Respondents officials and agents, unlawful thumb printing, improper accreditation, ballot box stuffing, non-holding of election among several other malpractices at Jere, Damboa, Askira/Uba, Mafa, Kukawa and Chibok LGA of Borno State. (See page 430, Vol. 2 of the Petition, pages 470 and 471, Vol. 2 of the Petition, pages 487 and 488, Vol. 2 of the Petition, page 316, Vol. 2 of the Petition, page 458, Vol. 2 of the Petition, page 437, Vol. 2 of the Petition, page 440, Vol. 2 of the Petition, pages 522 and 523, Vol. 2 of the Petition, pages 525 and 526, Vol. 2 of the Petition and page 444, Vol. 2 of the Petition)

5.10 **GOMBE**

PW29 and PW31 gave evidence of vote buying, voters intimidation, result errors, uttering/alteration and cancellation in Biliri and Kaltungo LGA, Gombe State among others. (Please see pages 340 and 341, Vol. 2 of the Petition and page 331, Vol. 2 of the Petition).

5.11 **YOBE**

PW33, PW39 and **PW45** gave evidence vote buying, voters harassment and intimidation by members of the security agency, non-deployment and malfunctioning of card readers, cancellation of and wrong entries of results particularly in Potiskum, Fika and Jakusko LGA, Yobe State. (Please see pages 888 and 889, Vol. 3 of the Petition, pages 872 and 873, Vol. 3 of the Petition and pages 946 and 947, Vol. 3 of the Petition).

5.12 **NASARAWA**

PW43, PW44, PW46, PW47, PW48, PW49, PW50, PW51 and **PW52** gave evidence of $10,000 bribery, non-deployment of card readers, cancellation of results, overvoting, indiscriminate allotment of votes in favour of the 2nd and 3rd Respondents, violence, non-holding of election and civil unrest between Tiv indigenes and herdsmen which prevented election in some places. The major areas affected are Lafia, Kokona, Akwanga, Doma and Awe LGA in Nasarawa State. An attempt by 2nd Respondents to discredit the solid evidence of PW46 was grossly deflated under cross examination where it was clearly established that the witness had no idea of what he was talking about and was only trying to speak to a document prepared for him. (Please see page 798, Vol. 3 of the Petition, pages 843 and 844, Vol. 3 of the Petition, pages 804 and 805, Vol. 3 of the Petition, pages 767 and 947, Vol. 3 of the Petition, pages 794 and 795, Vol. 3 of the Petition, page 801, Vol. 3 of the Petition, page 851, Vol. 3 of the Petition, pages 774 and 775, Vol. 3 of the Petition and pages 811 and 812, Vol. 3 of the Petition).

5.13 **KANO**

PW53 gave evidence of manipulation, mass alteration and re-writing of already collated results especially in Gaya LGA, Kano State. (Please see page 677, Vol. 2 of the Petition).

5.14 **KOGI**

PW57, PW58 and **PW61** gave evidence of voters harassment and intimidation, violence orchestrated by thugs of the 2nd and 3rdRespondents, cancellation and false announcement of results despite cancellation. Dekina, Ayingba and Okene Local Government of Kogi State were the major areas affected. (Please see pages 605 and 606, Vol. 2 of the Petition, pages 590 and 591, Vol. 2 of the Petition and pages 602 and 603, Vol. 2 of the Petition)

PW40 gave evidence and identified **Exhibits P36 to Exhibit P84** being video CDs, transcripts and printouts together with an authentication certificate. (Please see pages 946 and 947, Vol. 3 of the Petition). He testified that he kept records of press briefings, interviews, publications and other related print and electronic media materials relating to the activities of the 1st Respondent and the conduct of election. He specifically demonstrated **Exhibits P76** and **P80** being the videos of the 1st Respondent Resident Electoral Commission of Akwa Ibom and the 1st Respondent Chairman respectively giving evidence on deployment of card reader for electronic transmission of results.

5.15 An application was made for the rest of the videos to be taken as read. Among the videos are the state by state announcement of the election results which revealed that

2,906,384 million votes were cancelled in the election across the country as detailed in **Exhibit P36** to **Exhibit P73** been videos and transcripts attached of the live broadcast of from the National Collation Centre of the Presidential Election held on 23rd February 2019 for 36 States and Federal Capital Territory of the Federal Republic of Nigeria.

Also among the set of exhibits tendered by this witness was **Exhibit P83**, the printout from the 1st Respondent's website, of areas where supplementary elections were to hold because of the number of persons disenfranchised across the country totaling **2,698,773**. This figure, when added to the **2,906,384** million above exceeds the **3,928,869** differential between the votes as stated in INEC Form EC8E (**Exhibit P3**). As such no valid return could have be made by the National Returning Officer and Chairman of the 1st Respondent. (Please see paragraphs 1, 2, 3, and 4 of statement contained on pages 39 and 40, Petitioners' Reply to the 2nd Respondent)

5.16 **PW60**, a subpoenaed expert also gave evidence of how he was professionally engaged to conducted a comprehensive analysis of CTCs of EC8As, EC8Bs and EC8Cs deployed for the Presidential elections in Kaduna, Kano, Katsina, Bauchi, Borno, Gombe, Yobe, Kebbi, Niger and Jigawa; as well as Petitioners' pink copies of EC8As, EC8Bs and EC8Cs deployed for the Presidential elections in Zamfara. (Please paragraphs 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20 and 21 of statement contained on pages 2 to 5, Expert Witness Statement on Oath filed on 18/7/2019). He found incidence of over voting, uttering or mutilation, cancellation and lack of 1st Respondent's stamp or signatures on a large number of these forms. He opined that from the documents under his purview, no less than 5,967,042 votes polled by the 2nd and 3rd Respondents are voidable, while no less than 1,821,972 votes polled by the Petitioners are voidable too. (This was not discredited under cross examination. And assuming without conceding that the final results announced by the 1st Respondent as stated in **Exhibit P2** was correct, the final standing of the two contestants after deduction of these voidable votes will be 9,224,805 and 9,441,006 for APC and PDP respectively. As such, the return of the 2nd Respondent by the 1st Respondent, as duly elected is not in compliance with the provisions of the electoral act on the required vote for making such a return).

5.17 **PW62** testified and adopted his 4 depositions which spoke to all the Petitioners Pleadings and Replies. He chronicled litanies of incidence of non-compliance with the provision of the Electoral Act and corrupt practices by reason of which the election and return of the 2ndRespondent should be invalidated. Please see paragraphs 107 to 368 of his witness statement on oath deposed on 18/3/2019. See also the statement on oath of this witness as deposed to on 15/4/2019, 26/4/2019 and 18/4/2019.

The evidence of PW1 also corroborated the case of militarization, harassment, threat and other corrupt practices that affected the 2019 Presidential Election. (Please see pages 293 to 294 of Vol.1 of the Petition). No serious evidence was elicited to contradict these averments under cross examination.

5. 18 In addition to the witnesses that testified in respect of the issue hereof as indicated in the preceding paragraph, **PW1**, Buba Galadima whose Witness Statement on Oath is at pages 292 – 295, Vol.1 of the Petition equally gave evidence of how he had been subjected to series of intimidation, harassment, threat of arrest and detention by various security agencies including the Nigerian Army before, during and after the 2019 Presidential Election. He also gave evidence with respect to the undue interference of the Nigerian Army with the 2019 Presidential Election as well as militarisation of the

Electoral process resulting in the killing of innocent citizens in many states of the Federation including Rivers State during the 2019 Presidential Elections. He maintained in his evidence that the Presidential Campaign Council of the 3rd Respondent publicly called for his arrest by the Security agencies when they became uncomfortable with his sustained opposition to the impending announcement of fake results by the 1st Respondent at the instance of the 2nd and 3rd Respondents. The witness also deposed on Oath that apart from himself, many other members and supporters of the Petitioners were arrested, harassed, intimidated and even killed across the country. Paragraphs 12, 13, 14 and 15 of his Witness Statement on Oath at pages 293 – 294, Vol.1 of the Petition are particularly relevant with regards to Ground 2 of the Petition.

5.19 The Petitioners' case on electoral violence encouraged or instigated by the 2nd Respondent is supported by the documents tendered by the 2nd Respondent and he will swim and sink with them. See **Exhibits R.9, R.10, R.11, R.12 and R.13**. The military and other securing agencies acting on the instigation and order of the 2nd Respondent as shown on the Exhibits above inflicted untold violence on members and supporters of the Petitioners.

COMPROMISED PRODUCTION OF ELECTORAL MATERIAL

5.20 Flowing from above, it is clear that the Petitioners led cogent and credible evidence to show that the contract for the election material used for the Presidential Election was awarded by the 1st Respondent to a company named **Activate Technologies Limited owned by one Alhaji Muhammed Musa who was a Senatorial Candidate under the same party with the 2nd Respondent as averred in paragraph 365 of the Petition.**

MANIPULATION/MISUSE OF STATE RESOURCES

5.21 In the same vein, the Petitioners led evidence in proof of the assertion at paragraphs 368 – 372 of their Petition that the 2nd Respondent improperly used his office to induce voters to vote for him through a scandalous scheme known as **Trader-Moni**. Through this scheme, the 2nd Respondent corruptly induced voters with ₦10,000.00 each across the 36 States of the Country and the FCT. There is no evidence that the Scheme continued after the election underscoring the fact that it was contrived to influence the election.

MANIPULATION OF CARD READERS

5.22 Similarly, the Petitioners adduced evidence to prove the assertion in paragraph 374 in their Petition that Card Readers were not used in some States such as Bauchi, Borno, Kebbi, Yobe, Zamfara, Katsina, Kaduna, Niger, Nasarawa, Gombe, Jigawa and Kano States. The non-use of card readers enabled the agents and representatives of the 1st Respondent to ascribe arbitrary votes to the 2nd Respondent.

MANIPULATION OF ACCREDITATION AND COLLATION PROCESS

5.23 What is more, the Petitioners adduced credible evidence to prove the assertion at paragraphs 375 – 378 of the Petition that accreditation did not take place in majority of States in the country and that the 1st Respondent's officials did not correctly reflect the score of the parties at various or respective Polling Units at Ward and Local Government Collation Centres. This was a common practice in Bauchi, Borno, Yobe, Zamfara, Katsina, Kaduna, Niger, Kebbi, Nasarawa, Gombe, Jigawa, Kogi and Kano States.

NON-COMPLIANCE WITH THE PROVISIONS OF THE ELECTORAL ACT AND GUIDELINES

5.24 Turning to the 2nd issue which relates Ground C at paragraph 15 (c) of the Petition to the effect that the election of the 2nd Respondent is invalid for non-compliance with the provisions of the Electoral Act, 2010 (As Amended), Guidelines and Manuals, the relevant averments in the Petition are at paragraphs 107 – 363, pages 32 – 121 of the Petition. The 1st Respondent joined issues vide paragraphs 62 – 91, pages 34 – 62 of their Reply on this ground. The 2nd Respondent also joined issues at paragraphs 108 – 324, pages 36 – 87 of their Reply while the 3rd Respondent also joined issues at paragraphs 86 – 457, pages 23 – 86 of their Reply to the Petition with respect to allegation of non-compliance with the provisions of the Electoral Act, 2010 (As Amended). Paragraphs 18 – 24, pages 8 – 9 of Petitioners' Reply to 1st Respondent's Reply as well as paragraphs 16 – 20, pages 9 – 10 of Petitioners' Reply to 3rd Respondent's Reply are also relevant on allegation of non-compliance. The allegation of non-compliance includes but not limited to non-holding of elections and cancellation of results, wrong and deliberate entry of results, non-authentication, over-voting, inflating and deflating of votes, wrong entries on FORM EC8As in several Polling Units, Wards and Local Governments in various States of the Federation.

5.25 The Petitioners led comprehensive evidence in support of the said Ground C of the Petition through **PW62**. His main Witness Statement on Oath is at pages 159-291, Vol. 2 of the Petition. This witness deposed to Additional Witness Statements on Oath at pages 20 – 27 of the Petitioners' Reply to the 1st Respondent's Reply, pages 23 – 32 of the Petitioners' Reply to the 2nd Respondent's Reply and pages 22 – 29 of the Petitioners' Reply to the 3rd Respondent's Reply. Interestingly, **RW6,** Mohammed Usman Patewhose evidence is found at pages 379 – 380, Vol. 2 of 2nd Respondent's Reply and who testified on 31st July, 2019 lent credence to the complaint of the Petitioners judging from evidence elicited from him under cross-examination. Beside **RW6**, **RW7**, Usman Dagona blundered in his Witness Statement on Oath at paragraph 4 thereof when he talked about addition of votes with respect to what happened in Polling Unit 009, Sharp Corner in Karu Ward in Karu Local Government Area of Nasarawa State.

5.26 Admittedly, the Petitioners are not unmindful of the nature of the burden of proof with respect to non-compliance with the Electoral Act. Indeed, it is settled law that where a Petitioner alleges that an election is invalid by reason of non-compliance with the provisions of the Electoral Act, 2010, such Petitioner must prove that the non-compliance took place and that such non-compliance substantially affected the outcome of the Election.

5.27 Also, in **UCHA VS ELECHI (2012) 13 NWLR (PT.1317) 330 at 363 Paragraphs. B – C,** the Supreme Court held as follows: *"By virtue of section 137(1) (2) of the Evidence Act, 2010(sic), the standard is on preponderance of evidence. That is to say one sides position outweighs the other. The Petitioner is to prove that there was non-compliance with provisions of the Electoral Act. He then has an added burden to prove that the non-compliance was substantial, that it affected the results of the election. It is then, the burden shifts to the Respondent to rebutt that fact. Evidence led by the Petitioner outweighs that of the Respondent when the Petitioner is able to establish substantial non-compliance and there is only a feeble response or nothing much forthcoming from the Respondent in rebuttal."*

5.28 Nevertheless, it is our contention that the Petitioners discharged the requisite burden of proof on them in this case on this issue. For instance, at paragraph 107 of his Witness Statement on Oath deposed to on 18th March, 2019, **PW62** deposed to the fact that on 1st Respondent's showing, Election was cancelled in 4,171 Polling Units out of the 119,973 Polling Units in the country and that by reason of that cancellation, a total of **2,906,384** registered voters were affected as shown on electronic evidence and as admitted by the Chairman of the 1st Respondent. As a matter of fact, in keeping with the obvious admission that election did not take place as prescribed by law, **PW62** affirmed in paragraph 108 of his Witness Statement on Oath of 18th March, 2019 that the 1st Respondent ordered National Assembly supplementary elections in 14 States of the Federation, namely, Abia State (192 polling units); Akwa Ibom (45 polling units); Anambra (42 polling units); Bauchi (5 polling units); Benue (50 polling units); Imo (604 polling units); Kaduna (17 polling units); Kogi (156 polling units); Lagos (97 polling units), Ondo (56 polling units); Oyo (6 polling units); Plateau (106 polling units)); Rivers (956 polling units) and Sokoto (9 polling units) covering 2,698,773 registered voters. No reason was given why it was limited to only National Assembly election while excluding Presidential election.

5.29 Also, at paragraph 109 of his Witness Statement on Oath deposed to on 18th March, 2019, **PW62** deposed to the fact that if **2,296,384** cancelled votes are added to **2,698,773** voters who did not vote, the figure will stand at **5,605,157** which will exceed the figure of **3,928,869** being the difference in votes between the Petitioners and the 2nd Respondent as announced by the 1st Respondent. That being so, the *margin of lead principle* applies with equal force. This is more so that the piece of evidence led by **PW62** was never controverted by the Respondents. It is trite law that where a piece of evidence is not contradicted and it is supported by pleadings, a Court of law is duty bound to accept such evidence as admitted and proved. In **ADINDU NZE V. CHRISTAIN NJOKU &ORS (2017) LPELR -42440 (CA)** this Honourable Court held thus: "...when a defendant failed to challenge the evidence of the plaintiff, the defendant would be assumed to have accepted the fact adduced by the Plaintiff". In **NZE V. NPA (1997) LPELR-6254 (CA)**, the Court of Appeal held thus: "It is settled law that the court must accept as admitted and proved any unchallenged and uncontroverted piece of evidence."

NON-HOLDING OF ELECTION/CANCELLATION OF ELECTION IN SOME POLLING UNITS AND THE EFFECT ON THE RESULT DECLARED BY INEC

5.30 In paragraph 107 of the Petition, the Petitioners pleaded that during the national collation of results, it was announced that election was cancelled in **4171** polling units in the Federation and that **2,906,384** registered meters were thereby affected. The Petitioners tendered VCDs as **Exhibits P36 – 83** in support. The 1st Respondent in reaction adopted a clearly evasive approach in paragraph 62 of its Reply to the Petition. However, one of the documents the 1st Respondent produced on subpoena in court was tendered as **Exhibit P167**, that is Form **EC40G (3)**. It is a "summary of registered voters of polling units (election not held/cancelled) in **3958** polling units in 36 States of the Federation". It is shown therein that **2,739,533** voters were affected. See also deposition of **PW62**.

5.31 In paragraph 108 of the Petition, it is pleaded that the 1st Respondent ordered National Assembly Supplementary elections to take place in **2341** polling units in the country

and that **2,698,773** voters were so affected. The Petitioners tendered **Exhibit P83** in support. See also the deposition of **PW62**. Strangely, the 1st Respondent could not explain why Presidential election was excluded from the Supplementary Election. The accreditation of voters for the National Assembly and the Presidential Elections were simultaneously done. A careful comparison of **Exhibits P167** and **P83** shows that the figures in both are not the same. For example in **Exhibit P83**, Abia State has **192** polling units where election was cancelled or did not hold while **152,543** registered voters were affected. In **Exhibit P167** the figures are respectfully **98** and **59,825.** The total number of voters affected in **Exhibit P83 is 2,698,773.**

5.32 If the number admitted by the 1st Respondent in **Exhibit 167** being **2,739,533** is added to the number in **Exhibit P83** being **2,698,773,** the total number of voters affected by non-holding/cancellation of election will be **5,438,306**. The above figure has exceeded the figure of **3,928,869** claimed by the 1st Respondent to be the difference in votes between the 1st Petitioner and the 2nd Respondent.

5.33 That is not all. In paragraph 111 of the Petition, it is pleaded that the number of accredited voters and the total votes cast at the election shows that **750,019** votes were unaccountable for. The 1st Respondent evasively claimed that the pleading is "**incorrect**" and "**misleading**". On the part of the 2nd Respondent, he pleaded in paragraph 117 of its Reply to the Petition that it **"shall contend that the 750,019 votes were properly accounted for"**. He did not substantiate that baseless and empty claim. In any case, he called no witness on the issue.

5.34 At the instance of the Petitioners, the 1st Respondent brought **Exhibit 130**, Form EC8D(A) on subpoena. On the face of it, **29,364,209** voters were accredited to vote in the last Presidential election. It also contains the claim that the total votes cast is made up of total valid votes and rejected votes of **28,614,188**. The difference between the two is **750,021** votes which the 1st Respondent did not account for. This is another clear evidence of non-compliance affecting the votes of **750,021** voters.

5.35 When the figure of **750,021** is added to **5,438,306**, the total figure of voters affected by cancellation/non-holding of election will be **6,188,327**. This has clearly wipeout the margin of victory of the 2nd Respondent as declared by the 1st Respondent which is **3,928,869.**

5.36 In paragraph 34(e) of **Exhibit 27**, it is provided thus: *"Where the margin of lead between the two leading candidates is not in excess of the total number of registered voters of the Polling Units where elections were not held or were cancelled in line with section 26 and 53 of the Electoral Act, the returning officer shall decline to make a return until polls have taken place in the affected Polling Units and the results collated into a new Form EC8D (A) and subsequently recorded onto Form EC8E for Declaration and Return".*

5.37 Furthermore, it is equally important to note that **PW62** was never cross examined on this piece of evidence which is an indication of admission of the evidence on the part of the Respondents. We refer the Honourable Court to the case of **EZEANUNA v ONYEMA (2011) 13 NWLR (PT.1263) 36 AT 78, PARA. A** where this Honourable Court held as follows: "Where a witness was not cross-examined on a piece of evidence, his testimony is deemed to have been accepted." Still on non-compliance, the Petitioners adduced evidence to graphically demonstrate how the 1st Respondent and its agents deliberately and inappropriately entered wrong results in 11 States, namely, Borno, Yobe, Zamfara,

Niger, Katsina, Bauchi, Jigawa, Kaduna, Kano, Gombe and Kebbi which substantially affected the outcome of the result of the election in which the 2nd Respondent was declared the winner.

5.38 The implication of the foregoing is that the 1st Respondent rampantly violated Paragraphs 10(a), (b), (c), (d), 11(d) and 23(a) & (b) of its own Regulations and Guidelines with respect to mandatory use of Card Reader in the process of accreditation and which occasioned over-voting thereby rendering the election null and void. In the same vein, the 1st Respondent was in gross breach of various Sections of the Electoral Act, 2010 (as amended) such as Sections 12, 43(3) & (4), 47, 49 (1) & (2), 53, 61(1) & (4) and 63 with respect to under-aged voters manipulation of Ballots and Ballot boxes, compromising production of Electoral materials, non-adherence to Poll time, lack of proper accreditation, over-voting *et al.* In addition, the 2nd Respondent was in gross violation of Section 130 of the Electoral Act, 2010 (As Amended) with respect to **Trader-Moni** whereby traders across the country were compromised to vote for him. Likewise, the shady involvement of soldiers and military personnel resulting in intimidation, militarisation, arrest and detention of supporters of the Petitioners as well as innocent voters was a gross violation of Section 131 of the Electoral Act. Under this circumstances, the 2nd Respondent cannot be said to have been duly elected in accordance with Section 134(2) of the Constitution of the Federal Republic of Nigeria, 1999 (As Amended).

5.39 It is our humble submission that the 1st Respondent is bound by its own Manual, Guidelines as well as Regulations. In the case of **ANDREW v INEC (2018) 9 NWLR (PT.1625) 507 AT 563, PARAS. D – A,** the Supreme Court per **OKORO JSC** held as follows: "Let me state that Manuals, Guidelines and Regulations made by the Electoral Body in aid of smooth conduct of the election are to be observed by both ad-hoc and permanent staff of INEC for the good of the electoral process."

5.40 It is our humble submission that the evidence led by the Petitioners in this case through various witnesses that testified as well as documents tendered is sufficient proof of the issue hereof. It is settled law that documents containing facts relevant to the issue in a Petition are the best form of evidence. In the case of **AREGBESOLA v OYINLOLA (2009) 14 NWLR (Pt. 1162) 429 at 478, PARAS. F – G,** this Honourable Court held as follows: "I have observed that in election Petition cases oral evidence and/or the demeanor of witnesses are not as important and decisive in settling the issues of documentary evidence tendered. **Documents used in an election and all documents containing facts relevant to the issue in a petition are the best form of evidence of resolving election matters**"

5.41 Similarly, in **ANDREW v INEC (supra) at 560, PARA. A,** the Supreme Court held thus: "There is no doubt that allegations of lack of accreditation/improper accreditation, over voting, inaccurate ballot papers account can be established by documentary evidence. **This can be done by examination of voters registers and from EC 8AS used for the conduct of the relevant election.**" Significantly, the 1st and 3rd Respondents did not call evidence, let alone offering rebuttal of evidence led by the Petitioners. This is a fatal blunder as the failure of the 1st and 3rd Respondents to lead evidence having regard to the entire circumstances of this case is tantamount to admission. In the case of **AKANNI v MAKANJU** (1978) 13 at 22, the Supreme Court per **OBASEKI, JSC** (of blessed

memory) held as follows: **"The 1st defendant/appellant did not testify and so as against him the evidence of the plaintiff stands unchallenged"**

5.42 Also, in the case of **DINGYADI v WAMAKO (2008) 17 NWLR (Pt. 1116) 395 at 449 – 450, PARAGRAPHS. G – A**, the Court held as follows: *"As I have stated earlier in this judgment, failure by the 3rd to 43rd Respondents to adduce evidence in support of their pleadings amounts to an admission of the claims of the appellants as stated in paragraph 9(ii) of the Petition.* ***The officers of INEC have in this case, portrayed the commission as an irresponsible organization which is ready to perpetrate illegality and scuttle the nascent democracy for whatever reason best known to them. It is very clear from the circumstances of this case that the INEC was working with gloves in hand along with some political parties in Sokoto to pervert the cause of justice.*** *The electorate are taken for granted. This is most unfortunate."*

5.43 As for the 2nd Respondent, he was, with all due respect, more embattled, albeit, in a futile attempt to defend the allegation of giving false information of a fundamental nature to the 1st Respondent vide FORM CF001 in aid of his qualification than defending allegation of corrupt practices and/or non-compliance with the Electoral Act. Thus, the 2nd Respondent ended up not substantiating paragraphs 108 – 324 and paragraphs 325 – 360 of his Reply to the Petition with respect to corrupt practices and non-compliance with the provisions of the Electoral Act, 2010. The law is settled that Pleadings without evidence is deemed to be abandoned. The rationale is simple: pleadings have no mouth to talk unless animated by evidence. In the case of **OWNERS OF M/V GONGOLA HOPE v S.C. (NIG.)LTD. (2007) 15 NWLR (PT. 1056) 189 at 207, PARAS. A – C,** the Supreme Court per **MUSDAPHER, JSC** (as he then was and of blessed memory)had this to say:

"But it is good law, that pleadings, as stated by Tobi, JSC in Ojoh v. Kamalu supra:

"...not being human beings, have no mouth to speak in court, and so they speak through witnesses. If witnesses do not narrate them in court, they remain moribund, if not dead at all times and for all times, to the procedural disadvantage of the owner, in this context the appellant."

In the instant case, the appellants, led no shred of evidence in support of their entire pleadings and I am of the view that under the circumstances the Court of Appeal had no duty or authority to resurrect the pleadings and to find a defence for the appellants to limit their liability, significantly when such a defence was even never referred to the court."

5.44 Also, in the case of **OGUNYADE V. OSHUNKEYE (2007) 15 NWLR (Pt. 1057) 218 at 286, PARAS. G – H,** the Supreme Court per **MUKHTAR, JSC** (as he then was) admirably stated thus: *"It is merely saying the obvious that pleadings do not have the brain and then mouth to talk and so they need the human being with the automation of the brain, mind and mouth to express the contents of the pleadings in open court. Where the human being, in this context, the appellant, fails to talk for the statement of defence, that seems to be the end of the road for the defendant."*

5.45 The pith and substance of our submission is that the Petitioners have established Grounds B and C of their Petition. *A fortiori*, we urge the Honourable Court to grant Alternative Relief (f) at page 138, Vol.1 of the Petition by nullifying the election of the 2nd Respondent and in consequence ordering a fresh election to the office of President of

29. ***CHUKWU v NWOYE &*** *ORS (2011) ALL FWLR (Pt 553) 1942 CA*
30. ***EHILANWO v INEC*** *(2009) 2 EPR 494, (2008) 16 NWLR (Pt 1113) 357*
31. ***BUHARI v INEC*** *(2008) 4 NWLR (Pt 1078) 546*
32. ***APC v MARAFA & ORS*** *(unreported SC. 377/2019 of 25th May, 2019*
33. **NWOBODO v ONOH** (1984) 1 SCNLR 1
34. **HASHIDU v GOJE** (2003) 15 NWLR (Pt. 842) 352 at 386
35. **ABUBAKAR v YAR'ADUA** (2008) 18 NWLR (Pt. 1120) 1
36. **NGIGE v INEC** (2015) 1 NWLR (Pt.1440) 281 at 317.
37. **BUHARI v. OBASANJO** (2005) 13 NWLR (Pt.941) 1 at 122 paras C-D
38. **AMOSUN v. INEC & ORS.** (2010) LPELR-4943 (CA)
39. **OBAFEMI & ANOR V. PDP** & ORS (2012) LPELR-8034(CA)
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72. **ANDREW VS INEC (supra) at 560, PARA. A**
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Nigeria in the unlikely event that the Honourable Court declines to grant the substantive or main reliefs sought in paragraph 409 of the Petition.

5.46 The Honourable Court is respectfully urged to resolve **ISSUES 4** and **5** in favour of the Petitioners.

6.0 CONCLUSION AND PRAYER

6.1 The Honourable Court is respectfully urged to uphold the Petition and grant all reliefs sought therein.

D A T E D this 14th day of August, 2019

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IN THE COURT OF APPEAL
HOLDEN AT ABUJA

IN THE MATTER OF THE ELECTION TO THE OFFICE OF THE PRESIDENT OF THE FEDERAL REPUBLIC OF NIGERIA HELD ON THE 23RDFEBRUARY 2019.

PETITION NO: CA/PEPC/002/2019

BETWEEN:

1. ATIKU ABUBAKAR 2. PEOPLES DEMOCRATIC PARTY (PDP)	}	PETITIONERS
AND		
1. INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC) 2. MUHAMMADU BUHARI 3. ALL PROGRESSIVES CONGRESS (APC)	}	RESPONDENTS

PETITIONERS' FINAL WRITTEN ADDRESS IN REPLY TO THE 2ND RESPONDENT'S FINAL WRITTEN ADDRESS

LIST OF AUTHORITIES

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2. **OGAH V. IKPEAZU** (2017) 17 NWLR (Pt. 1594) 299
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4. **AL HASSAN & ANOR V. ISHAKU & ORS** (2016) LPELR- 40083
5. **PDP v. INEC & ORS.** (2014) 17 NWLR (Pt. 1437) p. 525
6. See **ALFA ALAD v MEMUDU KURE & ANOR** (2000) LPELR – 10467 (CA)
7. **AMAECHI V. INEC & (No. 3) ORS.** (2007) 18 NWLR (Pt. 1065) 105
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9. **NSEFIK & ORS. V. MUNA & ORS, (2007) 10 NWLR (PT. 1043) P. 502**
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21. **CHUKWUEGBO V. AGU & ORS.** (2015) LPELR- 25578 (CA)
22. **ALHASSAN & ANOR V. ISHAKU & ORS.** (2016) LPELR- 40083 (SC)
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